



Sri Pendekanti Venkatasubbaiah

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Vasavi Academy of Education

Vasavi Academy of Education was established in 1981 by a few prominent members of the society under the stewardship of Sri Pendekanti Venkatasubbaiah an eminent social worker, an able administrator and former Governor of the States of Bihar and Karnataka with the laudable objective of providing quality education on non-commercial basis to all, particularly in the field of professional education. Sri Pendekanti Venkatasubbaiah served as Hon. Chief Patron of the Academy guiding its destiny and was indeed a friend, philosopher and guide throughout his life. In this age of rapid change and development in science and technology, education has come to be recognised as a major input for the speedy development of the nation and the uplift of its people. Vasavi Academy of Education is an organisation that has been making a vital contribution towards this goal.

Institutions of Vasavi Academy of Education

The Academy has sponsored and established the following institutions in Telangana and Andhra Pradesh.

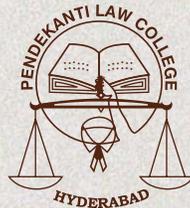
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|---------------------------------------|---------------------------|
| 1. Vasavi College of Engineering | 2. Vasavi Public School |
| 3. Pendekanti Institute of Management | 4. Pendekanti Law College |
| 5. Vasavi College of Music & Dance | 6. Vasavi Polytechnic |

Pendekanti Law College

Pendekanti Law College was formally inaugurated on the 13 April 1991 by the then Chief Justice of India, Hon'ble Sri Ranganatha Misra and Sri Krishna Kanth, the then Governor of Andhra Pradesh, was the Chief Guest. The college offers LL.B., 5 Years Integrated Degree Course; LL.B., 3 Years Degree Course and LL.M., with corporate law specialization. The college has been conducting regular moot courts, workshops, seminars, symposiums, interaction with the members of Industry, the Bar and the Bench. The college has highly qualified and experienced faculty appointed by the duly constituted committee of Osmania University.

LEX VISIO

**“STUDENT MAGAZINE”
2023**



Pendekanti Law College

(Sponsored by Vasavi Academy of Education)

(Affiliated to Osmania University and approved by the Bar Council of India)

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Dr. Tamilisai Soundararajan



सत्त्वमेव जयते

GOVERNOR
TELANGANA

RAJ BHAVAN
Hyderabad - 500 041

28.02.2024

FOREWORD

Architects and engineers play a vital role in revolutionizing the nation's infrastructure and industrial development. Similarly, lawyers serve as the architects of society, shaping the nation itself. Therefore, striking a balance between national growth and development is crucial.

In this regard, Pendekanti Law College, established under the aegis of Vasavi Group of Institutions, has emerged as a renowned institution imparting legal education since 1991.

I believe Lex Visio, the 2023 edition, a student magazine published by the college, offers a rich collection of insightful interviews with legal luminaries who have made significant contributions to the legal system and fraternity. The magazine also features scholarly articles and opinions from students, academics, and practicing professionals, highlighting the evolution and dynamics of the Indian judiciary and judicial system, along with their transformation. The research articles, essays, book reviews, puzzles, and quizzes developed by the students themselves are both impressive and demonstrative of exceptional talent.

The primary objective of Lex Visio is to encourage students to write dynamic articles, essays, and book reviews. This fosters their articulation skills and hones their research abilities, ultimately equipping them with the necessary legal aptitude to excel in their future endeavors and contribute meaningfully to the nation's development. The magazine also aims to help students meet the current judicial system's standards and develop the critical thinking skills required to analyze complex legal cases and gain the necessary acumen to excel as young generation lawyers.

I highly commend and appreciate this innovative and dynamic initiative by the Pendekanti Law College to publish a magazine where students' contributions are clearly evident, from conception to completion. I wish the college and the students continued success in all their future endeavors and sincerely hope that their contributions to the Indian judiciary and legal fraternity are cherished and recognized widely.

Dr. Tamilisai Soundararajan



UNIVERSITY COLLEGE OF LAW
OSMANIA UNIVERSITY
HYDERABAD - 500 007

MESSAGE

Prof. B. Vijaya Laxmi

B.A., LL.M., Ph.D.

Dean & Head, Faculty of Law

On behalf of Osmania University, and on my behalf, as Dean Faculty of Law, OU, it gives me immense pleasure to be part of the launch of the third edition of "Lex Visio 2024" student magazine of Pendekanti Law students. It is a good initiative taken up by the teachers and students of Pendekanti College of Law. This is a platform for the students to showcase their academic talent. In this digital and competitive era, this kind of academic activity will definitely improve the intellectual capacity of the students. Furthermore, it creates a habit of exploring, identifying and advocating the issues that are the need of the hour. I appreciate and congratulate the Principal and the Colleague teachers for their efforts to bring out this student magazine. This magazine not only benefits the students, it also in a way helps the society at large. with these few words, I once again congratulate the Principal, teachers and students for their sincere efforts to bring out the magazine for the third successive term.

With Best Wishes.

B. Vijaya Laxmi
Prof. B. Vijayalaxmi,
(Prof. B. Vijaya Laxmi)



UNIVERSITY COLLEGE OF LAW
OSMANIA UNIVERSITY
HYDERABAD - 500 007

MESSAGE

Prof. Dr. N. VENKATESHWARLU

LLM, Ph.D.

Joint Sec. (U.G.C.), Former Chairman of B.O.S. (Law)

I am very happy to know that one of the best private colleges affiliated to Osmania University, Pendekanti Law College is launching its second edition of students' magazine 'Lex Visio'. Every attempt to transcend the knowledge and academic prospects of students by colleges must be commended. Lex Visio is such a sincere and bona fide attempt.

The most significant aspect of publishing a student magazine is that it provides an opportunity for the students to put thoughts into motion and analyse various aspects of law so that the jurisprudential perspective of those aspects can be understood well which can also be imparted upon to the other students. This way students also get the required impetus and enthusiasm to write and publish more and more articles. Writing articles involves a lot of research which is very much essential for the law students and young advocates in order to learn and acquire the necessary skill of making efficient and effective arguments.

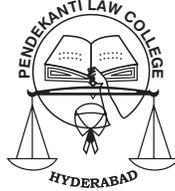
I had the opportunity to go through the magazine. I noticed that students also interviewed various eminent people including Supreme Court and High Court Judges and Senior Lawyers. Their interviews are very candid which gives a lot of insights on Legal Profession and Indian Judiciary to the students. There are articles relating to a wide variety of topics. A lot of efforts have been put in by the students and the editorial team.

I convey my appreciation to Pendekanti Law College for the efforts it has put in to release this magazine and for its welcome initiative. I wish the college team that this magazine becomes a great success and all the best for its future endeavours and initiatives.

N. Venkateshwarlu
(Prof. Dr. N. Venkateshwarlu)



P. Ramamohan Rao
President



VASAVI ACADEMY OF EDUCATION
HYDERABAD

MESSAGE

I am elated that Pendekanti Law College is publishing the second edition of its student magazine 'Lex Visio'.

Pendekanti Law College was established in 1991, under the Vasavi Academy of Education, by late Sri Pendekanti Venkatasubbaiah, a visionary and a veteran statesman, who served as a Union Minister and later, as Governor of the states of Bihar and Karnataka. The college has, ever since maintained high standards of imparting legal education at fair and reasonable costs.

The magazine accords an opportunity to students to express their thoughts and voice their opinions on legal issues, which encourages them to deeply study the issues with a critical mind and innovate solutions within the existing legal framework, both of which are extremely vital skills for lawyers.

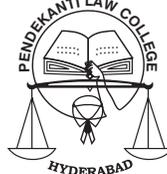
I congratulate the Principal I/c, Dr. P. Aravinda for her untiring efforts in taking the institution to greater heights through her able stewardship. I would like to convey my appreciation to the members of the Editorial Board for their efforts for the magazine.

I welcome the magazine with great pleasure and a strong belief that it is here to stay. I wish 'Lex Visio' a great success and look forward to many more such enriching editions.

(P. Ramamohan Rao)



Prof. (Dr). V. Srinivasulu
Vice-President



VASAVI ACADEMY OF EDUCATION
HYDERABAD

MESSAGE

Our steadfast adherence to maintaining academic standards at Pendekanti Law College, for over three decades, has done us immensely proud. We provide a congenial atmosphere for multifaceted development where students are encouraged to channelize their potential in the relentless pursuit of excellence.

I am thrilled to extend my heartfelt congratulations to everyone involved in the creation and launch of our remarkable Magazine Lex Visio 4th edition. It brings me immense joy to see the dedication and hard work of our students, faculty, and staff culminate in such a significant achievement.

The Law Magazine stands as a testament to our commitment to academic excellence and the exploration of legal discourse within our institution. Its inception not only enriches our academic landscape but also fosters a platform for insightful discussions, critical analysis, and the exchange of ideas within the legal realm.

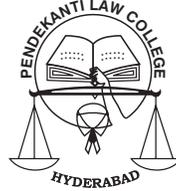
May the Law Magazine continue to flourish as a beacon of legal scholarship and innovation for years to come.

Once again, congratulations to everyone involved, and thank you for your invaluable contributions to our academic community.

Warm regards.



M. Krishna Murthy
Secretary



MESSAGE

VASAVI ACADEMY OF EDUCATION
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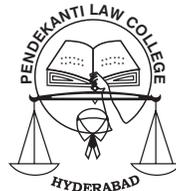
I am happy to note that the students of Pendekanti Law College are coming out with the second edition of their magazine, 'Lex Visio'. Our endeavour has always been to encourage such initiatives by the student that contribute to the all-round development of our students.

I take this opportunity to congratulate the Principal, faculty and students of Pendekanti Law College and the Editorial Board, on this happy occasion. I wish 'Lex Visio' a successful journey ahead.


(M. Krishna Murthy)



V. M. Parthasarathi
Treasurer



MESSAGE

VASAVI ACADEMY OF EDUCATION
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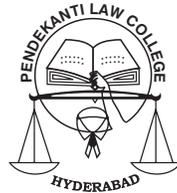
It is with great joy that I receive the news of publication of the student magazine of Pendekanti Law College, which is one of the premier institutes of legal education in the state. I am confident that 'Lex Visio' will bring forward the skills and talents of the budding lawyers who are being moulded by the college.

I take this opportunity to compliment the Principal, faculty and students of Pendekanti Law College at this momentous occasion and put on record my appreciation for the Editorial Board. I wish 'Lex Visio' a wonderful journey ahead.


(V. M. Parthasarathi)



Dr. P. Aravinda
Principal
Pendekanti Law College



PENDEKANTI LAW COLLEGE
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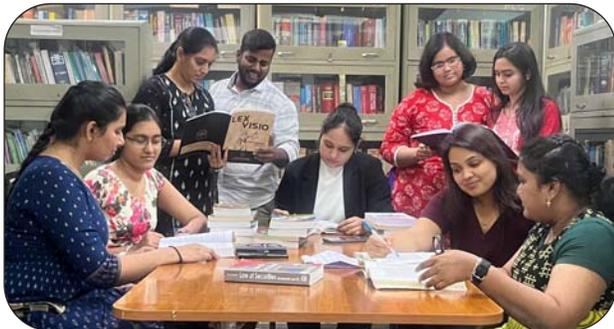
FROM THE PRINCIPAL'S DESK

It gives me immense pride to announce the release of second edition of the 'Lex-Visio'- student magazine which is 'for the students and by the students'. Art of writing is a prerequisite in the legal profession and it is the central medium, with which a lawyer communicates his/her work. "Lex-Visio" provides a platform to the students to sharpen their writing skills, critical thinking and research attitude. The magazine provides an opportunity to the students to echo their opinions on various contemporary societal and legal issues in relation to legal development across the globe.

I take the privilege of congratulating the contributors to the magazine. I acknowledge the relentless efforts of the editorial board and faculty in bringing out this prestigious magazine. I encourage and look forward for more editions in near future.


(Dr. P Aravinda)

FROM THE EDITORS' DESK



It is with great pleasure and enthusiasm that we welcome you to the latest edition of our esteemed Law Magazine LEX VISIO. As stewards of legal knowledge and discourse, we are committed to providing insightful analysis, thought-provoking commentary, and cutting-edge perspectives on the ever-evolving landscape of law and justice.

In today's world, where legal issues permeate every aspect of society, from the local to the global, it is imperative to stay informed and engaged. Our publication serves as a beacon of light, illuminating complex legal matters and facilitating constructive dialogue among legal scholars, practitioners, policymakers, and the public.

In this edition, you will find a diverse array of articles, essays and book reviews spanning various legal domains, from Cyber Crimes to Tech Enhancement, from Undertrial prisoners to E-commerce fraud. Our esteemed contributors have delved deep into pressing legal issues, offering fresh insights and innovative solutions to the challenges we face in our quest for a more just and equitable society.

As members of the editorial board, we extend our heartfelt gratitude to our dedicated team of editors, reviewers, and contributors whose tireless efforts have made this publication possible. We would also like to extend our sincerest gratitude to Dr. Aravinda, The principal and Dr. L. Padmavathi, faculty for entrusting us with the opportunity to spearhead the creation of our esteemed law college magazine. It has been an enriching experience to collaborate with such talented individuals and contribute to our vibrant academic community. Their unwavering support and encouragement have been instrumental in guiding this magazine to fruition.

We also express our sincere appreciation to our readers for their continued support and engagement.

In closing, we invite you to immerse yourselves in the pages of this magazine, to explore the rich tapestry of legal thought and practise it presents, and to join us in our ongoing pursuit of a more just and equitable world under the rule of law.

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Interview with Hon'ble Justice G. Chandraiah

(Retd. Judge of High court of Andhra Pradesh)



He was born in an agriculturist family on 10.05.1954 in Timmapur village, Jannaram (Mandal), Adilabad District to Sri Gunda Beerpuri and Smt. Marthamma. He completed primary education, 1st to 3rd class at his native village and primary school at Timmapur. He completed the upper primary and secondary education i.e., 4th to S.S.C., from Z.P.H.S., Tapalapur. He completed intermediate and graduation i.e., B.A. at Government Arts and Science College, Adilabad. He completed LL.B., M.A. (Political Science) and LL.M. from Osmania University, Hyderabad. He enrolled as an advocate on the Bar Council of A.P. and later joined Sri I.Venkatanarayana's chambers. He was trained in administration of justice and later served as the Government Pleader for Education. He later served as Judge of A.P. High Court and Acting Chief Justice. He served as Government Pleader for Prohibition and Excise, where he made significant decisions, including the amendment of the A.P. Excise Act, 1968.

He served as a Standing Counsel for various institutions, including A.P. Scheduled Castes Co-Op. Finance Corporation Ltd., A.P. Social Welfare Residential Educational Institutions Society, A.P. Municipalities (Telangana Area), A.P. Study Circle, and A.P.T.W. They were nominated as Members of High Court Legal Services Committee and Board of Studies in Law, Osmania University. They were also a member of Legal Services Authority before becoming Additional Judge of A.P. High Court. They retired on the age of superannuation in 2016.

1. Reflecting on your career, could you please elucidate or explain how you came to choose law as a profession?

When I was a student of seventh class, basically I wanted to become a doctor. The word “doctor” I came to know when I was a student of seventh class. So, at the time, one of my distant relatives' son, was a student of medicine I am told. So therefore that gentleman was talking to my father, that he's doing medicine. That is how the word “doctor” came to my mind. Then I wanted to become a doctor. Then after completion of 10th class, I wanted to join in BiPC in fact, because to become a doctor, unless I do BiPC, I cannot. Then my parents came to my mind, about their socio-economic background, and I thought that they may not help. Then I discontinued the idea of becoming a doctor by taking admission in BiPC. I diverted my thought towards arts. That's how I took admission in CEC. In that process I completed graduation. During the course of this time, as I come from a small village where there's a variety of people living, including the farmers, one of the village elders wanted to occupy the land of the farmers illegally. Then I came to their rescue and protected their rights and restored their lands. In that process, I came in contact with a lawyer by the name M. Ram Mohan Rao, a senior lawyer of the local area. Then now and then I used to go to the court to attend cases. At that time I asked the lawyer Mr. Ram Mohan Rao, sir if I take admission now, what will be the future of the lawyer? He said that a lawyer will be leading a life better than a Tahsildar. So Tahsildar is one of the good authority in the local area. I felt happy. Then I completed law after completion of graduation. I came to Hyderabad, then I wanted to become a lecturer. I wrote two examinations. One is to become a lawyer, another is to become a lecturer. I had admissions in two subjects, but the result came early in law and later in arts, that is political science. Then I took admission in law I completed that law. Soon after completion of law, I joined the legal profession. That's how I became a lawyer.

2. Kindly navigate us through your journey of being enrolled as an advocate at the outset and later getting elevated to the bench of AP high court and to what do you attribute your success?

Before my enrollment as a lawyer, I was in the public service. In the process, I came in contact with several officers, including IAS and IPS. So one of the IAS officers was the district collector, when I was student of intermediate. That relationship continued and it is continuing. He ultimately retired as a Special Chief Secretary of the Government of Andhra Pradesh. His name was RKR Gunella . One day, when I went to the Secretariat, in connection with the problem of a farmer who came from a village, he was coming inside, I was going out. Then we met. I asked him, Sir, I completed law. I need a senior. Kindly will you suggest a senior. He suggested once, one gentleman's name, his name was I. Venkat Narayana, who later became high court judge and retired. I joined with him, before securing my provisional certificate in law. So after securing the provisional certificate, he moved my enrollment, then I became a lawyer. I continued with him for about two years, from 1980-82. Then in 1983, I was selected in a scheme sponsored by the government of Andhra Pradesh, known as Social Justice scheme. By virtue of that, I was allotted to a government pleader in high court then, by the name, Syed Shah Mohammed quadri, who later on became a High Court Judge, and then a Supreme Court Judge, and then retired. Now he is happily taking rest as a retired Judge of supreme court. When my second senior Quadri sir, became a judge of the High Court, I became an independent lawyer in 1986, in which year he became a judge of the High Court. In 1987, I was appointed as a standing counsel for a government corporation, in 1992 I was appointed as a government pleader and continued till 2003, then in 2005, I became a judge. Then I functioned as a judge for 11 and a half years, and I retired as a senior judge of the High court on 9th May 2016.

3. Are there particular contributions or milestones that you feel especially proud of achieving throughout your journey ?

My presence in the court itself is a contribution to the institution. Because I never lost any case of my private clients. I never lost any case from the government side. And I never saw any tears in the eyes of my client. Whoever comes to me with a problem, there is no question of saying “no” on the

ground that he is not able to pay the fee. Half of the cases I did free of cost for the people. Then as a government pleader on account of my contribution, there are several laws that have undergone amendments. For instance, there is an excise law, known as prohibition and excise. In that there is a section called Section 34 which deals with the power of the authorities to seize certain materials. There is a material called black jaggery which is a waste good. And lorries full of it used to be transported from Tirupati area to Hyderabad. And they used to sell it duly paid which was used for manufacturing of illicit liquor. The transporters used to say that you (excise officials) have no authority under the law to seize our vehicles, unnecessarily you are troubling only for the sake of misguiding us or troubling us. They have filed several cases, contempt directions were given, and you have no authority, why are you seizing it? But they (the Excise officials) never released the vehicles, contrary to the directions of the High court, on the grounds that what they are doing is correct, but they have no authority. Then as a government pleader for excise, what to do? So I inspected all the areas as the government pleader, wherever the illicit manufacturing of illicit liquor was going on. Then I advised the government to take some black jaggery, send it to the laboratory and get the report, so that what is the utility of that Black jaggery will be known to us. Then they sent a very big report which shows to the effect that this black jaggery will be utilized for manufacturing of illicit liquor, which will be harmful to the human health. Taking support of that report, I argued the matter. And the court delivered a judgment in our favour, in the government's favour. Consequently, the prohibition of excise acts underwent an amendment whereby the excise officials have been given the power to seize the vehicles which transport Black jaggery.

4. How did you unmask the truth and deliver judgements in cases where there is conflicting testimony or evidences and law is nebulous or unclear?

In law, evidence is a very, very critical subject. The whole thing, either in the civil side or criminal side, the law of evidence will take a very major role in the adjudication process and also finally in the adjudication. A judge will have a spiritual view, a

legal view and a logical view. After verifying the entire record and the facts and the law, whatever that comes to our mind that this is correct, that will resolve all the conflicts of law when we examine the law and the facts. That gives us the way how to adjudicate the matter and how to determine and how to deliver the judgment.

5. How crucial do you consider collaboration between the legal system and human rights organizations in effecting meaningful change? Can you share examples where such collaboration led to significant positive outcomes?

There is not much of a difference between legal rights and human rights. Every human right is a legal right. But every legal right is not a human right. Legal right is one which flows from the law in connection with a thing or a person. Suppose you are the owner of a particular property. The property was not there before the property came to you, when you started claiming the right over it, when you came into contact with the property. Then somebody comes and says that it is not your property, it is my property. So both the parties will claim the same based on some evidence. Evidence is of two types. One is the documentary evidence and the other is the oral evidence. So therefore, that particular right flows from the law. That is called legal right. Then we'll find a constitutional right. Right to property is not a fundamental right but it is a constitutional right because the constitution says whoever has private property, if that property is required for a public purpose, unless the government follows the due process of law under article 300A of the constitution you cannot deprive him of that property without paying the appropriate compensation to him. This is called constitutional right.

Then there is the fundamental right. Fundamental right is one which cannot be deprived in any manner, in any way. For example, the right to life is a fundamental right. So therefore you cannot beat him, you cannot kill him on the ground that a particular person has indulged in a non bailable offense. It is for the court to adjudicate. Court has the power to save a man or to take away the life of a man subject to the nature of the case that is proved,

if it is a case where there's imprisonment for life or taking away his life.

Human right is one where every aspect is a human right. Medical necessity is a human right. Education is a human right. House necessity is a human right. Food necessity is a human right. Clothing is a human right. Work necessity is a human right. Life necessity is a human right. So therefore human rights prevail over the legal rights, constitutional rights and any other rights. So the human rights are natural rights, then the legal rights and constitutional rights.

Human rights can be had by a child in the womb of the mother. And human rights can be protected by the way of reputation and respect and honour of man even after death, by celebrating his birthday and death days, having regard to his services rendered by him to the society when he is alive.

6. From your perspective, how influential is the judiciary in safeguarding and advancing human rights within a society? From your experience how have you seen this role evolve over the years?

Earlier there was no classification of legal rights, constitutional rights and human rights. There were only human rights. They are natural rights. Right to life is a human right. It is a natural right. Right to liberty is a human right. It is a natural right. Right to dignity is a human right, a natural right. And the right to equality is a human right and a natural right. Only after the law has been developed, then the differentiation between the legal right and constitutional rights. Initially it was only natural rights and human rights. So every institution is meant to protect human rights. So therefore every institution of law is only meant to protect human rights. Not only the law institutions but also the quasi-judicial authorities. Not only quasi-judicial authorities but every authority of the executive. The authority is meant for to protect the rights of the citizens. And the citizens are entitled to protect their rights either from the neighbour or from the authorities. That is how the institution of law functions.

7. How have you seen the legal system change over your career ,What do you think are the most critical issues facing the legal system today compared to previous Era of judiciary?

Judiciary will not be facing any problem, but every society's problem is a judicial problem. Every individual problem is a judicial problem, every family problem is a judicial problem, every property problem is a judicial problem, every material problem is a judicial problem, every natural problem is a judicial problem. Judiciary is only meant to deal with the issues of problems and finding solutions, but the critical problems are the human problems. Human problems are mainly the conflicts between the individuals, conflict between the families, conflict between the states, and conflict between the nations. Therefore, we have domestic law, we have international law. All these issues will have to be dealt with by only the judiciary. Now, human problems are, earlier they used to settle the matter by adjudication at one level, either at the magistrate court or at least by the senior civil judge court. It depends upon the money power and failure of the parties. They are not going back and pursuing the dispute further. Instead of knowing that there is a loss of money, there is a loss of time, there is a loss of energy. So the society is struggling with the ego. The ego of the society has become the big problem for the judiciary in adjudicating the matters, and is one of the reasons for causing the delay. So therefore, the human ego has become the greatest problem in the society. That problem has become a problem for the judiciary for adjudication because it leads to so many conflicts .

8. In your esteemed tenure, what were some of the most complex or demanding challenges you encountered as a high court judge,a government pleader, and a resource person at the telangana state judicial academy and How did you vanquish (triumph over) them?

I never faced, as a student, any problem. I never faced any problem as a law student. I never faced any problem as a lawyer. I never faced any problem as a government pleader. I never faced any problem as a judge. I never faced any problem as a chairperson of the Human Rights Commission.

And I do not have a problem, right now. I never faced anything as the problem. Without problems there is no human being. And every problem needs a solution. Every solution leads to happiness.

9. The fact that you had great power in your hands, what responsibilities did you carry, in capacity as a permanent judge of the Andhra Pradesh high court, on your shoulders?

Every power is not absolute. There is no greatest power in the world except the power of God. Power of God has its own limitations. It always doesn't protect everybody. It protects only the good people and remove the bad people. The judge also does the same thing. So therefore, no individual is above the law. Law is subject to the situation, but law is ultimate. It is meant for resolving the problems. So I had power with limitations, but for the people it feels unlimited, but as the judge we know our limitations. So within the execution of the powers, I enjoyed completely. I exercised my whole powers and I showed the solution for all the problems, which came into my purview.

10. For law students who are aspiring to pursue a career in human rights law or aiming for judicial positions, what advice or guidance would you offer based on your experience?

Study the society, study the individual, study the family, study the social structure. Social structure consists of several issues, academic structure, cultural structure, social structure, political structure, philosophical structure, history. Then in the process of your life as a lawyer, whichever problem that comes to your knowledge through a client or otherwise, as a legal personality, you get the matter adjudicated by approaching the appropriate court of law.

11. Over the span of your career, how have you observed the legal system transform, and what pivotal changes do you believe have significantly impacted the judiciary?

When I joined in law, started practicing, there are so many laws that underwent amendments. Secondly, there is a lot of change in judiciary, means among

the judges and the lawyers. The transformation, that is, what is the progress and regress. The qualifications become high, and the quality becomes less. There are failures and there are successes. So Therefore, judiciary is moving ahead to resolve the problems of the nation from the High Court to the Supreme Court. And day by day, the response to the judiciary is going up. And the need of ours is that the lawyers and judges should equip enormous knowledge to resolve the problems of conflicts which are arising day by day due to the development that is taking place in the society.

12. What advice would you give to young lawyers and law students about handling setbacks or failures in their careers? How can they maintain resilience and commitment to justice despite facing challenges?

Every human life is a challenge. Every minute is an examination. Every challenge needs to be attended and every examination needs to be passed. For that purpose you should have self-confidence, courage, enthusiasm and energy for which your thinking plays a vital role. In the thinking you will have a positive nature and a negative nature. Both come at a time. But when you tackle with a justifiable cause, when you feel that it may not be possible, then if you stop for a minute or for an hour, then you rethink, then you'll find a solution. Because the cause that you want to take is a justifiable cause. Every cause is an issue. Every issue is a problem. Every problem needs a resolution. Every resolution is coupled with a law, and law gives a solution for all the problems.

Interview with Hon'ble Justice T. Rajani

(Retd. Judge, High Court of Telangana)
Former Judicial Member, NCLT Amaravathi Bench



Born on 06.11.1958 in Annambhotlavari palem, Prakasam District to Smt.Ramathulasamma and Venkatappaiah. Pursued School and College studies at Guntur. Joined in Andhra University for Law in 1977 and completed Law in 1980. Got enrolled for law practice in April, 1981. Practised Law in Guntur from 1981 till getting selected as District Judge in August, 2002. After 4 1/2 months of training at Judicial Academy, posted as II Additional District Judge in Karimnagar and later worked as I Additional District Judge, Karimnagar; Judge Mahila Court, Hyderabad; Economic Offences Court, Hyderabad; District Judge, Medak; and Metropolitan Sessions Judge, Hyderabad. Elevated to High Court on 17.01.2017.

1. Ma'am, you have done a three-year law degree course. What is the graduation course?

I did a B.Sc. before doing a 3-year law degree course with Zoology as a main subject and I was also good at dissection due to which my evaluator encouraged me to go for higher studies i.e., M.Sc. However, I conveyed my indifference towards the same. By then, I had already decided to join a law course, which I was passionate about. Whereas, I believe B.Sc. is just an accident because My parents want me to go into the field of medicine, even though I am more committed towards law since the age of my discretion. So, in this way, I first attempted the medical entrance test, where I lost the chance of getting a seat by one mark. My parents were very hopeful that I will crack the test next year and made me join B.Sc. so that I will be in touch with science. This is the reason why I did B.Sc., otherwise, I would do B.A. or B.Com.

2. What inspired you to make the decision to enter the law field?

I don't know how. But, from my childhood, they were comments from my family members that I raised very good knowledge on law and possessed great argumentative skills. Maybe, this is how I got related to law. My father was an advocate, but I don't think I drew inspiration from that fact. Rather, the afore-said comments motivated me to do law.

3. While pursuing an LLB course, what is your aim? Did you aim to become judge or lawyer?

I don't want to do anything other than be a lawyer. I want to practice. By default, I became a judge (laughing). I didn't even know that there was an exam to become District Judge (DJ). Earlier, only on the basis of interviews, people became DJs. Until I applied for the DJ exam, there was no written examination. With the impression that there is no written examination and with the belief that I am good at interviews, I applied for it. When I received the hall ticket, they notified me that there was a written examination. I thought I would make it with just an interview, but, if I know there is a written exam, I would definitely not apply for it. After reading the notification that there is a written exam, I thought of giving up. Then, my senior

advised me to go for it as you have already received the hall ticket. Without any expectation, I attempted and I passed the written exam. Then, I appeared for the interview and we had no clue as to how they would assess us. We thought that the written exam was conducted to assess the basic knowledge of law possessed by the candidate and, hence, the interview is the main stage on which they decide who to recruit. I stood first in the interview. However, I lost with a fraction of marks as stated by the interviewers. I was lucky as there were three subsequent notifications . There was a second notification stated that the posts are exclusively for women, which was widely debated at that time. Somehow, the controversy was resolved due to Justice Misra, who was a dynamic judge. In that examination, I got selected. However, when the panel was sent to the government, Justice Misra was transferred. Again, controversy started and the matter went to the Supreme Court where we were asked to write an undertaking stating that we will work as a judge only in family courts. But, we lost the case. In the meantime, there was yet again another notification. I applied for that. This time, I succeeded, I stood first and, ultimately, I got into the service.

4. How were the initial days of judgeship as you said you always wanted to be a lawyer and not decided to be a judge?

Yes, I was surprised that I can adjust so well to this judgeship because, when I got selected, they were judges who were betting that I will go back within a few days by resigning as early as possible. But, honestly, the transformation came to me automatically. It was like sliding without any friction. From day 1, I could effectively function as a District Judge. I did not have any difficulty because of my temper and all. There are still people contending that I still carry on myself with aggressiveness. However, I don't think it as aggressive, rather I am assertive. We, being a judge, shall have a skill to not hurt the bar, but still ensure that you make a point. We should give a belief to them (advocates) that we are giving a good hearing, but we should also be able to stop them when it is required to do so. Otherwise, the court management could get affected, that is, time of the court must be maintained. Repetition is one thing which I don't

like to take place in the court. Advocates, usually, have this tendency to repeat points due to the lack of confidence on judges and false assumptions that whether the bench is listening to his points or not. Besides repetition, long and irrelevant arguments is another thing which an advocate should be focusing on and ensure that he or she has a quick grip over the facts of the case so that the time will be curtailed and case can be disposed off speedily. In this way, a judge should ensure not to hurt advocates and, at the same time, ensure the court's time is not being wasted.

5. Could you Please tell us three philosophical thoughts a judge must possess while deciding a particular case?

The first primary thing is that a judge should be able to focus. Generally, judges lose focus because, after all, judges are humans too. This happens when judges don't get any interesting points from advocates and when a judge doesn't have a skill or thought of controlling the unnecessary arguments from advocates and allows them to go on. A judge has to be bent upon the disposal of that litigation so keenly that disposal of the litigation is the goal while also granting justice. Thus, a judge should keep all these in mind so as to not be lethargic; be focused enough and have an aim to deal with all the aspects in order to end the litigation.

6. Do you think emotions play a role in delivering judgments because there are several cases that should be dealt with emotions, rather than dealing with them logically?

Emotions definitely play a role because, as I said, as a human being, if you are not elevating yourself beyond required norms then All the judgments get affected as well which inturn hampers the delivery of justice. So, not only as a judge, but also human beings should also be beyond emotions. This is what our philosophy says. How much you evolve yourself as a human being, definitely, contributes to the efficiency and effectiveness of your role as a judge. So, emotions are required and I don't say that a judge must be completely emotionless. However, such emotions should be there only to the extent of understanding the feelings and needs of the people.

But, during that process, one should not be involved in emotions. For an example, let us take an example of a rape case. We definitely become emotional seeing rape victim. But, a judge should stop his or her emotions at a point where one should be inclined to redress the grievance of the victim, not one's own grief.

7. Ma'am, is there any case where you are instantly saying something, whereas the evidence speaks the other way? How do you deal with this kind of situation?

I don't speak whatever comes into my mind. I express something only for two reasons; that is, either to get clarification on that point or to get justification, but not to showcase my smartness. Besides this, I feel that a judge should express whenever it is needed. If the judges are silent then, the advocates will be at a loss worrying about what's going on in the judge's mind. In this regard, there is a saying: "Silent judges are more dangerous than counter-judges".

8. Ma'am, in the criminal justice system, does evidence really meet the end of justice all the time?

No, because there are certain lapses in the police department and other investigating agencies And, lapses on the part of victims due to lack of knowledge and awareness. In several rape cases, they don't know that they have to preserve the condition of the victim as it is for medical examination. Additionally, in most cases, the victims don't even report the incident to their own parents. Due to this, crucial evidence gets lost or destroyed in the initial stages itself. For example, in most of the NDPS cases, the accused are getting acquittals due to the purposeful destruction or creation of evidence by the police like keeping drugs in their pockets, etc in order for him to not get bail. There are many shortfalls between justice and evidence collection.

9. As you've said earlier, sometimes the intention of the legislature is not clear. But when the judiciary interprets, it is seen as judicial

overreach. Can you comment on it?

The three wings of society- executive, judiciary and legislature have to work effectively and within their boundaries, it is an accepted norm. So when a wing becomes weak, the other wing takes up. As I said, ultimately we are looking at how to do justice and how to reach the needs of the people. If the law is leaving the scope for interpretation then definitely judges come to the rescue of the victim and interpret it, which is being termed as proactive. Judicial activism is used as a wrong term actually, activism comes into play only when there is some ambiguity in the law. How you deal with that ambiguity is the question for the legislatures. If the legislature is not keeping that law ambiguous then the judiciary will not have scope for interpretation. When you are leaving scope for interpretation we interpret it to meet the objects of the law and the intention of the legislature itself.

10. Do you think the training given by the judicial academy is sufficient to become a judge?

Not really. It should be more focused, the study within the institution must be both intensive and extensive so as to understand what are the problems that are affecting the objectivity of the judges. Academics are trying to focus on this aspect but they are not achieving it, they have to work on it in my opinion.

Mahila courts deal with all cases pertaining to violence against women.

11. What is the major shift you saw after being promoted from district court judge to high court judge?

As a high court judge, we have broader powers. So if we find anything which is not constitutional we can address that issue, we don't have that liberty as a district court judge. As a district court judge, we have to work within the framework of the law. For example, if I am dealing with the Hindu Succession Act I have to deal with the Hindu Succession Act as it is, whereas a high court judge if I find anything unconstitutional within the Act judge I can strike it out. For example, in T Sareetha's case, she went to

court challenging the constitutionality of Section 9 of the Hindu Marriage Act. Justice P. A. Chowdhary struck down Section 9 saying that it is unconstitutional for the reason that the remedy given in Section 9 does not equally come in favor of men and women for the reason that the construction of their bodies is different. Take for example, giving restitution of marriage to a male, a male can exercise his rights effectively against the will of women whereas women even if they get a decree of restitution of marriage can't make a man come to her terms because of the sexual difference. So there he pointed out that this is not operating equally for both the sexes and he held this is unconstitutional. But the Supreme Court overruled this judgment by saying that you can't bring the constitutional principles into the bedroom, stating that it is like putting the bull in a chinaware shop.

12. Most of the criminal appeal cases in the high court state the “erroneous mistakes of the trial” while reversing the decision given by the lower courts. Can you comment on it because you have exposed yourself to both things?

It is generally understood that the lower courts have limited powers in terms of efficiency, I don't say that lower court judges are not as efficient as high court judges, many judges are more efficient than Supreme Court judges also. At the magistrate level also there are many magistrates who are more wise and efficient than the supreme court judges but still, the confines within which they work do not allow them to go beyond a particular purview, apart from that I don't whether I can say it they are working under some fear which unfortunately is lingering in the judiciary. If they acquit a particular case, they may be tagged as corrupt. For that reason, in cases which do not deserve conviction they give conviction to satisfy society. They are afraid of the uproar coming from society in a few cases. So that's how they go with harsh convictions. So ultimately they don't stand the test of the law, then the high court reverses it.

13. What does the economic offenses court deal with?

Economic Offenses court deals with economic

offenses as the term says. It includes income tax and certain provisions under company laws like filing of annual returns, and balance sheets. In many of the statutes, violation of that statute in many contains a penal provision also, the economic offenses court deals with those penal provisions. They deal with those provisions which civil courts cannot deal with. For example, we are sitting at NCLT. We have certain penal provisions in company law but there are judgements in which I also said that we don't have the power to punish because the evidence that has to be taken for that aspect is different. Those cases are dealt with by a regular court that takes evidence.

14. Recently, UCC has gained a lot of attention. What do you think about it?

I did not come to a conclusion yet. There are people who support it and others who oppose it. I am trying to understand the rationale behind both arguments. I feel that it is difficult at present because India is a diverse country which contains various cultures. I did not form any opinion at present. I should look at both sides and have an opinion. Apparently, the concept of UCC looks good as it conforms with the spirit of the Constitution of India, especially the principle of equality. However, because the country has a religious diversity, it is not so easy to make laws uniform, unless some process or measures took place before the implementation of UCC.

15. During your time as a metropolitan session judge, you established a child-friendly court. Could you please share your experience with our readers?

An NGO approached me asking to provide the space for a child-friendly court. I provided space within the campus of the court. But usually, there are a lot of space constraints in the courts, particularly in metropolitan session courts. Luckily, we were going for the construction of another building on the other side of the road. That is when I could provide some space for the child-friendly court. However, there were several hiccups when we started a child-friendly court, like in the given scenario where a single judge has to handle

more than 1000 cases, taking a few minutes to go to the child-friendly court is also a difficult task for a judge. But still, despite all that, we made a good effort, luckily that caught up. That was the first child-friendly court in South India. From then on, several child-friendly courts were established in the state.

16. Is there any special knowledge required to be a corporate lawyer?

You need to get a grip on the subject. If you are going to be a corporate lawyer you need to get a grip on company law, IBC and all. If you are going to criminal law you need to get a grip on IPC, evidence and CrPC. Whichever subject you deal with, you need to get a grip on it.

17. With the rapid increase in the concept of globalization worldwide, many aspects which are interlinked to other countries in our country are emerging. So, how far can cross-border insolvency be an important aspect of our economy?

It is definitely important because we are going beyond the boundaries in this corporate world. However, I feel there is a lot of ambiguity in laws pertaining to international treaties and international agreements. The law is slowly evolving in this aspect.

18. Recently, an article in the Economic Times stated that in many instances a corporate debtor is getting things settled within themselves at the admission stage in NCLT for the CIRP process. Is it true?

Yes, It is happening not in the majority of the cases but they are happening in a few cases which is good. Because the ultimate aim of IBC is to revive the sick industries, there are several issues that need to be addressed just because there is a debt and a default if you take a company into insolvency, it will not have existing disputes as the law requires but they have certain defenses for them not to pay the debt. If you do not consider those defenses at this level and ask them to notify these defenses before the issuance of the demand notice, it is not

possible in all instances because they do not feel free to express their grievances but when it comes to court they feel free now. So even if we see this grievance express is cogent enough we should be able to stop them from proceeding to order insolvency which the law does not allow, unfortunately. Sometimes even for a small debt I have to order insolvency where my heart aches.

19. Is there any provision or any alternate mechanism for a corporate debtor to make a complaint against the RPs in such cases?

Yes, there are. Under Section 60(5) of the Insolvency and Bankruptcy Code, you can come up with any questions. It gives wide powers to IBC to entertain these applications coming in respect of the CIRP.

20. What is the major difference between a Resolution Professional (RP) and a Resolution Applicant?

The Resolution Applicant is the one who gives the resolution plan, whereas RP is the one who takes control of the process of CIRP (Corporate Insolvency Resolution Process). As soon as he comes into the picture, he calls for claims and all. So, one creditor brings the company into insolvency, which may have several debts. In the interest of all the creditors, the RP calls and invites through public advertisement asking the creditors to submit their claims. So, if I am moving to the IBC, you are there as another creditor. So, you will also parallelly claim before the RP. So, the RP takes into consideration all the claims. He admits or rejects your claim. This is the process. So, he takes all the creditors' claims and keeps them there and he forms COC (Committee of Creditors). COC will be constituted with only financial creditors. There is a mechanism for this institution under Section 50. So, RP is there to control the assets and he calls for resolution plans. The resolution plans come from a person who is willing to purchase this company. One will come up with a plan saying that I am ready to offer different amounts to each category of creditors. The plan is being discussed in the COC. The plan either be accepted or rejected if not feasible. The viability or feasibility of the plan will

be discussed in COC. So, if the plan is accepted in the COC, it comes before the NCLT for approval. NCLT considers all the aspects which were laid down under Section 30(2). So, if the plan satisfies all those things, we approve it. Otherwise, we reject it. Therefore, to take over the company, the acceptance of COC is also essential; only then, a resolution plan will be implemented.

Even if the resolution applicant comes into the picture, the RP will still be there. RP is the person who actually coordinates between the resolution applicant and COC. He is the one who has to enlighten the COC on the legalities of the resolution plan. Thus, RP plays an important role. So, if there is no resolution applicant coming forward, then the company is taken into liquidation as a last resort. Even in the liquidation also, there are people who come forward to take up as a growing concern.

21. Whether the NCLT jurisdiction is similar to the civil courts or it can penalize someone?

Majority of the provisions were there to receive remedies. Penal provisions are also there. But, I don't think we can really apply those provisions. We need to have more evidence on that. If there are certain instances where those provisions are applied. But, so far as my opinion is concerned, I don't think we have certain material to apply those provisions. Apparently, we look at the report because we only go by the documentary evidence. The NCLT, usually, won't take the oral evidence. So, based on the documents like forensic, audit report, etc., which are the basic evidence NCLT receives. If there is any element of fraud being found in the audit report, the court can order for the investigation. After an investigation is made, the court will be able to punish the person. So, without that deep investigation and giving opportunity to the accused, which is the basic norm of criminal jurisprudence, the court cannot right away punish the accused because there is no provision that an audience is provided to the accused before the NCLT. In usual criminal proceedings, even before the court hangs the convict, it will give a reasonable opportunity of being heard to him. The same is not there in case of NCLT. On the basis of the investigation, the NCLT has power to punish the criminal. At the end, the imposition of the

punishment by the NCLT depends upon the judicial wisdom because, if the decision of punishment does not stand the test, the person on whom punishment is inflicted will question the decision.

22. We can see many female students are pursuing law degrees, but not entering into practice. What may be the reason for this?

I see, now, more female students are coming into practice. However, it is still a challenge for the women to come into the legal profession because the law is like a jealous mistress, but also a jealous mister. So, as it demands all of your time, it is a challenge for the woman, who has an imposition of responsibilities on her by the society with regard to the family. So, it depends upon the skill of the women to share the responsibilities with the other members of the family. I believe this is the only thing which stops women from stepping into the practice. Besides this, other societal pressures like safety of the women is also there. All these difficulties for a woman become hurdles in your profession. Handling all these issues by women is yet again another issue. With the help of the society and government, by providing safeguards, this issue may be resolved.

23. What is your meaning of 'empowerment of women'. Are women in India empowered?

The term 'empowerment', according to me, means being able to fulfill wishes and desires and having their own space. There is a saying by Virginia Woolf that "the most precious thing is to have a room of her own." Here, she emphasizes that a woman must have a room of her own where wounds can heal and souls can blossom, where the sparkle and deep wishes of the women can find both ground and sky. I feel that having my own room is the biggest achievement. If a woman has her own room where she can have a space, that will be the highest achievement of her life. That's how I feel at the end of my life. Because, when I go to my room, I feel I am liberated and feel that this is where I can be on my own. After all the work I do throughout the day, at 9 pm, when I enter my room, I feel this is my world where I can be free and do whatever I want. I can keep anything according to my tastes and

wishes. Having room means not just having a mere physical space, rather it is a space of you being allowed to be free in your world. That's a very difficult thing to achieve. The family has to leave you after a particular time, which is practically very difficult.

24. What are the three traits that a judge looks for in a budding advocate?

First is whether he or she is able to deliver good arguments, whether he or she is keen on his or her work, whether he or she is behaving himself or herself within the court hall. That's what it is called the "court craft".

25. Your advice to the judicial aspirants.

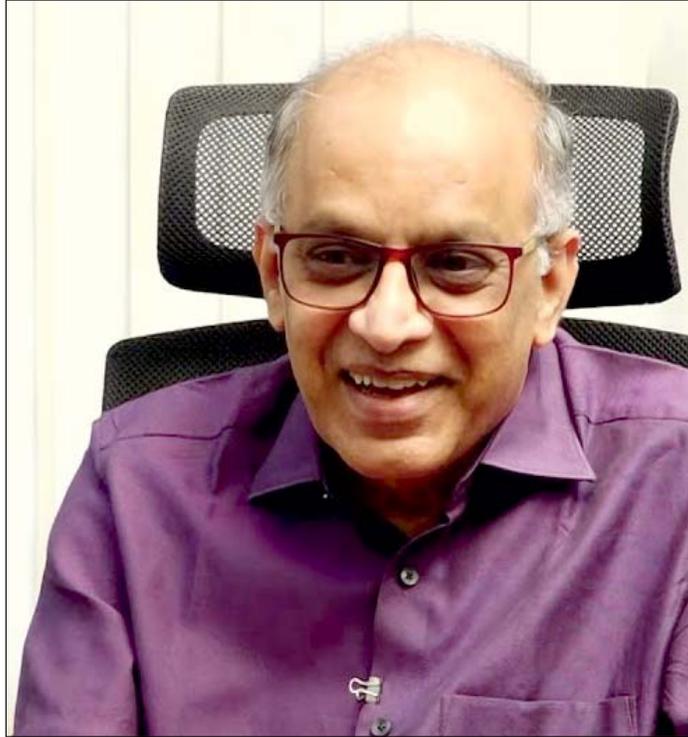
It's a larger picture. You will be a good advocate when you are a good human being. What a good human being needs is an independent study again. There is no kind of preaching that can bring about a change in you. Preaching don't work unless you are ready to receive it. So, how you will make yourself ready to receive is coming to you. This is what you have to work upon. Besides this, don't generalize things and never be judgemental. First, practice this and look at the change you underwent within yourselves. Then, if you are believing that this is going to bring a change within you. First, make yourselves ready for practicing such things.

26. How are you managing your mental strength and what keeps you going?

I think it is open-mindedness in accepting things. If your mind is not open to anything, there is no possibility for you to evolve into anything else. Being non-judgemental and not generalizing things will come only from that. I always tell people to count up the judgments you make in the whole day just before you go to sleep. Take 10 minutes time and count upon the judgments you have given from morning to evening and count up the validity of the judgments. Then, you will come upon tomorrow with better judgments or with no judgments, which is better.

Interview with Adv. V. Seetharam Avdhani

(Former Secretary General, Supreme Court of India)



Mr. V. S. R. Avadhani is a gold medal awardee in Law from Andhra University during 1977-80. As advocate he earned reputation as a civil lawyer. Joined judiciary in 1987 and became District Judge (Super time scale). He worked as Director of AP Judicial Academy, Registrar-Judicial in Supreme Court of India and was appointed as Secretary General of the Apex Court in the cadre of Judge of High Court/Secretary to Government of India. In that capacity, he was instrumental in bringing radical changes in the administration of the Apex Court Registry, introduced e-cause list, and took unique initiative and effectively completed scanning, digitization of records of the Supreme Court from 1947 up to 1991. As in-charge of Supreme Court Reports, the only official law journal under Law Reports Act, he raised the subscription levels from 55 copies to 3000 copies. He has participated in several conferences as delegate from Indian Government and Judiciary, representing the Supreme Court.

He is a guest faculty member at several State Judicial Academies, National Judicial Academy, and Police Academies. He is guest faculty of Christ University Law School, Bengaluru, and teaching Indian Evidence Act. Joined as Judicial Member of National Company Law Tribunal, having resigned to the Judiciary, but also resigned to that post and incorporated *Avadhani and Associates* with a team of professionals. He is legal Advisor to several Corporate Bodies and Banks. He is acting as Arbitrator in several matters. He has authored several commentaries on various subjects of law which are well received by legal fraternity. His regular weekly column 'Law Lochanam' in Andhra Jyothi, telugu daily is very popular. He is the Chief Editor of the Supreme Court Journal (SCJ).

1. Sir, please tell us about your journey from childhood to the legal profession.

I am from a lower middle-class background, and my father was a teacher. I completed my schooling and college in Narasaraopet. I am a science graduate. I joined law because I couldn't secure a seat in MBBS (laughs). I joined Andhra University, Visakhapatnam. I regretted my decision to join law in my first three months of college. In the classes of Prof. Gupteshwar, I was stimulated to continue law. While studying law I worked at All India Radio, Vishakapatnam as a newsreader, where my association with Rachakonda Viswanatha Sastri, Balivada Kanta Rao and Ananda Gajapati Raju has brought immense change in my approach. I couldn't score well in the first year, but in the next years, I started scoring more marks. I got gold medals in International Law, Hindu Law, Law of Contracts and Company Law.

After completing law, I started my practice in the chambers of a senior advocate, S.S.S. Somayajulu. He happened to be a civil lawyer, therefore, I too developed an interest in civil law. After seven years of legal practice, I became a district judge and also worked as director of the judicial academy. Then I worked as a Registrar at the Supreme Court for some time and, later, I became Secretary-General of the Supreme Court of India. I resigned there and joined the National Company Law Tribunal as a judicial member. I resigned from that position too and started my practice.

2. What made you shift from advocate to judge and again judge to advocate?

There was no special reason. My six years of practice then were good. I thought there was something I could learn from judgeship and I wanted a break from the practice. Even after joining the judgeship, I expressed my desire to resign but I did not get a good response from my family members. Therefore, after serving as a judge in different capacities for 34 years, I started my practice again.

3. Did you find any gaps in law school education while training Judges as a director of the judicial academy?

Yes, I do. Any bench needs a correct perspective of the law. Judges do not want to invent a new principle or lay down a new approach to existing laws. Many judges are just reading and reproducing. Between reading and reproducing the legal provisions, there should be one more element i.e., the judges' contributions. The mental exercise for their contributions in the judgement is absent in the judges. Therefore, as a director of the judicial academy, I taught the junior judicial officers to develop their approach and skills for preparing a judgement.

4. As you mentioned earlier, a judge can contribute new elements to the judgement. Can a district court judge do it?

I say they can and they have to. Being a judicial officer, after appreciation of the evidence and the other materials placed, he has the liberty to express his view. If the matter goes to the higher courts, they will notice the view of the District Judge. The landmark judgement of Vaddaboyina Tulasamma v. Shesha Reddy, which interpreted Section 14 of the Hindu Succession Act, was given by the Municipal Magistrate, known as a District Munsiff then. The Supreme Court agreed with the decision of the District Munsiff unlike the District Court and the High Court. Here, the District Munsiff has laid down the law, not the Supreme Court, which only declared that the decision is correct. Trial Court judges are bound to follow the ratio laid by the higher courts but, at the same time, they can place their independent views in the judgement.

5. Can you elaborate on the role of the Secretary General of the Supreme Court of India?

The Secretary General (SG) of the Supreme Court is the top bureaucrat of the Indian judiciary. He coordinates with all the high courts in the country for administrative matters. He supervises the functioning of the National Judicial Academy and national law schools. The SG oversees the Supreme Court Registry. Though the ultimate decision maker is the Chief Justice of India (CJI), everything must be first approved by the SG. On the judicial side, the SG will supervise the registration and division of cases. Securing the budget for the

judiciary and allocation to all high courts are other functions of the SG. The SG is the ear and mouth of the Supreme Court. The CJI and judges of the Supreme Court depend on the SG for all administrative purposes. If any judge expresses concern about an administrative issue, the SG must take steps to rectify the defect immediately. There is no issue in the Supreme Court outside the supervision of the Secretary-General.

6. What inspired you to be a catalyst for some profound changes in Supreme Court functioning?

My service in the Supreme Court has given me immense pleasure. I noticed over a while that Supreme Court Reports were replaced by private law journals. But still, the Supreme Court reports were being printed. Out of 500 copies of the Supreme Court Reports, 250 copies were sent to godown every month. There was a mistake on our part too. We were not able to print Supreme Court judgements quickly in comparison to the private law journals. Then I informed the former CJI H. L. Dattu about the state of Supreme Court Reports, he gave me a free hand. We started a new Supreme Court Report, the first modified issue was sent to chief justices of all the states, followed by a request letter to take steps to purchase the Supreme Court Reports for their judicial academies. After that, the subscription rate of the Supreme Court reports started.

The digitalisation of Supreme Court records was started during my tenure. CJI H. L. Dattu came up with the idea. We were wasting around 25 lakh pages on printing the cause list. Then, Justice H. L. Dattu asked me why shouldn't we use email to send the cause list. Then we prepared the groundwork and started circulating the cause list by email. We received some opposition from the bar association because most of the members were not comfortable with the technology. But gradually they too accepted. Over time, the Supreme Court has completely discarded printing.

Secondly, I realised that the paper section in the Supreme Court godown was in a dangerous condition. If there had been any fire accident in the godown, none of the 300 workers would have escaped. With the advice of Justice Madan Lokur,

we started working on placing all old files in the cloud. We recruited retired employees and provided part-time jobs for engineering students. We supplied them with unused computers and scanners without purchasing a single machine. We disposed of all paper records from the godown after digitalisation.

7. In the present day, do you wish to see any changes in the functioning of the Supreme Court?

Yes, I do. We contemplated translation of the judgements into regional languages, but it couldn't happen at that time. The client will understand the cause of his defeat only if the judgement is made available to him in his native language. Transparency is the backbone of every system, with no exception to the judiciary. Transparency must be maintained, in the sense one must know what is his rights and liabilities.

Secondly, the court fee is not uniform in all states. Few states follow the Court Fees Act, 1870 while few states have their own Act. The court fee must be reasonable. However, in a few states like Telangana and Andhra Pradesh the court fees are unreasonably charged.

8. What is your opinion on pro bono services?

I am personally against the pro bono services by an advocate. I feel that legal services should not be free. An advocate is giving his time, knowledge, and wisdom to advise a needy person. An advocate has to charge a fee for his services and the State has to offer free legal aid to the poor.

9. Have you encountered any ethical dilemmas or conflicts of interest? How do you handle those situations?

Yes. Sometimes I face it. Even when I feel that the client is wrong still I have to defend him. As an advocate, I have to handle the case. But, if the client has a justifiable case, it is easy for me to argue. If the client has a weak case or a case which is unacceptable to me, I have to take pain to represent that case. But as a professional, I cannot refuse a client for this reason even if the legal position is against the client.

10. Sir, you spoke about facilitating laws and protecting laws in your previous interviews. Can you elaborate on it?

Facilitating laws is required for those clients who cannot afford them due to their finances, physical conditions or emotional background. For example, we should facilitate a married woman who is abused by her husband or old parents who are being abused by their children or not able to avail their remedy without any assistance. Protecting laws is required by those who know the existence of the law and how to avail them but are incapacitated like a child or a mentally retarded person.

11. What changes do you want to see in the Maintenance and Welfare of Parents and Senior Citizens Act, 2007?

By the expression “senior citizen” itself, it conveys that such persons are aged. To answer this question, let's take an example. A 90-year-old man, who was disowned by his children, has no assistance in visiting the RDO office, which is the competent authority under the Act to entitle senior citizens to protection. If he goes to the RDO office with some assistance, the RDO officer will not be available in his office due to some other revenue meeting or work. In this way, the old man goes to the office believing that the said officer will be there and their absence causes problems to senior citizens. Considering the various disabilities and issues a senior citizen has, there should be a proper mechanism in the Act which mandates the authorities to approach the senior citizen, receive the complaints and take action accordingly. Nowadays, we are availing various services at our doorsteps on payment of money. Why can't we expect legal services sponsored by the State?

12. What is your opinion on legislation enacted for 'vote bank' which increases litigation due to loopholes?

If a legislature wants to make a new law, such prepared draft Bill has to be discussed with concerned stakeholders in various platforms, including bar associations, judicial academies, law universities, and police academies. No doubt, every law has a political meaning, purpose and

motivation to promote a concerned group of society. However, such a law has to be scrutinised by other stakeholders, which is not happening at present. This is the reason many provisions of the law are declared unconstitutional when the matter is heard in the higher courts by judicial review. For instance, recently, there are three Bills presented in the Parliament that proposed to replace the IPC, CrPC and the Evidence Act. Until I saw about this in the news, I didn't know about it. There is no discussion on these Bills in any platform before presenting them in the legislature. And, I could not make out any difference between the old and new criminal laws, except for the sections and language. I went through the entire new evidence law i.e., the Bharatiya Sakshya Bill, 2023, everything is the same, except 1-2 new provisions were added concerning cybercrimes.

13. Sir, what is the practical scenario of the accused persons and their rights?

The basic principle followed in India is that the accused is deemed to be innocent until proven guilty and should not be treated as a culprit. Besides this, the accused also has the right to remain silent. But, in the Prevention of Money Laundering Act, the accused will be summoned, his confession will be recorded and the same will be used against him. If this is questioned by the defence, the Court responds that the officer recording under the Act cannot fall under the category of 'police officer' and, therefore, the irrelevancy of confession under Sections 24, 25 and 26 of the Evidence Act is not applicable. But, the procedure followed in the money laundering cases is CrPC and such cases, for all purposes, is a criminal law. Then, what about the fundamental rights of the accused, especially the right to remain silent, declared by the Supreme Court in the Nandini Satpathy case? Because of these practices where the confessions are being used against him, the principle of presumption of the accused until proven guilty is not being followed. Police are conducting interviews by placing the accused before the camera. Moreover, media trials are a new normal. Because of the fear, no one is questioning the police and media for their violation of the accused's rights. Because people are arrested by the fear psychosis, their rights are being submerged. Where there is fear, there is no

democracy; where there is an absolute power by one person or group, there is no meaning to democracy.

14. Sir, can you please explain the difference between dispute and default?

Dispute refers to the liability and the quantity, quality, standards and sum of goods supplied in case of operational creditor or dispute with reference to the settlement of the accounts unless accounts are settled. For example, there is a mutually open current account, one is supplying and the other one is making payments. There is no final settlement as to what is the amount due. So, unless accounts are settled, the due will not be confirmed. In dispute as to the claim, there is no agreement at all. The amount given is not a debt, but an investment, The dispute is very origin of the liability. The value of the supplied goods by one and the paid amount by another has to be settled. So, after the settlement of accounts, the amount due will arrive, and only then the default arise.

15. Sir, under IBC, if there is a pre-existing dispute, can an application be filed for initiation of CIRP? And whether such a dispute includes only a suit or Arbitration application.

If the dispute is raised during correspondence, even before the issuance of notice under Section 8(2) i.e., Form 3 notice, it can also be treated as dispute. It need not be a filing of an arbitration proceeding or a suit. Further, even if you have initiated the arbitration proceedings by issuing a notice, that does not mean a dispute exists and has to be adjudicated upon. In case of initiating a dispute, one cannot take an exception that there is a dispute unless disputed. If a party issues a notice that has been contested by the respondents that the claim is not acceptable, there is a pre-existing dispute which is involved in an arbitration proceeding. Therefore, this will come as an exception to initiate the proceedings and hinder the initiation of the CIRP process provided the dispute is raised before the issuing of the demand notice either under Section 8 or before issuing an invoice by the creditor.

16. Sir, under Section 14 of the IBC, there is a moratorium on other proceedings once CIRP is

initiated. In this case, if there is a pre-existing dispute, can CIRP be initiated? If initiated, will there be any stay on all the proceedings?

If a person already initiated a civil suit and a decree is granted, the moratorium will affect the execution of the decree, but not the pending suit and if the CIRP process is ordered by NCLT, the suit proceedings will not halt. If a decree is granted, such a decree will not be executed. Further, even if a notice is issued under Section 21 of the A&C Act, though the Act itself states that the proceedings have commenced upon issuance of a notice, it will not bar the Creditors from applying CIRP before NCLT as IBC overrides every other law and all other proceedings can be stayed.

17. Can different Creditors of a company file different CIRP applications?

Once, there is a moratorium under IBC proceeding, initiating another CIRP does not arise. That client will be merged into the already existing CIRP application. So, the creditors may be different, but there is only one debtor. If this petition is acquitted regarding one creditor, all the other claims will be merged into their claim.

18. Sir, what do you see in a person recruiting him as a junior lawyer believing he can assist you?

I believe that an advocate should not be assisted by any junior. The concept of assistance may work in the corporate sector, but not in our profession. A lawyer, who has to argue in the court, must write the pleading, along with arguments, cross-examination and all other things relating to that case. Nowadays, we see that the arguing counsel and pleading counsel are different individuals. I don't allow this as I believe that will cause a communication gap. I do everything on my own from writing plaint or writ to arguing in the court. Only then, the way I want to take the course of the case will be perfect. This assistance can only be confined to the preparation of a brief and search for relevant case laws. If I entrust my junior to draft a plaint, I will insist the same person take up the entire case even if he or she has one-day experience and will not interfere. However, I guide them and supervise them as a teacher.

19. Can you say any 2 changes you want to see in Indian laws?

Firstly, I don't see any benefits that a widow gains from the Hindu Succession (Amendment) Act, 2005 which amends Section 6 by which the daughter born in the Mitakshara joint family shall be treated in the same manner as the son while distributing the joint family property. However, the outcome of this law is widow's share decreases when compared with the 1956 law.

Secondly, Section 317 of the CrPC deals with the condonation of the absence of the accused and, in case the accused did not engage any advocate, adjournment of trial or trying separately. But, in cases of the absence of the accused, who was released on bail, in one or two adjournments, the magistrates nowadays are issuing non-bailable warrants, although no provision in CrPC empowers the Magistrate with such powers. Even in cases where the accused has absconded as stated by the prosecution, the Magistrate, if satisfied, is empowered only to forfeit the bail bonds and issue notices to the sureties. Absent in one or two adjournments does not mean the accused has absconded. Being a former Magistrate in rural areas, I know the difficulties of the accused, who is poor, to be present in the court. Thus, in the practical scenario, the accused are unreasonably punished due to these warrants issued by the Magistrate even though the law did not empower them to do so.

20. What advice do you give to an advocate to keep going in this profession?

I believe we have a limited time i.e., we can have a healthy life of only 50-60 years. In these 60 years, more than one-third of it goes to sleep and most of the remaining part goes for other miscellaneous activities. The question is how much time we are spending on education. 2-3 hours of educating ourselves is not enough for an advocate. It must be at least one-fourth of a day. I work using my laptop even when I travel in my car. Besides this, a lawyer should not possess any rigid and fixed views because the law is dynamic and it changes when society changes. Moreover, many lawyers are not well-known about the legal position of a particular question of law. A lawyer, when asked about a matter, should be able to tell the latest settled legal position on the same. Also, a lawyer should spontaneously respond with relevant provisions and rules of a particular law. A judge-made law comes out, where the law is silent only when an advocate is in a position to assist the court by giving a proper interpretation of a given law. Thus, an advocate should be capable of providing a proper interpretation to play a positive role.

“ Finally, budding lawyers should keep in mind that society needs many advocates. As stated in professional ethics, an advocate should function only as an advocate and not do any other business. The law student should confirm which path they want to take, whether an advocate, judge, legal advisor, consultant or teacher. Once the goal is confirmed, one should find a way to reach that goal. Also, one should mould one's ideology to suit his or her goal. ”

Interview with Judge Ch. Ramesh Babu

(Principal Special Judge For CBI)



Sri Chitturi Ramesh Babu, was born on 31st October, 1965, at Amalapuram, to Late Sri. Chitturi Nageshwar Rao and Late Smt. Vasundhara. He studied in Municipal school, Kakinada. He graduated in B.Sc from Ideal College, Kakinada, B.Ed from Maharaja College, Vizianagaram and B.L from B.R. Ambedkar Law College, Andhra University Campus, Visakhapatnam. He enrolled as an Advocate in the year 1993. He was appointed as District Judge in the year 2003. He worked as District Judge in Nizamabad, Medak, Ranga Reddy and Hyderabad. He worked as District Judge in Special Courts such as Commercial court, Labour court and SC/ST Court. He also worked as Secretary, High Court Legal Services Committee. He regularly takes classes at the Telangana Judicial Academy to train the Judicial Officers on Commercial Courts act, Prevention of Corruption Act, PMLA and ADR.

He is currently working as Principal Special Judge for CBI Cases, Hyderabad.

1. Please tell us about your Family and Early days

My father was a farmer and lived in a remote village near Amalapuram, East Godavari District, Andhra Pradesh. There was no school in that village. Till 2004, the village did not have electricity. My father was the only educated person in the village during those times. He studied upto SSC Meticulation. Due to which in the year 1971 my father shifted our family to Kakinada. Because of poverty and backwardness in the village, he used to guide all the villagers about their rights. In the process of fighting for the rights of the villagers, my father spent huge amount even by selling his own agricultural lands. His fondness for education was the main reason for shifting to Kakinada. My entire schooling upto B.Sc took place in Kakinada. After completion of B.Sc, I got admitted in Maharaja College of Education, Viziangaram, where, I studied B.Ed. with physics and maths as core subjects. Later on, I got admitted in Law College, Andhra University Campus. I completed B.L. in the year, 1993 and I was enrolled as an Advocate in the same year. Having no legal background, I faced a lot of struggles. I joined as Junior in the office of Sri B.S.R.Krishna, Advocate at Kakinada. I practised under him for about 4 years. Thereafter, I practised independently. In the month of February 1994, I lost my mother. To fulfil her dream to see me as a Judicial Officer, I completely dedicated myself to the Advocate profession from morning 8.00 AM to night 11.30 PM. In the year 1996, one of my then colleague advocate, senior in the profession, Sri M. Sitaram Murthy has appeared for the District Judge examination and later he became a High Court Judge and retired. He once gave me a copy of the District Judge examination paper, that incident further encouraged me to become a Judicial officer. Not only in Kakinada, I also attended courts throughout the then Andhra Pradesh. I also appeared once in the courts situated at Bilaspur, Bangalore and New Delhi. In the year 2003, I succeeded in the written examination but could not clear the interview. Later on in the same year, I got selected as a District Judge.

2. What made you to choose the law profession?

It happened incidentally. After completion of B.Ed, I wrote two entrance exams for M.Sc and B.L. I

secured seat for B.L in Andhra University. That is how my journey started in this field.

During the budding stages, the income of junior lawyer will be very less. No senior will feed us. Once an Advocate Clerk told me that, you should always sit in the Court and observe the proceedings of the Court keenly, observe the way in which the senior advocates mould the case with their arguments from the beginning of the case till concluding the arguments in that case, then only we can learn articulation of presenting the case. One can succeed in this field solely with hard work. What I learnt in practice is that the clients may give the instructions innocently, but as an advocate you should present only the necessary points before the court which will benefit the client.

3. What is the difference you observed between the profession of an Advocate and a Judge?

As an Advocate, I observed that, whenever we win a case, we certainly get professional satisfaction. Whereas being a Judge, I observed that only few cases will give job satisfaction. As a Judge, I may dispose 10 or 20 cases in a month, but I get sense of satisfaction only once in two or three months. It does not matter if an Advocate has presented the case properly or not, it is the duty of the Judge to study the case without prejudice and give the Judgement, otherwise any judgement pronounced is not a proper judgement.

4. What is the herculean task in your view?

When you are an advocate, you focus on the weaknesses of other party. But as a Judge, we have to see the truth basing on the facts and the prevailing laws. When advocates brief their case in a better way then my job as Judge becomes easy. But as an advocate one has to research and work on the case themselves. While discharging duties as a Judge, 50 per cent of the material will be supplied by both the parties and as a Judge I have to do the remaining work. A Judge is always eager to do justice.

6. There are many challenging judgments in my service. Some judgments gave me job satisfaction. While I was working as Presiding Officer of Labour Court, in one case, wages of more then 170 workmen who worked in Srisailam Power Plant Construction, were not paid by the contractor. Those 170 people were scattered and settled in

different places after completion of the work. One of the union leader filed a case that certain amount has to be paid by the contractor. In that case, I have done a lot of spade work, from securing the details of those scattered workmen and I have also given suggestion to the union leader how to secure it. To protect the interest of the workmen I emulated some guidelines in that judgment that only real workmen should come to the Court and receive their wages. Thereafter I was transferred from the Labour Court. After three years I came to know that, the Judgement which was passed by me was implemented in true spirit and the workmen were benefitted,

5. What are other things those should be there in the law colleges and what are the gaps you find while training?

Always train the law students in a practical way. From the beginning, you should hold camps in the villages and educate the villagers to know their legal rights. Only after participation in legal awareness camps in villages, students must be allowed to observe the regular court practice. At the same time, I suggest that colleges must conduct moot courts everyday. You should divide all the students in batches and daily conduct moot courts, otherwise the purpose of studying law is defeated. Law students who are studying in low ranked law colleges should not feel inferior to students from corporate law colleges and National Law Schools, as the performance in the court will be the main criteria. The low ranked law colleges should adapt the practical approach of the corporate law colleges as it is helping the students to succeed in the profession. The curriculum is one and the same for all the colleges but the mode of practice in which they are implementing is different. In Corporate colleges, they provide guest lectures by famous persons and basing on those lectures, they conduct the practical sessions and group discussions. The similar approach maybe adapted by low ranked college for which there is no need to spend additional funds. I observed that many junior advocates are very intelligent than some seniors. Certainly I try to learn from them. One should never feel as a master in this field, as Law is an ocean and understanding it is a continuous learning process. My final advice is to always hear the other side and extract the good message and learn from it. We have to maintain some limitations. Law is nothing but

common sense. Anyone who has common sense will succeed in judicial profession.

Certainly the intention of the legislature in making Special Acts is to meet the ends of justice, but one should ask whether those steps taken are fruitful or not. I think, only 50 per cent of the intention is materialised whereas the rest is not yet materialised due to many hurdles. The intention of the legislature is not being fulfilled in true spirit, anomalies should be answered and efforts should be made towards it. As per my observation, nowadays every lawyer is going for Special Acts and Special Court, but being a lawyer you should be an all rounder. Being a lawyer you should have basic knowledge about every aspect.

There is no difference at all. But the litigation involved in some Special Courts is related to crimes which emerged recently. For example, in 1940s and 1950s there was no rampant corruption for which there was no need for Special Courts to prevent corruption. Thereafter corruption increased, for which Special Courts were established to deal with the corruption cases. As per my wisdom, the functioning is similar in respect to regular courts. The end result is to do justice.

6. What is the main purpose of the CBI courts?

CBI Courts main purpose is prevention corruption and fraud in the society. Mainly the CBI will investigate various cases, but the difference is, as per the Constitution, even though CBI is under Central Government they can still take up the investigation of a State subject with the consent of the State Government. Recently, there is a proposed amendment for that. For example, one Income Tax officer has taken bribe, he may be a distant relative of a influential person in the State Government, how can the State Government give permission for CBI to conduct investigation. The Constitutional Courts can give direction to the CBI to conduct investigation. More than six or seven States are against the CBI and they are not giving blanket permission to CBI.

The provisions for confiscation of illegal assets of the convict are not provided in the prevention of Corruption Act. Due to which the intention of this Act is not being achieved.

7. Five qualities to sit on the bench?

First, you should acquire day-to-day knowledge.

You should be patient. You should not make any comments from the bench, as it might give an impression of being biased. Whatever you want to do, do it in writing. Apart from that while discharging duties as a Judge, you should try to compensate the poor and see that justice is being served.

8. What is the most challenging part of being Principal Judge of CBI Court?

More particularly, these are white collar offences. In white collar offences, the accused always has a sound legal assistance, due which we have to be careful. These crimes are very technical in nature. At times, those technicalities may favour the accused or the Prosecution. Therefore, we should understand those technicalities through a right perspective.

As per my observation, speedy justice is required in these cases. If anybody is caught red handedly while taking bribe, that case should be disposed of within six months. After establishing Fast Track Courts and POCSO Courts, the cases are being disposed of within six months.

There is no pressure from anybody, but we should be cautious while dealing with such high profile cases.

Certainly, basing on the facts we can sense the reality. But the Evidence Act and the criminal jurisprudence says that the burden is on the prosecution. We cannot convict the accused unless the prosecution brings concrete evidence on the record.

Certainly, basing on the facts we can sense the reality. But the Evidence Act and the criminal jurisprudence says that the burden is on the prosecution. We cannot convict the accused unless the prosecution brings concrete evidence on the record.

9. Impact of AI on judiciary

For some offences and some cases it is helpful, especially in matters where yardsticks are already fixed by the Hon'ble Supreme Court. In heinous crimes under criminal jurisprudence, I think, it is not at all good to use the AI. But the intention of the legislation is that human can only think in a humanistic way and a machine cannot think in a humanistic way. For example, in 302 IPC cases the

intention should be there and if there is no intention in committing the crime it comes under 304 IPC and to find out whether intention is there or not, that is something only a human can understand and decide whereas the AI cannot come to such conclusion.

10. What are the three changes in law you wish for?

Strict compliance of the present law is sufficient. In today's society, the changing trends are clearly painting the picture regarding what laws should be implemented and what laws should be repealed. But some radical changes should be made to curb the crimes. Duration of disposal of cases should be in a time-frame manner. The Supreme Court has given directions in that regard. But it is difficult to achieve because of the ratio of Judges and population in India. My view is that giving free-bees by the Government to people should be curtailed. It is nothing but a quid pro quo.

I am an ardent fan of Telugu literature. Throughout my childhood, I used to read Telugu novels and other books related to Telugu literature, but nowadays I do not have sufficient time to read books related Telugu Literature.

If I was not a Judge, I would have been in teaching profession. I love teaching. When I was a student, I gave tuitions to three economically weaker students. Now, all of those three students are in highly reputed professions.

11. My advice to budding advocates

Everybody should work hard. My personal advice is that young advocates and law students, should sit in the court hall, observe the proceedings and learn from it. Being patient is necessary in this field. At the same time, read the judgments pronounced by the Supreme Court of India during 1960 to 1980. When you go through those judgments, one way or the other, understanding of provision of laws will become easy. Nearly 90 per cent of the knowledge I gained is through court observation and reading Supreme Court judgements. The rest of the 10 per cent is by reading statutory laws and contemporary articles. Make sure that you observe cases from the start to end, otherwise you cannot articulate the sequence. Young lawyers can opt for specialised subjects like Arbitration, I.P. Rights, cybersecurity, etc.

A Supreme Rewind

Notable Judgements of the Supreme Court of India - 2023)

- R. Sonali Yadav (3 YDC Alumni 2023)

1. Vivek Narayan Sharma vs. Union of India

W.P(C) no. 906 of 2016

The 5 judge bench of the Apex court has upheld the decision of Union Government relating to the demonetization of currency notes of ₹500 and ₹1000 denominations by a 4:1 majority ratio after 6 years.

It held that the center's notification dated Nov 8th, 2016 is valid and satisfies the proportionality test. Nagarathna J was the only dissenter who ruled that though demonetization was well intentioned and we'll thought of, it has to be declared unlawful on legal grounds and not on the basis of objects.

It was observed that S 26(2) of RBI Act cannot be struck down as unconstitutional on the ground of excessive delegation while there are inbuilt safeguards.

This matter was regarded as academic as 6 yrs elapsed still on the merits agreed to hear the matter based upon the persuasive arguments of Sr Adv P Chidambaram. He argued that the court should lay down the law for future so that 'similar misadventures' are not repeated. Also certain batch petitions filed by persons seeked extension of the deadline for exchange of notes.

The AG for India defended the Union Government by arguing that decision was taken to curb the evils of fake currency, black money and terror funding also made a clear point that the scope of judicial review in economic policy decisions are extremely narrow. While the Sr Adv defending RBI submitted that Union govt took the decision based on recommendation of the central bank i.e. the RBI.

The dissenting judge observed that there was no independent application of mind by the RBI in recommending the aforementioned series of currency as it was wholly proposed by the central government.

2. Common Cause vs. Union of India

M.A 1699 of 2019 in W.P(C) no. 215 of 2005

In 2018, the Apex court held that the right to die with dignity is a fundamental right under Ar 21 of the Constitution of India.

The 5 - Judge Constitution bench delivered an important judgement altering the guidelines for terminally ill patients to withdraw from treatment by making it less cumbersome. The court aimed to streamline the procedures so as to reduce the suffering of such patients who are unable to communicate their wishes. These will apply to cases where the patient leaves instructions in 'advance medical directive' as well as cases where no instructions have been given.

Earlier in 2018 guidelines, the treating physician was to determine if the AMD was genuine and if there was any hope of patient being cured, before suggesting withdrawal of treatment. Then was the hospital supposed to form a medical board with doctors having 20 yrs of expertise. Also Dist. Collector was charged with creating a second medical board. Now in the year 2023, the modifications removed the Judicial magistrate from the long process and retained in only when if the primary and secondary medical boards decide to withdraw medical treatment, then hospital has to communicate the decision to the judicial magistrate along with the consent of the close relative or guardian named in the AMD.

3. Anoop Baranwal vs. Union of India

W.P(C) no. 104/2015

The 5 - judge Constitution bench of the Hon' ble Supreme Court has directed that the Chief Election Commissioner and Election Commissioners shall be by the President on the advice of the committee of the Prime Minister, the leader of opposition in the Lok Sabha and the Chief Justice of India thereby

curtailing the devastating effect of continuing to leave appointments in sole hands of the Executive on the fundamental rights and values until a law is made by the Parliament.

In this case a PIL was filed by Anoop Baranwal challenging the appointment of the members of ECI as unconstitutional as Executive enjoys to make the appointments and thus challenged on the ground that it is incompatible with Ar 324(2) and manifestly arbitrary.

On which the Union defended that the current mechanism based on the honest record of all past Commissioners and urged the court not to intervene as matter falls in the Executive domain.

The court appealed that there is an urgent need to provide for a permanent secretariat and also provided that expenditure be charged upon the Consolidated Fund of India for the independence of election commission

4. Union of India vs. Union Carbide Corporation and Ors.

C.P(C) no. 345-347 of 2010

A 5-judge Constitution bench of the Apex court dismissed the Curative petition of central government which sought to reopen the settlement with Union Carbide Corp. (now Dow Chemicals) so as to claim additional compensation for victims of the Bhopal Gas Tragedy of 1984.

The AG defended the stand of the Government indicating as to inadequacy of compensation and to amend the same in the light of subsequent developments. To which the court emphasized that a part of compensation amounting to ₹50cr 25lac was still lying with the RBI. Sr Adv Salve apprised the bench that arguments of union government in curative petition has travelled beyond the scope of issue raised in the original suit as issue of relief and rehabilitation and disposal of toxic waste was not a part of the suit. He further asserted that a full and final settlement was arrived at between UCC and the Govt of India in 1989 and that there is no scope for reopening of the same.

The court observed that the responsibility was placed on the Union of India being a welfare state to

make good the deficiency and to take our fge relevant insurance policies and as it was not done, it depicts a gross negligence on part of the government and is a breach of the directions made in the review judgement. It noted that settlement can be set aside only on the ground of fraud, but no such ground was pleaded by the Union and that pending amount lying with RBI ought to be utilised to satisfy pending claims, if any.

5. Subhas Desai vs. Principal Secretary, Governor of Maharashtra and Ors.

W.P(C) no. 493 of 2022

The 5 - judge bench of the Supreme Court has upheld the Governor's decision of inviting Eknath Shinde to form the government in the State of Maharashtra and has refused to quash Uddhav Thackeray's resignation as it was submitted voluntarily before the floor test.

In 2019, a coalition of the Shiv Sena, the Nationalist Congress Party, the Indian Congress and certain independent members of legislative assembly formed the government in Maharashtra with Shiv Sena's Uddhav Thackeray as the CM. This alliance was named as Maha Vikas Aghadi(MVA) which continued to Governor the state until June 2022 when reports of some Shiv Sena MLAs meeting the leaders of the BJP started coming in. Consequently, Shiv Sena Legislative Party featured into 2 factions - one led by the then CM Udhav and other led by Group leader Eknath Shinde. Each faction claimed to represent the 'real political party ' and passed various resolutions pertaining to the affairs of the SSLP.

In the event of resignation of CM Udhav even before the floor test and Eknath forming government by coalition of his faction, BJP and certain independent MLAs led SC to refer the matter to a 5 judge bench under Ar 145(3).

The Apex court held that: - Governor's decision calling for floor test was wrong and that it cannot order status quo ante and reinstate Udhav government as he resigned without facing floor test and since it was voluntarily done, the Governor was right in inviting Eknath Shinde to form the government with the support of BJP. The Court

placed strong reliance on Shivraj Singh Chouhan vs Union of India (M.P political crisis case).

- That Nabam Rebia's case to be reconsidered by a 7 - judge bench as it did not consider misuse of freezing speaker's power.
- The speaker is to decide whether the rebellion amounts to defection.
- A faction of legislature party cannot declare itself to be the real political party based on in-house majority. It is elected based on its association to political party.

6. Shilpa Sailesh vs. Varun Sreenivasan

Transfer Petition (C) no. 1118 of 2014

In a landmark judgement, the Hon'ble Supreme Court through a Constitution bench held that it can dissolve marriages on the ground 'irretrievable breakdown of marriage ' by invoking the powers under Ar 142 of the Constitution so as to issue extraordinary directions to do complete justice.

The original issue referred to this bench was whether the mandatory waiting period for divorce by mutual consent as prescribed under S 13B of Hindu Marriage Act, 1955 could be waived. The court specified certain broad factors such as a) the period of time cohabited after marriage b) when the parties had last cohabited c) the nature of allegations made by parties against each other d) the orders passed in legal proceedings from time to time and the cumulative impact on the personal relation e) number of attempts to settle the dispute by intervention of court or mediation and when was the last attempt made etc. f) period of separation shall be sufficiently long and anything beyond 6 yrs or more will be a relevant factor. And that such factors have to be evaluated based upon the economic and social status and children born out of marriage and such other factors are to be considered.

The judges in this case observed that, "it would be in the best interest of all, including the individuals involved, to give legality in the form of formal divorce to a dead marriage, otherwise the litigation, resultant sufferance, misery and torment shall continue."

7. The Animal Welfare Board of India and Ors. vs. Union of India and Anr.

W.P(C) no. 23 of 2016

A Constitution bench upheld the constitutional validity of the State amendments made to the central law Prevention of Cruelty to Animals Act by states of Tamil Nadu, Karnataka and Maharashtra to allow the conduct of animal sports like Jallikattu, Kambala and bull cart racing in these respective states. It further held that these laws cannot be construed as 'colourable legislations' and that the state legislature has legislative power to make amendments as per Entry 17 to List III of Schedule VII.

The TN govt argued that it is natural for animals to suffer pain in the process of being domesticated or otherwise and that the real test for the court is to see whether such pain or suffering is unnecessary. And moreover contended that just because compassion for living creatures is specified in Ar 51A, it cannot be argued that animals have rights under the Constitution. While the Petitioners submitted that the practice of bovine sports itself involves strong element of involuntariness and infliction of some pain and suffering.

The Court thus thought that question of elevation of statutory rights of animals to the realm of fundamental rights is to be considered by the legislative body. Moreover, Ar 14 cannot be invoked by an animal as a person and also that there is no precedent to show that Constitution of India recognizes fundamental rights for animals. It also expressed its disagreement with the 2014 division bench judgement in Animal Welfare Board of India vs. A Nagaraju insofar as it held that Jallikattu is not a cultural practice in TN.

8. CPL Ashish Kumar Chauhan (Retd.) vs. Commanding Officer and Ors.

Civil Appeal no. 7175 of 2021

The division bench of the Apex court has ruled in favour of a retired Air Veteran, holding the IAF and Indian Army jointly and vicariously liable for medical negligence upon which the appellant who contracted HIV during a blood transfusion at a military hospital while falling sick on duty was

awarded compensation amounting to 1.54 cr which are to be disbursed within 6 weeks.

Court not just addressed the specific case but also laid down significant directives for the government, courts and quasi-judicial bodies under the framework of S 34 of HIV Act 2017.

9. Supriyo vs Union of India

W.P(C) no. 1011 of 2022

The Hon'ble Supreme Court refused to grant recognition for queer marriages in India stating that legislature has to decide in this matter. The 5 judge bench agreed for the constitution of a committee to examine the rights and entitlements of persons in queer union without legal recognition of their relationship as a 'marriage' yet they have a right to cohabit without any threat of violence, coercion or interference.

This batch petitions were filed by same-sex couples, transgender individuals and LGBTQIA+ activists which challenged the provisions of Special Marriage Act 1954, Hindu Marriage Act, 1955 and Foreign Marriage Act 1969 as they do not recognize non-heterosexual marriages thereby discriminating against the LGBTQIA+ community. Bench clarified that challenge pertaining to personal laws will not be taken up hence confined to Special Marriage Act alone. The bench by 3:2 majority declined the right of adoption to queer couples and also in the same ratio declined the right of a civil union to them.

10. X vs. Union of India

M.A no. 2157 of 2023 in W.P no. 1137 of 2023

A 3 - judge bench of the Hon'ble Supreme Court did not accede to the prayer for the medical termination of the pregnancy as it has crossed the 24 weeks. It did so basing on 2 fundamental reasons, firstly, as the statutory limit of 24 weeks is crossed, the requirements in either S 3(2B) or S 5 of Medical Termination of Pregnancy Act, 1971 must be met. Secondly, that there is no 'substantial foetal abnormalities' diagnosed by a medical board. Upon calling of second medical report from AIIMS, it found that neither of them indicates that a termination is immediately necessary to save the life of the Petitioner.

The Petitioner, a married woman filed a writ petition for termination of pregnancy on the ground of her mental condition that do not permit her to raise another child (she already has 2 children) and in financial reasons. And that she realized about the pregnancy in the 24th week upon visiting her gynaecologist for the first time soon after the delivery of the second child who is now a year old.

Following the split verdict by a 2 judge bench of SC, the petition was directed to be listed before the higher bench as Hima Kohli J held that her conscience prevented her from allowing the prayer in view of the email sent to ASG about the good health of foetus. On the contrary, Nagarathna J held that order allowing the petition and permitting a medical termination on the ground that it could seriously imperil the mental health of the mother, ought not to be overturned as interest of her must be given preference.

The court ruled that the delivery will be conducted by AIIMS at the appropriate time and the Union Government will bear all the medical costs for the delivery and further told that, the decision of whether to give the child up for adoption is entirely that of the parents.

11. In Re Article 370 of the Constitution of India

W.P(C) no. 1013 of 2019

The Apex court through a 5 judge bench upheld the validity of the Union Government's 2019 decision to repeal the special status given to Jammu and Kashmir under Article 370 of the Indian Constitution. The petitioners stressed upon the unique nature of J & K relationship with India which got embodied in the Indian Constitutional set-up highlighting that the Maharaja of J&K did not give up the internal sovereignty to the Dominion of India therefore, power to make laws on foreign affairs, communication and defence lied with union as per Instrument of Accession while the internal sovereignty of J&K remained with the Maharaja. They contended on the misuse of Ar 356 and that amendment to Ar 370 through Ar 367 was invalid.

The Union Government along with other respondents strongly argued that the abrogation of Ar 370 resolved the psychological duality of the

people of J&K and that there existed discrimination against the people of J&K before abrogation as the Indian Constitution was not fully applied to the state prior to 2019. Also went ahead and contended that it was very clear that the Constitution makers foresaw Ar 370 as a temporary provision and wanted it to die. Also told that Ar 367 was not modified and that J&K constitution was subservient and subordinate to the Indian Constitution and the J&K Constitution never had original constitution powers.

The Bench held that proclamation of Maharaja stated that the Constitution of India will supersede also that presidential power was valid. The reorganization of Ladakh as a UT was upheld as per Ar 3. It directed the Election commission of India to conduct elections to J&K assembly by September 30th as the restoration of statehood shall take place at the earliest. And recommended for constitution of a truth and reconciliation committee.

12. In Re Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act 1996 And The Indian Stamp 1899

Curative Petition (C) no. 44 of 2023 in R.P (C) no. 704 of 2021 In C.A no. 1599 of 2020.

The Hon'ble Supreme Court through a 7- judge bench held that arbitration clauses in an unstamped or inadequately stamped agreements are enforceable. It stated that mere insufficiency of stamps does not make the agreement void or unenforceable yet makes it inadmissible in evidence, and such defect is curable as per the Indian Stamp Act 1899.

Earlier in April of this year, the same court led by a 5 - judge bench in M/s. NN Global's case ruled that unstamped arbitration agreements are not enforceable with a 3:2 majority ratio.

The Petitioners contended that existence of an arbitration agreement and validity of the arbitration agreement were two different concepts and moreover as per S. 11 of the Arbitration and Conciliation Act, 1996 the court's power is limited up to the examination of the existence of the agreement and not to do with the validity of it. They also stated that the arbitrator has to decide upon the validity of the agreement while court only had to determine if any agreement existed. Also they relied upon S.16 of the Act (competence of arbitral tribunal to rule on its jurisdiction) and the 'doctrine of separability'.

On the other hand, the Respondents questioned the 5 judge bench decision of referring the matter to a 7 judge bench in its curative jurisdiction as it can only be exercised when injustice is caused in an individual cause.

In 2020, the SC in Bhaskar Raju and Bros vs. Dharmaratnakar Rai Bahadur case observed that an arbitration clause in an agreement which is required to be duly stamped, if not sufficiently stamped, cannot be acted upon by the court. And this led to Curative plea hearing before a 5 judge bench which referred the matter to a higher one for revisiting on M/s NN Global.

Thus the CJI ruled out that objection as to stamping doesn't fall for determination under S 8 or 11 of the aforementioned Act but falls within the ambit arbitral tribunal. He pointed that the object of the Act was to minimize the supervisory role of courts in arbitration contracts and that the purpose of legislation gets defeated if courts are obligated to decide on stamping issues under S 8 and 11. With this decisions of NN Global 2 and SMS Tea Estates vs Chandmari Tea co. are overruled.

Undertrial Prisoners: Will justice ever be served?

- Pujari Dharani and Sai Shriya Potla¹

ABSTRACT

An increase in undertrial prisoners is a serious problem in India as various fundamental rights of prisoners are at stake. According to Prison Statistics India 2020, the number of undertrial prisoners has increased compared to past years. Undertrials are those who are not convicts of any offence, yet remain in the prisons waiting for the disposal of their cases. Their prolonged detention also violates the legal and human rights of undertrial prisoners. Undertrial prisoners who are jailed along with the convicts in the prison are given the same treatment that is given to convicts, this creates an adverse impact on the mental state of an undertrial prisoner. Some of them spend years waiting for their trial and eventually lose belief in the judicial system. The Indian judicial system upholds the principle that a person is innocent until found guilty, the prolonged trial process diminishes the value of this principle. Even prisons are not serving their actual purpose. This article is an attempt to answer, Can the bail system solve this issue or is it economically biased? What are the rights of prisoners? Are prisons truly correctional institutes or merely workshops for criminals? What are the solutions to tackle the challenges concerning undertrials? What reforms can be brought to improve the present situation? Deep insight into Undertrial prisoners is provided in the article.

Introduction

The criminal trial is a judicial process of determining the guilt of the accused. The accused remains in judicial custody until the final judgement of the court. However, due to the prolonged delay in the trial proceedings, the accused stays in prison for a considerable amount without being convicted. They are known as undertrial prisoners. The issue of undertrial prisoners brings immense disgrace to the Indian criminal justice system given that innocent people are also treated in a similar manner as to the criminals.

“Three in four prisoners in India's jails are under trial, according to government data for the year 2020²”. To safeguard the fundamental legal and human rights of undertrial prisoners and to keep them from being placed in an untenable situation, cases must be resolved quickly. To quickly settle cases, the prison system and judicial system should be reformed. The article concentrates on the statistics, bail provisions for undertrials, prisoners' rights, issues with the prison system, and suggestions made by several legal bodies to solve the issue of the increase of undertrial prisoners.

What do statistics show?

The recently released Prisons Statistics of India (PSI) 2020³, which was released by the National Crime Records Bureau (NCRB), depicts a disappointing image of India's prison system, which is hampered by overcrowding, delays in litigation, and a lack of adequate medical care for prisoners. The percentage of undertrial prisoners of all prison inmates has increased to an all-time high in the pandemic year 2020. According to PSI 2020, the percentage was about 76% in December 2020, increasing from 69% in December 2019⁴. Almost all states witnessed a significant rise in the population in prison from 2019 to 2021.

68% of these prisoners were either illiterate or dropouts of school. More precisely, it was reported that about 41% of undertrials had left school before Class X, and over 27% of them were illiterate. The percentage of prisoners from marginalized communities did not reduce. In 2020, two out of every three undertrials belonged to a Scheduled Caste, Scheduled Tribe, or Other Backward Classes⁵. This made it pretty clear that most of the undertrials come from socially and economically underprivileged sections. Nearly 30% of all undertrial inmates stay in jail for more than a year, while 65% aren't released until after three months, according to the same data. Due to Covid regulations, both court visits and medical appointments decreased significantly in almost all

states. This demonstrates the plight of inmates in India.

Bail provisions in the Indian legal framework

The data collected about India's prison population reveals a negative image. It shows that 76% of prisoners in India's prisons are undertrials⁶. One of the major causes of overcrowding in jails across the nation may be inconsistency in the bail system⁷. It is one of the problems that affect regular people and their families since it goes against not only the fundamental tenets of "justice" but also puts human dignity at stake.

There are two kinds of undertrial prisoners: one, suspects who have been charged with non-bailable offences and whose bail has been rejected. Two, those accused who have been charged with bailable offences and whose release on bail has been granted under their basic rights, but have failed to submit the bail bond and sureties due to a few reasons. The major reason why they fail to furnish bail bonds is their financial inability to pay those bail bonds. In general, the amount of bail is higher. Although the judge has discretionary power to fix the amount of bail after an inquiry into each case, they fix a high amount to assure the presence or attendance of the accused during the investigation, court trial, etc. However, as many undertrials belong to economically marginalized families, they are unable to pay these hefty fees. Even if they pay that amount by losing their assets, selling their jewellery, and mortgaging their properties, it further drags them into jaws of poverty. This is the exact reason why the majority of those facing trials remain behind bars even after getting bail, rather than being released on bail.

Further, in the case of *Maneka Gandhi v. Union of India*⁸, Justice P.N. Bhagwati mentioned how the bail system is unfair and discriminatory when viewed from a person's economic perspective. It is discriminatory in such a way that a rich accused can get bail promptly on the same day when he was arrested, whereas a poor accused will remain in prison for many years even if he was granted bail. This happens just because of the economic capacity of an individual. This discrimination occurs even if the amount of bail set by the magistrates isn't high for some, because many of the undertrials are

indigent who face monetary deficiency and it would be difficult for them to afford the amount for bail, even if it is a small amount.

To solve this problem, the law commission recommended that the poor persons who are unable to pay to get bail be released without taking any sureties or bail in its 268th report⁹. Another recommendation by this commission is to use personal bonds based on government-verified, standard identification of documents like Aadhar or voting cards, in cases of indigent undertrials who are unable to fill out their bail bond¹⁰. Many of these recommendations made by the law commission may not only significantly release the majority of those undertrials throughout India's overcrowded prisons but also solve the problems of increase in undertrials if they were enacted by the legislature and efficiently put into place. Therefore, the government should ensure that everyone has access to the right to bail, including those who cannot afford it, without any economic bias. Bail should not only be in the hands of the privileged.

Another remedial measure suggested by the Law Commission in its 268th report is the inclusion of Section 436A. By an Ordinance duly promulgated by the President of India, Section 436A of the Criminal Procedure Code (CrPC)¹¹ was adopted with effect from June 23, 2005, keeping in the view the best interest of undertrial prisoners' best interests. Under Section 436-A of the Criminal Procedure Code, "a person who has been imprisoned for some time equivalent to one-half of the maximum period of imprisonment specified for an offence under a particular law (not being an offence for which the death penalty has not been prescribed as a punishment under that code) during the process of an investigation, inquiry, or trial under the CrPC shall be released by the Court on his personal bond with or without sureties¹²". In order to reduce prison overcrowding, the Parliament of India adopted the Law Commission's advice and changed Section 436A of the CrPC. Nevertheless, the problem of undertrials hasn't been solved even after 17 years of enforcement of provision Section 436A. This may be because of no proper and effective legal aid and awareness to the prisoners. For instance, just a third of the prisoners who were

eligible for early release under section 436A of the Code of Criminal Procedure in 2020 were released, according to PSI 2020¹³. From this, it was evident that legal aid is not effectively produced for those two-thirds of eligible prisoners under section 436A. The best possible solution for this issue is to strictly enforce the right to free legal aid, and the government along with the judiciary should ensure that all prisoners are availing of those free legal services.

Legal rights of Undertrial prisoners

The Constitution of India guarantees Fundamental Rights to every citizen including convicts, inmates, and undertrial prisoners. Every citizen in this country has access to these fundamental and unalienable rights by birth irrespective of caste, sex, ethnicity, language, etc. No one can be barred from their basic legal rights. Let's have a closer look at the rights of undertrial prisoners.

- **Right To Speedy Trial**

The guarantee of life and personal freedom found in Article 21 of the Constitution includes the right to a speedy trial in its interpretation¹⁴. The Supreme Court has emphasized the importance of the right to a speedy trial in the landmark judgment of *Hussainara Khatoon v. Home Secretary, State of Bihar*¹⁵, it was laid down "Procedure prescribed by law for depriving a person of his liberty cannot be reasonable, fair or just unless that procedure ensures a speedy trial for determination of the guilt of such a person. No procedure that does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial, we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21."

William Edward Gladstone, the former PM of England, cited the phrase "**Justice delayed is Justice Denied**", which means if justice is not rendered at the right time, then even if it is rendered later it is not real justice, because when there was the demand for justice there was lack of justice. People eventually lose their belief in the judiciary system if there is no speedy disposal of the cases. A

speedy trial reduces the chance of delayed proceedings will make it difficult for the accused to present a defence¹⁶.

Whether it is overcrowded prisons or unjust incarceration of the poor, the solution lies in expediting the trial process. The greatest cause of injustice in our legal system continues to be a delay in the trial. And any procedure that puts the indigent, weak or innocent people in jail just because the competent courts do not have 'time' for trials to even commence, cannot be just and fair. It is inhuman and indecent when innocents have to rot in dingy rooms, overcrowded prisons, and bad food, and are always at risk of custodial violence. Waiting for 12-14 years in prison and then courts declaring them innocent or guilty is against the principles of natural justice.

The Speedy Trial is an essential feature of a fair trial but; at the same time, "Justice hurried is Justice buried". Thus, there is a need to strike a balance between the right of the accused to have a speedy trial and the right of the prosecution to a fair opportunity to establish the guilt or innocence of the accused.

- **Right To Free Legal Aid**

Article 39A of the Constitution¹⁷ specifies that the State must provide free legal aid to citizens from the underprivileged sections. Justice P.N. Bhagwati states that legal aid means providing an arrangement in the society that makes the machinery of administration of Justice easily accessible and within reach of those who have to resort to it for enforcement of rights given to them by law¹⁸. The Supreme Court in the case of *Hussainara Khatoon v. Home Secretary, State of Bihar*¹⁹, "The right to free legal services is, therefore, clearly an essential ingredient of reasonable, fair, and just, procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty". In the case of *Khatri v. State of Bihar*²⁰, the Supreme Court held that "The state should provide free legal aid to an accused person who is unable to secure legal services on account of indigence. It cannot avoid its constitutional obligation to provide free legal

services to the poor by pleading financial liability”

Analysis of the latest reports of the National Crime Records Bureau (NCRB) shows that jails in India are mostly flooded with young men and women who are illiterate or semi-literate and come from socio-economically weaker sections of society. Most of them are too poor to even afford the bail fee. This makes the need for free legal aid essential²¹.

- **Right to Fair Trial**

The principle of Fair Trial is incorporated under section 304 of the Code of Criminal Procedure (CrPC)²². All parties involved, the accused and the victim must be treated fairly as the primary objective is to uncover the truth. In a criminal prosecution, everyone has a right to a fair trial. Denying the accused a fair trial indirectly causes injustice to society at large. An accused has a right to a fair trial. In *Zahira Habibullah Sheikh and Anr v. State of Gujarat and Ors*²³, the Supreme Court of India observed that “each one has an inbuilt right to be dealt with fairly in a criminal trial. A fair trial obviously would mean a trial before an impartial judge, a fair prosecutor, and an atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witness or the cause which is being tried, is eliminated”. The right to a fair trial is a fundamental safeguard to ensure that individuals are protected from unlawful or arbitrary deprivation of their human rights and freedoms, most importantly of the right to liberty and security of a person²⁴.

The principle of **presumption of innocence** is adopted by Indian courts to ensure a fair trial. Every criminal trial begins with the presumption of innocence in favour of the accused and the provisions of the Criminal Procedure Code are framed that a criminal trial should begin with and be governed by this essential presumption²⁵. It is the right of the accused to be assumed as innocent until proven to be guilty. The presumption of innocence is an essential element of a fair trial.

The legal doctrine “**Bail is a rule, jail is an exception**” is laid down in a landmark Supreme Court judgment of the *State of Rajasthan v. Balchand*²⁶ to safeguard prisoners' right to a fair

trial. Justice Vaidyanathapuram Rama Krishna emphasized the rights guaranteed to an accused under the Constitution of India. Among these rights, the most distinguished one is the right given under Article 21 of the Constitution²⁷. An individual's right to life and liberty is impacted by detention. Subsequently, bail should be obtained if a person guarantees that he will continue to maintain compliance with the investigation and show up for the trial after being released. Obtaining bail is the fundamental right of prisoners if compliance is maintained.

Human Rights of Undertrial Prisoners

Undertrial prisoners must be provided with human rights. Human rights and undertrial prisoners have a close connection with each other. Many times, it has been seen that a good number of undertrial prisoners are innocent. Such prisoners were detained in the correctional home only for doubt. In those cases, if they don't get the least benefit of human rights, they will be demoralised and cause a long-term harmful impact on society²⁸.

Guarantee to liberty and life, no inhuman treatment, no arbitrary arrest, effective remedy in courts, the presumption of innocence, etc, and other rights are listed in Article 3-11 of the Universal Declaration of Human Rights, which was adopted in 1948. India, a signatory to the UDHR, must uphold these rights.

Prison: A correctional institution transforming into a workshop for criminals

According to Section 3(1) of the colonial act named The Prisoners Act, 1894²⁹, the word prison is defined as “any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners”. This centurion-old act defined 'prison' in such a way that the purpose of prisons is detention and there is no inclusion of reformative and rehabilitation measures for prisoners. If one turns the pages of this act, one will understand that not just section 3, but also all sections in this act reflect the idea of the retributive theory of punishment. This act, which was enacted during British rule, resulted in such prison administration that the purpose of imprisonment was to create terror among wrongdoers. Our Indian criminal justice

system adopted the reformatory theory of punishment as this theory proved to be an effective way of eliminating crime in a nation. This theory focuses on changing the criminal mind of the offender through rehabilitation and making them law-abiding citizens once they come out of prison³⁰. Even though the Indian Judicial system claims that it adopted reformatory measures during imprisonment, it failed to amend this colonial act.

Indeed, an individual is not a criminal by birth, but rather his social and economic conditions make him that. Crime is the result of a mentally ill state that would be curable. That's the very reason why many psychologists, sociologists, criminologists, and jurists advise and encourage the government to adopt reformatory measures in their prison system. But, the reality in Indian prisons is completely different. One can see both undertrials and convicts stay in common prisons and sometimes as fellow inmates. According to the Prisoners Act, 1900³¹, undertrials should be kept apart from those who are convicted. However, due to prison overcrowding, undertrials must share rooms with convicts, which encourages criminal behaviour in undertrials. The prison administrators do not bother to treat undertrials differently from convicts. On one hand, convicts are treated as criminals by prison authorities, and no measures are taken to transform them into good and responsible citizens, on the other hand, undertrials who may be innocents are forcefully made to cohabit with convicts for years together further creating such an environment that instigates undertrials to adopt criminal behaviour. This is not the right way to implement the reformatory theory which can reduce the crime rate if enforced in its letter and spirit. Because of such cohabitation of both convicts and undertrials, the very essence of the reformatory theory of punishment is deviated. Thus, prisons are now being termed as correctional homes or institutions that are being transformed into workshops for criminal activities. A criminal who commits minor offences becomes a professional offender after completion of a sentence by learning tactics and strategies from fellow inmates.

There is a dire need for a mechanism that separates both convicts and undertrial prisoners. In

the case of convicts, the modern philosophy of reformation of convicts on humanitarian grounds should be properly implemented, instead of advocating punitive and disciplinary measures to subjugate prisoners like zoo animals, to change their hearts and minds to become responsible citizens. The convicts should be treated with the respect given to human beings rather than just being placed in prison to suffer and die like dead beings³². Whereas, in the case of undertrials and convicts who committed petty offences, an open jail system should be adopted. The overcrowding of prisons is a problem in Indian prisons that desperately needs a solution. That's how the concept of an open jail system came into being. The problem of the increase in undertrials can be resolved through the open jail system³³. In addition to being less expensive, open jails allow the government to make use of the offenders' skills. Positive financial returns result from the open prison operation, which ultimately leads to their self-sufficiency. Therefore, the government should adopt solutions like an open jail system.

Recommendations by Law Commissions and other Committees

The Law Commission is an executive body established by the Government of India. It is an advisory body that extensively works on bringing legal reforms into the country. Over the years, Law commissions have made numerous recommendations on undertrial prisoners and speedy disposal of the cases.

➤ By Law Commissions

78th report submitted by the 8th Law Commission in 1979 under the leadership of Justice H.R. Khanna³⁴ dealt with the Congestion of undertrial persons in jails. Some of the important recommendations include-

1. Cases in which the accused are in jail must be given preference and the target for their disposal should be four months.
2. Inordinate delays in the investigation of cases should be avoided. Investigation of cases should be completed as soon as possible. If an investigation is not completed within a specific period the

accused should be released on bail.

3. When accused in jail, adjournments of the cases should not be granted unless necessary.
4. The statutory requirement that the amount of bond shall not be excessive should be observed.
5. There should be separate institutions for the detention of undertrial prisoners.

Recommendations on provisions on bail have been made in the 268th report of the twenty-first Law Commission³⁵ headed by Former Supreme Court judge, Balbir Singh Chauhan, in 2017. Few of them are mentioned here

1. Any bail practice that results in the incarceration of the accused person without meaningful consideration of the ability to pay, alternative methods of ensuring appearance at a trial, and the nature of the crime are violative of the rights of the accused.
2. If the prosecution cannot show through evidence that the person accused of an offence is at the risk of absconding is likely to interfere with the judicial process, or is likely to commit the same offence, the accused person should be considered eligible for release.
3. If the accused person has served half the maximum sentence specified for the offence for which he has been charged, he should be released on bail, subject to fulfilling the conditions of bail imposed on him.

The law commission also stated that poorer sections of society are not in a condition to afford bail

➤ **By the National Expert Committee on Women Prisoners**

The National Expert Committee on Women Prisoners under the chairmanship of Justice Krishna Iyer in 1986 has made recommendations to improve the conditions for women in prison³⁶. Some of them include

1. Women prisoners should be informed of their rights under the law
2. Only the women constables should conduct searches on women prisoners.
3. Medical check-ups of women prisoners or undertrials should be done by women doctors as soon as they are admitted to prison.
4. Women prisoners should be allowed to contact their families and communicate with their lawyers, women social workers, and voluntary organizations

Reforms that need immediate effect

▪ **Reform in the Prison System**

The Indian prison system suffers from overcrowding, a lack of a sustainable environment, an inadequate prison program, and a lack of proper legal and medical aid. Recently, in March 2022 the Supreme Court constituted a committee chaired by Justice Amitava Roy to submit a report on prison reforms. To improve conditions in the prison system, reforms must be implemented.

The primary issue with Indian prisons is overcrowding. The rapid trial can help to alleviate overcrowding. Fast-track courts must be established to quickly resolve cases. In India, there are currently 69 open jails; expanding this number could help with the overcrowding issue. Reports suggest that 31.8 per cent increase in the incarceration of the number of undertrial prisoners and an increase in imprisonment of detainees by 40.1 per cent from 2015 to 2020 (as of December 31, 2020)³⁷. Instead, the government must prioritize decriminalization.

Mansukh Mandaviya, the Minister of Health and Family Welfare provided that only 22,345 prisoners have been fully vaccinated across all 37 states and Union Territories³⁸. Authorities are required to ensure that all prisoners are healthy and completely vaccinated.

Undertrial prisoners should not be detained with other convicts and must have a reasonable standard of living with a proper lifestyle. Rehabilitation programs and other activities that help prisoners develop their personalities should be done to run

the prison system humanely and equitably.

▪ Reforms in Judiciary

Judiciary reforms in the prison system enable them to run smoothly. Unnecessary adjournments in justice delivery interrupt the accused's right to liberty. Unless necessary, adjournments should be avoided.

In modern times, technology facilitates the administration of justice. After the outbreak of COVID-19, video conferencing benefitted courts. It must be used liberally for the speedy disposal of cases of undertrial prisoners.

Many prisoners come from less privileged backgrounds and are illiterates. They do not possess knowledge of the law. Authorities in legal services must play a principal role in increasing awareness among the people about the rights they possess.

An undertrial review committee, comprising the District Judge, District Magistrate, and Superintendent of Police, should be set up in each district. The onus of constituting such a panel for every district should be put on the National Legal Services Authority, acting in coordination with the State Legal Services Authority³⁹.

CONCLUSION

Everyone knows how our criminal justice system treats the life of an undertrial prisoner. Usually, undertrials spend valuable years of their life in jail even though they are not convicted of the alleged crime while the trial is ongoing. The more distressing moment comes when they are found innocent by a court after spending years in jail. The criminal justice system negatively impacts undertrials since they must spend years similar to those of convicted criminals, which causes them great mental agony and emotional hardship. This is not just the case for a few undertrials because their percentage share is rapidly increasing. The issue of the increase in undertrials makes them deprived of their basic fundamental rights like the right to a speedy trial, the right to free legal aid, the right to bail, and many more human rights. The increase in undertrials in 2020 is the highest of all years. The NCRB reports show how the situation is worsening

year by year. It is the need of the hour to look into the problem and take action as soon as possible.

It is now imperative to abolish the colonial Indian prison system and reform the outdated Prison Act of 1894 since both the prisons and the prisoners need a change in the present day and age. To prevent prisoners from developing into hardened criminals, it is also crucial to improve the prison environment and value the humanitarian needs of prisoners. On the other hand, the facilities and conditions of the prisons should be enhanced in a better direction, and the undertrials should be kept in separate jails rather than with the convicts. When looking at the cost of prison space, resources, and upkeep, it should also ensure that prisons are not overcrowded. Not only must our laws ensure a speedy trial of criminal cases, but they also must be properly enforced in practice. Prisoners' rights must be clearly explained to them by the legal services authorities in each State.

All of the aforementioned reforms must be implemented in full compliance with its letter and spirit so that prisons truly serve as correctional homes. It is best for the situation if this is addressed as quickly as possible.

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UNDISCLOSED INCOME -“THE SOCIAL MENACE”

- Vaishnavi Chitturi'

The Income which is not shown by Taxpayer in his Income Tax returns and not paid the taxes on the same is known as undisclosed income and also amounts to black-money. Tax Evaders are people who try to avoid tax implications. So to avoid paying tax these Tax Evaders do not disclose their income to Tax Authorities, they tend to hold in the information which is to be observed and taxed by Tax Authorities. There are a lot of crude methods for evading tax such as stashing cash, jewellery, bullion, gold bars etc. in false ceilings, floors etc. Income concealed in such a manner cannot be Taxed even by scrutinizing account books as these transactions are kept off-books. Undisclosed income can be detected and taxed only by finding out Investments, bullion, jewellery, cash, etc., possessed by a Tax Evader or huge expenditure incurred by him on education of children, marriage of family members etc., then tallying such Incomes and expenditures with account books, receipts, Investments, expenditure, etc., with the disclosed/reported income to find out if these are disproportionate to disclosed income.

The Undisclosed income comes to knowledge of Income Tax Authorities through searches, surveys and other mechanisms like Annual Information Returns and then the Authorities tally/check with income/wealth reported to the Tax Authorities. If assets/expenditure exceed reported/disclosed income and if no satisfactory explanation is given regarding the source of the excess assets/expenditure, the excess is taxed as undisclosed income. Section 69 to 69C of Income Tax Act, deal with these measures of tallying assets and expenditure of Tax Evader with reported/disclosed income and seeking explanation of the Tax Evader for discrepancies.

Undisclosed source of income includes cash credits, unexplained Investments and money, amounts invested which are not reflected in the books of account, unexplained expenditure, amount borrowed or repaid. The Income Tax Act defines black-money and undisclosed source of income differently.

PROMINENT SECTIONS in the INCOME TAX ACT RELATING TO UNDISCLOSED INCOME

Section 68 of Income Tax Act defines cash credits which are not satisfactorily explained for not mentioning the said amount in the books of account.

Section 69 of Income Tax Act defines unexplained Investments, an individual who makes investments, which are not reflected in the books of account and the individual has no explanation or the explanation offered is not satisfactory.

Section 69A of Income Tax Act defines unexplained money. The Taxpayer found to be the owner of any money, jewellery or other valuable articles and the same is not recorded in the books of account and he has not offered any explanation or explanation offered is not satisfactory it amounts to unexplained money.

Section 69B of Income Tax Act defines when a person made investment or found to be the owner of any bullion, jewellery and the amount spent on making such Investments or acquiring such articles exceed the amount recorded in the books of account the excess will be treated as Undisclosed income. Basing on this principle even the disproportionate assets of Government Employee's will be calculated and he will be punished accordingly under Prevention of Corruption Act also.

Section 69C of the Income Tax Act defines unexplained expenditure. If the Taxpayer has incurred any expenditure and he has not offered any explanation about the source of such expenditure or the explanation is unsatisfactory, he has to pay income tax and such unexplained expenditure shall not be allowed deduction under any head of account.

Section 69D of Income Tax Act defines amount borrowed or repaid on hundi. If the amount is borrowed on hundi or any amount due is repaid other than an account payee cheque, the amount so borrowed or repaid deemed to be the income of the

person and he will not be liable for deduction under any head.

Section 115BBE of Income Tax Act explain the taxation of undisclosed source of income i.e., cash credits, unexplained Investments, unexplained money, amounts of Investments not fully disclosed in the books of account, unexplained expenditure amount borrowed or repaid on hundi are taxable at the rate of 60%, surcharge at the rate of 25% of tax and education cess of 4% will be levied in addition to tax. The effective rate of tax is 78% on undisclosed source of income. Under section 115BBE, no basic exemptions or allowances, expenditure will be allowed to the Taxpayer in computing the tax under section 115BE, no set-off of any loss shall be allowed against income.

Notable Judgements of the Honourable Supreme Court of India on Undisclosed Income

To prove unreported income, the Government utilises specific items such as net worth, expenditures/cash or bank record. The income Tax Authorities file a complaint of tax evasion/undisclosed foreign asset/benami property.

Tax evasion is a serious crime. If anyone is found guilty, he will be sentenced to imprisonment for up to 7 years or a fine shall be imposed. If it is the first offence of the Tax Evader then he will only be fined.

If the undisclosed amount was invested, for which a satisfactory explanation is not given, then Enforcement Directorate(ED) will come into the picture and file a case under section 3 of the Prevention of Money Laundering Act which deals with conversion of tainted money into untainted money.

The Government of India introduced the Demonetisation scheme in the year 2016, under this scheme currency notes Rs.500/- and Rs.1000/- ceased to be Legal Tenders. Recently, Reserve Bank of India(RBI) withdrew the circulation of Rs.2000/- currency notes as well. One of the reason for implementation of such schemes is to curtail the Undisclosed income held by Individuals.

In a Judgement rendered by Hon'ble Supreme Court in *Union of India and Ors V. Ashish*

*Agarwal(2022(5) TMI 240 SC)*²: “In view of the above and for the reasons stated above, the present Appeals are ALLOWED IN PART. The impugned common judgments and orders passed by the High Court of Judicature at Allahabad in W.T. No. 524/2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under: In view of the above and for the reasons stated above, the present Appeals are ALLOWED IN PART. The impugned common judgments and orders passed by the High Court of Judicature at Allahabad in W.T. No. 524/2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:

- (I) The impugned section 148 notices issued to the respective assesseees which were issued under unamended section 148 of the IT Act, which were the subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be showcause notices in terms of section 148A(b). The assessing officer shall, within thirty days from today provide to the respective assesseees information and material relied upon by the Revenue, so that the assesseees can reply to the showcause notices within two weeks thereafter;
- (ii) The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) is hereby dispensed with as a onetime measure visàvis those notices which have been issued under section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts. Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned Assessing Officers to hold any enquiry, if required;
- (iii) The assessing officers shall thereafter pass orders in terms of section 148A(d) in respect of each of the concerned assesseees; Thereafter after following the procedure as

required under section 148A may issue notice under section 148 (as substituted);

- (iv) All defences which may be available to the assesses including those available under section 149 of the IT Act and all rights and contentions which may be available to the concerned assessee and Revenue under the Finance Act, 2021 and in law shall continue to be available.

11. The present order shall be applicable PAN INDIA and all judgments and orders passed by different High Courts on the issue and under which similar notices which were issued after 01.04.2021 issued under section 148 of the Act are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent. The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the Revenue on the very issue by challenging similar judgments and orders, with a view not to burden this Court with approximately 9000 appeals. We also observe that present order shall also govern the pending writ petitions, pending before various High Courts in which similar notices under Section 148 of the Act issued after 01.04.2021 are under challenge.”

The Hon'ble Supreme Court in *Deputy Commissioner of Income Tax(Central) Circle 1(2) v. M/S M.R. Shah logistics pvt ltd*³, enunciated the guidelines to reopen the assessment as follows, “In *Tanna & Modi v Commissioner of Income Tax, Mumbai XXV & Ors* also, this court held, similarly that immunity granted for one purpose, cannot be extended for another: “20. It may be necessary for the aforementioned purpose to bear in mind that the immunity granted pursuant to acceptance of a declaration made under the voluntary taxation scheme or Kar Vivad Samadhan Scheme, 1998 does not lead to a total immunity. Immunity granted under the Scheme has its own limitations. The Scheme must be applied only in the event the conditions precedent laid down therefore are applicable. See *State, CBI v. Sashi Balasubramanian and Anr. [2007]289ITR8 (SC) and Alpesh Navinchandra Shah v. State of Maharashtra and Ors. 2007 (3) SCR 223 21*. A raid was conducted in the premises of the firm. Search warrant might have been issued in the name of a

partner of the firm. The partner made certain statements. The search revealed some undisclosed income. The firm has a separate legal entity, it could have made a declaration, but it was done in respect of the same amount regarding the partner of the firm made disclosures. What would be the effect of his subsequent retraction is not a matter which we are required to deal with herein. It is one thing to say that when a firm has concealed income, each partner need not make a declaration but it would be another thing to say that when a search has been made on the premises of the firm and the books of accounts of the firm are inspected, on the strength of a search warrant issued in the name of one of the partners thereof, a declaration can be made by the firm so as to cover the loopholes. In a case where Sub-section (2) of Section 64 is applied, Sub-section (1) thereof would not apply inasmuch as it starts with the term "nothing contained" in Sub-section (1) shall apply in relation to. What are the conditions which would make Sub-section (1) of Section 64 inapplicable is the income assessable for any assessment year for which a notice under Section 142 or 148 of the Income Tax Act has been served upon such person and the return has not been furnished before commencement of the Scheme and upon strict construction, it is possible to argue that the word "such person" must relate to that declaring which being a firm would not include within its purview its partners. But, in a case of this nature where fraud is alleged, we cannot be oblivious of the fact that each firm acts through its partner. A firm is the conglomeration of its partners, and is not a juristic person. In the instant case, the purported disclosure made by the firm relates to the same amount which has been disclosed by the partner. Even the source of income was found to be the same. As the income of a firm vis-a-vis its partners have a direct co- relation, in our opinion, while construing a statute granting immunity, it should not be construed in such a manner so as to frustrate its object.”

The Hon'ble Supreme Court in a judgment in *K.L.Swamy v. The Commissioner, Income Tax*⁴, categorically held that for assessing undisclosed income the charging provision is section 158BA(2) alone:

“In view of the above and for the reasons stated above, the present appeals succeed in part. It is

observed and held that the respective assesseees are not liable to pay the surcharge under proviso to Section 113 of the Income Tax Act. The impugned judgment and order passed by the High Court is required to be modified to the aforesaid extent. So far as the liability to pay the interest under Section 158BFA of the Income Tax Act for late filing of the return under Section 158BC of the Income Tax Act, in absence of any notice under Section 158BC upon the assessee - persons other than searched persons, the said question is held in favour of the revenue and against the assessee.”

The impugned judgment and order passed by the High Court is hereby confirmed and it is observed and held that the assessee - persons other than searched persons shall be liable to pay the interest on late filing of the return under Section 158BC even in absence of a notice under Section 158BC of the Income Tax Act and even for the period prior to 01.06.1999.

The Hon'ble Supreme Court of India in respect of imposing penalties on Undisclosed income has held in *Manusukhlal and brothers v. Commissioner of Income Tax*⁵: “ It only remains to be considered as to what is the true import and meaning of the word "avoided" and the words "income as returned" in section 28(1). According to the appellant's submission "avoided" has to be read with reference to clause (c) as meaning "evaded". It is suggested that this word should be restricted to mean omission or default on the part of a person and should not be so construed as to being within its ambit mere escarpment of income. This argument was rejected by the High Court which referred to the meaning given in the Concise Oxford Dictionary and rightly observed that the use of the word "avoided" has to be seen in the context in which it appears. When read with the words "income as returned" the word "avoided", in the view of the High Court, was used in the sense of "escaped". The submission on behalf of the appellant that avoiding of tax should be linked to the concealment of income has hardly any force. Even with regard to clause (b) the same amount of penalty can be imposed as in the case of clause (c). The learned Solicitor-General has drawn our attention to Chapter V- B containing special provisions relating to avoidance of liability to income-tax and super-tax. Sections 44D and 44F

use the expressions "avoiding", "avoid" and "avoided" which cannot ordinarily have only the meaning of "evade", "evaded" or "evasion". In our opinion the High Court was right in holding that the word " avoided " does not mean " evaded " and that it has been used in the sense of escapement. To put it differently, the legislature wanted the income-Tax Authorities to determine what would have been the amount of tax that would have escaped assessment had the income as shown in the return been accepted as correct and 1 1/2 times of the said amount would be the maximum limit within which penalty can be imposed where it was discovered that income had been concealed. So far as the word " returned " is concerned, it is not possible to go beyond its plain meaning particularly when the expression " return " is well understood in income-tax law. Section 22 contains provisions relating to " return of income " and the words " income as returned" would clearly mean income as disclosed or shown in the return filed under section 22, Even in clause (a) of section 28(1) the word " return " has been used in the same sense and the submission of the counsel for the appellant that other meaning should be given to it cannot, by any stretch of reasoning, be accepted.

In the above view of the matter it must be held that the penalties which have been provided by section 28(1) are meant for the acts of omission or commission which are set out therein and once an assessee is proved to have been guilty of them the penal provisions are attracted and with reference to clause (c) irrespective of the amount concealed. Thus the answer returned by the High Court to the question referred was correct. “

In a recent judgment rendered by the Hon'ble Supreme Court in *Vijay Madan Lal Chowdary v. Union of India*⁶, the Hon'ble Supreme Court has categorically held that the amendments made in Finance Act, 2018 and Finance Act, 2019 with regard to investment of undisclosed income by way of investment.

The Hon'ble Supreme Court of India has enunciated the principles in exercising the writ jurisdiction in the matter of search and seizure under section 132 of the Act wherein point No. (iv) referred as follows :

iv) Such person is in possession of any money, bullion, jewellery or other valuable article which represents either wholly or partly income or property which has not been or would not be disclosed;

The Hon'ble Supreme Court in a decision reported in 1974 AIR 348 in *Pooran Mal ETC. v. Director of Inspection (Investigation of Income Tax), Mayur*⁷, wherein an undisclosed amount was recovered from the premises of the petitioner, held that income Tax Authorities are having powers to seize the undisclosed source of income.

In *Union Of India vs Gautam Khaitan*⁸, the Hon'ble Supreme Court held that the penal provisions of black-money (undisclosed foreign income and assets) and imposition of Tax Act, 2015 is not retrospective:

20. It would further be relevant to note that subsection (3) of Section 1 of the Black Money Act, itself provides that save as otherwise provided in this Act, it shall come into force on 1 st day of July, 2015. A conjoint reading of the various provisions would reveal, that the Assessing Officer can charge the taxes only from the assessment year commencing on or after 01.04.2016. However, the value of the said asset has to be as per its valuation in the previous year. As such, even if there was no change of date in subsection (3) of Section 1 of the Black Money Act, the value of the asset was to be determined as per its valuation in the previous year. The date has been changed only for the purpose of enabling the assessee(s) to take benefit of Section 59 of the Black Money Act. The power has been exercised only in order to remove difficulties. The penal provisions under Sections 50 and 51 of the Black Money Act would come into play only when an assessee has failed to take benefit of Section 59 and neither disclosed assets covered by the Black Money Act nor paid the tax and penalty thereon. As such, we find that the High Court was not right in holding that, by the notification/order impugned before it, the penal provisions were made retrospectively applicable.

In the Judgment rendered by the Hon'ble Supreme Court in *M/s. Goodyear India Ltd. v. Commissioner of Income Tax*⁹ defined the admission of undisclosed income.

Conclusion

Undisclosed income leads to Inflation. It is enormously raising the gap between the rich and the poor, further resulting to unrest in the society. Undisclosed income is a product of illegal activities, which in turn creates a pattern of continuing and increasing the rate of illegal activities, leading to deterioration of human values. Tax Evaders are parasites who feed over the society, as they are the people who hold undisclosed income and enjoy the comforts illegally by evading tax that should be responsibly paid by them, it is unfair on the part of diligent Taxpayers. Tax Evaders must realise that their selfish act is burdening industrious Citizens of our Country. Every Citizen must work assiduously for the development of our Nation “The Tax Paid Today Is for A Better Tomorrow”.

Endnotes

1. Author is final year Student of LLB (3YDC) at Pendekanti Law College, Hyderabad
2. *Union of India and Ors V. Ashish Agarwal*(2022(5) TMI 240 SC)
3. *Commissioner of Income Tax(Central) Circle 1(2) v. M/S M.R. Shah logistics pvt ltd*(ARISING OUT OF SPECIAL LEAVE TO APPEAL (C) NO. 22921/2019)
4. *K.L.Swamy v. The Commissioner, Income Tax, CIVIL APPEAL NO. 3704 OF 2012*
5. *Manusukhlal and brothers v. Commissioner of Income Tax, AIR 1969 SC 835*
6. *Vijay Madan Lal Chowdary v. Union of India, SPECIAL LEAVE PETITION (CRIMINAL) NO. 4634 OF 2014*
7. *Pooran Mal ETC. v. Director of Inspection (Investigation of Income Tax), Mayur, 1974 AIR 348*
8. *Union Of India vs Gautam Khaitan, CRIMINAL APPEAL No.1563 OF 2019*
9. *M/s. Goodyear India Ltd. v. Commissioner of Income Tax, CIVIL APPEAL NOS. 7703-7707 OF 2012*

ANCIENT TO MODERN: NAVIGATING THE JOURNEY OF WOMAN IN THE INDIAN SOCIETY

-B. Vamshitha¹

ABSTRACT

The study has attempted to emphasize the women's status, which contains two strong and crucial words, namely, status and women. In brief, the word "status" means a social position, condition or standing to which varying degrees of responsibility, privilege and esteem are attached.

The status of women in India has undergone many changes over the span of recorded Indian history. The position of women in society deteriorated early in India's ancient period, and their subordination continued to be reified well into India's early modern period.

INTRODUCTION

The position of women has numerous aspects that can be investigated in a society as diverse as India's. In the past, women in India were thought to have a lower status than men. They were elevated in the scriptures and revered as the world's ideal housewives. Women have unmatched attributes like a level head, the stamina to overcome any emotional difficulty, and the ability to face even the most trying circumstances with ease and positivity. Women maintain their families and act as the thread that unites all the divisions and people.

Since ancient times, women have played a significant role in Indian culture and society. However, there has been a long discussion and worry about the status of women in India. Despite recent improvements, women in India still face a number of difficulties today.

HISTORICAL BACKGROUND-

- **Vedic Era**

Historical studies and the scriptures indicate that Indian woman enjoyed a comparatively high status during the early Vedic period (2000 B.C. to 1000 B.C.), surpassing contemporary civilizations. The Aryans, who were mostly busy fighting wars, regarded woman as useful and productive members of society. The condition of Vedic Woman was good. Woman also enjoyed religious status like that of men, especially in Vedic initiation and studies.

The Rig Veda provides ample evidence to prove the concept of equality of woman with men as regards access and capacity to acquire the highest knowledge, even the absolute knowledge. The Rig Veda had rendered the highest social status to qualified woman of those days. But status of woman fell in the later Vedic and Epic period. They were not at all treated equally with men or we can say that they were not enjoying equal rights and privileges as compared to men. Though the woman participated in each family ceremony with men but they only played a role as a silent observer not an active participant. As per Manu, men always enjoy unchallenged authority over their wives. Child marriages, Polygamy and Sati were prevalent at that time. Still out of all these things woman at that time were respected by the society. However, changes into the status of woman introduced in 15th century. Saints and supporters of bhakti movement were expounded and spoken about equality of woman with men.

- **Medieval Era**

The medieval period (500 to 1500 A.D) was a time of decline in the status of Indian women. They were considered inferior to men and had to deal with a variety of issues, such as child marriages, restrictions on education, Sati, Jauhar, and the Purdah system. As a result, a vicious spiral developed, with women being the victims.

In other words of famous poet Rabindranath Tagore, women's status in medieval India may be summarized as follows: "Why, Lord, haven't you given woman the power to choose her own destiny? Why does she have to stand by the wayside, head down, waiting with worn patience, hoping for a miracle the next day?"

- **British-Era**

Social reformers in the nineteenth century launched a fervent effort to improve the status of women in Indian society. They worked to prevent child marriage, promote women's education, and remove polygamy and the remarriage of widows. The British Government passed a number of social

laws as a result of their efforts, including the Child Marriage Restraint Act of 1929, the Hindu Widow Remarriage Act of 1856, and the Hindu Women's Right to Property Act of 1937. These laws helped to improve the lives of Indian women by giving them more rights and opportunities. Thus, the Indian woman's status, which had taken a rocky course during the British Government, was attempted to be balanced with the aid of many social laws.

India has a long history of women leaders who have fought for the status of women in the country. Some of the most notable women leaders include:

1) Savitribai Phule was a prominent figure in the Indian social reform movement of the 19th century. She was particularly known for her work to improve the status of women and education in India. In 1848, in addition to her work in education, she was also a social activist. She campaigned against child marriage, the purdah system, and other social evils that were prevalent in Indian society at the time. She was a pioneer in the field of women's education and social reform. Her work is still relevant today. She is an inspiration to all those who are working to promote gender equality and social justice.

2) Rani Lakshmi Bai was the queen of the Indian state of Jhansi who is known for her bravery and leadership in the Indian Rebellion of 1857. She encouraged women to get an education and to participate in public life. She fought against social evils such as child marriage and sati. She established a women's army to help her defend Jhansi during the Indian Rebellion of 1857. She was a role model for women in India and her legacy continues to inspire women today.

3) Sarojini Naidu was a prominent Indian poet, politician, and activist who played a key role in the Indian independence movement and the advancement of women's rights. She was one of the few women who were directly involved in the Indian independence movement, and she was also a vocal advocate for women's education, empowerment, and suffrage. Naidu was a strong advocate for women's education. She believed that education is essential for women to achieve their full potential.

- **Post-Independence Era**

The Constitution, its makers, and the country's

authorities recognized the unequal social position of women after India attained independence, and they took steps to ensure that women would have the same rights as men. The Constitution's enshrinement of equality has been the biggest source of pride for women, who were historically the most marginalised and oppressed group in society. The West's influence and the growth of women's education in India led to a rise in female resistance to male oppression. They opposed polygamy and argued for marital equality, sought the right to divorce and demanded restriction on dowry. Due to these demands, a number of social laws were passed to enhance the situation of Indian women.

CONSTITUTION AND LEGISLATIONS FOR WOMEN UPLIFTMENT

Article 14 of the Indian Constitution provides equal status to all citizens, including women, and prohibits discrimination based on gender. Additionally, article 15 gives the government the authority to create unique protections for women. Women are free to engage in all political, religious, cultural and economic activities.

Furthermore, they have been entitled to vote and receive other special perks. The Constitution guarantees equal rights and opportunities for women in all fields and prevents them from being exploited.

Legislations safeguarding Women's interests

Now, let us look at a few legislations which safeguard the interests of women.

- **The Hindu Marriage Act, 1955**

This legislation categorised Hindu marriages which established the marriageable age, stipulated monogamy, allowed for the dissolution of marriage in certain situations and claimed maintenance from the husband under certain circumstances.

- **The Hindu Succession Act, 1956**

This legislation provided for the daughter to have equal rights to the father's property. The Hindu Succession (Amendment) Act, 2005, is a landmark legislation that has had a positive impact on the lives of women in India. It has given women more rights and opportunities and has helped to promote gender equality. The Hindu Succession

(Amendment) Act, 2005, has uplifted the status of women in India in the following ways:

Before the amendment, daughters were not entitled to any share in ancestral property. They could only inherit property from their father or husband. The amendment has changed this by giving daughters an equal share in ancestral property, even if their father is alive. The amendment has also given daughters the right to claim a share in their mother's property. Previously, daughters could only inherit property from their mother if she died intestate (without leaving a will). The amendment has changed this by giving daughters the right to claim a share in their mother's property, even if she has left a will. The amendment has given women more financial security by giving them equal rights to property. This has made it easier for women to start their own businesses and invest in the economy. It also helped to promote gender equality by giving women equal rights to property. This has helped to break down traditional gender roles and has given women more power and autonomy in their lives.

The Hindu widow's standing has significantly improved, and she now occupies respectable position in the Family. Although widow remarriages have long been permitted, The Hindu Marriage Act also grant widows the option of being remarried.

Indian women are now free to select any type of schooling or professional training that will prepare them for a career. The Indian constitution guarantees equal opportunities for all the appointees entitles them to aspire for the highest office of the state. The Indian Constitution ensures equal Adult Franchise for Men and Women.

Following the Declaration of Independence, women's education rights were supported and they were made aware of the importance of education. Since then, there has been a progressive increase in the proportion of women enrolling in higher education. The government offered women who wanted to pursue higher education a number of privileges, including scholarships, loan options, dormitory accommodations, etc. Many women are now able to seek higher education because of these incentives.

For women especially, separate schools and colleges have been built. In addition, separate

universities have been founded, some of which are renowned today and admit female applicants with strong academic credentials. Particularly for girls, India has a large number of engineering and medical schools/colleges that offer top-notch education and support for professional advancement.

The Women Reservation Bill, 2023

The Women's Reservation Bill, 2023, is a bill that proposes to reserve 33% of seats in the Lok Sabha and all state legislative assemblies for women. The bill was introduced in the Lok Sabha on December 18, 2022, by Union Minister Smriti Irani for Women and Child Development. Despite the unanimous support given to the legislation, the Union government failed to provide a specific timeline for its implementation. The Bill states that the “provisions relating to the reservation of seats for women...shall come into effect after an exercise of delimitation is undertaken for this purpose after the relevant figures for the first census taken after [the Bill is passed] have been published.” The bill cannot be put into effect until after the 2024 Lok Sabha elections. The subsequent delimitation exercise can only be conducted after the first post-2026 census. This implies the bill cannot attain legal status until at least 2027.

STEPS TAKEN BY THE JUDICIARY FOR WOMEN UPLIFTMENT

The case laws listed below demonstrate efforts taken by the Judiciary to improve the status of women in Indian Society;

- **Vishakha and Ors. v. State of Rajasthan and Ors. (1997) 6 SCC 241**

This case was a landmark judgement of the Supreme Court of India that laid down guidelines to protect women from sexual harassment in the workplace. The Vishaka Guidelines are as follows:

- 1) Definition of sexual harassment: Sexual harassment is defined as any unwanted sexual advance or attention, any request for sexual favours, or other verbal or physical conduct of a sexual nature, which either explicitly or implicitly makes it a condition of employment or affects the victim's employment or creates a hostile work environment.

2) Duties of employers: Employers have a duty to: Provide a safe and harassment-free work environment for their employees. Formulate and implement a policy against sexual harassment.

Set up a complaints committee to investigate and resolve complaints of sexual harassment.

3) Duties of employees: Employees have a duty to:

- Refrain from engaging in sexual harassment.
- Cooperate with the complaints committee in investigating and resolving complaints of sexual harassment.

The Vishaka Guidelines have been hailed as a landmark step in the fight against sexual harassment in the workplace. They have been adopted by many employers and organizations in India, and have been cited in several cases by the courts.

In addition to the Vishaka Guidelines, the Supreme Court also held that the Government of India is duty-bound to enact legislation to prevent and address sexual harassment in the workplace. This led to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The Vishaka judgment and the Vishaka Guidelines have had a significant impact on the way sexual harassment is perceived and dealt with in India. They have helped to raise awareness of sexual harassment and have provided a framework for preventing and addressing it.

- **Mohd. Ahmed Khan v. Shah Bano Begum and Ors. 1985 SCR (3) 844**

In this case, the Supreme Court of India held that a divorced Muslim woman is entitled to maintenance from her former husband under Section 125 of the Code of Criminal Procedure, 1973, even if she has received mehr (dower) from him.

The Court held that Section 125 is a secular provision that applies to all persons, regardless of their religion. It also held that the obligation of a Muslim husband to maintain his divorced wife is not limited to the period of iddat (the period of waiting after divorce during which a woman cannot remarry).

The Court also observed that the payment of mehr does not extinguish the husband's obligation to maintain his divorced wife, especially if she is unable to maintain herself.

The Supreme Court's judgment in Mohd. Ahmed Khan v. Shah Bano Begum was a landmark decision that upheld the rights of divorced Muslim women. However, the judgment was met with strong opposition from some Muslim groups, who argued that it was an interference with their personal laws. The Apex Court has held that the Muslim Women (Protection of Rights on Divorce) Act is valid and constitutional. However, the Court has also held that Section 125 of the Code of Criminal Procedure remains available to divorced Muslim women who are unable to maintain themselves.

- **Laxmi v. Union of India and Ors. 2014 SCC (4) 427**

Laxmi v. Union of India was a landmark case in the Indian legal system. It was a Public Interest Litigation (PIL) filed by Laxmi, an acid attack survivor, in 2006. The case sought to address the issue of acid attacks in India and to provide relief to acid attack survivors.

In its judgment, the Supreme Court of India laid down a number of guidelines for the prevention and rehabilitation of acid attack survivors. These guidelines included:

- Regulation of the sale of acid
- Provision of free medical treatment to acid attack survivors
- Compensation for acid attack survivors
- Rehabilitation programs for acid attack survivors

PROBLEMS FACED BY WOMEN IN MODERN INDIA

Numerous studies show that gender bias causes significant stress for women in both professional and non-professional settings. Women still maintain control over their household duties despite having demonstrated their best skills on Par with men in a variety of spheres of work. Despite

their dedication, women are still viewed as secondary in their line of work. Because men solely see women as consumers, sex objects, or reproductive machines, women's status in the family and society has been diminished. This has consequently resulted in a rise in violence and a denial of justice, liberty, and equality.

Women are viewed as lesser, subordinate people to men. As a result, they continue to be suppressed, oppressed, harassed, subjugated and deprived of even the most fundamental rights. They are the victims of crimes and atrocities committed by members of their own families. They deal with a plethora of issues in their post-marriage lives for their families in various capacities, such as those of a bride with no or less dowry, a wife without a son, or a widow responsible for her husband's death. In particular, if they are working women, they are expected to accomplish all the activities from dusk to dawn in order to meet the needs of every family member. Therefore, despite the fact that women are crucial to the socioeconomic development of a nation, they face discrimination practically wherever they go, starting at a very early age.

With the rising number of rape cases being registered in India on a daily basis, the question as to the safety of women in India is not relevant at all. Rape is a terrible crime that can have devastating consequences for the victim. In India, rape is often considered to be the fault of the victim. In India, not a single day passes without hearing a case at all about the rape of a woman. India is a country of billions out of which 48% are women but it is still unsafe for women. According to the National Crime Records Bureau (NCRB) 2018 a total of 33,356 rape cases were reported in India out of which 93.9% of the cases were held to be appropriate. With this number of cases of utmost brutality, the question again boils down to a fact of whether India is safe for women.

Less number of female police can be one of the reasons for the sexual violence problem in India. Whenever a woman is raped, she is more likely to report her case to a female police officer. Victims of sexual violence may be reluctant to report their crimes to male police officers, due to fear of stigma, judgment, or even further violence. This can lead to underreporting of sexual crimes and a lack of justice for victims.

A study by the National Commission for Women found that in 2016, only 7.5% of police officers in India were women. This is significantly lower than the global average of 10.1% of female police officers. The study also found that female police officers are more likely to be assigned to administrative roles than to field roles. This means that they are less likely to be involved in the investigation and prosecution of sexual crimes.

Blaming a rape victim for their indecent clothing is a form of victim-blaming. It is the practice of placing the blame for a crime on the victim, rather than on the perpetrator. In the case of rape, this often involves blaming the victim for what they were wearing. Victim blaming is a harmful practice that can have a number of negative consequences for victims of rape. It can make them feel ashamed, guilty, and responsible for their own rape. It can also discourage them from reporting their crime to the police or seeking help from others. There is no evidence to suggest that a victim's clothing can cause rape. Rape is a crime of violence and control, and it is always the perpetrator's fault. Blaming a rape victim for their indecent clothing is a form of sexism. It is based on the belief that women are responsible for preventing themselves from being raped. This belief is harmful and it reinforces the idea that women are objects who can be controlled and violated. It is important to remember that rape is never the victim's fault. It is a crime that is committed by the perpetrator, and the perpetrator is the one who should be held responsible.

The Kerala High Court Said that a Woman's dress cannot give a man a License to outrage her modesty in the Civic Chandran Sexual Harassment case. The Court removed the "Sexually provocative Dress" from the session court's anticipatory bail order. The court also said objectifying a woman based on what she wears cannot be justified.

Four in ten women have faced domestic violence. Yet fewer women are reporting violence today than a decade ago, with complaints dropping 10 percentage points to 14% over the decade ending 2015, reported the National Family Health Survey 2015-16 (NHFS-4). In the present scenario, the pandemic and the lockdown have led to an increase in the cases of domestic violence, the population has been confined to their homes as a result of the pandemic, which has resulted in a rise in domestic

abuse, making it more common and dangerous. The reasons for this could be because of an increase in stress levels as there had been serious problems faced by the citizens. The situation in India was worse where the cases of domestic violence had increased by 100% as per the reports of the National Commission of Women of India. Measures were taken by NGOs, Police and other higher authorities but it did not show the results as expected. Violence against women and children is on the rise every day, despite various technical advancements, laws, and regulations designed to better their lives. The rate of domestic violence has not decreased despite an increase in literacy over the past few years. The phrase "It's just a slap par maar nhi sakta" from the "Thappad" movie, which means "it's a slap but he's not supposed to", needs to be understood and realised by women. Women must, first, begin to learn to respect themselves.

WOMEN IN JUDICIARY

The High Courts and Supreme Court do not have reservation policies for women, which are common in lower levels of the judiciary in many states. As a result of the reservation policies, states like Assam, Andhra Pradesh, Telangana, Odisha, and Rajasthan now have 40–50% female judicial officers. No serious attempt has been made during the past 70 years to give adequate representation to women either in the high courts or in the Supreme Court. In India, women constitute about 50% of the total population and a large number of women are available in the Bar and the judicial services for elevation but, in spite of that, the number of women judges is small. With more than 76 years of Independent India, it is disheartening that only 11 Women have succeeded to being elevated as Supreme Court Judge out of the 270 Judges appointed to this esteemed institution, which barely accounts for just 4 per cent of the total appointees to date.

SUGGESTIONS

Gender sensitivity can help to raise awareness of the various ways in which women are disadvantaged and discriminated against. This can lead to a more critical understanding of gender inequality and a greater willingness to challenge it. Second, gender sensitivity can help to promote

positive attitudes and beliefs about women. When people are more sensitive to the needs and experiences of women, they are more likely to see them as equal partners and members of society. This can lead to more opportunities and better treatment for women in all areas of their lives. Third, gender sensitivity can help to create a more supportive environment for women. When women feel supported and valued, they are more likely to thrive and reach their full potential. This can lead to greater economic and social empowerment for women.

Here are some specific examples of how gender sensitivity can help the status of women:

- **Education:** Gender-sensitive education can help to ensure that girls and boys have equal access to quality education and that the curriculum is free of gender stereotypes.
- **Employment:** Gender-sensitive employment practices can help to ensure that women have equal opportunities for employment and advancement and that they are paid fairly for their work.
- **Healthcare:** Gender-sensitive healthcare can help to ensure that women have access to the healthcare they need, including reproductive healthcare services.
- **Political participation:** Gender-sensitive political participation can help to ensure that women are equally represented in positions of power and decision-making.
- **Violence against women:** Gender-sensitive approaches to preventing and responding to violence against women can help to create a safer environment for women and girls.
- **Overall,** gender sensitivity is an important tool for improving the status of women. By being more aware and responsive to the needs and experiences of women, we can help to create a more inclusive and equitable society for everyone.

CONCLUSION

The status of women in Indian society has evolved significantly over time, but there is still a long way to go before true gender equality is achieved. There are many challenges that women in India face, including discrimination, violence, and lack of access to education and employment. However, there are also many positive developments, such as increasing awareness of women's rights, growing numbers of women in leadership positions, and changing social attitudes towards women. Despite the changes in the status of women in Indian society, Unfortunately, household chores are still expected to be done by women. This is due to a

number of factors, including traditional gender roles, social norms, lack of support, and gender stereotypes.

Despite the challenges that women in India face, there is reason to be optimistic about the future. Awareness of women's rights is growing, and more and more women are taking on leadership roles. With continued effort and dedication, we can create a more just and equitable society for all women in India.

End Notes:

1. *Author is 3 year student of LLB (5YDC) at Pendekanti Law College, Hyderabad.*

LEGAL TERMS - 1

- Jayathi Jain (5/5)

WGN AZNWIRATNEMTCIDNIBHFDLAFUOTZTIIJA OBZNYBG
HUBOQGEIWXCDULABFGBOTVGGDQUCAGUPVAFNVZWJV
SUHUPIMSZAQZGNRBEVJRDCNVDCRXOAUZEMZORIEUVR
JAITNACAVANOBIIGASJTYFYIFPMIMROTUCESORPNYYT
EWOXSSKASJYNVCORXC NJUJRCDIAOZOCEMKNRMBOSZS
JVEEOIMJURHQXDEVGAAWDUVNWDIOTDRXCPUVQ TERT
NRIBAAREACPURS QXIPIABVHWVORCBGNCYAAC EPJTM D
MUENEWNOILUUZ FVFRVGTLYIRCWVAXGFVTNDIMDADL
GABDREZMQLEAGJVCAFIUMYRLZUCNEVRUWTWUYIIAI
HFRIKEHENDULZH KIXSGAONGNLPKRXTCITGEIJCONSNT
ZFOYIEIJPMNAYZTWDANXOKIUQUVWMHOCMUINFKYNTZ
FLLOOZJFAFBVFPNWTKVYDPQGIRNXQVIYTFAREN BOLR
NQTYTREPMAHCFDIVUMRHBUCDD SRIYYALAIMCZXOPGF
XRWDSBBSMHYGRUTT COMVNUHJIVUWA

1. CONCILIATION
2. ACQUITTAL
3. VERDICT
4. PROSECUTOR
5. BONA VACANTIA
6. CHAMPERTY
7. DENUNCIATION
8. DETINUE
9. INCRIMATE
10. INTERLOCUTORY
11. JEOPARDY
12. JUS SOLI
13. NOVATION
14. WAIVER
15. SUBROGATION
16. FIDUCIARY
17. INDICTMENT
18. PROXY
19. SUBPOENA
20. PRIMA FACIE

THE LEGAL FRAMEWORK FOR CYBER CRIMES IN INDIA

-Sriya Varanasi¹

The digital arms race between white hats and black hats has been running since the internet game started. The revolution over the past few decades has been immense in consideration of numerous aspects like information technology, telecommunication, healthcare, industry, and governance. The huge scale of impact in association with the rate of development, and socio-economic changes expanded in a very short period. It brought different systems under one single interconnected ecosystem with highly remarkable components with immeasurable long-term possibilities. All the leap in technology has brought new progress in the domain of law. Depending on every country's territorial and legal boundary they have different Technology or Cyber Law which governs the state cyberspace, computer systems, and information technology. It is not just cyber law but Privacy Law, Intellectual Property Rights, Information Technology Act, and other binding laws. Being aware of all the cybercrimes like cyberbullying, cyberstalking, online fraud, cyber grooming, etc. The legal system needs to be more indestructible. After India being recognised as the Second-largest internet population in the world the Government of India took several steps in spreading awareness about cybercrimes, capacity building of law enforcement judicial officers, uplifting forensic facilities, etc. The Government of India has also launched an online reporting portal for filing complaints on any cybercrime. It is the primary responsibility of all the States and Union Territories to detect, prevent and investigate any crime through enforcement machinery pertaining to their jurisdiction. They take action as per provisions of the law against cybercrime offenders. India apart from spreading awareness has few strict laws to govern cyberspace, and supervise the use of information, financial transactions, and the digital environment. The Indian legal system is strong but it still is going through many drawbacks like insufficiency of comprehensive AI-specific legislation, absence of clear and enforceable ethical guidelines, accountability and liability challenges, lack of sufficient regulatory oversight, etc. This paper emphasizes the Indian cyber laws, policies,

and bills in association with the new challenges faced in cyberspace. It also includes how it is overcoming the recent challenges in association with cybercrime with a brief about Indian cyber laws, crimes, and various types of cyber security concerning the current situation and the upcoming risks.

INTRODUCTION:

Living in the modern world which makes life easy and comfortable, where everyone is relying on the internet for all the requirements and everything can be done in seconds with just one click. Humans are not realizing how secure their data is without any leakage of the information. The world which is created by humans to make their life easy is slowly destroying them. Due to the emerging technologies safeguarding once private information has become very difficult and lead to increase in cybercrimes. In today's world almost 70-80% of the commercial and daily transactions are being done online which needs to be highly secure and safe, but the real question is are they secured and protected. The concept of cyber security is securing the data but also various other components of cyberspace. The major developments in recent times like AI Integration in various domains and operations, Greener technologies to protect sustainability, Nanotechnology, Metaverse touching hyperreality, creating immersive and interactive digital worlds. With all the new developments comes the new challenges, which should be handled by every nation for their own social and economic wellbeing. It has become an integral part for every government to make cyberspace secure and safer for the citizens of that nation. The fight against the number of illegal activities committed by technically skilled criminals has to be controlled in a very comprehensive and safer manner. It is not just technical measures alone which have to be controlled to prevent the cybercrimes but also the law enforcement bodies which need to protect the cybercrimes.

CYBERSPACE:

Cyberspace is a virtual world with a dynamic environment, consisting of electronic devices

which helps in storing, utilizing and transferring data. It is initially developed to share and communicate across the globe but in recent times it has been used beyond the main motive. Few evolving technologies in the cyberspace are AI, Internet of things, Quantum Computing, Block chain technology, Machine Learning, Encryption technology etc². Many primary sectors like healthcare, finance sectors, Education institutions, Government sectors use internet of data for storage and communication and it is indispensable to secure and prevent cyberattacks from hackers.

CYBERSECURITY:

Cybersecurity is protection of all the data including hardware and software in all the internet connected systems from cyberattacks. The security and protection of any data is the ultimate measure any organisation has to take into consideration. In a world where the social networking site provide a space for the users to connect with their family and friends and share their personal details online they need to be taken a proper care as it can give opportunity to cyber-criminals the target to steal and misuse the personal data.

CYBERCRIMES:

Dr. Debarati Halder and Dr. K. Jaishankar define cybercrime as “ Offences that are committed against individuals or group of individuals with a criminal motive to intentionally harm the reputation of the victims or cause physical or mental harm, or loss, to the victim directly or indirectly using modern telecommunication networks such as internet(chatrooms, emails, notice boards and groups) and mobile phones³”. A cybercrime is committed by hackers who use computers or computer networks as a base tool to commit any illicit activity. These activities can be Data crime, Network crime, Hacking, Virus dissemination, Email bombing and spamming, Web jacking, etc.

CYBERCRIMES AROUND THE WORLD:

Even though there are innumerable ways of committing cybercrimes, it can vary from country to country. But few cases such as phishing and data breach can be seen commonly in many countries. The United States of America has reported the highest number of cybercrimes in the year 2020. According to the records it is said that almost

791,790 cyber crime complaints were recorded⁴. It is the healthcare sector which saw the biggest rise, where almost \$29m victim losses with the percentage change of 2473%. Next in the crimes comes Malware with the 244% change from the previous year. The major issues in states are Fake insurance card calls, Health insurance marketplace assistance, Stolen Health information, Medication malpractice. The recent report on “FBI warning of dual ransomware attacks, and other cybersecurity news” which was published on 04.october.2023 by Akshay Joshi discusses the trends wherein there is an increase in dual ransomware attacks, the FBI warns the companies to be well aware and alert. Most of these warnings came in the form of private notification where the FBI stated that they have noted trends which occurred in two different variants, and also tools used were in different combinations. The FBI even insisted the companies review their security posture, look after the backup and to ensure they are encrypted⁵.

This above picture shows the cybercrimes in the



United States of America in the year 2020.

The Global programme on cybercrimes by the United Nations discusses the nature of cybercrime being an attempt by organised crime groups that occurs in the borderless realm of cybercrime. To study the crimes and problems expert groups were

established, this took place even before any global programme took place. The UN in its Commission for Criminal Justice and crime prevention resolution and the general assembly resolution, they have been mandated to assist the states through capacity building and technical assistance in case of any cybercrime issue. The Global Programme has funded countries like Australia, Japan, Norway, Canada, USA, and UK. In the year 2017 Central America, Eastern Africa, MENA, and SouthEast Asia were the main geographical nexus for the cybercrime programme⁶.

The key aim of the Global Programme was:

- a. To respond flexibility and to mainly help the developing countries by supporting in combating the cybercrimes in a very comprehensive manner.
- b. Take up investigation and arbitrate the matter in a very effective and efficient way.
- c. To keep up with the governments both nationally and internationally. Which later helps them in strengthening their government, legal agency and private sector and spreads awareness among the citizens.

The recent cybercrime took place in the Netherlands where the hackers have broken into the ICC (International Criminal Court) in the process of investigation they have noted a very unusual activity on the network. Later the ICC mentioned they were working to migrate off the impact of the cybersecurity breach. During the recent Ukraine-Russia war Russia was accused of hacking the law imposing system.⁷ The Hollywood actor Tom Hanks reported that his face was used to promote a dental plan where the Advertisement was actually an AI generated and he was not involved in it in any way. This kind of information has been a threat and also dangerous as it spreads misinformation in a very wide spectrum which can lead to fake imagery, loss of trust on the online and mislead people.

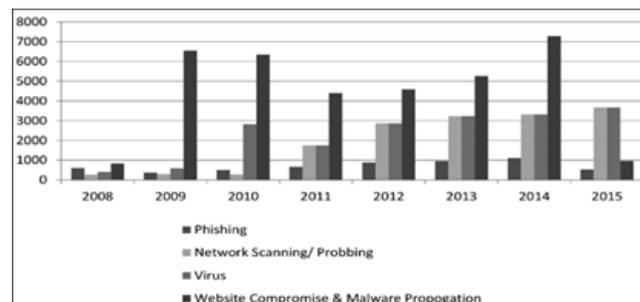
There was a major role of a court in zimbabwe that helped in the development of computer crimes and cybercrime laws. After implementation, they have observed that there are no cases before the high court in terms of laws. Almost the majority of the cases were taken up in the lower courts. These particular cases have become universal when compared to the modern challenges in cybercrimes.

SV Chirunga 1998 (2) ZLR 601 (HC):

The person who has been accused in this case was charged with housebreaking who had the intention to steal and theft, but was only convicted of theft by the magistrate court. The person who was accused was a former employee of the society, he entered the premises with the help of the cleaners after hours when he held no authority for being in the premises. He used the Computers of the society to make deposits in the account of two other people and they withdrew the money from their accounts. Later the High Court gave a verdict that the accused should be charged for fraud rather than theft for the housebreaking. The court also mentioned that the first given verdict ,that is 'theft' is not necessary to be changed and that it will be handled by the court itself. The judge noted that the act committed by the accused is a false pretence of theft because the accused had an access to the computer illegally and also changed the computer records which is considered as a fraud. As during the period of the offence,the laws related to illegal data interference, unauthorised access and computer related fraud were not present, the accused was not charged with them. But during the year 2003, computer related crimes as mentioned above were introduced and anyone with unauthorised access is punishable in different circumstances⁸

CYBERSPACE IN INDIA:

In India the concept of cyberspace started in the mid 1970s, when the National Informatics Center was established with the aim to find a solution to the IT problems and later over the time it tools twists and turns in developing the network. Even with the low internet usage rate it had a rapid and very vast growth. Today, India is ranked the second largest in the world for having a high number of internet users. Having ranked the second largest country in the world, it also has many cyber attacks such as breaches of data, virus, malicious software codes etc⁹.



The above graph shows cyber security related Incidents dealt by CERT-IN

In India the Ministry of Home Affairs has a division for information and cyber security which deals with matters in relation to cybercrimes, cybersecurity, National Internal security and policies, guidelines and the implementations. India saw a significant growth in the cyberspace, the cases reported in the year 2012 was around 3477, the latest report says that the cybercrimes reported in the year 2021 were 52974. It is recorded that Karnataka and Uttar Pradesh are the top states with the highest and rapid crimes. The Government of India had launched a website National Cybercrime Reporting Portal to register complaints related to cybercrimes with special focus on women and children. This website not just helps in registering but at the same time it also involves the concept of volunteering. It is helping people to know and be aware of the cyber frauds by providing resources like Citizens manual, Cyber safety tips, Screen Reader, Daily digital. The website even includes audio clips which helps in understanding how a fraud takes place and what can be done to avoid such frauds¹⁰. India being a country which is at high risk of cyber attack that could destroy the Nation's socio and economic dimensions.

CYBER CRIMES IN INDIA:

Concept of Cybercrimes as discussed above can be categorized into four different types, against Individuals, Society, Economy and the countries National security. All these again have sub categories of crimes namely Theft, Hacking, Social citing, Intellectual property rights Infringement, Cyber bullying, Cyber terrorism etc. The major part were a large group of people in India are affected and face cybercrimes either by Forgery or Web jacking, where making of False Documents, Signatures, Currency, Revenue Stamps. For example, if we consider land documents during the past years were all in the form of books where the officers or authorised departmental heads handled all the information and no digital form was present then, but later new online portals like Dharani, Bhoomi, ERekha etc are established. When the records from its original traditional form were digitised then a huge loss was faced by people and are still facing issues relating to the portal. More than 25% complaints registered were fraud documents and unauthorised registrations.

Economy of a state or country can completely be vanished by cyber attack. Cyberattacks and Cybercrimes are not just committed within the boundaries but can also exceed the boundaries and can be a global problem. Every country having their own legal system and procedure jurisdiction can cause a major issue in a case of crime, a person from his nationality if committing a crime in another country the evidence and the law will change. Cyber criminals have no particular point and region of attacks they can be committing crime from any corner of the world. In India alone it is observed that one cyber crime is committed every 10 minutes. In India alone the ratio of detection and conviction is very low, it can be said that the conviction rate is low in India as there is no proper implementation of the Law by concerned officials. Even though there are many Laws and Acts in India related to Cyber crimes and attacks there is lack of proper implementation, procedure and misuse of resources.

INDIAN CYBER LAWS:

To have a control over the crimes committed through internet or computer resources cyber laws were established. This implementation has a huge and important role to play as it helps in declining the technological crimes committed. In India and also other countries around the world the current situation and activities concerning transactions and communication is done via computers, phones which run with the help of the internet and software which is again created by humans. Previously there was not much use of the internet and all were money transactions and not much digital. Every cybercrime committed there will be a cyber legal and legal view according to their country's law enforcement. India has The Information Technology Act, 2000 which deals with the crimes both digital and cyber¹¹.

The Information Technology Act, 2000: Under this act any person committing a cyber crime as mentioned in the Act will be sentenced upto 3 years imprisonment and also fine will be

(a)Section 66: The person with an intention causes or destroys any information that is pertaining to public or any individual which leads to major or minor loss then that is considered as hacking and this particular section deals with Hacking with device or any data alteration.

(b)Section 66A: Any message sent to a person which is offensive or is threatening them, any invalid information which cannot be true or valid which causes an inconvenience, injury or any kind of harm. This can be any form of email or SMS sent with criminal intention to cause damage or mislead the person such offence is dealt in this section.

(c)Section 66E: This section deals with Violation and Privacy, any person without any authority or concern of the person captures others pictures or invades others privacy then that can be sentenced under as violation of privacy of individual and imprisonment for a period of 3 years.

Indian Penal Code, 1980: In this there are sections which deal with Forgery, False Documents, Presenting Forged Document in place of original as genuine, any case where the reputation of a person is damaged.

NIST Compliance: The national Institution of standards and technology cyber security framework enclosures almost all required standards, ways to manage cyber risks and guidelines. This prioritizes the cost, flexibility, protection of infrastructure and promoting resilience.

- It allows in managing, interpreting and reducing cyber security and its risk of mis usage of data, lost data restoration
- Maximizing investments to increase cyber security.
- Categorising the important activities and operations to secure and keep them much more secure.
- It extends its support to a large group of information and helps in storing it safely.
- It brings into picture the contractual and regulatory obligations and addresses them.

It can be said that by getting together the NIST CSF AND ISO/IEC 27001 the risk in cyber security can become rationalized. This makes transfer of information much easier and secure across cyber security derivatives and also supply chain¹².

JUDGMENTS RELATING TO CYBER CRIMES AND CYBER SECURITY:

In the case of *Justice K.S.Puttaswamy V Union of*

*India*¹³ On 11 August 2015 an attorney general raised a question regarding the privacy in Aadhar scheme. In this case the main question is that there is no Fundamental right to privacy. Justice while giving out the judgment held privacy is something which is intrinsic to liberty, freedom, life and that is the reason it is inalienable right which is natural¹⁴.

In *Poona Auto Ancillaries pvt ltd., Pune V. Punjab National Bank, HO New Delhi & others, 2013*, its a case the Pune based company MD Matharu responded to an email where deposit for Rs.80.10 lakh from PNB Account in pune. A complaint was raised as he reacted to mail, as there was a lack of security against the fraud mail the bank came forward deeming responsible for their negligence. Later IT Secretary Rajesh Agarwal in judicial adjudication of this cybercrime case ordered the bank to pay a compensation award of Rs45 lakh to MD Matharu¹⁵.

In *State of Tamil Nadu V Suhas Katti (2004)*, a divorce lady faced a lot of harassment from phone calls as the accused posted some obscene, defamatory and harassing remarks against her in yahoo group chat, and also he sent her emails from a fake account seeking her information. Due to all the posts she was considered to be soliciting and she used to receive a lot of unpleasant phone calls. This was the first final judgment in India which was convicted under section 67 of Information Technology Act, 2000. The accused was sent to Chennai Central Prison and was asked to pay fine¹⁶.

CONCLUSION:

In the past few years India has developed various legal and policy measures for protection of data, the legal policy framework. It is difficult to stay secure and continue with the programs especially in countries where there is a high population and huge risk of cyber attacks. The latest technological advancements like micro gadgets have a huge effect on individuals' privacy. It is very important and also to protect personal and sensitive information not just by individuals but also organisations. Considering the socio, economics and security of any country it is very important to protect itself from any kind of cyber crime or attacks. In a country like India the importance of privacy to maintain dignity of individuals is beyond explanation as the measures which are adopted by India are more than enough on paper but they lack

implementations compared to other countries. Even though there are large groups of awareness campaigns that take place in the cities, the people are lacking awareness and not able to analyze the risk factor. There is also a lack of expertise who can analyse the upcoming challenges and take measures from the present day. It is not just the responsibility of the state completely to control the cyber crimes but the individuals and every citizen have to contribute and be aware of all the frauds taking place around them and take required measures to avoid any cyber attack or cybercrime. It is never the country without citizens so it is responsibility of every individual to come forward in case of any cyber attack they faced or witnessed need to file a complaint so the accused is being punished, it may not stop as early as possible but after a point of time they will gradually reduce and the society can be in safe cyberspace

End Note:

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GUARDIANS OF JUSTICE: Ethical dilemmas on AI in court room

-D Hari Priya¹

"In the courtroom, when technology meets the timeless pillars of law, it's the enduring wisdom of legal minds that holds the higher ground, guiding the course of justice through the waves of innovation, it's the strength of law that stands taller, guiding and governing, ensuring justice prevails over technology's advancements."

INTRODUCTION

“Machine intelligence is the last invention that humanity will ever need to make” said Nick Bostrom, a Swedish philosopher. This statement or quotation is something that has been contradicting my views on artificial intelligence and is contradictory to every statement made by Stephen Hawking, as he firmly stated through his words, “I fear that AI may replace humans altogether. If people design computer viruses, someone will design AI that improves and replicates itself.”

This essay is an attempt to end the discussion between Law and AI, as we all know how well it's going to end, but I'd like to give this topic an equal run to compete again with the views of every student reading this.

The legal profession is a complex field that relies on advocates and practitioners who uphold justice and the rule of law. Advocates embody the legal maxim "Fiat justitia ruat caelum," ensuring justice prevails regardless of consequences. They are not just legal practitioners but also architects of fairness in society, guided by the principle "Salus populi suprema lex esto," which states that the welfare of the people is the supreme law. Advocates uphold promises and obligations with unwavering commitment, embodying the principle of "Fides servanda est." Their dedication to equity and righteousness makes the legal profession an enduring testament to these principles. Apparently, the legal profession is facing a threat from artificial

ntelligence, which could potentially take away jobs leaving people unemployed. This raises questions about the future of the legal profession and the importance of preserving its principles, which reminds me of the statement given by the CEO of Google, Mr. Sundar Pichai. He stated in an interview that “AI may make the law profession better in certain ways and may result in more people actually becoming lawyers. Law firms today already use AI to help draft documents, verify contracts, and complete other tasks. The idea is that AI won't take away lawyers' jobs”.

That might sound convincing on certain levels but here is why a human brain, specifically a legal brain, can never be outsmarted and no artificially generated program can come close to replicating it-

- The law profession is often considered one of the most humanly and thought-invoking professions for several reasons:

1. Interpretation and Application of Law:

Lawyers and judges play a crucial role in interpreting and applying laws to real-life situations. They must analyse complex legal principles and adapt them to individual cases, which requires deep thought and consideration.

2. Advocacy for Justice: Lawyers serve as advocates for their clients, striving to ensure justice is served. They must navigate ethical dilemmas, make persuasive arguments, and weigh the consequences of their actions on people's lives.

3. Ethical and Moral Considerations: The legal profession often deals with ethical and moral dilemmas, as lawyers must balance their duty to clients with their duty to uphold the law and justice. This requires profound ethical reflection.

4. Problem-Solving: Lawyers are problem solvers. They must analyse intricate legal issues, research precedents, and develop strategies to resolve disputes or protect their clients' interests.

5. Precedent and Precedent Setting: The law is built upon precedent, which means lawyers and judges must constantly review and interpret prior cases. They also have the opportunity to set new precedents that shape future legal interpretations.

6. Critical Thinking: Legal professionals engage in rigorous critical thinking. They must consider multiple perspectives, anticipate rebuttals, and construct well-reasoned arguments.

7. Impact on Society: Lawyers have the power to influence and change society through their work. Legal decisions can have far-reaching consequences, affecting individuals and communities on a broad scale.

8. Lifelong Learning: Law is constantly evolving, requiring lawyers to engage in continuous learning to stay up-to-date with new legislation and legal developments.

9. Empathy and Communication: Effective lawyers must possess empathy and strong communication skills to understand their clients' needs, concerns, and emotions, and to convey complex legal concepts to others.

10. Commitment to Justice: Many lawyers are driven by a deep commitment to justice and the rule of law, which can be a powerful motivator for their work.

- Human emotions play a significant role in the law profession in several ways:

Empathy: Lawyers often need to empathize with their clients, understanding their emotions, fears, and concerns. This empathy helps lawyers build trust and provide better legal representation.

Decision-Making: Judges and jurors are also influenced by emotions. Emotions can affect their perceptions of witnesses, defendants, and evidence, which can impact the outcome of a case.

Advocacy: Lawyers use emotions strategically in advocacy. They may employ emotional appeals, such as sympathy or outrage, to persuade judges, juries, or opposing counsel.

Client Counseling: Lawyers counsel clients through emotionally charged situations, such as divorce, criminal charges, or personal injury cases. They must provide support and guidance while considering their clients' emotional well-being.

Negotiations: Emotional intelligence is crucial in negotiations. Lawyers must understand the emotions and motivations of the parties involved to reach favorable settlements.

Stress and Burnout: The legal profession can be emotionally taxing, leading to stress and burnout. Lawyers often deal with emotionally

challenging cases and must find ways to cope with these emotions.

Ethical Dilemmas: Lawyers may face ethical dilemmas that involve conflicting emotions. They must navigate situations where their duty to clients may conflict with broader ethical or moral considerations.

Compassion and Advocacy for Justice: Many lawyers are motivated by a sense of compassion and a desire for justice. These emotions drive their commitment to representing marginalized or disadvantaged clients.

Impact on Mental Health: The emotional toll of the law profession can affect the mental health of legal professionals. It's essential to acknowledge and address these emotional challenges.

Public Perception: Emotions within the legal profession can influence public perception of the justice system. High-profile cases and emotional courtroom moments can shape public opinion.

Emotions are integral to the practice of law, influencing how lawyers advocate for their clients, how judges and juries make decisions, and how the legal system interacts with individuals' lives. Recognizing and managing emotions effectively is crucial for legal professionals to provide competent and ethical representation while maintaining their own well-being.

Where as on the other hand, Artificial Intelligence, with its ever-evolving capabilities, has undoubtedly transformed various industries, including law. It can analyze vast volumes of legal texts, predict case outcomes, and even aid in document review with remarkable efficiency. However, equating AI to the same height as law practitioners remains elusive, primarily due to several key factors.

Some of the advantages are as follows:

AI Learns More Over the Time

As the name suggests, AI technology is intelligent. It can help in analysing vast amounts of legal data, facilitating research for judges, predicting case outcomes based on historical data, improving document analysis and review, and enhancing

efficiency in managing court procedures. Continuous learning enables AI to adapt to new legal precedents and changes in laws, aiding in fairer and more informed decision-making within the judiciary.

Artificial Intelligence Identifies Unknown Threats

AI systems can detect potential threats or risks within legal contexts, such as identifying anomalies in legal documents, contracts, or financial transactions. This early detection helps prevent fraudulent activities or legal issues before they escalate. AI-powered security systems can safeguard sensitive legal information, ensuring the integrity and confidentiality of data involved in legal proceedings. This protects against unauthorized access or tampering. AI's threat identification capabilities can assist in assessing the risks associated with different legal cases or situations. It provides insights into potential vulnerabilities or weaknesses, aiding judges and legal professionals in making informed decisions to mitigate these risks.

AI Can Handle a Lot of Data

AI can sort, organize, and manage extensive volumes of legal data, including case files, precedents, statutes, and court decisions. This capability streamlines case management processes, making it easier for legal professionals to access relevant information quickly, analyze patterns, trends, and correlations within legal data. This assists lawyers and judges in legal research, enabling them to identify precedents, relevant case laws, and arguments to support their cases more effectively. AI-powered tools can review and analyze documents, contracts, and evidence, significantly reducing the time spent on manual document review processes. This not only accelerates legal proceedings but also helps in identifying critical information or discrepancies within documents.

The efficiency brought in by AI in handling legal data translates to time and cost savings. It reduces the manual workload for legal professionals, allowing them to focus on higher-value tasks that require human expertise.

However, AI operates on algorithms and data, lacking the essential human qualities of empathy, judgment, and ethical reasoning. Law

professionals bring a deep understanding of the human condition to their work, considering the broader societal implications of legal decisions. While AI can assist in legal research and data analysis, it cannot replicate the nuanced perspectives and ethical considerations that human lawyers provide.

The legal profession encompasses the interpretation and application of evolving legal principles, adapting to changing societal norms and precedents. Law professionals play an essential role in shaping legal frameworks and contributing to legal scholarship. AI, on the other hand, relies on historical data and established patterns, making it less adept at addressing novel or unprecedented legal issues.

DELHI – The Supreme Court of India has been testing a system to transcribe hearings using artificial intelligence (AI) tools and natural language processing technology. The live transcription of oral arguments could become the norm in India, speeding up judicial work and increasing transparency in a country with more than 50 million pending cases across all courts. It can also be the first time in the world that spoken language processing technology is used to transcribe court hearings.

The Supreme Court used an Artificial Intelligence based transcription system for the first time in a court hearing. The company, TERES, was used by the Supreme Court in the case of Maharashtra political dispute in February 2023.

Mandaar Mukesh Giri, a final year law student from VIPS, GGSIPU, has developed an app that aims to help people get access to legal information. The name of the app is Law Bot Pro. It offers a comprehensive and user-friendly platform for obtaining legal information. One of the key features of Law Bot Pro is its intelligent chatbot. The chatbot is programmed to answer questions in plain language, making legal information more accessible to the public. The chatbot makes it easy to use, one only needs to type in their legal question and they will get a clear and concise answer.

Since 2021, the Supreme Court has been using an AI-controlled tool designed to process information and make it available to judges for decisions. It does not participate in the decision-making

process. Another tool that is used by the Supreme Court of India is SUVAS (Supreme Court Vidhik Anuvaad Software) which translates legal papers from English into vernacular languages and vice versa.

In the case of Jaswinder Singh v. State of Punjab, the Punjab & Haryana High Court rejected a bail petition due to allegations from the prosecution that the petitioner was involved in a brutal fatal assault. The presiding judge requested input from ChatGPT to gain a wider perspective on the granting of bail when cruelty is involved. However, it is important to note that this reference to ChatGPT does not express an opinion on the case's merits, and the trial court will not consider these comments. The reference was solely intended to provide a broader understanding of bail jurisprudence when cruelty is a factor.

Legal tech companies have developed AI-powered tools to assist lawyers in tasks such as contract analysis, legal research, and case prediction. While AI can assist in gathering and analyzing large volumes of legal data, it's typically used as a supportive tool rather than as an active participant in legal arguments.

CONCLUSION

Laws are frequently amended, and court judgments set new precedents that shape legal interpretations. Legal professionals play a pivotal role in adapting to these changes, providing insights into the broader societal impact of legal decisions, which AI, relying on historical data and patterns, may struggle to do effectively.

India's legal system is dynamic and continuously evolving and deeply rooted in principles and practices shaped by centuries of jurisprudence. Legal professionals in India undergo rigorous training and education to understand the intricacies of the country's diverse legal landscape, which includes various laws, statutes, and precedents at the national and state levels. While AI can assist in legal research and data analysis, it lacks the capacity to interpret the complexities of Indian law comprehensively.

Legal professionals in India play a crucial role in court, negotiation, counseling, navigating complex legal procedures and the nuances of Indian society and culture. AI, while enhancing efficiency, cannot

replace the depth of expertise and nuanced understanding of local laws that legal professionals possess. The legal profession in India is not just about knowledge, but also about wisdom, empathy, and cultural sensitivity.

While AI is making inroads into the Indian legal landscape, it does not hold the same status as legal professionals. Rather than being direct competitors, AI and legal professionals in India have the potential to collaborate, with AI supporting lawyers in tasks that require data analysis and document review, allowing legal professionals to focus on higher-order legal tasks that demand their unique expertise and experience. In essence, AI and law professionals complement each other rather than being direct competitors. AI

enhances the efficiency of legal processes. However, the unique qualities that human lawyers bring to the profession, including empathy, judgment, and adaptability, remain irreplaceable. While AI continues to evolve, the human touch in the legal field remains invaluable, ensuring that justice is not just delivered but also tempered with wisdom and humanity. Thus, the comparison between AI and law professional practitioners is not one of equivalence but of collaboration, each contributing its strengths to the pursuit of justice and the rule of law.

Referred:

1. Author is a second year student of LLB (3YDC) of Pendekanti Law College, Hyderabad.

SCRAMBLED - 1

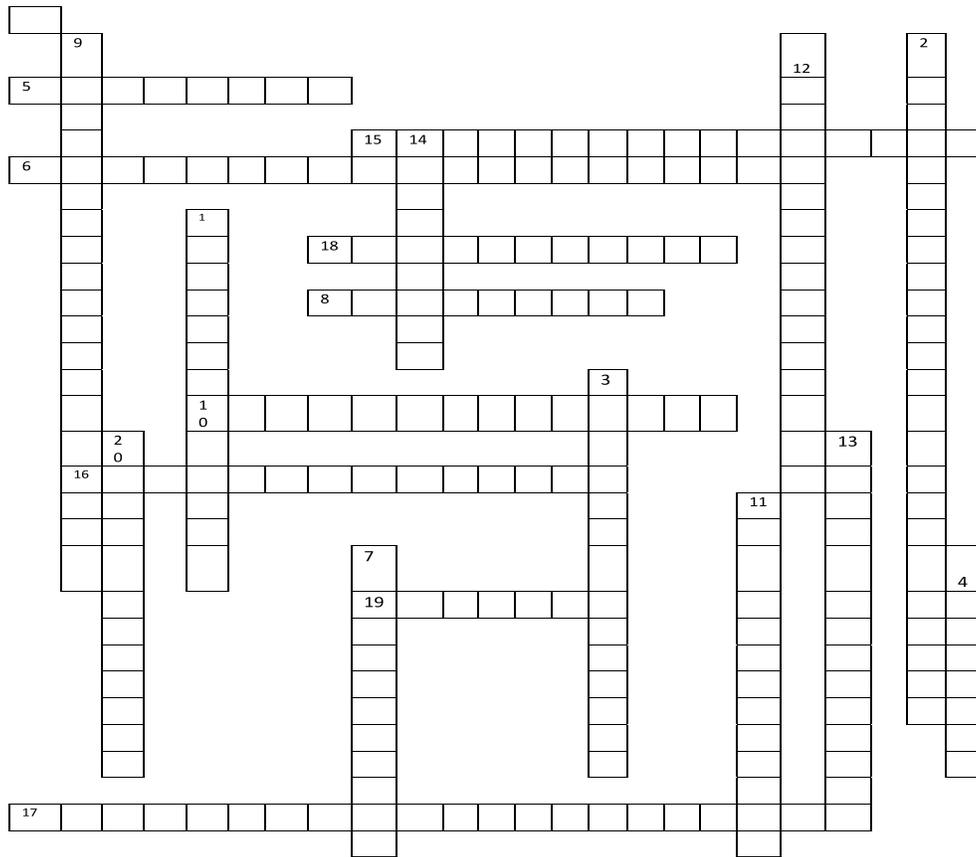
-Y Mounika (2/5)

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| 1. CEHBN ----- | 12. NOTCPTME ----- |
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| 5. LENMYCEC ----- | 16. RITARNIOTB ----- |
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| 7. ZECIOAGLNB ----- | 18. PEUIECDURJSRN ----- |
| 8. QENIDLETU ----- | 19. GOREYFR ----- |
| 9. ATMPIENEHMC ----- | 20. BEOPTRA ----- |
| 10. JNCINUINOT ----- | 21. FOECNFE ----- |
| 11. NMSOMSU ----- | 22. TECNIOVI ----- |

*When men are pure, laws are useless !
When men are correct, laws are broken !!
- Benjamin Disraeli*

CROSSWORD - 1

-Pranati (2/5)



CLUES

Across

5. By means of menaces or threats.
6. An injury is not done to one consenting to it.
8. Under the name of.
10. suggestion of untruth.
15. Good faith is to be preserved.
16. Before one who is not a judge.
17. The law does not arise from a mere injury.
18. An inconsistent statement, it does not follow.
19. From elsewhere, or from a different source.

DOWN

1. An intention to make a testament or will.
2. The practice of the court is the law of the court.
3. let the seller beware.
4. At the beginning.
7. Such as it is.
9. The king can do no wrong.
11. A misrepresentation of the truth by omission or suppression of certain key facts.
12. The law will give a remedy.
13. The exact language used by someone quoted.
14. In every respect.
20. Goods without an owner.

RIGHT TO INFORMATION ACT AND TRANSPARENCY

-Sindhuja and Ushaswi¹

Abstract

Right to Information provides the foundation of democratic administration. The democratic system must function properly for this right to exist. The freedom of speech and expression guaranteed by Article 19(1)(A) of the constitution, recognized as the first condition of liberty, is inextricably linked to the right to information. It holds a privileged place in the hierarchy of rights, supporting and defending other rights. It has been determined that the phrase "freedom of speech and expression" in Article 19(1)(a) includes the freedom to gather and spread information. It also includes the freedom to disseminate it via any form of media, including print, electronic, and audio-visual forms like advertisements, films, articles, speeches, etc.

This freedom incorporates the ability to freely express one's opinions to as many people as it is possible to reach both domestically and internationally. The exchange of information and its reception are two sides of the same coin. The unrestricted ability to acquire and spread information is regarded as a crucial component of freedom of speech and expression. A person cannot create an informed view without sufficient information. The Right to Information Act of 2005 must be carefully implemented in accordance with the legislation if Indian citizens want to have an effective right to information. Being answerable to the Indian people should increase with authority.

The vitality for successful democratic governance is information access. It includes basic concepts like accountability, openness, and involvement. The Indian government passed the Right to Information Act in 2005. It has given Indian citizens a useful framework for exercising their right to access information that is in the hands of public agencies. The primary goal of the act is to encourage accountability and openness in how each public entity operates. The RTI Act of 2005 provides access to government decisions and policies in order to ensure that they are in line with the values of justice, probity, and the public interest.

Introduction

The Right to Information (RTI) Act, 2005² is a great law that gives the public the right to ask government agencies for information. If there is any mismanagement on the part of the authorities, it also exposes corruption. Furthermore, it fosters transparency and accountability, all of which contribute to the development of good governance. All public authorities including national, state, local, and other governmental organisations that receive funding from the government are subject to the RTI Act. By virtue of this conduct, public leaders are held more accountable to both the people and to themselves. People have the right to question the government on a range of issues, including how public funds are used, how government policies and programmes are carried out, how officials work, and more. In a way, democracy is strengthened by this. Transparency guarantees that government agencies operate without hindrance. It also reduces nepotism and corruption. This act allows the public to scrutinise the government's decision-making process and hold officers accountable for their actions.

History of the RTI Act

The law in India that deals with the right to information is called the Right to Information Act of 2005. On June 15, 2005, the Indian Parliament approved the RTI Bill, and on October 12, 2005, it went into effect. India is a very large country where people choose their representatives in the elections. These people must have access to the information provided by the government to guarantee that they are also represented as persons in their democratic nation.

The early 1990s is where the act's history may be traced. The RTI movement started in this time frame. Few labour unions, farmers, and activists started to protest in several areas of the country, seeking an open flow of information between the government and the people. As it was successful in other countries including Sweden and the US in 1994, this campaign gathered momentum. MKSS, a people's organization, advocated for labourers and workers to have equal and fair wages³. In 1995,

Rajasthan passed the RTI Act. The act was eventually passed in a few other states, including Madhya Pradesh, Goa, Tamil Nadu, Karnataka, and Delhi, in subsequent years. Later, when the RTI legislation went into effect for the whole of India in 2005, all of these state laws were scrapped.

The Freedom of Information Act of 2002 was the first law in India to grant the general public access to government information to demonstrate government transparency and tackle corruption. In 2005, this statute was struck down and the RTI Act, which offers citizens broader rights to access government records, took its place. The easy access to information allows the public to question the government's arbitrary actions and understand how it operates. Besides, it demonstrates how transparent the government is, making it highly unlikely that there will be any corruption or financial mismanagement.

The case of *SP Gupta v. Union of India (1981)*⁴ established the basis for the right to information by acknowledging the public's access to information regarding matters pertaining to the government. The Supreme Court ruled that citizens have the right to obtain information maintained by public bodies and that confidentiality in government is incompatible with democracy.

What is the RTI Act?

The RTI Act was passed to enable citizens to obtain the information they require from the government or from any entity that works on its behalf. There are, however, some exceptions concerning topics like international affairs and national safety. The right to information is a potent tool in the hands of the people, particularly in democratic nations. The government is accountable for its actions. Our Constitution does not explicitly guarantee this right, but it can be inferred from Article 19(1) (a). This article guarantees freedom of speech and expression which also includes the right to access information.

The right to seek information from public agencies is granted under the RTI Act, a significant piece of legislation in India's history. Public authorities can disclose information on employees' work, officers' powers and functions, how money is spent, and so on. There is a procedure for requesting information from authorities. The citizens must make an application to get the information⁵.

The application must be submitted either in writing or electronically. Public officials are required to make a response to information requests within 30 days. If their request has been denied, they have the option of appealing to the Information Commission.

*Girish Ramchandra Deshpande v. CIC and Ors. (2012)*⁶: The concept of "public authority" under the RTI Act was defined in this case, which stated that any organisation or organisation created by law for public purposes and primarily funded by the government is regarded as a public authority.

Importance of transparency in government

Governments must be transparent because it encourages good governance. Transparency is the cornerstone of good governance. To take an active role in good governance, projects must be developed with the public's interests in mind, reviewed, and carried out as intended. Finally, the public must be satisfied with the results.

The barrier between the general public and the government is bridged via transparency. As a result, it fosters a positive relationship between them. The RTI Act has evolved into a mechanism that helps the public speak out against injustice, abuse of authority, corruption, etc. To make sure that government programmes and policies are in line with the needs of the general public and the principles of good governance, the public possesses the authority to examine and evaluate them.

The question in *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal (2019)*⁷ was whether the chief justice's office was a public authority under the RTI law. The court ruled that, like other public institutions, it is subject to public authority and has to be transparent. It emphasised the necessity of accountability as well.

The question posed in *CBSE v. Aditya Bandopadhyay & Ors. (2011)*⁸ is whether the evaluation procedure, including answer sheets, of CBSE examinations is excluded from disclosure under the RTI Act. The Supreme Court ruled that the evaluation process cannot be shielded from disclosure according to the RTI Act. The Court emphasised the need for transparency with respect to public exams and students' right to receive information about their performance.

The significance of transparency in the appointment of judges to the higher courts was emphasised by the court in the 2011 case of Ram Jethmalani v. Union of India. The government was ordered by the Supreme Court to reveal the guidelines and processes used in the appointment of judges, highlighting the importance of transparency and accountability in this process.

In the famous ruling in *People's Union for Civil Liberties v. Union of India (1997)*⁹, the Indian Constitution's Article 19(1)(a) recognised the Right to Information (RTI) as a fundamental right. The Supreme Court recognised the importance of transparency in assuring informed citizens and safeguarding democratic norms.

State of Uttar Pradesh v. Raj Narain (1975), in this case; the right of the public to know about government acts and the open justice principle were highlighted. The Supreme Court ruled that being transparent is necessary to preserve the trust of the public and that citizens possess a right to know how government agencies are run.

Examples of exposing corruption, mismanagement, and abuse of power

One of the biggest real estate frauds in India is the Adarsh Housing Society scandal in Mumbai. Housing facilities were offered to war widows and their families, but soon high-profile people stepped in. Yogacharya Anand and Simpreet Singh, RTI campaigners, revealed this swindle. Military officers, politicians, and several bureaucrats were involved in this fraud. Many other senior officers, including Ashok Chavan, the then-CM of Maharashtra, resigned as a result of it.

It undermined the military officers' reputation and demonstrated how the integrity of the country was hampered. The investigation into this fraud is still ongoing, and several officials have been charged with corruption and other accusations. This demonstrates how corruption destroys public institutions and public confidence in them. The Adarsh Housing Society scam serves as a reminder of the value of transparency and accountability in the hands of the government.

Other similar frauds include the 2G scam, the Commonwealth Games Scam, the Indian Red Cross Society Scam, etc.

How the RTI Act has empowered citizens to hold their government accountable?

The RTI Act fosters good governance by increasing public engagement in government programmes, policies, and decision-making. This strengthens democracy. It also promotes accountability and transparency on the part of the government.

The general public has a right to access the information held by government agencies. As a result, we have the right to report such scandals in cases of abuse of power, mismanagement, or corruption.

There are numerous instances where the RTI Act exposed different corruption and power abuse tactics. One similar instance was previously seen in the article. Few RTI petitions have demonstrated how the police have extorted money from the public by abusing their authority. The Act has been used to track the progress of government projects as well as to oversee the implementation of the government's initiatives.

The Act has been utilised to hold elected officials and government employees accountable. RTI requests, for instance, have been used to seek information regarding the use of public funds, monitor the implementation of governmental programmes and policies, and inquire about the activities of authorities.

Challenges to RTI Act Implementation

There are many challenges to the implementation of the RTI Act.

By the provisions of the RTI Act of 2005, the Central Government established the CIC in 2005. It is the State Government that establishes the State Information Commission. Over 2.2 lakh Right to Information cases are now pending before both the State and Central Information Commissions (ICs), according to a report published last year. According to the report, government employees are seldom held accountable for infringing the law. There still exist three vacant positions in the CIC despite repeated orders from the court.

The RTI Act's rights are unfamiliar to those from less affluent areas. Some public authorities could be reluctant to respond to RTI requests for information and often might give incomplete or inaccurate information. The requests would be

denied or delayed by some. This points out the public authorities' lack of compliance. The Information Commissions are now dealing with an enormous backlog of cases. This may cause delays in the resolution of grievances against public authorities. Certain individuals misuse the RTI Act by submitting pointless or vexatious requests.

Public authorities may be discouraged from following the Act because of this, which could burden their resources. Regardless of these difficulties, the nation's transparency and accountability have greatly benefited from the RTI Act. Citizens now have a strong tool to keep their representatives in government accountable and make sure they are receiving the services they are entitled to.

R.K. Jain v. Union of India (2013)¹⁰: The misuse of the RTI Act was the subject of this case. While the RTI Act is a strong tool for transparency, the Supreme Court stated that it should not be exploited for personal advantage or to harass public officials.

Reserve Bank of India v. Jayantilal N. Mistry (2015)¹¹: The RTI Act's exemptions were the subject of this litigation. The RBI cannot claim a general exemption from the Act's requirements for information disclosure, according to the Supreme Court, and exemptions must be used case-by-case, striking a balance between the right to information and the requirement for confidentiality.

What does transparency mean

The term transparency denotes the characteristic or state of being transparent. In governance, transparency refers to the government's willingness to be transparent and share information with the public. It also means the availability of information and conducting business in an open and sincere manner. It is essential for promoting transparency and efficiency in the exchange of information.

Transparency always ensures that the objectives and aims can be recognized even from a distance, with those involved at higher levels being held fully accountable. It helps determine whether a company can be trusted and is crucial for lowering corruption and bribery.

Merits of transparency for;

- **Government –**

Transparency is the basic feature of reliability and it

ensures that the government is accountable to the public. The benefits of transparency are as follows:

1. Smooth functioning among the organs of the government and the people - Maintains good relations between the people and the government as the government officials are directly answerable to the public.
2. Encourages public support and belief - It mainly promotes public trust and belief as it ensures how the government works and the public has all the rights to question the government officials.
3. Increases the level of decision-making processes and assures legal assurance - Transparency gives the citizens the choice of decision-making and also promotes legal assurance to the people.

- **Citizen –**

1. **Accessibility towards Public Records** - It makes public records accessible to the public, giving citizens a crucial tool to learn about what the government does and how successfully it does it, making the government more accountable.
2. **Fulfils Public Needs** - It also aids in better serving the needs of people and containing government corruption. The act aims to create more knowledgeable individuals who will maintain essential vigilance regarding how the political system functions.
3. **Fights against Corruption** - In judicial institutions, judicial openness is crucial because it promotes accountability, reduces corruption, and helps to end arbitrariness.

Challenges to transparency:

Transparency faces several challenges as it is open to the public at large and many organizations face this problem due to this feature. Some of them are;

- 1 **High rate of distortion** – The original data could be falsely represented, which would result in data loss for the organizations. Transparency may be hampered by distortion. The effective deployment of intelligent systems in the real world is frequently said to depend on transparency. However, depending on the situation, the reasons for the advantages of various forms of transparency might change greatly, and it can be challenging to

determine precise measurement standards. Transparency serves as a tool, not as a final destination. In some circumstances, increased transparency can reduce effectiveness, fairness, or trust.

2 Risk of Cyber Attacks – The information may be lost and is prone to several cyber attacks because of its transparent nature. To achieve transparency and efficacy in information exchange, transparency is a key factor. It can, however, come with risks, such as cyber attacks. By taking advantage of weaknesses in the systems used to store and share information, can be conducted. By putting in place strong security measures like encryption, firewalls, and access controls, organizations can reduce their vulnerability to cyberattacks. Organizations should also make sure that all of their staff members are taught to recognize and respond to cyber risks.

3. Resource Intensive – It needs many resources and the time duration would increase as it is resource-oriented. Although it can be resource-intensive, transparency is crucial for encouraging accountability and sound government. Through audit and public disclosure, a "light but tight" regulatory framework can protect the system's integrity, openness, and resource efficiency while promoting innovation and out-of-the-box thinking through autonomy, good governance, and empowerment.

4. Involvement of citizens – There is an equal participation of the people and it can be challenging to be transparent when it comes to citizen involvement because doing so costs a lot of time and money. Promoting accountability and openness in the operations of every public institution requires active citizen participation. Citizens are essential in advocacy and improving public institutions' accountability, transparency, and effectiveness. However, there are drawbacks to citizen engagement that include a lack of knowledge, a lack of funding, and a lack of confidence in the system. Public authorities can take action to solve these issues by running awareness programs, giving citizens training, and making sure the information presented is simple to understand.

Case laws on the RTI Act and transparency –

The RTI Act of 2005 allows people to request information from government agencies. The RTI Act has been the subject of various decisions by the Supreme Court of India, which have greatly influenced the laws surrounding it.

In *Central Board of Secondary Education v. Aditya Bandopadhyay (2011)* – “Supreme Court stated that students had the right under the RTI Act to request to see their answer books”.

Girish Ramachandra Deshpande v. Central Information Commission & Ors. (2012) case: “The Supreme Court stated that the government has no legal authority to restrict access to information on the grounds that it is too extensive or that it is in the public interest”.

Are the Right to Privacy and the Right to Information the same?

The Right to Information refers to the ability to access information held by the government, and it is a fundamental right of every individual. On the other hand, the Right to Privacy deals with how to protect a person's personal information and ensure that no one's privacy is violated or infringed.

Perhaps the right to privacy and the right to information are two unique and distinct rights. Both of these rights are regarded as fundamental rights in India. They have been reaffirmed as Fundamental Rights by the Supreme Court of India on numerous occasions. In contrast to the right to privacy, which seeks to safeguard information which is in the grab of violating personal privacy, the right to information aims to promote transparency by granting access to information.

- **ARTICLE 21-** Right to Life and Personal Freedom

The right to life and personal freedom is guaranteed under Article 21 of the Indian Constitution for both citizens and non-citizens. They are protected against having these rights taken away unless it follows the legal process. It also incorporates all the facets of life that give it depth, breadth, and value.

- **Article 19(1)(a)** - Right to information is explained in this Article of the Indian Constitution which is the fundamental right of the citizen. The public interest must

always be put first when dealing with the right to information, and disclosures must be done in a way that serves that purpose. One must determine if the information sought does not violate anyone's right to privacy and only pertains to topics strictly related to the operation of government and in the public interest.

The Supreme Court decided in *R. Rajagopal & Anr. v. State of Tamil Nadu (1994)* that the “Right to Information is a fundamental right under Article 19(1)(a)”.

Drawbacks of the Right to Information and Transparency

Right to Information Act, 2005 have been criticized, for things like the bureaucracy's inadequate record-keeping procedures, the lack of resources and personnel for staffing information commissions, the dilution of supplemental laws like the one for employees protection, and more. The demerits of this act are as follows;

1. Absence of Public Interest - In 2012 and 2017, proposals were put forward to change the RTI Act of 2005; drafting suggestions were made available to the public for opinion and consultation. Nevertheless, the newly modified act of 2019 was passed without being put forth to public stakeholders. The government adopted a pre-legislative consultation strategy in 2014 that makes it clear that any department or ministry drafting new laws or amending current laws, such as drafting bills, must present them to the public for comment. It is essential to understand the opinions of those likely impacted by this legislation. According to the principles outlined in the Pre-legislative Consultation Policy, 2014, the Government has yet to act.

2. Inadequate Participation by Parliament - An excessive delegation would allow the central body control over a crucial legislative function. The legislature is not allowed to transfer the executive's authority to make laws to the legislature. An essential responsibility of the legislature is to determine the terms of employment for the Chief Information Commissioner, Information Commissioners, State Chief Information Commissioner, and State Information Commissioners, who are statutory authorities under the Act.

3. No Equal Distribution of Powers - The legislature should assign to the subordinate bodies the task of enacting subordinate legislation, which by definition is ancillary to the statute while keeping to itself the work of essential legislative functions like setting legislative policy and establishing standards that become a rule of law.

4. Denial of Information to the Public - A citizen may ask a public authority for information in accordance with the Right to Information (RTI) Act. The information can be challenged, regardless, on some grounds. One of these grounds is when the information sought is of a private character and has no connection to any activity or interest of the public, or if it would result in an unjustified invasion of the person's privacy.

The person making the request can submit a complaint to the Information Commission if the information is denied on such grounds. However, the RTI Act's Section 7(9) cannot be used as an excuse for withholding data that is included in records.

In *Shayara Bano v. Union of India (2017)*, the Supreme Court of India held that “persons have a right to constitutional morality, which includes abiding by the law and the rules outlined in the Indian Constitution. The concept of constitutional morality refers to the obligation to uphold constitutional principles and refrain from acting in a way that would violate the rule of law or be indicative of arbitrary behaviour”.

Conclusion

The Right to Information Act guarantees every citizen of the nation the right to request information from public institutions. By making it easier for the general public to do so, it has increased government transparency and put a stop to corruption. The right to information promotes transparency, guarantees accountability, prevents corruption, and encourages openness in decision-making by public entities. It enables public discussion of government policies, preventing arbitrary and arrogant behaviour by public officials. The RTI Act of 2005 has the impact of destroying the secrecy culture, altering the mindset of politicians and bureaucrats, and creating the framework for making informed decisions.

The Supreme Court has acknowledged the right to information and a transparent decision-making process as arising from Articles 14, 19, and 21 of the Indian Constitution in a number of rulings. Despite the fact that the idea of transparency is regarded as admirable and acceptable, there is no standard definition of transparency that specifies its scope, extent, and limit. Likewise, there is no standard operating procedure or set of guidelines that the statutory bodies can adhere to in order to guarantee that the requirements of transparency will be met.

Therefore, various statutory and regulatory bodies exercise their unguided discretion to comply with the requirements of transparency because there is no definition of transparency that signifies its normative characteristics and no procedural guidelines, resulting in the decision subject to being overturned as manifestly arbitrary and unreasonable.

End notes:

1. Authors are 3 year student of LLB 5YDC at Pendekanti Law college

2. *Right to Information Act, 2005, No. 22, Acts of Parliament, 1949 (India).*
3. *Vansh Aggarwal, Brief legislative history of RTI law, LEGAL VIDHIYA (Oct. 16, 2023, 14:27 PM),<https://legalvidhiya.com/brief-legislative-history-of-rti-law/#:~:text=The%20RTI%20movement%20in%20India,to%20Information%20Act%20in%202005>.*
4. *S.P. Gupta v. Union of India and Anr., AIR 1982 SC 149.*
5. *Rahul, RTI Act and Constitution of India: An Analysis, LEGAL SERVICES INDIA (Oct. 16, 2023, 14:23 PM),[https://www.legalserviceindia.com/legal/article-5023-rti-act-and-constitution-of-india-an-analysis.html#:~:text=Article%2019%20\(1\)%20\(a\)%20guarantees%20the%20fundamental%20right,collect%20and%20information%5B%5D](https://www.legalserviceindia.com/legal/article-5023-rti-act-and-constitution-of-india-an-analysis.html#:~:text=Article%2019%20(1)%20(a)%20guarantees%20the%20fundamental%20right,collect%20and%20information%5B%5D).*
6. *Girish Ramchandra Deshpande v. Central Information Commissioner & Ors., (2013) 1 SCC 212.*
7. *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Aggarwal, (2020) 5 SCC 481.*
8. *CBSE v. Aditya Bandopadhyay & Ors., 2011 (8) SCC 497.*
9. *People's Union for Civil Liberties v. Union of India, (1997) 1 SCC 301.*
10. *R.K. Jain v. Union of India, (1993) 4 SCC 119.*
11. *Reserve Bank of India v. Jayantilal N Mistry case, (2016) 3 SCC 525.*

LAW OF DIVINE KNOT

- Poondla Siva Durga Sai Kaartheik (Alumni 2023)

Law of nature helped us both to meet each other. Study of Law brought us closer.

The Constitution of India helped us to understand the true meaning of Article 21, Right to Life and Liberty using which, we both chose each other as life partners.

As per Article 19 we expressed our love for each other to live together.

Using interpretation of statutes, we both made our families accept this law of true love by making them understand the interpretation of the family statute.

Law of Hindu marriage made us understand the importance of rituals and solemnization of marriage.

The overall human jurisprudence of law of nature and love helped us in understanding these statutory, constitutional and fundamental rights that led to the finalisation of the date for enactment of our new constitution of life.

There shall not be any amendments to this new Constitution of Life.

E-commerce Fraud: Is the law our ally or not?

-Kejal Rawal and Shreenidhi. J¹

ABSTRACT

This is the world of e-commerce. A world wherein you can shop from the comfort of your own home. With e-commerce you can have the goods purchased by you delivered and services provided can be availed at your doorstep within a matter of time. E-commerce has led to a greater flow of information and technology and has digitalised commercial activities. Consequently, this results in a direct development in the field of economic activities. However, E-commerce has enhanced the way we shop but has also created an emerging frontier for con artists. Even though e-commerce has refined our standard of living, it is not free from the lurking shadows of fraudsters waiting to prey on vulnerable customers.

E-commerce fraud targets online shoppers. They take the form of identity theft, product misrepresentation, product fraud, payment fraud, shipping fraud, delivery fraud, refund and return fraud, affiliate fraud, gift fraud and many other forms. With digitalisation across the globe and the help of AI, fraudsters are becoming more intelligent and sophisticated. They are deriving new ways to steal data and buy information about the consumers like creating imposter accounts with real information which makes it difficult to find the real account holder.

The legal framework around e-commerce fraud is complex and inadequate to address the evolving nature of e-commerce fraud. E-commerce fraud can have devastating consequences for its victims. Stricter laws regarding e-commerce are important to protect consumers, promote fair competition, and maintain consumer confidence in e-commerce. By making it more difficult and riskier for fraudsters to operate, stricter laws can help to make e-commerce a safer and more enjoyable experience for all.

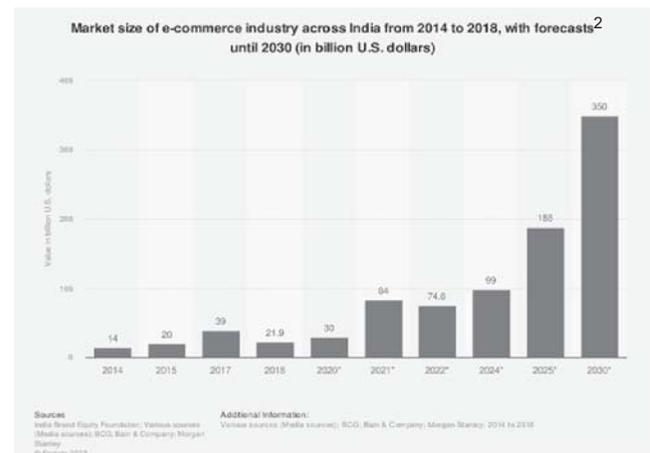
Introduction

E-commerce is not just a trend but has now become a way of living. It is a standard form of shopping that helps you personalize your shopping experience exactly according to your preferences and needs. E-commerce is a rapidly growing

phenomenon that is having a significant impact on businesses, consumers, and the economy. It has also become an integrated part of our daily lives. New technologies are emerging that are making shopping more convenient and it is just getting started. E-commerce has led to a greater flow of information and the evolved technology has digitalized commercial activities across the globe.

Benefits offered by e-commerce

E-commerce provides several benefits to consumers and businesses. E-commerce offers consumers the convenience to shop from anywhere, at any time, with just a few clicks. It offers a wider range of products and services than traditional stores. Consumers can easily compare prices from different retailers to find the best deal. Consumers are given access to detailed product information which includes reviews, specifications, and images. E-commerce platforms personalize the shopping experience for each customer based on their past purchases and browsing history. It saves consumers a lot of time by eliminating the need to travel to and from stores. Most e-commerce retailers offer easy returns, making it easy to return items that are not satisfactory. E-commerce businesses collect a lot of data about their customers, which are used to improve their products and services. E-commerce businesses operate 24/7, which gives them a competitive advantage over retail stores. There is no geographical barrier to online shopping. Overall, e-commerce is an affordable and efficient way to shop and sell products and services.



E-commerce as a double-edged sword

E-commerce is a double-edged sword, cutting both ways with its perks and pitfalls. While E-commerce genuinely has enhanced the way you shop and has accurately set a high bar at providing services as per the convenience and standards set by you, it is not free from the lurking shadows of the fraudsters waiting to prey on vulnerable consumers. It has created an emerging frontier for con artists. Security risks and privacy concerns are the two main phantoms in the digital realm that haunt our online shopping experience. They further take the following forms.

1) Identity theft: Identity theft is a crime in which a person unlawfully obtains and uses another person's data such as name, Social Security number, credit card number, or other identifying information, without their permission, to commit fraud or other crimes.

2) Data breaches: Data breaches are security events in which confidential content is stolen from a company's database. This content can include names, Social Security numbers, credit card numbers, and other personal data.

3) Phishing attacks: Phishing attacks are emails or text messages that are structured to mislead people into revealing their personal information. Phishing emails often look like they are from an authorized company, such as a bank or credit card company. They may deceive the recipient to click on a link or open an attachment, which will then install malware on the recipient's computer or device, and with the help of the malware they illicitly obtain the recipient's information

4) Social engineering: In this type of fraud, the fraudster may delude the victim into revealing their personal information. Social engineers may call the victim pretending to be from a recognized company, or they may approach the victim in person. They may question the victim for their Social Security number, credit card number, or other personal information.

5) Credit card fraud: In this type of fraud the person illicitly uses your credit card information to make purchases or withdraw money.

6) Hacking: Hackers can break into computer systems and abscond credit card information from

businesses and individuals.

7) Skimming: Skimming is when scammers attach instruments to ATMs or credit card terminals to steal credit card information. Once fraudsters have your credit card information, they can use it to make purchases online, in person, or over the phone. They can also create counterfeit credit cards or sell your information to other con artists.

8) Chargeback fraud: It is also known as friendly fraud. It is a type of fraud in which a customer purchases with a credit or debit card, receives the goods or services, and then disputes the charge with their card issuer to obtain a refund. This type of fraud could be committed with malicious intent as the customer may simply be unhappy with the purchase or may be trying to get a free product or service.

9) Account takeover fraud: It is a type of fraud where a fraud actor takes control of your online account, such as your bank account, email account, or social media account, and uses it to make purchases or carry out other fraudulent activities.

10) Refund fraud: It is when a fraudulent actor, pretends to be a customer and asks for a refund for something they never bought. They may do this by giving fake order details or using stolen account information.

11) Cookie stuffing: Cookie stuffing involves placing cookies on a user's computer without their consent to inflate the number of clicks or sales attributed to the affiliate.

12) Ad fraud: Ad fraud occurs when affiliates create fake websites or engage in click fraud to generate false impressions or clicks on ads, which they receive a commission for.

13) Fake leads: Affiliates may submit fake leads or customer information to earn commissions that they are not entitled to.

14) Brand bidding: Brand bidding involves affiliates bidding on a business's branded keywords in search engines, driving up the cost of advertising and reducing the effectiveness of the business's campaigns.

15) Counterfeit or fake products are often intentionally produced and sold under pretences, often using a brand name or trademark without the authorization of the original manufacturer or

owner. These products can range from luxury goods, such as designer handbags and watches, to everyday items, such as electronics, cosmetics, and pharmaceuticals. Counterfeit products can be difficult to distinguish from the real thing, and customers may unwittingly purchase them online, believing that they are buying a genuine product. This not only results in financial losses for the customer but can also have serious health and safety implications – particularly in the case of counterfeit pharmaceuticals, cosmetics, and electronic devices.

16) Dropshipping fraud: It occurs when a drop-shipper engages in deceptive practices to scam buyers or other businesses in the supply chain. This can involve various fraudulent activities, such as misrepresenting the quality or availability of products, failing to fulfil orders, charging excessive fees or prices, or using stolen credit card information to make purchases. A drop-shipper is a retailer who does not keep a physical inventory of the products that they sell. Instead, they fulfil orders by purchasing products from a supplier or manufacturer, which ships the product directly to the customer on behalf of the retailer. This allows the retailer to avoid the costs and complexities of storing and managing inventory and to focus on marketing and selling products.

However, the true magnitude of the e-commerce fraud is still unknown.

Legal framework concerning e-commerce fraud

The legal framework governing e-commerce fraud is complex and inadequate. It is because of several factors which include the evolving nature of e-commerce fraud and the rapid growth of e-commerce businesses. One of the main challenges faced is the lack of comprehensive law that specifically addresses e-commerce fraud. Instead, it is covered by a patchwork of laws which include;

- **Consumer Protection Act, 2019**

Section 14 - Right to File a Complaint: Consumers have the right to file complaints regarding defective goods or deficient services.

Section 15 - Consumer Disputes Redressal Commission: Establishes the Consumer Disputes Redressal Commissions at the district, state, and national levels to hear consumer complaints.

Section 16 - Consumer Protection by Mediation: Allows for dispute resolution through mediation,

providing consumers with a quicker and less formal process.

Section 17 - Consumer Protection by Adjudicating Officers: Authorizes adjudicating officers to hear and decide upon consumer complaints.

Section 18 - Product Liability: Deals with product liability and allows consumers to seek compensation for harm caused by defective products.

- **Punishments**

Section 77 - Penalty for Non-Compliance with Orders of the Consumer Disputes Redressal Commission: Specifies penalties for non-compliance with orders issued by the Consumer Disputes Redressal Commissions.

Section 78 - Penalties for Manufacturing for Sale, Offering for Sale, etc.: Imposes penalties for manufacturing, selling, or distributing goods or providing services that do not comply with the prescribed standards.

Section 79 - Penalty for Misleading Advertisements: Deals with penalties for publishing, broadcasting, or communicating misleading advertisements that may harm consumers.

Section 87 - Punishment for Non-Compliance with Orders of the Central Authority: Prescribes penalties for failure to comply with the orders of the Central Consumer Protection Authority.

Section 89 - Power to Imprison: Grants the power to imprison those who fail to comply with the orders of the Consumer Disputes Redressal Commissions or the Central Consumer Protection Authority.

- **Remedies**

Product liability: The CPA imposes liability on manufacturers and sellers of defective products.

Penalties for non-compliance with orders: The CPA imposes penalties on businesses that fail to comply with orders issued by the CDRCs or the Central Consumer Protection Authority (CCPA).

Penalties for manufacturing, selling, or distributing defective goods or services: The CPA imposes penalties on businesses that manufacture, sell, or distribute defective goods or services. Penalties for publishing, broadcasting, or communicating misleading advertisements: The CPA imposes

penalties on businesses that publish, broadcast, or communicate misleading advertisements.

Power to imprison: The CPA gives the CDRCs and the CCPA the power to imprison those who fail to comply with their orders.

- **The Indian Penal Code (IPC), 1860**

The IPC is the general criminal code of India. The following sections of the IPC are relevant to e-commerce fraud:

Section 415: This section deals with the punishment for cheating.

Section 416: This section deals with the punishment for cheating by personation.

Section 417: This section deals with the punishment for cheating with the knowledge that the deception is likely to induce the delivery of property.

Section 420: This section deals with the punishment for cheating and dishonestly inducing delivery of property.

Section 467: This section deals with the punishment for forgery of valuable security, will, etc.

Section 468: This section deals with the punishment for forgery for cheating.

Section 471: This section deals with the punishment for using forged documents as genuine.

- **Information Technology Act, 2008 - Recognition of E-contracts**

Section 10 of the IT Act, 2008 gives legislative authority to E-contracts. It says, "Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or using an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose."

Section 43: This section deals with the punishment for hacking and data breaches.

Section 66C: This section deals with the punishment for identity theft and cheating by personation by using computer resources.

Section 72A: This section deals with the punishment for unauthorized access to a computer system.

Section 72B: This section deals with the punishment for unauthorized disclosure of information stored in a computer system.

Section 72C: This section deals with the punishment for unauthorized transmission of any program, information, or data to a computer system

- **The Payment and Settlement Systems Act, 2007**

This Act has several provisions related to e-commerce:

Section 25- Provides that dishonouring an electronic transfer of funds is an offence.

Section 10A- States that banks cannot impose a charge for using electronic modes of payment.

Section 11 of the Act deals with the unauthorized use of electronic payment instruments

Section 26 - Provides that a person who contravenes the provisions of Section 4, which states that no person other than the Reserve Bank can operate or commence a payment system unless authorized by the Reserve Bank, or fails to comply with the terms and conditions of an authorization may be punished with imprisonment for a term of at least one month but not more than ten years.

- **The Credit Information Companies (Regulation) Act, 2005**

This law regulates credit information companies (CICs) in India and provides for the establishment of a Credit Information Bureau of India (CIBIL).

Section 22 deals with unauthorised access to credit information.

(1) No person shall have access to credit information in the possession or control of a credit information company a credit institution or a specified user unless the access is authorized by this Act or any other law for the time being in force or directed to do so by any court or tribunal and any such access to credit information without such authorization or direction shall be considered as unauthorized access to credit information.

(2) Any person who obtains unauthorised access to credit information as referred to in sub-section (1) shall be punishable with a fine which may extend to

one lakh rupees in respect of each offence and if he continues to have such unauthorised access, with a further fine which may extend to ten thousand rupees for every day on which the default continues and such unauthorised credit information shall not be taken into account for any purpose.

- **Trademarks Act, 1999**

Section 29: This section prohibits the unauthorized use of a registered trademark in the course of trade or business.

Section 30: This section prohibits the use of a mark that is deceptively similar or substantially identical to a registered trademark.

Section 38: Assignability and transmissibility of registered trademarks.—Notwithstanding anything in any other law to the contrary, a registered trademark shall, subject to the provisions of this Chapter, be assignable and transmissible, whether with or without the goodwill of the business concerned and in respect either of all the goods or services in respect of which the trade mark is registered or of some only of those goods or services.

- **The Copyright Act, 1957**

Section 51: This section prohibits the reproduction of copyrighted work without the permission of the copyright holder.

Section 52: This section prohibits the communication of copyrighted work to the public without the permission of the copyright holder.

Section 55: This section deals with civil remedies for infringement of copyright

Section 47: This section prohibits the making, using, selling, or offering for sale of a patented product without the permission of the patent holder.

Section 48: This section prohibits the use of a patented process without the permission of the patent holder.

- **RBI guidelines concerning e-commerce fraud**

The Reserve Bank of India (RBI) has issued several guidelines to address e-commerce fraud. These guidelines are aimed at protecting consumers and businesses from fraud, and to promote a safe and secure e-commerce environment. Here are some of the key points:

1. Payment gateways: Payment gateways must implement robust security measures to

protect customer data and prevent fraudulent transactions.

2. Merchant acquirers: Merchant acquirers must have adequate risk management systems in place to identify and prevent fraudulent transactions.
3. E-commerce merchants: E-commerce merchants must implement fraud prevention measures, such as verifying customer identities and using secure payment processing methods.
4. Customers: Customers should be aware of the risks of e-commerce fraud and should take steps to protect themselves, such as using strong passwords and enabling two-factor authentication.

E-commerce fraud is one of the most pressing threats - facing online shoppers today, and it's important to be aware of the latest scams and take steps to protect yourself. According to a report by the National Payments Corporation of India (NPCI), In 2022, the country lost over ₹70,000 crores to e-commerce fraud.

- **The general precautions any person can take to be free from the lurking shadows of the artists**

Be careful about the information you share online. Avoid sharing your personal and financial information with unknown or untrusted websites. Shop on reputable websites. Look for websites that have a good reputation and that use secure payment processing methods. Be careful about shopping on social media platforms. Social media platforms have become a popular target for fraudsters. Read reviews before you buy. This can help you to avoid buying counterfeit goods or from fraudulent businesses. Be wary of unsolicited emails and messages. Do not click on links in emails or messages from unknown senders. These links can lead to phishing websites or download malware onto your device. Fraudsters often use phishing emails and text messages to trick people into revealing their personal and financial information. Use strong passwords and enable two-factor authentication. This will help to protect your accounts from unauthorized access. Monitor your account statements regularly. This will help you to identify any fraudulent charges early on. Beware of deals that seem too good to be true. If a price is significantly lower than the market value, it is

likely a scam. Public Wi-Fi networks are not secure and can be easily hacked. Avoid making online purchases or entering sensitive information when connected to a public Wi-Fi network. Use a VPN when connected to public Wi-Fi networks. A VPN encrypts your traffic, making it more difficult for fraudsters to intercept your data. Report any suspected fraud to the relevant authorities. Be careful about using public computers. Public computers may be infected with malware. Avoid making online purchases or entering sensitive information when using a public computer. Be aware of the latest e-commerce fraud scams. Fraudsters are constantly coming up with new ways to scam people. Stay informed about the latest scams so that you can avoid them.

Challenges

The digital realm on the one hand has given new technologies and tools and on the other has brought upon several challenges for law enforcement. AI-based technology is being used to create fake websites and social media profiles that are designed to trick people into revealing their personal information or making fraudulent purchases. Blockchain is also being used to create new types of cryptocurrency scams, which the law is not equipped to handle yet. To address these challenges, the legislature needs to be creative and innovative. They need to develop new partnerships with other agencies, both domestic and international. They also need to invest in new technologies and training for their officers. The inconsistency of laws makes it difficult to investigate and prosecute the crime. Artificial intelligence (AI) powered systems can be used to detect and prevent these types of fraud. These systems could be used by law enforcement agencies, e-commerce businesses, and consumers alike. It is the duty, which rests upon the government to make sure that consumers and businesses are made aware of the laws about e-commerce fraud.

One of the biggest issues in enforcing the law is faced in implementing the law about e-commerce and the challenges faced, is that there arises a conflict between the judiciary and police in investigating and prosecuting the crime, as the Indian Information Technology Act was enforced by the police rather than a proper legislature. This can lead to arbitrary and inconsistent enforcement

of the law. To address the problem of jurisdictional conflict, law enforcement agencies need to develop clear and concise guidelines for determining which agency has jurisdiction over a particular cybercrime. These guidelines should be developed in consultation with all relevant stakeholders, including law enforcement agencies, e-commerce businesses, and civil society groups.

Another challenge is the rigidity of the constitution. The Indian constitution was written a long time before the digital age hence, it is unable to adequately address the legal challenges of the modern age. We have to understand that the challenges we face are not just technological but also legal and jurisdictional. The inconsistency of laws and the jurisdictional conflicts between different agencies create obstacles in investigating and prosecuting e-commerce fraud. We must bridge these gaps to ensure a more effective and consistent application of the law.

E-commerce fraud can have devastating consequences for its victims. Stricter laws regarding e-commerce are important to protect consumers, promote fair competition, and maintain consumer confidence in e-commerce. By making it more difficult and riskier for fraudsters to operate, stricter laws can help to make e-commerce a safer and more enjoyable experience for everyone.

CONCLUSION

E-commerce fraud is like a game of cat and mouse, with fraudsters constantly devising new schemes and merchants scrambling to keep up. Therefore in the face of this pervasive threat, is the law our ally or not? The answer, unfortunately, is not a simple one. The legal landscape surrounding e-commerce fraud is often a contradictory labyrinth. A patchwork of laws, each with its own limitations and jurisdictional quirks, creates an environment where fraudsters can exploit loopholes and operate with impunity. The Indian Information Technology Act, while acknowledging the digital realm, struggles to keep pace with the ever-evolving tactics of cybercriminals. This inconsistency and rigidity of the legal framework leave consumers vulnerable and businesses exposed.

However, amidst this legal maze, there are glimmers of hope. The increasing awareness of e-commerce fraud is prompting legislative action,

with initiative for the development of AI-powered systems for fraud detection and the establishment of clear jurisdictional guidelines offer further avenues for progress.

Ultimately, the battle against e-commerce fraud demands a multi-pronged approach. We need a legal framework that is adaptable, and capable of addressing the dynamic nature of cybercrime. Law enforcement agencies must collaborate, transcending jurisdictional boundaries and sharing intelligence to track down and apprehend perpetrators. Consumers, too, must play their part by exercising caution and vigilance, adopting safe online practices and reporting suspicious activity.

The question, then will change, not whether the law is our ally or not, but rather, how effectively we can harness its power. By working together - legislators, law enforcement, businesses, and consumers - we can build a stronger legal defence against e-commerce fraud. Only then can we truly unlock the full potential of the digital marketplace, ensuring a safe and secure environment for all.

As law students, Our journey does not end with a mere understanding of these issues. We seek not just to comprehend but to conquer these problems. In the legal language, it is said that ubi jus ibi remedium

which means where there is a right there is a remedy. Therefore, we urge the Indian government to recognize the gravity of e-commerce fraud and address it with equal importance. We call for developing clear and concise guidelines to determine jurisdiction in cybercrime cases, involving all stakeholders in the process.

E-commerce fraud is a formidable adversary in the digital age. Still, with the right laws, technologies, and collaborative efforts, we can tilt the scales in favour of a safer and more reliable e-commerce ecosystem. Let us work together to protect consumers, promote fair competition, and maintain trust and confidence in the digital marketplace. Together we shall forge a future where e-commerce fraud is not a fear but a distant bygone memory.

Let our minds be our weapons, our knowledge, our armour, our shield and our determination.

End notes:

1. *Authors are 2nd year student of LLB (5YDC) at Pendekanti Law College, Hyderabad.*
2. *Market size of e-commerce industry across India from 2014 to 2018, with forecasts until 2030, STATISTA (J a n 1 6 . 2 0 2 4 , 8 : 2 0 A M) , <https://www.statista.com/statistics/792047/india-e-commerce-market-size/>.*

SCRAMBLED - 2

- Jayathi Jain (5/5)

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| 3. SAMCUI CEIAUR | 10. EMTTATESN | 17. EYUTSR |
| 4. TATENTISE | 11. ESDJUEM EEIGRSN | 18. TTAABINRIOR |
| 5. GTAousturi | 12. INMNDYTEI | 19. EPETPLOS |
| 6. MBDUNSAMO | 13. CIACPCLMEO | 20. OTRMUCALECNI |
| 7. MHELBYAP | 14. OIRNOBTAP | |

*“ We are very good lawyers for our own mistakes,
but very good judges for the mistakes of others ”
- Nickey Gumbel*

Women's Reservation Bill: A step towards women's empowerment and gender equality in India

-K. V. Satya Savitri'

Introduction

India is the largest democratic country in the world, where women constitute nearly half of its population. The Constitution of India guarantees equality along with the men but there is very little participation of women in politics.

The 2023 composition of the Lok Sabha reveals the underrepresentation of women members of Parliament constituting less than 15% of its members. Similarly, this gender disparity is stronger in the states' assemblies too.

The Women's Reservation Bill in India seeks to reserve a certain percentage of seats in both the Lok Sabha and State Legislative assemblies for women. This step leads to gender equality, women's economic empowerment and their increased role in leadership positions.

Significance of the Bill

The Women's Reservation Bill is very much significant in lieu of the present scenario.

- Primarily, improving the status of women in Indian society is one of the main significant features in favour of the Bill.
- Since 1990, reservation has made it possible for women to participate in local government i.e., Panchayati Raj Institutions at the village level and the office of the chairperson at all levels at the Panchayati Raj Institutions and in urban local bodies respectively. Though the major political parties have supported the Bill that would add women reservations to the Lok Sabha and the State Legislatures, it never got passed due to various political reasons. Presently, it seeks to enhance the representation and participation of women in politics and governance, which is currently very low in India when compared to global countries.
- Women's political empowerment is seen as an essential tool for eradicating prejudice and gender inequity.

- Implementing such reservations for women to represent in parliament for the effectiveness of governance shall pave the way for the recognition of India across the globe.
- The Bill expects that by increasing the presence of women in Parliament and assemblies, the policies and laws will be more inclusive, progressive, and beneficial for all sections of society.
- In a historic move, the Parliament passed the Constitution (One Hundred and Twenty-eighth Amendment) Bill, 2023 commonly referred to as the NARI SHAKTI VANDAN ADHINIYAM or Women's Reservation Bill.

Objectives of the Bill

- Under this Bill, 1/3rd of the seats in the Lok Sabha and state assemblies as well as the Delhi Assembly will be reserved for women candidates.
- These reserved seats will be rotated following each general election, ensuring a fair and equitable distribution.
- 33% reservation for women belonging to Scheduled Castes (SCs) and Scheduled Tribes (STs) will also be provided within the existing quota for this category.

Key Features of the Bill

Articles to be amended: The 2023 Bill proposes an amendment to one constitutional provision i.e., Article 239AA (Special provisions with respect to Delhi) in clause (2). After sub-clause (b), the following clauses shall be inserted namely :

“(ba) Seats shall be reserved for women in the Legislative Assembly of the National Capital Territory of Delhi.

(bb) As nearly as may be, one-third of the seats reserved for the Schedule Castes in the Legislative Assembly of the National Capital Territory of Delhi shall be reserved for women.

(bc) As nearly as may be, one-third of the total number of seats to be filled by direct election in the Legislative Assembly of the National Capital Territory of Delhi (including the number of seats reserved for women belonging to the Scheduled Castes) shall be reserved for women in such manner as Parliament may by law determine."

New Articles to be inserted: The Women's Reservation Bill also introduced three new Articles pertaining to Part-XVI that is Special Provisions Relating to Certain Classes namely Articles 330A, 332A, and 334A.

- The Articles 330A and 332A newly proposed articles want to establish women's reservation of 33 per cent in the Lok Sabha and State legislative assemblies respectively. The aim of these provisions are:
 - To ensure greater gender representation, addressing gender disparity in politics;
 - Promotes intersectional representation; and
 - Empowering marginalized women.
- Article 334A included a sunset provision that would gradually end this affirmative action policy after a period of 15 years, with potential extension determined by parliamentary action.
 - Will encourage more women to join active politics
 - Article 82 provides for the readjustment of the constituencies of Lok Sabha and State Assemblies after every census.
 - The rotation of seats allocated for women will be governed by parliamentary legislation after each delimitation process.

A crucial difference between the earlier Bill and the constitutional amendment Bill that has now been introduced is that it is proposed to be enforced after an exercise of delimitation is undertaken for the purpose following the first census after the enactment of the Bill, although the sunset clause has been retained so that to ensure correct representation of data on women and subsequent seat reservation.

Further, provisions relating to the reservation for the Anglo-Indian community have also been left undisturbed, unlike in the previous Bill which sought to amend Article 331 "Representation of the Anglo-Indian community in the House of the People" and Article 333 "Representation of the Anglo-Indian community in the Legislative Assemblies of the States".

The framework of the Constitution:

The Constitution guarantees the right to equality to every citizen of India.

- Part III of the Constitution guarantees the fundamental rights of both men and women.
- The Directive Principles of State Policy (DPSP) ensures economic empowerment by providing for equal pay for equal work by both men and women, humane conditions of work and maternity relief.
- Article 14 states – "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Article 14 uses two expressions "equality before the law" and "equal protection of law". "Equality before the law" is a somewhat negative concept implying the absence of any special privilege in favour of individuals and the equal subject of all classes to the ordinary law.
- "Equal protection of law" is a more positive concept implying equality of treatment in equal circumstances. However, one dominant idea common to both expressions is that of equal justice. Equal law should be applied to all in the same situation, and there should be no discrimination between one person and another. Right to equality means that all citizens enjoy equal rights and opportunities.
- Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. The word 'discrimination' means to make an adverse distinction or to distinguish unfavourable from others. If a law discriminates against any of the above

grounds, it can be declared invalid whereas Article 15(3) of the Indian constitution provides power to the government to pass special provisions for women which is an exception to Article 15(1) and Article 15(2).

- Article 15(1) provides that “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.”
- Article 15(2) states that “No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to -
 - access to shops, public restaurants, hotels and places of public entertainment; or
 - the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.”
- Article 15(4) – “Nothing in this article or clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or the Scheduled Castes and the Scheduled Tribes.”
- The Constitution of India does not expressly allow reservation for women in public employment. On the contrary, Article 16(2) prohibits discrimination by the State in public employment on the grounds of gender. Therefore, women can, at best be provided only horizontal and not vertical reservation based on the Supreme Court's pronouncement in the famous Indra Sawhney case (1992).

Procedure for Amendment

It is pertinent to learn about the procedure for amendment of the Constitution in brief. A Bill to amend the Constitution may be introduced in either House of Parliament. It must be passed by each House by a majority of the total membership to that House and by a majority of not less than 2/3rd of the members of that House present and voting. When a Bill is passed by both Houses it shall be presented to

the President for his/her assent who shall give assent to the Bill and thereupon the Constitution shall stand amended.

In addition to the special majority mentioned above, ratification by not less than 1/2 of the State Legislatures. The States are given an important voice in the amendment of these matters. These are fundamental matters where States have important power under the Constitution and any unilateral amendment by Parliament may vitally affect the fundamental basis of the system built up by the Constitution.

But a Bill which seeks to amend the provisions mentioned in Article 368 requires in addition to the special majority mentioned above the ratification by the 1/2 of the States. Article 368, however, does not constitute the complete Code. The process of amending the Constitution is the legislative process governed by the rules of that process.

The groundwork for the Women's Reservation Bill

- In 1987, former Prime Minister Rajiv Gandhi's government constituted a 14-member committee led by Union Minister Margaret Alva to give recommendations for improving the status of women to provide one-third reservation for women in rural and urban local bodies.
- In 1988, the aforementioned committee presented the National Perspective Plan for Women 1988-2000 to the then Prime Minister.
- The Bill was passed in Lok Sabha. However, the Bill failed to get passed in Rajya Sabha in September 1989.
- In 1992, Prime Minister P.V. Narasimha Rao's government passed the 73rd and 74th Constitutional Amendment Acts which mandated 1/3rd of seats for women i.e., 33.3% reservation for women in Panchayati Raj Institutions and offices of the chairperson at all levels of Panchayati raj Institutions and in urban local bodies respectively. It was the doing of the National Perspective Plan for Women that mandated the reservation. States such as Maharashtra, Andhra Pradesh, Bihar, Chattisgarh,

Jharkhand and Kerala have made legal provisions to ensure 50% reservation for women in local bodies.

- Article 325 – Eligibility for inclusion in Electoral Role: Provides that “No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex”. There shall be one general electoral roll for every territorial constituency for election to either the House of Parliament or the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

1993

- The idea originated from the 73rd and 74th Amendment acts in 1993 (enacted vide Articles 243D & 243T respectively) which stated that one-third of Sarpanch (or Council Leader) positions in the Gram Panchayats should be reserved for women.

1996

- Women's Reservation Bill was first introduced in Parliament in 1996 as the 81st Constitutional Amendment Bill, but it faced several hurdles and opposition from various parties and groups.
- The Bill was then reintroduced in 1998, 1999 and 2008. However, it was unable to be pursued further due to the dissolution of the Lok Sabha or the absence of consensus among the political parties.

2010

- It was referred to a Standing Committee in 2008. In 2010, it was passed in the Rajya Sabha and transmitted finally to the Lok Sabha.
- However, the Bill lapsed with the 15th Lok Sabha and never voted on the bill. Originally, the Bill proposed reserving women in all legislative bodies.

2023

- The Lok Sabha passed the Women

Reservation Bill (Nari Shakti Vandan Adhiniyam 2023) with more than a two-thirds majority.

Reasons for Lapse

1. Qualified men may lose their position.
2. The rotation of reserved constituencies in each election could reduce the incentive of a Member of Parliament.

Arguments against the Bill

1. Implementation of women's reservations depends on the census and delimitation processes, which can be delayed or politically sensitive.
2. The Bill does not provide separate reservations for OBC women, despite OBC women constituting a significant portion of the female population.
3. There are concerns that women may be used as proxies by male family members, similar to what has happened to Panchayats (Local Governments).
4. This can be overcome by creating awareness among women about their rights and the importance of their participation in politics is essential. In addition to this, educational programs and awareness campaigns can help to increase women's political participation.

Arguments in favour of the Women's Reservation Bill

1. Addresses India's low global ranking in women's political representation.
2. Promotes gender equality in political leadership and decision-making.
3. Challenges traditional gender roles and perception of women's roles.

India's rank in terms of women in the Parliament

The Parliament of India consists of two houses i.e., Lok Sabha consisting of 543 seats and Rajya Sabha consisting of 245 seats based on the last census carried out in 1971. A census was supposed to have been carried out in 2021 but due to the Covid-19 pandemic being postponed and due to several other reasons it has been further pushed to 2024-25 until further orders.

Now NDA (BJP) Government has 334 seats out of 543 in Lok Sabha and 109 seats out of 239 in Rajya Sabha.

Globally, India ranks 143rd in a list of 193 countries. The list is released each month by the Inter-Parliamentary Union, an international organisation of national parliaments, based on the percentage of women in national parliaments. Currently, women members are 14% of the Lok Sabha and 11% of the Rajya Sabha

Present Status of the Women's Reservation Bill

- On 19th September 2023, the current government introduced the Bill as the 128th Constitutional Amendment Bill, 2023 during the Parliament Special Session in Lok Sabha in the New Parliament Building.
- NARI SHAKTI VANDAN ADHINIYAM will go to Rajya Sabha again after it is passed by Lok Sabha.
- The Rajya Sabha on 21st September 2023 unanimously passed the Bill proposing to reserve one-third of all seats for women in the Lok Sabha, the State Legislatures, and the Delhi Legislative Assembly.
- The President of India has given assent to the Constitution (106th Amendment) Act, 2023, which provides 1/3rd reservation for women in Lok Sabha and State Legislative Assemblies.
- The gazette notification was published on

28th September 2023 which made it clear that the reservation would come into force soon after the first delimitation (frozen until 2026).

- Therefore, the Bill will come into effect after the first delimitation or redrawing of constituencies i.e. 2027, as per details of the legislation.

Conclusion

The passage of the Women's Reservation Bill is a significant step towards promoting gender equality and women's participation in the Indian political landscape which will strengthen the respect for women in an overall manner while creating an ideal situation for balanced policy-making in the legislative field.

Finally, the decision led to a landmark achievement for a significant step towards women's empowerment and gender equality in India. The phenomenon of the decision not only encourages more women to participate in politics but also inspires women to take on leadership roles in other sectors. However, the actual implementation of the Bill might take some time since the reservation for women is contingent upon the delimitation exercise, which is likely to be done in the next elections.

Endnotes

1. The author is a second year student of LLB (3YDC) at Pendekanti Law College, Hyderabad.



**With law schools turning out so many good young lawyers,
there was only one way to thin them out.**

THE INNOCENT BUTTERFLY

“A strong girl knows she has strength enough for the journey,
but a girl of strength knows it is in the journey where she will become strong.”

-Nethikar Lavanya¹

ABSTRACT:

The issue of crime against any person requires analysis from different dimensions. The term crime signifies disturbance and horrific experience. In this Essay we have expressly spoken about the numerous kinds of barbarities tackled by girl child in India. Let us look in to the laws, proposals, numerous institutions, goals, rules and resolutions and the issues faced by them and provisions related to violence against girl child in India.

Introduction:

A child is reviewed as a huge real fortune of a Nation – State, as the inevitable destiny of any Country relies upon exactly how its children grow and improve.

In ancient India girl child were considered with respect and dignity, they even attended gurukuls, which were traditional schools. Girls were given equal opportunities as boys in educational institutions, but this privilege end very soon and girls were only exposed to domestic work and family responsibilities. Instead of sending to school they were trained to do household work

In the era of Indus valley civilization there was certain evidence of worshipping women goddesses and was given high status and value within the household society. In the meantime, imparting education to girls was also considered important and was considered essential for herself and development of family, society and country.

There were women rishis, they were given respect and they even rendered a significant contribution in making of decisions and administrative functions. She has been branded as a mysterious creature, as well as devoted mother and self-sacrificing wife. For playing all such roles actively and effectively, Girl child was trained since her childhood. The status of girls in India, both historically and socially has been one of the respect and reverence.

But in today's modern world we are nowhere near to these points. In our day to day life we notice number of News relating to crimes against girl Child, both

in print and electronic media. It may be gang rape, outraging the modesty of women, sexual harassment, domestic violence, sexual assault, early and forced marriages, sex exploitation trafficking, prostitution etc. such acts are injurious to the society and country.

Incidents of sexual assault and sexual crimes against girl child are reported regularly from across the country. Being a country with over 25 crore girl child population, sexual abuse continues to be a serious and wide spread issue in India. There may be unreported cases also whose number can't be guessed as there is no accurate data or information available in regard. Studies have highlighted how the trauma of victims of child sexual abuse leads to a host of psychological and emotional disorders which they may never overcome, resulting in poor overall development of child, parents and they may even refrain from reporting such incidents due to fear of dignity, social stigma, communication gap between child and parents, community denial, lengthy legal procedures and other reasons and suffer in silence. It makes all of us to think seriously and find out a way forward for the prevention of crime and assessment of the role played by various organs of the government.

Violence against girl child in India :

According to the most recent data from the National Crime Records Bureau (NCRB), overall incidents of crime against children increased by 16.2% in 2022 compared to the previous year.

- Uttar Pradesh records highest rate of crime against girl child,
- Delhi tops UT list, and
- Nagaland as the safest state in India.

“The crime rate registered per lakh girl population was 66.4 in 2022 in comparison with 64.5 in 2021.” As many as 1,62,449 cases of crimes against children were registered during 2022, showing an increase of 8.7% (1,49,404 cases) compared to 2021.

- India ranked 148 out of 170 countries in the 'Women, Peace And Security Index 2021
- India has made significant progress, rising from 135th (in 2022) to 127th out of 146 countries in the 'Women, Peace And Security Index 2023 .

Over the last few decades, India has witnessed phenomenal growth. In spite of all development and growth, girls are still victims of horrendous crimes such as rape, child marriages, dowry death of minor girls, domestic violence, kidnapping, molestation, torture, sexual harassment in India. Crimes have physical and psychological impact on child which preventing them from leading a standard life. Crimes against girl harm families and communities across generations and reinforce other evils prevalent in society.

Violence against girls is perhaps as old as mankind. In some villages of India, girls are still treated as curse to the family. Not only in rural areas but also in urban areas, girls are facing lot of problems.

The important factors causing crimes against girls are :-

- Male dominated Indian society,
- Poverty,
- Illiteracy,
- Inefficient legal justice system,
- weak rules of law,
- weak political structure and
- Lack of moral education

Girls become targets of attacks even before they are born. Sex determination abortions and the increase in female infanticide cases have become a significant social phenomenon in different parts of India. Tests which were originally designed to detect any abnormality of the fetus, are being misused to determine the sex of the fetus with the intention of break it off if it happens to be a girl. Worst of all, when these abortions are performed the woman's life is endangered .

- Madhya Pradesh is highest and Karnataka is lowest in cases of female feticide in 2021 .

As much as it is depressing to see the increase in the number of sexual assault cases against children in India, the stronger the need is felt to deliver justice

to the victims at the earliest. In our country, the legislation governing sexual offenses with children is the

POCSO Act:-

which provides stringent punishment for the offenders. As per the government report, around 23% of girls in India are sexually abused or harassed before 18 years of age. In most cases, the parents do not complain because the abuser is known to them.

Although the Convention on the Rights of the Child was adopted by the United Nations in 1989, the offenses against children were not redressed by any legislation in India until 2012, when the Protection of Children from Sexual Offences [POCSO] Act was passed to protect children from all forms of sexual abuse. It provided stringent punishments for committing offenses against children ranging from a minimum of 20 years of imprisonment to the death penalty in case of aggravated penetrative sexual assault.

Laws to protect girl child against crimes :-

1. Juvenile Justice (Care and Protection) Act, 2015,
2. The Protection of Children from Sexual Offences (POCSO) Act, 2012
3. The Commissions for Protection of Child Right (CPCR) Act, 2005
4. The Indian Penal Code, 1860
5. Protection Of Women From Domestic Violence Act, 2005
6. The Dowry Prohibition Act, 1961
7. The Indecent Representation Of Women (Prohibition) Act, 1986 and
8. The Immoral Traffic Prevention Act, 1956.
9. The Code of Criminal Procedure, 1973,
10. Information Technology Act, 2000

A girl child like any other citizen of India too needs all the rights for its comprehensive development. *National Policy on Children 2013* provides the rights, and these are categorized in four categories as

- Right to survival & Health;

- Right to Development;
- Right to Protection and
- Right to Participation.

Other National programmes in this regard include:

- Integrated Child Development Service 1975 to address malnutrition issues for children below the age of six years
- Mid-day meal scheme for school children
- Udisha Child Care Training Programme for ICDS workers
- Sukhanya Samridhi Yojana, 22 January 2015 for the schemes to ensure equitable share to a girl child in resources and savings of a family.

The constitutional articles related to child rights:-

- Right to equality (Article 14)
- Right against discrimination (Article 15)
- Right to personal liberty and due process of law (Article 21)
- Right to being protected from being trafficked and forced into bonded labour (Article 23).

Provisions under IPC:

(the word woman denotes female human being of any age)

Let us see some of the important sections under IPC [indian penal code] dealing with the crime against the girl child and women.

Section 366- procreation of minor girl :

Kidnapping, abducting or inducing minor girl to compel her marriage, etc. Whoever kidnaps or abducts them with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 375 –Rape:

Defines rape as "sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud or at a time when she has been intoxicated or duped, or is of unsound mental health and in any case if she is under 18 years of age."

Section 376 Punishment for rape:

Whoever, commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

Section 376 AB: punishment for rape on woman under twelve years of age:

Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death.

Section 376 DA: punishment for gang rape on women under sixteen years of age:

Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine.

Section 509 :Word, gesture or act intended to insult the modesty of a woman: Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Provided further that any fine imposed under this section's shall be paid to the victim. such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim .

Recent cases in Telangana State related to violence against the girl child:

1. Minor girl gang raped in Hyderabad: (August 22nd, 2023)
2. Minor girl raped by neighbour: (September 23rd, 2023)
3. Jubilee Hills gang-rape: (May 28th, 2022)
4. Minor girl raped by school principals driver: (October 22nd, 2022)
5. 9-month-old raped, killed in Warangal: (June 19th, 2019)
6. Saidabad Rape Case: 6-year-old raped and murdered: (10th September, 2021)

Steps and precautions taken by Union government to fight the crimes against the girl child:

- Nirbhaya Fund:

Nirbhaya Fund is an Indian rupee 10 billion corpus announced by the Government of India in its 2013 Union Budget.

This fund support the initiatives by the government and NGOs working towards protecting the dignity and ensuring the safety of women in India.

- Mahila Police Volunteer:

It envisages the creation of a link between the police authorities and the local communities in villages through police volunteers who will be women specially trained for this purpose.

- Ujjawala Yojana:

A comprehensive scheme for prevention of trafficking and rescue, rehabilitation and reintegration of victims of trafficking and commercial sexual exploitation.

- Pocs0-e Box;

POCSO e-box is a unique endeavour by NCPCR for receiving an online complaint of Child Sexual Abuse directly from the victim.

Through a well-defined procedure, complaints are directly followed up by a team which counsels the victim, providing further guidance for required legal action. Through a short animation film embedded in the e-box, it assures the victim not to feel bad, helpless or confused as it's not her fault. With the e-box, it is easy to register a complaint through a step-by-step guided process.

CCPWC (CYBERCRIME PREVENTION AGAINST WOMEN AND CHILDREN) SCHEME:

Ministry of Home Affairs had constituted an Expert Group comprising of the official/academicians from NSCS(National Cyber Security Coordinator), Ministry of Home Affairs, Indian Institute of Technology, Indian Institute of Science and IT experts to study the gaps and challenges, prepare a roadmap for effectively taking of Cyber Crime in the country and give suitable recommendations to take effective measures to prevent crime against women and children and create awareness in the society about these issues .Accordingly, a scheme for Cyber Crime Prevention against Women and Children (CCWC) has been formulated by the Ministry of Home Affairs.

Emergency Response Support System ;

Emergency Response Support System (ERSS) is the vision of Govt. of India to launch an integrated emergency response system with a single emergency number 112, to address different emergencies of citizens. ERSS is designed to address all emergency signals received from citizens through voice call, SMS, e-mail, panic SOS signal, ERSS web portal etc.

A mobile App called '112 India' is introduced by Govt. of India, to quickly raise a request for help when a person is in emergency, by pressing a button to send alert messages with location data and make emergency call to 112. This facility will aid the concerned service agencies to reach out the requestor quickly.

[Help lines provided by union government]

- **National Domestic Violence Hotline,**
- **National Human Trafficking Hotline,**
- **National Sexual Assault Hotline,**
- **Safe Helpline.**

Steps and precautions taken by Telangana state government to fight the crimes against the girl child and women:

- **HawkEye app:**

If they enable HawkEye app on their mobile, we can track a lady with their permission until they safely reach their destination. As soon as a contact is made with our app, (either directly through

HawkEye or through any other app that maybe linked to our Police Response system) the concerned person is immediately connected to our call centre. Thereon, we can closely track the caller during their transit.

- **Bharosa:**

Bharosa is an integrated multi-pronged one-stop Support Center to provide a slew of police, medical, counselling, legal and prosecution services for women and children who are victims of violence and sexual abuse. Either they or their family can get immediate assistance from multiple specialised services under a single roof for their relief, rehabilitation and protection as per the requirements.

After the Bharosa center was established, a unique Child Friendly Court was also set up by the Telangana police in consultation with the Telangana High Court on April 7, 2018. This court aims for speedy disposal of cases registered under POCSO (Protection of Children from Sexual Offenses) Act. They have identified Bharosa, Hyderabad, as the best model in the country.

- She Teams:

[PIONEERING WOMEN SAFETY INITIATIVE BY TELANGANA]

'SHE Teams' were launched on the 24th of October 2014 in Hyderabad City as part of the Telangana State Government's vision of providing a totally safe and secure environment for women within the larger concept of friendly policing. In view of the resounding success of SHE Teams in Hyderabad City, it was replicated initially in Cyberabad and thereafter in each district of Telangana from April 2015. Women Safety Wing monitors the work done by all the SHE Teams in Telangana State. At present there are 331 SHE teams working in Telangana State.

Aims of the SHE teams:

- To curb harassment of women in public places,
- To nab offenders who harass women through phone calls, messages, emails and social media,
- To render immediate police support to women and ensure their safe travel etc.

Suggestion To Improve The Implementation of protection of Girls Related Law:

- Fast Track Courts,
- Strict Punishments,
- Increase Reporting of Cases,
- Spread Awareness among girl child,
- Proper Planning,
- Active Police Department, and
- Education of girl child.

Conclusion:

Girls are the women of tomorrow and the future of the world. An educated girl will become a woman who will be aware of her rights and responsibilities and above all, becomes a bearer of hope and lasting solutions to the various economic, climatic and social crises that plague the world.

They are not just mother, sister, daughter, they are the valuable part of our society due to the important roles they play and the duties they perform as they grow.

Crimes against girls are a global phenomenon & it is a need of an hour to take steps & protect them against crimes. Its their right to live a dignified and respectable life. Only laws are not sufficient, every citizen should take a pledge to respect them. It is responsibility of every citizen to make them feel safe in our society. We should provide them a fearless society.

Hence what a girl wants today is not the treatment as superwoman of yesteryears or epics or the looking down attitudes of today but a healthy attitude; a human treatment.

A GIRL CHILD IS A COLOURFUL BUTTERFLY, LET HER GET OUT OF THE COCOON AND FLY HIGH IN TO THE SKY, THEY ARE PEARLS LET THEM SHINE AND PLEASE STOP THE CRIME.

Endnotes

1. The author is a Third year student of LLB (3YDC) at Pendekanti Law College, Hyderabad.

SCRATCH VOTE

Right to Reject

-Bodhukam Nagendra Prasad'

We grow up in a society where democracy holds a special place. Furthermore, India, without a doubt, is the biggest democracy in the world. While we have many identities apart from caste, creed, language, and region, ultimately we are all identified as Indians or Hindustanis. It is the heart and soul of India's System. The democracy in India works on the principle of political equality. It essentially means all citizens are equal before the law. There is no discrimination on the basis of religion, caste, creed, race, sect, etc. Hence, every Indian citizen enjoys equal political rights.

In a democracy, the right to vote plays an ultimate role in shaping the country's future as a superpower. This practice of exercising suffrage by citizens of the country is instrumental for a peaceful transition of power from citizens to states. Though the Right to Vote is not a fundamental right, it is the duty of citizens to cast votes empowered by constitutional rights only.

After suffering at the hands of British colonial rule, Bharat finally became a democratic nation in 1947. The first general election of independent India was held from October 1951 to February 1952, where the whole nation was enthused about how this nation was going to form a democratic and republican government without any idea about the same. But everyone's expectations were trashed out. There were nearly 1874 candidates and 53 political parties, of which 14 were national. These included the Indian National Congress, the Communist Party of India, the Socialist Party, the Kisan Mazdoor Praja Party, and Akhil Bharatiya Hindu Mahasabha, among others. It was a humongous exercise in which one-sixth of the world's population was going to vote, making it the largest election conducted in the world at the time. The election went fair and fearlessly and established India as a constitutional republic. The living culture and traditions of Bharatiyas are exemplary reasons for this achievement.

The concept of suffrage, an inalienable right to

the citizens of a nation, cannot be curtailed on the lines of caste, religion, gender, race, etc., in India as a wide concept of democracy, and we believe our mothers and sisters are equivalent to goddesses. That's the reason we personified our nation as Bharat Mata, which means in the form of a mother. India, being a progressive nation, gave suffrage to women, while other world countries were hesitant to do the same when we looked into the history of suffrage. New Zealand was the first country in the world to introduce the concept of suffrage to women in 1893, making electoral practices much more inclusive. UK, US, Germany, the 20th century, and some continued to recent years also, but still, nations like Saudi Arabia, the Middle East, and other countries are still pending.

As societies are evolving thought processes, the public is changing day by day. A remarkable piece of legislation was the 61st Amendment Act 1988, famously known as the "Adult Franchise", which lowered the age of voting from 21 to 18 years without any gender difference, which itself is a milestone decision that gave a window to young and teen blood to take part in every election, which helped in smooth mechanisation of the electoral process.

We all know, even in DPSP, that we divide the articles into 3 categories, and one of these is liberal. The liberal thought process was there in us from the initial stages. We have the chance to select our representative, but if they don't subscribe to anyone on the ballot, then what?

The elector has the right to not cast the vote because, for various reasons, let's go to one of them, that is, none of the candidates are not suitable to represent their constituency. This is one of the major reasons to pull back the vote percentage.

India installed its milestone decision in the ECI for every generation gap. In 2009, a writ petition (civil) was filed, which is a landmark case, i.e., People's Union for Civil Liberties (PUCL) v. UOI (2013). In this case, the petitioner filed a writ petition under Article 32 of the Constitution of India, challenging its constitutional validity. Rules 41(2), 4(3), and 49-

O of the Conduct of Election Rules, 1961, to the extent that these provisions violate the secrecy of voting, which is fundamental to free and fair elections and required to be maintained as per Section 128 of the Representation of the People Act, 1951.

In 2009, the case came to a bench. The respondent made an objection with regard to the maintainability of the writ petition on the ground that the right to vote is not a fundamental right but a statutory right as held in *UOI v. Association for Democratic Reforms & Ors.* (2002). Later, the petitioner pointed to the principles of secrecy of the vote and the right to vote freely and fearlessly.

There is a concept that electors decide not to vote according to the Conduct of Elections Rules, 1961 Rule 49-0. Although there is the concept of a peculiar way of casting your vote, none of the contested members gets the fruits of the franchised one, which is a valid vote. In this concept, the vote is counted in the total casting of votes, but there is no value for the caste. The idea of “none of the above” was already being exercised in the electoral systems of various countries like France, the USA, Brazil, etc.

The petitioner prayed in the writ for declaring that rules 41(2), 41(3), and 49-O of the Conduct of Election Rules, 1961, are ultra vires and unconstitutional to the extent they violate the Principle of Secrecy of Vote and also stated that the Election Commission under Article 324 should provide necessary provision in the ballot paper or electoral machines for protection and the right not to vote any and to keep the exercise of such a right under secrecy of vote.

This case led the voters to cast their vote with the intent of not being cast on any candidate, instead of expulsion or escaping from the election. This eliminates the spoiling or returning vote ballot, which gives relief to the secrecy of the vote because, in the past process, voters were identified and their ballots were marked as spoilt or returned the vote and kept in a separate packet.

Later in 2009, the Committee of Bharat was asked by the Supreme Court to supply the electors with the “None of the Above” possibility on the ballot because it exercises voters' liberty of not choosing any unworthy candidate. In the 2018 *PUCL v. UOI*

case, the Supreme Court of India judgement said, “We direct the Election Commission to provide necessary provision in the ballot papers or EVMs, and another button called “None of the Above” (NOTA) may be provided in EVMs so that the voters, who come to the polling booth and decide not to vote for any of the candidates in the fray, can exercise their right not to vote while maintaining their right of secrecy.”

India became the 14th nation to introduce NOTA. First, it was implemented in the 2013 state assembly elections, and now it has become a common electoral button in every election, where it is mentioned first and last on the ballot.

POV: I prefer and suggest casting your vote for a candidate. Coming back, I appreciate E.C. for taking a liberal step in this modernised society by introducing the concept of NOTA. Looking into the facts of the general election, which was held in 2019, the number of votes secured by NOTA was approximately 60,00,000, which means 1.04% of total votes cast. This is huge, which is almost equal. 10 parliament seats or a state government with 1 crore population.

As far as I know, the process done towards NOTA is an incomplete process. Because if the majority of people reject the candidate and give the majority to NOTA,” we all know that the second person with majority votes is elected as a representative. In my view, it is completely ultra vires and unconstitutional. Here, the majority of citizens reject all the candidates because they are unworthy. And making the second-leading candidate a public representative is also undemocratic. The E.C. must respect the people's judgement and needs to seek a solution for this. Owing to the fact that India is a democratic country, the word “democracy” means a government in which the supreme power is vested in the people directly or indirectly by involving them in an election.

The Constitution states, “India, that is, Bharath, shall be a union of states.” Let's move to the Preamble, which declares itself a Democratic Republic Nation. The Republic defines that a country's power is held by the people or the representatives that they elect. Here, only elections can fulfil these two terms: democracy and republic. A seat of the legislature cannot be vacant for any reason because each and every seat plays a key role

in forming the government, and it also violates the principle of the republic. But if you look into the theory of NOTA tops, declaring the next leading candidate as a public representative is a clear denial of the majority's choice. By obeying the majority's choice to reject all the candidates mentioned, the E.C. will take responsibility for re-election within a short period of time. Because a vacancy in the legislature is void as per the Republic,

In recent times, a PIL was filed by advocate Ashwini Kumar Upadhyay in SC to nullify election results if the maximum votes were in favour of NOTA.

The petition contended that political parties choose contesting candidates in a very undemocratic manner without consulting electors, which is why many times people in the constituency are totally discontented with candidates presented before them. "This problem can be solved by holding a fresh election if maximum votes are polled in favour of NOTA. In such a situation, the contesting candidates should be considered rejected and not allowed in the fresh election," the plea said.

"The right to reject and elect a new candidate will give the people the power to express their discontent. If voters are dissatisfied with the background or performance of the contesting candidate, they will opt for NOTA (none of the above) to reject such candidates and elect the new candidate," Plea said. "The injury caused to the public is extremely large and continues till date, as the right to reject is an integral part of Article 19, but the Centre and ECI did nothing to declare the election result invalid and hold fresh elections if maximum votes are polled in favour of NOTA," it added.

The ECI has its plenary power under Article 324 to nullify the election result, hold fresh elections if maximum votes have been polled in favour of NOTA in a particular constituency, and restrict the candidates who have participated in the invalidated election from contesting the fresh election.

The Supreme Court directed the Centre and the Election Commission on the PIL to direct the poll panel to nullify an election result and conduct a fresh poll if the maximum votes are for NOTA in a particular constituency.

The Five Principles of Democracy in India are:

secular, sovereign, republican, socialist, and democratic. These five principles have to be respected by every political party participating in the general elections in India. The party that crosses the magic figure, which means 50%+1 seats, will form the government, which represents the democratic principle. No discrimination is done on the basis of religion, which represents the secular nature of democracy. The government formed after the election has to work for the welfare of the common people, which shows socialism at play.

Coming to election polling percentage, it always differs in urban and rural areas because of the higher literacy of people. During the election, which has now become an electric mindset to skip and consider it a public holiday, let's take an example of the Serilingampally constituency, the so-called financial capital of the city where most of the income is generated. Host localities like Madhapur, Hi-Tech City, and Gachibowli are in this constituency, but it is shameful to say that the turnout vote percentage is lower than 50%, which was 48.51 in 2018 and 47.85% in 2014. Moving to the Adilabad constituency, we call it backwards in living. But they are in front to decide their representatives; the vote cast percentage is 81.68%. As you can see, there is a clear distinction between a literate urban and an illiterate rural mind-set among the people.

Huge voter turnouts are really an efficient way to strengthen democracy in India. People must avoid hesitation and come out to vote. A large voter turnout would signify a substantial involvement of the common people in Indian politics. Democracy in India is something very precious. Furthermore, it is a gift to elect patriotic national leaders to the legislatures of India. The citizens of this country must realise and appreciate the great value of democracy. The democracy in India is certainly unique in the world.

It ensures the necessity of a free, fair and fearless election. This sound vibrates with democracy. In a democracy, it is an essential right where people can elect their representatives by vote. When it comes to vote sharing, NOTA pushes the citizens to cast their vote even with an option to reject and makes a platform for expressing dissatisfaction with the candidates. This may force political parties to field better candidates and lead to political reform and

better governance. It prevents bogus votes by omitting the option for casting false votes. It maintains the fundamental rights to freedom of expression and privacy. Simultaneously, NOTA has no impact on the election outcome, and it does not address the root causes of poor candidate selection. It may be seen as a protest vote rather than a genuine attempt at reform. The NOTA option was first used in the assembly elections held in five states last year. More than 15 lakh people exercised the option in the state polls. Now it maintains the national average of 1.6%. This percentage is huge in terms of political views because many political parties lost their power with a difference of 1-2% in various elections like parliament, state assembly, municipal, and other local bodies.

So, the EC and the judiciary both have to make reforms in the case of NOTA. If NOTA gets more votes than all the candidates, then the people are clearly stating that none of these candidates is fit to serve them. In such a case, going to re-election would make NOTA potent and meaningful. The Constitution states that “the majority has no right to vote against a person's individual rights,” but here, the majority's rights are hurt by making a rejected candidate a public representative.

Suggestions regarding NOTA:

- If NOTA receives the highest vote, then re-election in that constituency shall be held within a six-month period from the date of the results.
- If NOTA receives the highest vote, and if there is no re-election, then the governor should be appointed as the ruler.
- If NOTA receives the highest number of votes, then re-election shall be held, and during re-election, the NOTA option must be disabled.
- Candidates who lost elections against NOTA should not be allowed to take part in re-elections.
- Making NOTA potent signs to achieve more ethical & moral values in elections, political parties & candidates

Endnotes

1. *The author is a second year student of LLB (3YDC) at Pendekanti Law College, Hyderabad.*

LOVE AND FUNDAMENTAL RIGHTS

- Prateep J (2/3)

Love should be like a promise similar to Article 14 - 18, promoting right to equality and non discrimination among each other and blooming more love amongst each other

Love should be like Article 19 - 22 giving you freedom to pursue your dreams and goals and still want each other

Love should be like Article 23 - 24,

Protecting you from all kinds of exploitation and giving you strength and courage to prove yourself, because love gives you wings to do great things.

Love should be like Article 25 - 28, giving you freedom of your own conscience and religion. Love is greater and the common trait of all faiths; and only love has to dwell between the two souls as one heart

Love should be like Article 28 - 30, where two people stay together by eliminating differences of faith, thereby, protecting and preserving one's identity because love is the essence of all cultures

Love should be like Article 32 through which Supreme Court protects, cares and corrects the wrongs of the government and here love should be the one which helps and motivates to be the best of the individuals

Love does not mean just being together. Rather it means there more understanding, trusting and believing each other like the core of fundamental rights, as they strive to bring the best of all us for a better tomorrow.

Tech Enhancement: Addressing the Digital Era's Impact on the mode of; Living, Confidentiality, and Ethical Standards.

-Siddhanth Rayudu and Srivarshini Reddy¹

Abstract

Flourishing technology in a wide variety of industries like business, law, education and administration has simplified workplace existence-activity. This revolution impacted human interaction and consumption of the internet and data. As the technology in commercial activities expanded, it created a platform for purchasers and distributors to accommodate their necessities over the internet. Incidentally, the digitalisation of currency simplified transactions and made it convenient for people in their day to day financial activities.

This financial shift instigates potential issues that demand regulatory frameworks for security of the digital currencies. Both, e-commerce and e-currency also made it easier to enter into e-contracts which may further give a room for invasion of privacy and sensitive information of the concerned parties.

Another pressing issue involves ethical considerations. Artificial intelligence is contrary to human intellectual capacity. Though AI Can provide validated details exactly as it is, it is incapable of independently formulating an unbiased perspective since it is the responsibility of software developers to describe the parameters and constraints within which the developed algorithm can operate. So it leads to algorithm bias.

Such issues of technology-based industries and addressing their plethora of security gaps and ethical lapses are an integral part in administering through AI generated operation systems. Cyber security is concerned about computer security, security of Information technology, data security with respect to computers and computer networks. Cyber security also copes with computer based equipment, information, services and protection from unauthorized breakthroughs, alteration and wreckage.

This article delves into the adaptability of AI in workspaces, highlighting its evolution and potential for transformation. It addresses ethical

dilemmas, existing laws, and data protection in this tech-driven world. The article also explores the evolving landscape of data protection and safeguarding personal information in a digitalized world.

Keywords: Digital currency, Artificial Intelligence, E-contracts, Data security, Algorithm bias, Cyber security, Information Technology laws.

INTRODUCTION :

In this phase of digitization, there are various technological shifts, which helped in reshaping the way we work, the way we live, and the way we interact in our day to day professional and personal lives. Adapting and harnessing these changes helps us to be efficient and competitive. As a result of technological advancements, the internet is also expanding massively. The internet has become an integral part in communication, commerce and in other abundantly diverse arenas. The mesmerizing speed of the internet, wide ranging pool of information, instantaneous global connectivity and cost effectiveness made it the most favorable communication system within just a few decades. The rise of the internet has signified the decline of traditional money. Banks have led the way in leveraging technology's potential and are perhaps the primary beneficiaries of this prominent innovation. Artificial intelligence is also a subset to technology, which produces cognitive computing solutions which are set to improve user's understanding by which the users get faster and easier personalized services. The creation of devices and systems with artificial intelligence (AI) in mind aims to mimic human intelligence. Work is progressing more efficiently thanks to AI technologies.

The advent of the internet and networked computers, often referred to as the second industrial revolution, has presented a profound challenge to legal systems worldwide. The emergence of paperless contracts, digital signatures, online transactions and cyber crimes has caught the legal world off guard and left it grappling with these new complexities. A whole new generation of crimes

called cyber crimes represents the latest category of crimes in this present evolution of the world.

The internet shift has brought with itself a new kind of crimes like deep fake creations, AI driven fraud detection evasion that mimics the legitimate user's behaviors, Cyber phishing, Cyber terrorism, and many more. The Information Technology Act of 2000 and its 2008 revision, the Intellectual Property Rights Act, telecommunications restrictions, and other laws were introduced as a result of the technological breakthroughs of the previous century.

These legislative changes addressed issues like digital evidence, digital signatures etc that were pertinent at the time. However, the current era has ushered a new set of challenges alongside its new technological progress. These challenges necessitate the creation of new laws and policies to effectively address emerging issues.

UNVEILING THE TECH TRANSFORMATION :

Many technologies are accelerating exponentially, reshaping the world and presenting both opportunities and challenges. Reflecting on the 1990's, the internet emerged as a nascent commodity, gradually expanding its accessibility to households and businesses. As we go through this apex of technological evolution, the legal landscape is also being radically influenced. For instance, the U.S. Legal Services Corporation has combined efforts to equip itself with machine learning legal portals to deliver free legal advice on civil law disputes to those who are financially incapable of appointing themselves a legal representative.

Justice is a prolonged journey, but these innovations have enhanced technology's ability to bridge gaps in the legal landscape, such as legal research, document review, speculative analysis which provides past data aiding lawyers in making rational decisions, administrative tasks which may increase overall efficiency, consequently establishing broader societal benefits that technological advancements can bring. Such advancements not only upgrade the legal services but also signify a growing synergy between technology and law, promising a future where accessibility, efficiency and productivity continues

to grow, benefiting the stakeholders or affected parties.

In addition to increasing productivity, these technological developments in the workplace have created new avenues for creative real-time communication. Since communication is a necessary tool for all human interactions on a daily basis, it has also evolved remarkably.

Coming from the days of handwritten notes and printing presses for the access and exchange of knowledge and ideas to procreation of email and social media communication platforms at the moment, courtesy to the innovation of the internet, it has been connecting people like never before. All in all, Technology is continuously reshaping how we connect. AI has also become highly proficient in human language comprehension, facilitating chatbots like ChatGPT and virtual assistants like Siri, Bixby or Alexa to grasp and respond to human language, thereby advancing communication. Further, the breakthrough of Augmented Reality (AR) and Virtual Reality (VR) has stimulated both real and virtual experiences for humans, providing consumers with a unique experience by introducing them to a whole new environment in several arenas such as education, gaming, healthcare, medical training and entertainment.

Though Communication and quantum computers are two distinct domains, yet they are interrelated. Introducing quantum computers to our world can transform communication technology unimaginably with a quicker and highly secured information exchange. These computers can be game-changers in complex subjects like Data analysis and Cryptography (both encryption and decryption).

The next big thing is quantum computing. Quantum computers will supersede conventional computers with algorithmic systems and will transform every aspect of human life, including problem-solving techniques, the economy, and our relationship with the cosmos. Every industry that could be affected by quantum computing includes banking, finance, healthcare, education, and agriculture. When quantum computing becomes more widely available and sophisticated over the next ten years, it has the potential to improve food supply chains and potentially treat incurable diseases by modeling conditions like cancer,

Alzheimer's, and other diseases at the microscopic level. They can also significantly improve cyber security, encryption, and AI algorithms. Automation will also replace manual labor and manual operations, where minimal intervention of humans is required to perform various activities to reach various objectives of mankind.

The present technological transformation is shaping the world and mankind in exceptional ways, from the convergence of technology and law, to the evolution of communications and computers, and assuring the future of quantum computing and mechanics, these advancements are facilitating a world that is more connected, accessible and efficient and this evolution also indicates a thrilling and swift transformation in this era of science and technology. As we revere these changes, we are on the verge of a new era where automation and innovation will drive progress in many sectors where mankind will be benefited as a whole.

LANDSCAPE OF FINTECH : TRANSITION IN BANKING, E-COMMERCE ,CONTRACTS & IPR:

Adopting the rapid evolution of technology, the banking sector has undergone significant transformations, incorporating innovative tools and techniques to refine the customer experience, boost operational efficiency and bolster security. A prominent withdrawal from traditional banking methods, digital banking has reshaped the engagement patterns with financial institutions and management of personal finances. Mobile payments and digital banking are other noteworthy shifts of the decade in the fiscal domain. These advancements are highly distinct from traditional banking systems. The primary perk of digital banking is the convenience it offers. With the banking apps that the banking industry has developed as part of the tech revolution, customers may access their accounts at any time, day or night, from any location in the world as long as they have an internet connection. This reduces the necessity of going to banks.

The rise of fintech companies has undoubtedly reshaped the financial sector. This progress has made banking and financial tasks highly accessible with mobile phones and the internet by providing personalized customer experiences . It is highly convenient since it provides the users an ability to

administer their finances from home or place of their business or while on the move.

In this new era of finance, the use of blockchain technology has become highly prevalent. Blockchain stands as a foundation for most of this era's financial applications. It provides a secure, transparent and efficient platform for transactions. It also enhances the user's identity verification and record-keeping which lowers the risks of fraud and manipulation. It renders a highly secure system for tamper-free data storage, offering real-time visibility into the operations. It also made cross-border transactions easier by reducing the need for multiple intermediaries which can be time consuming and making it cost-effective and eliminating time zone restrictions. Smart contracts in Blockchain technology automate transaction tasks, verifying that prerequisites are met before transferring funds, optimizing risk management and potentially minimizing disputes. It establishes a level of credibility and visibility that outshines the traditional contracts. To put it concisely, this transformation in the banking industry made day to day transactions and financial tasks more simplified.

The technological progress has brought with itself one of the most renowned and thriving trends in the monetary world in the form of cryptocurrency like Bitcoin and Ethereum. Cryptocurrency is a sort of digital currency that uses cryptography for security. It carries out its functions by decentralized blockchain technology for secured transactions, free from exploitation. They have also taken on a secondary role as non-traditional investment options for assets and investment choices. Bitcoin even came to be considered as digital gold. To put it simply, they offer diverse options apart from traditional investments like stocks and bonds.

Within the domain of blockchain technology, Cryptocurrency and Smart contracts stand as fundamental pillars. These inventions caused a remarkable disruption not only in the financial domain but also in numerous other industries as well. The synergy of digital currency and smart contracting is shaping a decentralized future of monetary affairs and contract enforcements. The rise of such technologies has led to a surge in e-commerce relying on shopping websites, banking apps and the internet. Blockchain technology has

helped in seamless and secure payment processing which is fundamental to the advancements of e-commerce. On top of that, the utility of software tools fostered fine-tuning of the supply chain. Use of Artificial Intelligence algorithms in data analytics helps analyze and assess vast and complex amounts of data on consumer behavior.

This usage empowers the businesses in decision-making, predictive assessment, optimization and risk management, upgrading the customer experience. Online marketplaces like Amazon and eBay made it convenient for distributors to connect with a broad customer base and for consumers to explore a diverse range of goods and services. Furthermore, the use of chatbots, virtual assistants and other AI driven tools ensure round-the-clock customer support. E-commerce owes its global reach to the technology, which created an environment among customers and businesses for an effortless trade across international boundaries. In this landscape, the protection of consumer data and privacy is of utmost importance. Hence, this resulted in the implementation of rigid security measures such as encryption and multi-factor authentication.

Combating counterfeit products on e-commerce platforms is an encompassing issue and IPR acts as a guardian for trademarks, ensuring that the bogus merchandise doesn't flourish in these online marketplaces. The primary focus of IPR back then was protection of physical trademarks, and tangible products such as books and inventions. It was limited to individual nations and regions which made it hard to address cross-border issues. There was a limited digital presence since the issues like online copyrights and digital piracy were less prevalent. But now, the IPR has broadened its range towards intellectual creations like software applications and algorithms, digital contents etc. To address cross-border issues and facilitate global IPR protection various international policies like the Paris convention, TRIPS (Trade Related aspects of Intellectual Property Rights) are established for global IPR protection. To conclude, IPR has broadened its reach to keep its pace with ever-changing technologies and global commerce. Its mission is to strike a balance with protection of creators' rights while facilitating access to information and encouraging innovation in this digital era.

Banking, e-commerce, smart contracts and IPR are entwined in various ways. They are interdependent in the landscape of modern business affairs. The ongoing advancements are pivotal in molding the financial realm and fuelling economic development. In today's digital economy, the intricate fusion of technology, finance and law has woven a complex web where banking, e-commerce, contracts and IPR overlap. Successfully grasping and navigating through these junctures, especially in the face of these technological shifts and unprecedented challenges, is crucial for businesses and individuals in this era.

UNMASKING THE DARK WEB : CYBER CRIMES, CYBER SECURITY AND ETHICAL DIMENSIONS OF AI :

Artificial intelligence plays an increasingly prominent role in our ever-expanding, technological driven age. As Artificial intelligence and technology become deeply embedded into our daily life experiences, we often find it involved in making decisions that have a direct impact on people's lives. For example, AI streamlines tasks in the fields like education by generating test questions, progress reporting, material organization, student admission processes and curriculum management, significantly minimizing manual efforts and time consumption. Firms are adopting AI for efficient sourcing, enhancing data integration, speeding up product development, minimizing the pricey trial-and-error trial for the same by processing huge amounts of data quickly. These scenarios explain how AI can directly or indirectly impact the individuals. The present ubiquity of artificial intelligence and technology introduces a multitude of intricate ethical challenges. Given the intertwining of AI and technology across various domains, these challenges are inevitable and multifaceted.

AI being adopted in various industries and business operations produces numerous beneficial outcomes while also presenting a myriad of ethical challenges. These ethical challenges also include concerns about data privacy and security, accountability in AI generated outcomes, transparency and explainability in AI's decisions, public trust in artificial intelligence, data ownership and intellectual property, fair competition and the need for global regulatory frameworks. Also,

because of the speed at which technology is developing and being used, children are the most vulnerable groups that might be victimized by cybercrimes. Children are most likely to be targeted for cyberbullying, identity theft, pornography or exposure to harmful content which might negatively impact on their mental health. To tackle these dilemmas effectively, it is crucial to develop frameworks for AI ethics, establish ethical guidelines and adopt responsible practices that strike a balance between innovation and conscientious usage. Achieving this requires an effort, from businesses, policymakers and society at large to ensure that AI is deployed ethically and responsibly while maximizing its potential.

SPECTRUM OF CYBER CRIMES.

Ethical dilemmas can sometimes be a contributing factor to cybercrimes. The presence of ethical dilemmas can muddle the distinctions between right and wrong, that drives some individuals into involvement in criminal acts. Establishing solid ethical frameworks and addressing ethical concerns are paramount in the promotion of responsible online behavior and the fight against cybercrimes. Cybercrimes are also called Computer Crimes. It involves the use of computers for further illegal ends, such as committing fraud, violating privacy, trafficking in pornography, deep-fake creations, stealing identities and intellectual property. Cybercrimes have occurred in the past, are currently ongoing, and continue to persist. Cybercrimes can be classified into 5 distinct categories, like Hacking, cyber phishing, social engineering, malware installation, DDoS (Distributed Denial of Service) and cyber terrorism. The cybercriminals have capability to harness the internet as a weapon by providing them with anonymity, giving them a global reach, enabling them to target victims worldwide from anywhere, inducing or tricking the victims into sharing personal information or login details or credentials, dispensing malicious software like viruses, Trojan etc ,online extortion and so on.

ONLINE BANKING FRAUDS.

Banking and UPI scams are the most prevalent cyber attacks in India. For instance, the cyber criminals impersonate banks by sending fraudulent texts or emails to the netizens asking them to click on the links and provide their account information.

In the realm of cybercrimes, phishing endeavors are similar to the art of deception, wherein malicious actors seek to manipulate individuals into disclosing sensitive bank information. In parallel, DDoS is the most commonly used for unethical actions. In 2020, The website of National Payments Corporation Of India (NCPI), which handles transactions in the country was hit by a DDoS attack, causing disruptions in online transactions. A number of banks, including HDFC Bank, ICICI Bank, and Axis Bank, experienced DDoS assaults in February 2021, which caused their online services to be unavailable for many hours.

Social engineering plays a pivotal role in these illicit activities, relying on psychological manipulation to achieve unauthorized ends. Furthermore, the unseen infiltration of malware stands as a persistent threat, infiltrating digital systems through different means.

CYBER THREATS AND SECURITY PROTOCOLS

An internet born crime Cyberstalking, is a use of the internet or any other electronic medium for stalking or harassing someone without their assent, recognized as a distinct offense under chapter XVII of the Indian Penal Code, 1860 by adding a new section i.e 354-D. Cyber terrorism, on the other hand, possesses serious apprehension as it specifically targets essential infrastructure, thereby evoking a persuasive sense of anxiety and apprehension among the general populace, cyber terrorism can be premeditated, politically motivated and results in violence.

Effectively mitigating these cyber threats obliges a collective commitment to enhanced vigilance, the cultivation of the robust Cybersecurity practices, modification of designated statues and establishment of effective policies by the law making body and resolute support for the enforcement agencies tasked with preserving the security of our digital domain. The unceasing battle of wits between the cyber attackers and Cybersecurity experts illuminates the dynamic nature of the cyber threats landscape. Cybersecurity serves as a protective shield that safeguards computer systems, devices, networks and data from unauthorized intrusion, use, disclosure, disruption, modification or destruction. It deals with the ability to control the access to the

cyber resources, or networked systems and the data they hold. It embraces a broad spectrum of tools, operational methods and practices crafted to protect digital data assuring that the information remains confidential, intact and accessible and protecting individuals, institutions and governments from the ever-present cyber threats.

The adoption of methods such as firewalls, Intrusion Detection System (IDS) and Intrusion Prevention System (IPS) which are devices and systems that keep a watch on the network security and suspicious activities, filter the incoming and outgoing network circulation, establishing an access control and automatically blocking and responding to the prospective threats. Installing Anti-Malware and Antivirus software helps in detecting and discarding the malware from devices. Alongside, encryption of sensitive data ensures that the information is indecipherable by the digital intruders. Adopting multi-factor authentication and robust passwords policies also exerts a substantial influence in access control, permitting entry exclusively for authenticated users.

The horizon of cyber security is filled with the prospect of innovation and ability to flexibly respond to emerging threats and evolving challenges. If the cyber security controls are absent, incomplete or poorly designed, cyberspace will be considered a wild west of the digital age. Cybersecurity is not solely a requirement but a resilient force that accommodates the shifting tactics of the cyber adversaries, strengthening the foundations of the digital realm and enabling trust within the interconnected society.

LEGAL SYSTEM SETBACKS : LEGISLATIVE RESPONSES OVERTIME AND THE CALL FOR NEW LAWS AND POLICIES.

In an era where innovation knows no bounds, our legal system is confronted with unprecedented challenges due to the relentless march of technology since it has given rise to new kinds of offenses. The regulation by law is more challenging in cyberspace than in real life as the law is required to unify both worlds, the virtual and the real. The technological changes have had a substantial impact on the most critical facets of the legal system, namely, evidence and jurisdiction. The

cyberspace is a boundaryless world which has become a play zone to the perpetrators, where they can commit crimes at a lightning speed and remain conspicuously away from the crime scene. The only weapon they need is a device connected to the internet. The crime world has undergone major shifts, especially its modus operandi which helps with crime identification by noticing typical patterns of the offender, investigating patterns and refining the suspects. The Internet allows the cybercriminals to maintain anonymity, posing significant challenges to the law enforcement in investigating and prosecuting these crimes as they often lack physical constraints leaving no physical proofs and evidence.

To keep the online behaviors in check, traditional laws have geared up to some extent to adapt to the shifting requirements of our digital age. The Indian Information Technology Act is the primary law in India till date, which deals with cyber crimes and e-commerce. This particular act was enacted to give legal recognition and sanctions to electronic commerce and electronic transactions . Its provisions encompass a wide spectrum of cyber crimes including data breach, unauthorized breakthroughs, Hacking, identity theft, Cyber frauds and online harassment, non-consensual transmission of explicit images, Cyber bullying, Cyber terrorism, violation of privacy, electronic records and digital signatures.

This act plays a crucial role in safeguarding digital interests and security of the individual. In conjunction with the Indian Information Technology Act, the establishment of the National Cyber Crime Reporting Portal further bolsters the nation's efforts to combat cybercrimes . This portal serves as an accessible and user-friendly platform for citizens to report various forms of cyber misconducts. It ensures the cases are swiftly documented and thoroughly investigated. Cyber appellate tribunals have been established under the information technology act, 2000 with the purpose to stop cyber crimes and digital frauds gradually. The procedures are similar to the legal proceedings and the tribunal is like a civil court for section 195 and chapter XXVI of CrPC.

The new framework for payment and settlement systems act, 2007 addresses and regulates electronic payment systems and its issues relating to financial frauds and fund transfers.

The Consumer Protection Act, 2019 has a provision for ecommerce and unfair trade practices in e-commerce marketplaces protecting the consumers from exploitation and establishing a jurisdiction for grievance redressal in the purchases and sales through the internet.

The RBI guidelines on information security, e-banking, technology risk management and cyber frauds have suggested the implementation of fine tuned and revised strategies by the banks to combat cyber attacks and create a cyber-safe environment in the banking world. The RBI guidelines on unauthorized financial transactions addressed the issue of financial frauds and the victim's role in reporting the same to limit the liability of the customers in such cases. The banks have been instructed to register the customers' contact number and e-mail IDs and make sure every transaction is notified to the customers. This makes it easier for the customers to recognize and report such unauthorized transactions to minimize the liability and get a refund.

The Digital Personal Data Protection Bill, 2022 promotes internet privacy and safeguarding information of an individual and aims to penalize the data breaches, keeps a check on cross-border data traffic and data retention.

The IT Rules, 2021 ensures the removal of unethical content from the internet which ensures the security, integrity and confidentiality. It also ensures a responsible conduct regarding the information shared on the online platforms. It restricts the netizens from sharing content that potentially jeopardizes the integrity of India or disturbs the public order, and it also prohibits the uploading of pornographic content, or content that infringes patents or IPR.

Though there was an evolution in protocols followed in order to minimize cyber attacks, the response of Indian law to various cyber crimes has been slow and meager. It is the number of such crimes which necessitates the formulation of such laws. It is important to acknowledge that while the existing legal frameworks provide essential tools for addressing cyber crimes, the ongoing rapid technological shifts in the digital landscape demand continuous evolution and the need for timely updation of laws and framing new policies. The continuous evolution of technology

underscores the imperative for ongoing legal adjustments to protect the interests and provide security for individuals and organizations for their digital privacy within its perpetual changes in the present digital domain.

In the face of an ever evolving landscape of cyber threats, a multifaceted approach is needed to protect the individuals and organizations. One of the foremost steps is to continually update our laws and regulations to keep pace with rapid advancements.

SUGGESTIONS;

- Establishing a dedicated ministry of Cybersecurity can help coordinate our national efforts. For a real life instance, the Australian government has a dedicated ministry for Cybersecurity, officially known as the Australian Signals Directorate's Australian Cyber Security Centre (ACSC) which leads the Australian government's efforts on cyber security. Implementing measures for Data localisation is another crucial approach in enhancing the users data security, this means the data collected should be stored within our own borders, which reduces the risk of data breach.
- The Parliament of the European Union has approved the first regulation on artificial intelligence: EU AI Act, the first of its kind globally which makes sure that the generated AI tools like ChatGPT will see a much greater regulatory scrutiny with tightened policies. The developers are required to submit their systems for prior review and approval before its commercial launch. This ensures that the developer is not having a malicious or selfish intent which could potentially put the citizens or government at risk of cyber crimes. Such laws must be introduced to align with the latest innovations to remain relevant and effective.
- However it is not just about laws, regulations and policies, it is also about bringing awareness among the people and organizations. We must prioritize spreading awareness, educating the people and conducting basic training programmes.

These steps equip individuals with the knowledge and skills to identify and respond to cyber threats effectively, creating a more resilient and informed digital society. The combined efforts of legal adoption, the government's commitment towards a peaceful and secure cyberspace, public education and awareness are essential to safeguard against cybercrimes and bolster against cyber security efforts.

CONCLUSION:

With the internet as a core in today's era, the technology has brought exceptional changes, from the emergence of artificial intelligence to thriving e-commerce across the world, from fintech advancements to paperless smart contracts. Despite the efficiency and connectivity brought about by these innovations, they have also spawned new challenges especially within the realm of cybercrimes. We can say that the growth of technology paved the way for criminals to commit criminal activities while escaping from legal sanctions. Adapting to the ever-evolving technological space is a persistent challenge to the

legal system and it is clear that there is a necessity for continuous introduction of new policies and innovative measures in order to safeguard individual and institutional interests. It is also the user's responsibility in building his awareness and knowledge on combat and preventive mechanisms against the potential cyber threats in the day-to-day personal and professional life.

During this era of unprecedented technological shifts, it is crucial that we strike a harmonious balance between harnessing the capabilities of technology and ensuring the security in our digital space at the same time. This could be possible with responsible usage and behavior in cyberspace. While the ongoing challenges are substantial, with continuous vigilance, cooperation and commitment to responsible innovation, we can effectively navigate this new era and we can maximize its potential for personal benefits as well as for the betterment of society.

Endnotes :

1. *Authors are 2nd year student of LLB (5YDC) of Pendekanti Law College.*

THE SAVIOUR- Laws

- *Fayza Unnisa (3/5)*

In a world consisting of everyone with flaws,
The only saviour that governs all is- the laws...

To protect humanity, ethics and principles,
The constitution contains several articles...

Imprisonment, imposing penalties, etc are the common practices,
Which the government follows to provide people with justice...

In the cycle of life, where everything is chaotic and in a circle,
Courts successfully deliver justice to all people...

People's inner demons provoke them to commit crimes in full rage,
Are hurled behind the bars and are caged...

Not only law aims at the welfare for which it had laid down several norms,
But also focuses to take a nation to the highest peak of success in all forms...

Therefore to remove all the flaws,
Everyone should be govern by the laws...

Navigating the Motor Vehicles Act in India: A Comprehensive Introduction

-Manaswini Vakulabharanam¹

Abstract

India, a land of diversified landscapes and diverse cultures, it is united by an intricate network of roads that intersect its vast expanse. In this tapestry of movement, the Motor Vehicles Act, 1988 stands as a lighthouse, guiding the nation's journey towards safer, more responsible and efficient road transportation. This abstract provides a peek into the significance and historical evolution of this transformative legislation highlighting its key provisions and significant impact on India's roads. As India continues to grow and evolve the Motor Vehicles Act remains at the heart of its transportation landscape, shaping the way its people travel the subcontinent.

Introduction

The Motor Vehicles Act stands as a testament to India's commitment to modernizing its transportation and infrastructure. Enacted more than three decades ago this legislation has evolved in response to changing times, ensuring that it continues to serve the needs of a dynamic growth and rapidly growing nation.

The Motor Vehicles Act, 1988 is aimed at consolidating and amending the law relating to motor vehicles in India and came into force on 1st July, 1989. It covers various aspects of road transport vehicles and includes provisions on licensing, registration of vehicles, control of vehicles, control of traffic, liabilities, insurance, offences and penalties for those offences. It is a comprehensive enactment with respect to various matters relating to traffic safety on the roads and the minimization of road accidents². The Act is further supplemented by the Central Motor Vehicle Rules, 1989 and enables its effective implementation.

Before we go further it is important to be aware of the following terminology/definitions under the Act:

- a) “driver” includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle³.

- b) “Driving license” is defined as the license issued by a competent authority under Chapter II authorizing the person specified therein to drive otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description⁴.
- c) “motor vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four-wheel and with engine capacity of not exceeding 25 cubic centimetres⁵.
- d) “owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardians of such minor and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under the agreement⁶.

Historical Overview

The Motor Vehicles Act in India has a significant historical background that dates back to the early 20th century. The first set of motor vehicle regulations in India was introduced under the Indian Motor Vehicles Act, 1914. This Act primarily aimed to regulate the operation of motor vehicles and ensure road safety. The Motor Vehicles Act was further revised in 1939 to address the changing landscape of road transportation. This revision introduced provisions for licensing of drivers and registration of motor vehicles. A major overhaul of the Motor Vehicles Act took place in 1988, which replaced the previous 1939 Act. The 1988 Act introduced several key provisions related to vehicle registration, driver licensing, road safety,

and penalties for traffic violations. In 2000, the Indian government introduced significant amendments to the Motor Vehicles Act, incorporating provisions for computerization and modernization of various processes, including the introduction of computerized driving licenses and vehicle registration. The Motor Vehicles (Amendment) Act, 2019, marked a major milestone in the history of the act. It introduced sweeping changes to address road safety issues, increase penalties for traffic violations, promote electric and sustainable transportation, and incorporate technology-driven solutions such as e-challans. In 2021, some states in India began implementing the amended provisions of the Motor Vehicles Act, 2019, which included higher fines for traffic violations, stricter enforcement of road safety regulations, and the promotion of digital documentation and services.

Objectives of the Act

The Motor Vehicles Act in India has several key objectives, which include:

- **Regulating Motor Vehicles:** The primary objective of the Motor Vehicles Act is to regulate the use of motor vehicles on Indian roads. It establishes a legal framework for various aspects of motor vehicle usage, including vehicle registration, licensing, and operation.
- **Promoting Road Safety:** One of the most important objectives is to promote road safety. The act sets rules and regulations to minimize accidents, injuries, and fatalities on the road. It includes provisions related to traffic rules, road signs, and safety standards for vehicles.
- **Ensuring Accountability:** The Act holds individuals accountable for their actions on the road. It defines various traffic violations and prescribes penalties for offences. This accountability is essential for maintaining order and safety on the roads.
- **Vehicle Registration and Licensing:** It lays down the procedures and requirements for registering motor vehicles and obtaining driving licenses. This helps in ensuring that

only qualified individuals operate vehicles and that vehicles meet certain safety and emissions standards.

- **Emission Control:** The Motor Vehicles Act includes provisions related to emissions and pollution control. It sets standards for vehicle emissions and mandates regular emissions testing to reduce air pollution.
- **Insurance Requirements:** The Act mandates that all motor vehicles must have valid insurance coverage. This is crucial for providing compensation in case of accidents, injuries, or damage to property.
- **Consumer Protection:** It includes provisions to protect the rights and interests of consumers. For example, it establishes rules for vehicle manufacturers and sellers to ensure the quality and safety of vehicles.
- **Public Transportation:** The Act also covers regulations related to public transportation, including buses, taxis, and commercial vehicles. It sets standards for passenger safety and service quality.
- **Promoting Sustainable Transportation:** In recent amendments, the act has shown an increased focus on promoting sustainable and environmentally friendly transportation modes, such as electric vehicles and public transport.
- **Integration of Technology:** The Motor Vehicles Act has been updated to incorporate technology-driven solutions for various processes, such as online services for vehicle registration, licensing, and the issuance of e-challans for traffic violations.

In summary, the Motor Vehicles Act in India has multifaceted objectives, with a primary focus on road safety, regulation of motor vehicles, accountability, and ensuring that the transportation system is safe, efficient, and environmentally responsible.

Key Provisions:

Now let's look into some key provisions of the Motor Vehicles Act, 1988:

- **Section 3 of the Motor Vehicles Act, 1988**

Necessity of driving license: The section 3 of the Motor Vehicle Act, 1988 mandates that, no person can operate a motor vehicle in a public place without possessing an effective driving license that authorizes them to drive the specific type of vehicle they intend to operate.

Transport vehicles used for hire or reward can only be driven by individuals whose driving licenses specifically permit them to do so.

Exceptions to the requirement of holding a driving license include persons receiving instructions in driving under the provisions of Section 8 mentions the Grant of Learner's license it specifies the eligibility criteria for obtaining a learner's license, the validity period of the license and the procedure for obtaining the license or Section 9, mentions the Grant of license, it specifies the eligibility criteria for obtaining a driving license, the procedure for obtaining the license, and the form and contents of the license. This section is fundamental in ensuring that only qualified individuals with the necessary driving skills and permissions are allowed to operate motor vehicles on public roads, contributing to road safety and responsible driving behavior.

- **Section 4 of the Motor Vehicles Act, 1988**

Age limit in connection to driving license: The section 4 of the Motor Vehicles Act, 1988 specifies that, no person under the age of eighteen years can drive a motor vehicle in any public place. However, there is an exception for motor cycles with an engine capacity not exceeding fifty cubic centimeters, which may be driven by a person after attaining the age of sixteen years.

A licensing authority may grant a driving license for motor cycles with an engine capacity not exceeding fifty cubic centimeters to a person who has completed the age of sixteen years, subject to conditions imposed by the authority.

Persons at least twenty years of age who hold a driving license to drive a transport vehicle and have the prescribed experience may drive such transport vehicles of the specified class or description at any place in India.

These age limits are essential to ensure that

individuals meet certain maturity and skill requirements before being eligible to drive particular categories of motor vehicles, contributing to road safety and responsible driving practices.

- **Section 39 of the Motor Vehicles Act, 1988**

Necessity for registration: The section 39 of the Motor Vehicles Act, 1988 specifies that, no person can drive any motor vehicle on public roads or any other place unless that vehicle is registered in accordance with the provisions of the Act, and the vehicle displays a registration mark as prescribed.

Vehicle owners are responsible for ensuring that their vehicles are registered, and they should not permit an unregistered vehicle to be driven on public roads. Compliance with this section is essential to ensure that motor vehicles are properly registered; thereby enabling authorities to keep track of vehicles, enforce safety standards, and maintain order on the roads.

- **Section 66 of the Motor Vehicles Act, 1988**

Necessity for Permits: The section 66 of the Motor Vehicles Act, 1988 specifies that, a permit is necessary for the use of a motor vehicle as a transport vehicle in any public place. This requirement applies to vehicles used for hire or reward, such as commercial vehicles.

The provisions of sub-section (3) of section 66 of the Motor Vehicles Act, 1988 states that the provisions of sub-section (1) shall not apply to any transport vehicle owned by the central government or a state government and used for government purposes which are not connected with any commercial purposes.

This section is important for regulating the use of motor vehicles for commercial purposes, ensuring that vehicles intended for hire or reward are appropriately permitted and adhere to safety and licensing requirements.

- **Section 177 of the Motor Vehicles Act, 1988**

General provisions for Punishments of offences: The section 177 of the Motor Vehicles Act, 1988 specifies that, if a person violates any provision of the Act, any rule, regulation, or notification made

under the Act, and no specific penalty is provided for that violation elsewhere in the Act, that person may be punishable as follows:

→For the first offence, a fine not exceeding five hundred rupees (₹500).

→For any second or subsequent offence, a fine not exceeding one thousand five hundred rupees (₹1500).

Section 177 provides a general framework for imposing fines or penalties for offences not covered by specific sections of the Motor Vehicles Act. These fines are relatively modest and are intended to serve as deterrents for minor traffic violations or administrative lapses not addressed by more specific provisions in the Act. Specific offences with higher penalties are covered under other sections of the Act.

- **Section 180 of the Motor Vehicles Act, 1988**

Punishment for permitting an unauthorized person to drive a motor vehicle: The section 180 of the Motor Vehicles Act, 1988 specifies that, If the owner or person in possession or control of a motor vehicle allows or permits any person to drive the vehicle when that person does not possess a valid driving license authorizing them to drive, the owner or person in charge can be punished as follows:

→For the offence, may be punishable with fine not exceeding five thousand rupees (₹5,000) or shall be punished by imprisonment for a term which may extend to three months or with both.

This section is important for ensuring that vehicles are driven only by individuals who hold valid driving licenses, promoting road safety and responsible driving practices. It places the responsibility on vehicle owners and those in control of vehicles to verify the eligibility of the driver before allowing them to operate the vehicle.

- **Section 185 of the Motor Vehicles Act, 1988**

Punishment for drunken driving: The section 185 of the Motor Vehicles Act, 1988 specifies that, if a person is found driving or attempting to drive a motor vehicle in a public place with a blood alcohol

level exceeding thirty milligrams per one hundred milliliters of blood, as detected in a breath analyzer test, they shall be punished as follows:

→For the first offence, imprisonment for up to six months, or a fine up to ten thousand rupees (₹10,000), or both.

→For a second or subsequent offence committed within three years of the previous similar offense, imprisonment for up to two years, or a fine up to fifteen thousand rupees (₹15,000), or both.

If a person is found driving under the influence of a drug to the extent prescribed by the Central Government, they will be deemed to be driving under the influence.

Section 185 is aimed at deterring individuals from driving while under the influence of alcohol or drugs, which poses a significant risk to road safety. Violations of this section can result in legal consequences, including fines and imprisonment.

Amendments

The act of 1988 has been amended several times to cater for changed circumstances and to keep the law relating to motor vehicles up to date. The Motor Vehicles (Amendment) Act, 2019 is one of the major amendments to the Act and it ushered in some significant changes some of which are as follows:

- a) To ensure road safety, penalties have been increased and stringent provisions have been incorporated for offences like drunk driving, speeding driving without a license, etc.
- b) The act provides for the creation of a national road safety board, which will advise the central and state government on aspects of road safety traffic management, registration, licensing of motor vehicles and formulation of standards for road safety⁷.
- c) The act introduces the scheme of Golden Hour under which cashless treatment will be provided to victims of accidents during the golden hour.
- d) The act defines good Samaritans and provides protection to them from any civil or criminal action for any injury to or death of the victim of

an accident while rendering emergency medical or non-medical care or assistance⁸.

The following are the penalties under New Motor Vehicle Act, 2019:

Penalties under Motor Vehicles Amendment Act, 2019

The Motor Vehicles Act (MV Act) in India has had a significant impact on road safety in the country. The

Sr. No	Violation	New penalty from September 2019
1.	Driving/ Riding without license	₹5,000 and/or community service.
2.	Driving/Riding under the influence of an intoxicating substance	₹10,000 and/or 6 months prison ₹15,000 and /or 2 years jail for the repetitive violation.
3.	Overspeeding	Light motor vehicle: ₹1,000- ₹2000MPV/HPV: ₹2,000- ₹4,000 (+license seizure).
4.	Driving without a seat belt	₹1,000 and/or community service.
5.	Driving/Riding without insurance	₹2,000 and/or 3-months prison, community service ₹4,000 for a subsequent offence.
6.	Violating road regulations	₹500- ₹1000
7.	Dangerous driving/riding and jumping red light	₹1,000- ₹5,000 and/or 6-months to 1 year in prison, license seizure.
8.	Driving/Riding while on the mobile (handheld)	₹5,000
9.	Speeding, Racing	₹5,000 and/or 3-months prison, community service ₹10,000 for subsequent violation and up to 1 year in prison, community service.
10.	Not giving way to emergency vehicles like ambulances, fire engines, etc.	₹10,000 and/or community service.
11.	Riding without Helmet (rider and pillion rider)	₹1000, and or license disqualification, community service for 3 months.
12.	Overloading Two-Wheelers	₹2,000 and license disqualification and/or 3 months of community service.
13.	Juvenile Offences	₹25,000 with 3 years prison, cancellation of registration for 1 year, juvenile ineligible for a license until 25 years of age.

14.	Driving/Riding despite disqualification	₹10,000, and/or community service.
15.	Overboarding Passengers	₹200 for every extra passenger and/or community service.
16.	Driving/Riding without ticket	₹500
17.	Offences committed by enforcing authorities such as offering bribes	Twice the penalty (varies according to traffic rules violated).
18.	Unauthorized use of vehicles without a license	₹1,000- ₹5,000
19.	Disobedience of orders of the authorities	₹2,000
20.	Vehicles without permit	₹10,000 and/or up to 6 months prison, community service.
21.	Oversized Vehicles	₹5,000 to ₹10,000 and/or community service.
22.	Overloading	₹20,000 + ₹2,000 for every extra ton and/or community service.
23.	Driving/Riding without a license (for aggregators)	₹25,000 to ₹1,00,000
24.	Driving/Riding without registration	₹5,000 ₹10,000 for a subsequent offence.
25.	Using a horn in the silent zone	₹2,000 ₹4,000 for a subsequent offence.

Impact of the Act on Road Safety

act contains various provisions and amendments aimed at improving road safety by regulating motor vehicles and traffic, imposing penalties for violations, and promoting responsible driving behaviour. Here are some of the ways in which the MV Act has influenced road safety:

- **Deterrence through Penalties:** The MV Act, particularly after the 2019 amendments, increased fines and penalties for various traffic violations. This increase in penalties serves as a deterrent, discouraging reckless driving, speeding, drunk driving, and other dangerous behaviours.
- **Stricter Licensing Standards:** The act sets minimum age limits for obtaining driving licenses, ensuring that individuals have reached an appropriate level of maturity before they can drive. It also mandates proper training and testing for license applicants, which helps ensure that drivers are adequately skilled.
- **Road Rules and Regulations:** The MV Act contains provisions that define road rules and regulations, including rules for overtaking, right of way, and obeying traffic signals. These rules promote safe driving practices and reduce the risk of accidents.
- **Traffic Management:** The act empowers traffic police and authorities to enforce traffic rules and manage traffic flow

effectively. This helps in reducing congestion and accidents at intersections and on highways.

- **Compulsory Insurance:** The requirement for third-party insurance coverage, as mandated by the MV Act, ensures that accident victims receive compensation for their injuries and losses. This reduces the financial burden on victims and their families.
- **Good Samaritan Protection:** The act provides legal protection to Good Samaritans who come to the aid of accident victims. This encourages people to assist in emergencies without fear of legal repercussions and helps provide timely medical assistance to accident victims.
- **Promotion of Road Safety Awareness:** The MV Act emphasizes the importance of road safety awareness programs and campaigns. These initiatives help educate the public about safe driving practices, seat belt usage, helmet-wearing, and the dangers of drunk driving.

While the MV Act has made significant strides in improving road safety in India, it is essential to recognize that challenges remain, including issues related to enforcement, public awareness, and infrastructure. Continued efforts in enforcing regulations, educating the public, and investing in road infrastructure will be crucial in further enhancing road safety across the country.

Benefits and Achievements of the Act

The Motor Vehicles Act (MV Act) in India, with its various provisions and amendments, has brought about several benefits and achievements in the realm of road safety, transportation, and traffic management. Here are some of the key benefits and achievements associated with the MV Act:

- **Protection of Accident Victims:** The MV Act mandates compulsory third-party insurance coverage, ensuring that accident victims receive compensation for their injuries and losses. This helps alleviate the financial burden on victims and their families.

- **Stricter Licensing Standards:** The act has laid down stricter eligibility criteria for obtaining driving licenses, including age requirements and skill testing. This ensures that individuals have the necessary skills and maturity to operate motor vehicles safely.
- **Traffic Management:** The MV Act empowers traffic police and authorities to enforce traffic rules and manage traffic flow effectively. This has led to better traffic management, reduced congestion, and improved road discipline.
- **Promotion of Sustainable Transportation:** The act encourages sustainable transportation options, such as electric vehicles (EVs), by providing incentives and setting emissions standards. This contributes to reduced air pollution and decreased dependence on fossil fuels.
- **Recognition of E-Rickshaws and E-Carts:** The MV Act officially recognizes electric rickshaws (e-rickshaws) and e-carts as legitimate modes of transport. This not only promotes eco-friendly transportation but also provides employment opportunities.
- **Good Samaritan Protection:** The act provides legal protection to Good Samaritans who come to the aid of accident victims. This encourages bystanders to assist in emergencies, leading to quicker medical attention for those in need.
- **Digitalization and Efficiency:** The MV Act promotes the use of technology for various services related to driving licenses, vehicle registration, and the issuance of electronic documents. This streamlines processes, reduces corruption, and improves overall efficiency.
- **Standardization of Vehicle Emissions:** The act includes regulations related to vehicle emissions and pollution control, which helps reduce air pollution and its impact on public health.
- **Harsher Penalties for Juvenile Offenders:** In

cases involving juvenile offenders, the act holds the vehicle owner (usually a parent or guardian) responsible, promoting greater vigilance in supervising young drivers.

Overall, the MV Act in India has contributed to significant improvements in road safety, reduced traffic violations, and promoted responsible driving behaviour. It has also encouraged the adoption of environmentally friendly transportation options and facilitated the efficient use of technology in transportation-related services. However, continued efforts are required to address challenges and further enhance road safety and transportation in the country.

Landmark Judgments

- In the case of *Oriental Insurance Co. Ltd. V. Sudhakaran, K. V.*⁹, the deceased Thankamani, was travelling as a pillion rider on a scooter when she fell down and succumbed to the injuries. In terms of section 147 of the Motor Vehicles Act, 1988, it is imperative for the owner of a vehicle to take a policy of insurance in regard to reimbursement of the claim to a third party while it is permissible for the owner to take a policy which may cover himself from other risks. Since in the instant case, the contract of insurance covered the risk of a third party only, the question before the court was whether the pillion rider on a scooter would be a third party within the meaning of section 147 of the 1988 Act. Holding that the pillion on a two-wheeler was not to be treated as a third party when the accident had taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle, the Apex court held that the legal obligation arising under section 147 of the Act, 1988, could not be extended to an injury or death of the owner of the vehicle or the pillion rider. The court further said that the provisions of the act and, in particular section 147 of the act were enacted for the purpose of enforcing the principles of social justice. “It, however must be kept confined to a third-party risk”, the court ruled. A contract of insurance which is not statutory in nature, should be constructed like any other contract, the court said.

- In case of *New India Assurance Co. Ltd v Prabhu Lal*¹⁰ the vehicle in question being in the category of transport vehicle, was driven by one Ram Narain, having a license to drive light motor vehicles, could not have driven the vehicle in question. It being so, the apex court held that the appellant was not liable for the accident caused by the said vehicle. However, the claimant's right to compensation would not be affected by the fact that the driver was driving without a driving license.

Challenges faced by the Act

The Motor Vehicles Act in India, like any complex legal framework, faces several challenges in its implementation and enforcement. These challenges can vary from administrative issues to societal factors. Here are some of the key challenges faced by the Motor Vehicles Act in India:

- **Weak Enforcement:** One of the significant challenges is the inconsistent enforcement of traffic rules and regulations across different regions of India. In some areas, strict enforcement may be lacking, leading to a culture of non-compliance.
- **Corruption:** Corruption among law enforcement officers and officials involved in the implementation of the MV Act can undermine the effectiveness of the law. Bribes and irregularities in the issuance of licenses or permits can compromise road safety.
- **Public Awareness:** Many citizens may not be fully aware of the traffic rules and regulations specified in the MV Act. Lack of awareness can lead to unintentional violations and a disregard for safety measures.
- **Inadequate Infrastructure:** India's road infrastructure, including signage, signals, and roads themselves, may not always meet the necessary standards. Poorly designed or maintained roads can contribute to accidents and traffic violations.

- **Outdated Penalties:** The fines and penalties specified in the MV Act may not always align with the economic realities of the population. Some argue that extremely high penalties may be impractical for many individuals, leading to resistance against enforcement.
- **Inconsistent Implementation of Penalties:** The sudden and steep increase in penalties for traffic violations introduced by the 2019 MV Act amendments faced resistance and non-compliance in some states. Some state governments have chosen to reduce the penalties, leading to inconsistency in implementation.

Conclusion

In conclusion, the Motor Vehicles Act (MV Act) in India stands as a crucial piece of legislation that governs various aspects of motor vehicle usage, road safety, and transportation management. It has evolved over the years to address the changing landscape of road transportation and to address challenges related to safety, emissions, and sustainable mobility.

The MV Act plays a pivotal role in shaping India's transportation ecosystem by setting standards for driving, vehicle registration, traffic management, and more. It seeks to strike a balance between promoting road safety, protecting the rights of

consumers, and encouraging the adoption of environmentally friendly transportation options.

As India continues to grapple with the complex task of ensuring safe and efficient road transportation, the MV Act remains a cornerstone of these efforts. It serves as a roadmap for shaping the future of transportation in the country, promoting responsible driving behavior, and ultimately contributing to the well-being and safety of all road users.

Endnotes :

- 1) *Author are 3rd year student of LLB (5YDC) of Pendekanti law College, Hyderabad.*
2. *Common cause (A Registered society) v. Union of India, A.I.R 2008 S.C 116*
3. *The Motor Vehicles Act, 1988, § 2(9), No. 59, Acts of Parliament, 1988 (India)*
4. *The Motor Vehicles Act, 1988, § 2(10), No. 59, Acts of Parliament, 1988 (India)*
5. *The Motor Vehicles Act, 1988, § 2(28), No. 59, Acts of Parliament, 1988 (India)*
6. *The Motor Vehicles Act, 1988, § 2(30), No. 59, Acts of Parliament, 1988 (India)*
7. *The Motor Vehicles Act, 1988, § 251B, No. 59, Acts of Parliament, 1988 (India)*
8. *The Motor Vehicles Act, 1988, § 134A, No. 59, Acts of Parliament, 1988 (India)*
9. *Oriental Insurance Co. Ltd. V. Sudhakaran K.V. A.I.R. 2008 S.C. 2729*
10. *New India Assurance Co. Ltd. V Prabhu Lal A.I.R. 2008 S.C. 614*



ATTORNEY AND CLIENT; FORTITUDE AND IMPATIENCE.

BOOK TALK

THE CASES THAT INDIA FORGOT

-Nallamalli Divya Sree (3/3 LLB)

About the author

Dr Chintan Chandrachud is an associate in Quinn Emanuel's London office. His practice deals with complex commercial litigation, tax litigation and international arbitration. He is also the author of *Balanced Constitutionalism: Courts and Legislatures in India and the United Kingdom*. He is the son of Dhananjaya Chandrachud, the Chief Justice of India.

Critical Acclaim

Fali S Nariman, an eminent Jurist and former Additional Solicitor General of India commented that this book is more readable than the judgments of courts, with well-told stories.

Harish Salve, former Additional Solicitor General of India, stated that the author had wisely selected forgotten cases that held contemporary relevance and presented them in a manner that identified both the strengths and weaknesses of the Courts.

Brief of the book

It takes us behind the scenes and tells us the stories of ten extraordinary and dramatic legal cases from the 1950s to the present day that have all faded from public memory. It paints an unexpected picture of the Indian Judiciary - the courts are not always on the right side of history or justice. Simply it gives a penetrating look into the functioning of Indian Institutions.

Overview of the book

This book provides a simplified summary of ten significant cases to encourage people's interest in

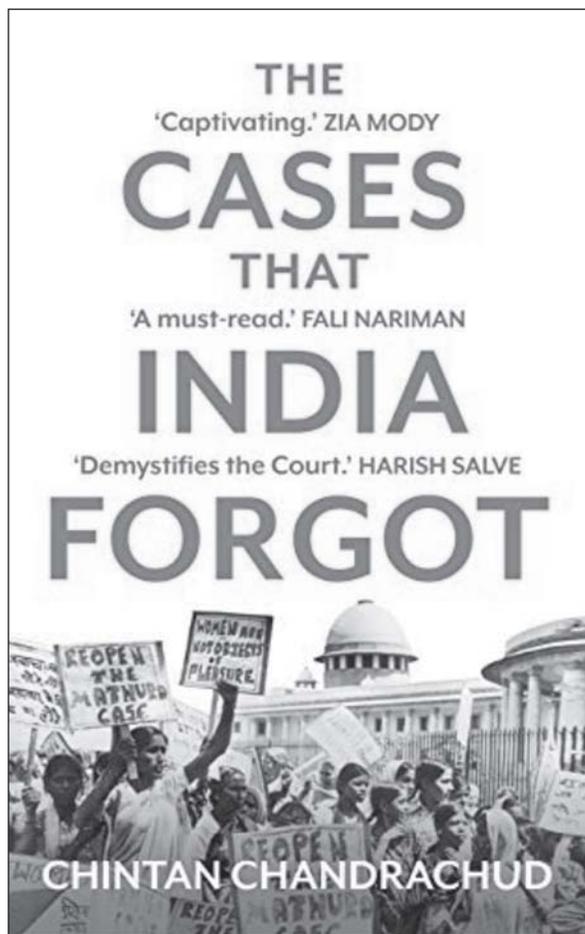
law specifically in the Constitution. The summary is not just a translation of the events in a factual manner but includes the narrative of what happened before and after these cases, to help understand their relevance. The cases in this book are segregated into four themes. They are politics, gender, religion, and national security.

Theme 1 - Politics

1. **Keshav Singh** Case the question of 'Can a state legislature imprison a critic and summon a high court judge to appear before the assembly' is answered. The situations that led to this judgement were explained and reasons for not codifying the parliamentary privileges were given. This case is worth remembering to demonstrate how easily constitutional institutions can turn against one another and, equally, how difficult problems are best solved through statesmanship rather than brinkmanship.

2. **In Minerva Mills v. Union of India**, the author narrated the judges' reasons for arriving at this judgement. He explained that 'amendment' could not mean replacement with a practically new and different constitution and how it

damaged the balance of power between the judiciary and Parliament—also mentioned how Nani Palkhiwala used this case as a platform to challenge the Emergency Era amendment to the constitution by stating the argument, 'donee of a limited power cannot, by the exercise of that very power, convert the limited power into an unlimited one'.



3. *Rameshwar Prasad v. Union of India* offers a heady combination of high political drama and significant questions of constitutional law. The case and the circumstances surrounding it involve no less than two state elections, midnight phone calls to Moscow, two Supreme Court decisions (one of them under five pages, the other close to five hundred), resignations and near-resignations and hideaways in Jamshedpur.

Theme 2 - Gender

1. *In Tukaram v. State of Maharashtra*, the author explained how this case involved a colossal failure of public institutions including not just the police and the lower judiciary but also the Supreme Court. Lower judiciary acquitted the persons accused of rape on the fact that there are no signs of a physical struggle, resistance, screams or protest. Later the High Court noted that there would be a difference between consent and 'passive submission'. The Supreme Court rejected the High Court's reasoning. This judgement was highly criticised by people all over the world and discussed legal, political and social aspects of rape. The author narrated the journey of 11 years of numerous protests and law commission reports that paved the way for legislative amendments in the aftermath of this case.

2. *R.D. Bajaj v K.P.S. Gill*, author explained 'Why did the Punjab Police organise a band to celebrate the defeat of the state in a case of sexual harassment'? In 2005 a senior civil servant (Rupan Deol) quest for justice finally came to a close. The Supreme Court confirmed the conviction of K.P.S.Gill, the 'supercop' who ended the militancy and Khalistan separatist movement in Punjab. It involved no less than eight judgements over seventeen years; decisions by several senior judges; complaints to bureaucrats, by bureaucrats, against bureaucrats; and claims of government secrecy and privilege. The legacy of this case remained highly contested.

Theme 3 - Religion

1. *State of Madras v. Champakam Dorairajan*
The author utilises this case to explain to the reader how the State managed to pass the First

Amendment of the Constitution to permit caste-based reservations. However, the Supreme Court decision influenced constitutional doctrine long after the provisional Parliament effectively overturned it. The idea that reservations are an exception to, rather than a facet of, the right to equality enshrined in the Constitution persisted. This established and deepened the vocabulary of binaries - such as 'reservations versus merit' - that should never have existed. Seventy years on, Dorairajan continues to cast its long shadow.

2. *State of Bombay v. Narasu Appa Mali* The author explains the question, are religion-based personal laws above fundamental rights? This case is unique in its way as the judgement of the Bombay High Court continues to exert a significant influence on religion and personal law in India. This judgement effectively made all uncodified personal law immune from fundamental rights under the Constitution. Yet the ultimate overruling of Narasu would be of some substantive, and tremendous symbolic, significance. The quest to establish the true meaning of constitutional supremacy would take us some distance.

Theme 4 - National Security

1. *Katar Singh v. State of Punjab*, author analyses that threats to national security, whether real or imagined, are often a trump card for governments around the world. National security can often be a cover for a multitude of sins. This case helps us understand the trajectory of the Terrorists and Disruptive Activities Act (TADA) and what led to its non-renewal. Ten years and tens of thousands of cases later, TADA was finally no longer in force. This case set the tone for continuing judicial deference to laws enacted in the name of national security.

2. *Naga People's Movement of Human Rights v. Union of India*, this judgement offers yet another example of the Supreme Court abdicating its responsibility to protect fundamental rights when the question of national security arrives. Following a 15-year wait for the case involving the

constitutionality of the Armed Forces Special Powers Act(AFSPA) to be decided, the inhabitants of North East discovered that the more things changed, the more they remained the same. The AFSPA itself, however, remains on the statute book despite its legitimacy having been chipped away.

3. **Nandini Sundar v. State of Chattisgarh**, the last case in this book reveals the limits of the impact and influence of courts. A state-sanctioned armed civilian movement continued to thrive nearly a decade after being declared unconstitutional by the Supreme Court. A combination of political manoeuvring, litigation strategy and judicial

delays have conspired to ensure that compliance with the court's judgement has been only in name.

Conclusion

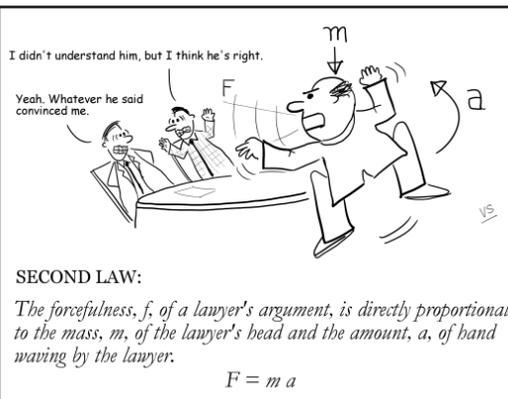
This book does not try to glorify the legacy of the Supreme Court but instead gives an insight into the reality concerning the failures and compulsions of the courts. In the postscript, the author mentioned that he questioned himself, 'Are these cases an exception rather than a norm'? Each of the cases in this book will leave not only with something to remember but also much to reflect on and question.

NEWTON'S THREE LAWS OF LAWYERING



FIRST LAW:

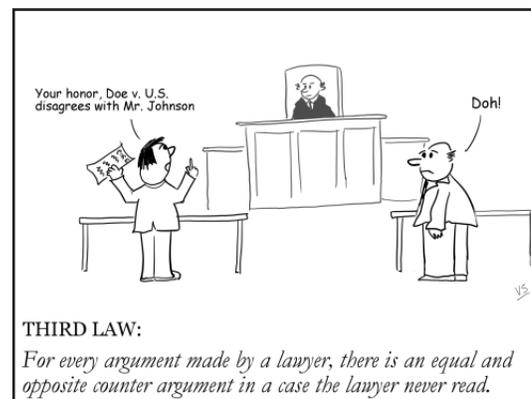
A lawyer making an argument tends to keep arguing unless his angry client stops paying him.



SECOND LAW:

The forcefulness, f, of a lawyer's argument, is directly proportional to the mass, m, of the lawyer's head and the amount, a, of hand waving by the lawyer.

$$F = m a$$



THIRD LAW:

For every argument made by a lawyer, there is an equal and opposite counter argument in a case the lawyer never read.

Legal Terms - 2

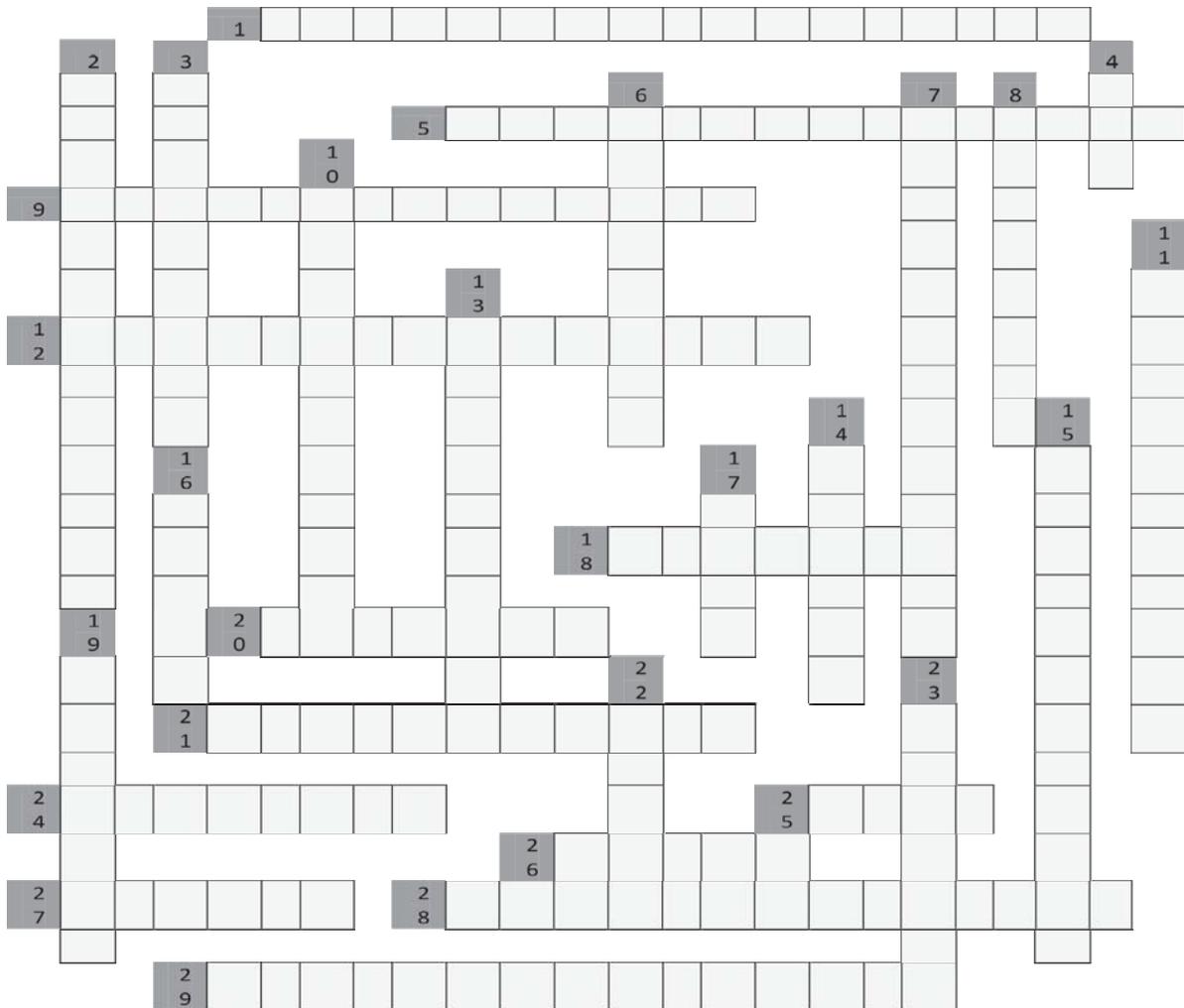
-Y Mounika (2/5)

X	S	W	T	C	O	N	J	U	G	A	L	R	I	G	H	T	S	D	F	H	J	L
B	E	C	L	A	I	M	A	N	T	H	N	K	O	M	N	A	L	I	R	S	G	M
P	G	D	L	C	G	T	B	N	B	Q	S	Y	T	R	E	A	S	O	N	W	H	N
A	B	S	F	O	R	G	E	R	Y	E	R	O	G	K	N	C	F	M	D	L	B	C
H	O	P	A	D	I	V	U	H	B	A	B	R	E	S	T	I	T	U	T	I	O	N
R	G	H	L	B	P	L	A	B	E	T	M	E	N	T	C	R	I	C	P	E	Y	Q
Q	N	A	L	L	E	G	A	T	I	O	N	S	D	M	A	G	H	Y	A	B	L	A
E	R	O	P	W	R	T	A	S	A	G	E	M	S	T	P	R	O	B	A	T	E	Y
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V	A	R	F	A	L	S	E	I	M	P	R	I	S	O	N	M	E	N	T	W	A	Z
S	L	A	N	S	A	C	C	O	M	P	L	I	C	E	F	R	A	N	S	C	I	O
A	O	S	D	F	G	H	J	K	L	L	D	E	F	A	M	A	T	I	O	N	S	I
S	D	L	S	W	E	R	T	W	A	R	R	A	N	T	N	O	Y	D	A	O	T	J
Z	X	C	A	B	R	O	G	A	T	E	R	V	A	R	A	S	E	S	S	M	M	D
A	G	W	E	T	A	S	D	F	H	K	G	M	A	L	I	C	E	E	T	K	R	E
C	V	B	N	M	I	J	T	C	O	E	R	C	I	O	N	T	R	R	U	S	S	G
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Q	W	E	R	S	E	J	E	C	T	M	E	N	T	T	Y	O	U	S	B	N	A	S

- | | | |
|--------------------|------------------------|---------------|
| 1. CONJUGAL RIGHTS | 10. ADEMPITION | 19. ABROGATE |
| 2. CLAIMANT | 11. CULPRIT | 20. MALICE |
| 3. TREASON | 12. SUBJUDICE | 21. SOLATIUM |
| 4. FORGERY | 13. ENCROACHMENT | 22. COERCION |
| 5. RESTITUTION | 14. EXTORTION | 23. PARDON |
| 6. ABETMENT | 15. FALSE IMPRISONMENT | 24. DEPONENT |
| 7. PROBATE | 16. ACCOMPLICE | 25. EJECTMENT |
| 8. CAVEAT | 17. DEFAMATION | |
| 9. COUNTERFEIT | 18. WARRANT | |

CROSSWORD 2

K. V. Satya Savitri (2/3 LLB)



CLUES

Across

1. Hear the other side too
5. The thing speaks for itself
9. Reason for the decision
12. With necessary changes
18. On its own motion
20. Proceedings in the absence of the other party
21. Right of a party to an action to appear and be heard by the court
24. Right against the world at large
25. Ban or order not to allow something to become law, even if it has been passed by a parliament
26. As if
27. Doing away with a law so that it is no longer valid
28. Of the same class, or kind
29. The act is punishable, and no proof of damage is required

DOWN

2. Utmost good faith
3. The law concerning the third
4. Law or right
6. Spoken, defamatory words because they have a double meaning
7. As much as it deserves; as much as she or he has earned
8. To break law/right
10. Incapable of crime
11. A gratuitous or bare promise devoid of any consideration
13. Beyond the powers
14. Minimum number of people who have to be present at a meeting to make it valid
15. Goods without an owner
16. At another time, otherwise
17. Nullity in the eyes of law
19. An offence of giving a false statement before the court, which a person knows to be false
22. Connection
23. Tort of wrongfully holding goods which belong to someone else

ALUMNI TESTIMONIALS

Learning is a never-ending process and education is an integral part of learning. Nelson Mandela, a renowned world leader and Statesman once said ***“Education is the most powerful weapon which you can use to change the world.”*** This quote influenced me a lot and after starting preparation for the Civil Services Examination, I understood its true meaning. During the process of this preparation, I have started learning to draft various petitions with my father and guru in order to get good command over the English Language along with articulation of words in order to refine my skills in speaking and writing. This helped me in interpreting and understanding various aspects of Law after which I have started developing more interest in the subject of Law. This inquisitiveness over this subject led me to join LL.B., at first to learn the subject and to understand the intricacies in it.

For this, I needed an Institution that could quench my thirst for acquiring this knowledge and I was fortunate enough to get admitted into LL.B., 3 YDC (2020 - 2023) batch at a renowned Institution like Pendekanti Law College. The Principal, faculty members and all other staff of the college were very encouraging and always had the positive attitude of not only helping the students academically but also in developing proper personalities to become promising lawmen. The manner in which we were taught the law subjects, both practically and theoretically, was astounding and this helped me in understanding various subjects of Law including but not limited to Constitutional Law, Law of Contracts, Jurisprudence, Crimes and Torts, ADR and Company Law. This training completely changed my perception of Law and legal profession and helped me in understanding the real meaning and character of an Advocate and the concept of Advocacy.

It is pertinent to note that the alumni of Pendekanti Law College got into Judicial services as well and are serving as Judges, Magistrates and even High Court Judges. It is appropriate to mention here the quote of Swami Vivekananda that “Education is the manifestation of perfection already in man” and I sincerely believe that PLC has been that medium for me and pushed me a step forward in that direction to achieve that perfection and I also believe that the future alumni of this college will also be on the road of achieving those higher echelons of human excellence. PLC has given me such a kind of confidence, knowledge and education that made me further stick like an adhesive to my decision of choosing advocacy as my profession. I am thankful and grateful to this August institution.

- Poondla Siva Durga Sai Kaartheik (2020- 2023)

Over the course of five years at this college, my journey has been nothing short of a remarkable blend of experiences. From the enlightening lectures that expanded my knowledge to the engaging classes, riveting seminars, and competitive moot competitions, it was a captivating academic adventure. The transition from the serene library to the bustling parking lot, and the balance between maintaining class discipline and sharing moments of laughter and camaraderie with friends, all contributed to our holistic growth.

I take this as an opportunity to convey my profound gratitude to the dedicated lecturers who not only possess a deep passion for teaching but also bring a wealth of experience to the classroom. Their exceptional communication skills have not only enriched our education but have also made them wonderful friends and mentors. This college has been instrumental in shaping me into the well-rounded individual I am today.

- Surabhi Kakkad (2018-2023)

College was a rigorous yet rewarding journey that sculpted my legal mind and cultivated resilience. From navigating case law to engaging in mock trials, the experience was a crucible of learning and growth. The friendships forged and skills honed during those years continue to shape my professional identity, marking college life as a pivotal chapter in my journey.

- B. Anoushka (2017-2022)

As an Alumni of Pendekanti Law College, I am humbled and honored to share my story with you- a journey filled with obstacles, strength, support, failures and above all journey of a mother and a dedicated student.

After completing my MBA in 2013 and spending 6 years of work experience in the corporate world, primarily in finance, I found myself wishing for something else. Dissatisfied with my job, my craving to tackle critical things started. In the year 2020 when my kid was merely 5 months old, supported by my husband and family, I undertook Lawcet entrance exam without prior preparation. I have cleared the entrance exam with an average mark. It was the beginning of my journey in Pendekanti Law College.

Being a mother pursuing higher education was not easy. I made it a point to attend all classes because I am fully aware that home study was limited due to constant interruptions from my child. I have decided to acquire knowledge only by attending classes. As a silent participant in the classroom, I absorbed every lecture and concept shared by my professors.

Having grown accustomed to digital tools, I found myself needing to brush up on the fundamentals of writing and studying. Gradually, I eased back into the student routine. Through regular class attendance, I endeavored to simplify concepts using a variety of resources, including the internet, books borrowed from the library, study materials provided by college faculty, and co- students.

Throughout my LLB course, my focus remained on absorbing knowledge rather than running behind the marks. There were number of times when I thought of giving up. I encountered numerous challenges particularly in balancing my child's health issues. There were moments of self-doubt and guilt for not being able to devote more time to my child. However, with the support of friends, professors and family, I persevered and successfully completed my studies. Today as I continue my journey in the legal department working for an MNC, I am deeply grateful for the opportunities that education has provided me.

My time at Pendekanti Law College not only equipped me with legal knowledge but also taught me valuable lessons and the importance of never giving up on one's dreams.

- Renuka Nalwade (2020-2023)

Just a few months back, our batch was busy in appearing for viva voce and organising the Annual College Fest- Solasta; writing this now as an alumna is bringing back a range of emotions that are tough to fathom. Being a student of this college for five years seemed to have gone by in a blink of an eye, yet the time spent here had given me learnings that I would bear in my mind for the rest of my life. When I first entered Pendekanti Law College, I was concerned whether the college would be able to provide a proper platform to know and pursue my dream, but shortly after the classes commenced I was convinced that the best of the institutions can only exhibit the opportunities available and the work is to be done by a student. Today I am proud to say that my college has given me the courage to take on the real world. For the value that this institution has added to my life, I have nothing but gratitude and would be ready to contribute towards the well being of the college in any manner within my capacity.

Last but never the least, I could make some good friends who are equally interested and happy in seeing each other's growth.

- A Srinivas Rohit (2018-2023)

My name is Harika. I pursued my ballb from Pendekanti college. To start with my experience, a few lines would not be sufficient. I have bagged many memories during my course. The main reason behind making memories is the support by the loving faculty. they are the best not only academically but even the guidance given by them is a huge resource. I am fortunate enough to be able to study in the college

- Harika Divvela (2017-2022)

DIARY OF A LAW STUDENT

-Kritika Singh Parmar (2/3 LLB)

Dear reader,

My name is 2022, I'm brown in color with 100 GSM paper thickness, 10 cm tall, fully plain and smooth. My hobbies are carrying all important case laws, judgements, legal maxims, important dates and some emotions of my holder. It was one of those beautiful summer evenings of April 2022, when my holder bought me from my manufacturer. I felt the touch of my holder for the first time and it felt as if I was meant for her- to be with her. I went with her to her hostel. She kept me on her study table and went out, then came with a black pen and opened it for the first time. She turned to the last page and with that black pen slowly wrote "LAW IS A RULE OF RIGHT."

Ouch! It felt so painful, as if someone were drawing a permanent tattoo on my body for the first time.

Then she stopped and wrote again "IGNORANTIA JURIS NON EXCUSAT". What does that mean? My manufacturer only taught me English but this seems to be some alien language.

Well, once more she stopped, and started again with the same intensity, but with some speed she made a cursive design-

And finally I got the name of my holder.

This is how our journey began.

From that day on she started taking me wherever she went- whether college, office, court or hostel. Sometimes she would write the timetable of her college, sometimes she would write important facts, points, law notes relating to her syllabus. Sometimes she would write the topics which she had to cover and then would strike it off once done. She would write important case citations and some facts about that case in brackets. One day she wrote a case citation but this time I could feel something through her handwriting- sorrow, regret, disappointment. In brackets beside that case citation she wrote (rape + 17year old girl + accused acquitted + justice not delivered) and she started crying, as if she was responsible for it, as if it was her mistake. That night she slept holding me close to her.

Then the next morning she opened up to me and wrote some sections relating to the Indian Penal Code and Indian Evidence Act, and she wrote some case citations and legal topics which she considered doing research on in the evening. And like these days, and even months passed by.

But one evening she sat with me for quite a long time. She kept researching and writing her speech on capital punishment for the next day. She would write a few sentences and underline them, then sometimes she would write a sentence and strike it off. She would close me shut for sometime and then come back with renewed dedication and start writing again. It took her 5 hours to complete the whole speech. The next morning, I sat on my holder's bench in her classroom, enjoying the weather with her palm on my body, and then she got up and left for a while, leaving me alone on the table.

All of a sudden I felt someone's touch. I could not recognise who it was but it definitely wasn't my holder. Oh no, they've lifted me off the table and are taking me somewhere, I let out silent cries to alert my holder but to no avail.

The stranger opened me slowly, flipping my pages as if looking for something within them, and they stopped at the page where my holder had written her speech on capital punishment. I felt a rough tug at the top end of my spine, and a sharp pain travelled all the way down.

The stranger was ripping my pages apart from me, one after the other, taking away the hard work of my holder. If I could talk I would be shrieking at the pain. My pages, now separated from me, were crumpled up as they lost the connection, and stuffed into the stranger's pocket. The stranger then took me back to the classroom and threw me carelessly on the table. The entire experience felt so different from how my holder would treat me. I was back again, injured, scared, and traumatized from what had been done.

After some time I felt my holders touch again. She was back. The feel of her palm on me was a relief after the rough handling I went through. She picked

me up and started flipping my pages to search for her speech. Panic coursed through me as she reached the spot where her speech should have been.

She saw my missing part and she shut me hard, slamming me on the table and hitting me hard on my cover. It was more heart-wrenching, more painful and deep. Then she sat down and started crying, and I could feel her tears fall on my faux leather cover.

I felt miserable- I felt as if I'm a failure, as if I'm a bad secret keeper.

The day went by soundlessly, and now it was 11:30 at night. She opened up to me again after the morning incident. She browsed through all my pages and kept me on her study table. She went out for a bit and then came back with a matchbox. She lit a matchstick and brought it close to me. I could feel the heat of the flame.

But wait, my bottom suddenly caught on fire, and I realised what was happening. With my silent voice, I screamed "no holder please stop, please don't burn me! What was my mistake in that?! Please forgive me, please don't do this to me, I am innocent!".

But she never stopped.

I felt myself disintegrating into ashes. Hot embers burning whatever was left of me. The pain was unimaginable.

Why did you do this to me? Was I so bad? Is this how the justice system works? People who are guilty get acquitted and the people who are innocent get punished? And then I remembered the rape case citation and understood what had actually happened. When the rape victim couldn't get justice then how could I? After all, I am just a diary.

And yet again, JUSTICE NOT DELIVERED.

I will miss you. I am sorry that I disappointed you.

UNSCRAMBLED - 1

- | | | |
|---------------|-----------------|-------------------|
| 1. BENCH | 9. IMPEACHMENT | 17. INFRIGEMENT |
| 2. AMNESTY | 10. INJUNCTION | 18. JURISPRUDENCE |
| 3. ALIBI | 11. SUMMONS | 19. FORGERY |
| 4. CHATTEL | 12. CONTEMPT | 20. PROBATE |
| 5. CLEMENCY | 13. HOMICIDE | 21. OFFENCE |
| 6. JUDGEMENT | 14. BAILMENT | 22. EVICTION |
| 7. COGNIZABLE | 15. AFFIDAVIT | |
| 8. DELINQUENT | 16. ARBITRATION | |

UNSCRAMBLED - 2

- | | | |
|------------------|---------------------|--------------------|
| 1. CONSENT | 8. CUSTODIAN | 15. EMINENT DOMAIN |
| 2. MISDEMEANOR | 9. REMAND | 16. SOLATIUM |
| 3. AMICUS CURIAE | 10. TESTAMENT | 17. SURETY |
| 4. INTESTATE | 11. EJUSDEM GENERIS | 18. ARBITRATION |
| 5. GRATUITOUS | 12. INDEMNITY | 19. ESTOPPEL |
| 6. OMBUDSMAN | 13. ACCOMPLICE | 20. COUNTERCLAIM |
| 7. BLASPHEMY | 14. PROBATION | |

EVENTS ROUND UP

(For the Calender Year 2022-2023)

- V Shobha Rani, Asst. Professor & Academic Co-Ordinator

- **07-01-2023** - Lecture by Dr. Pundla Bhaskara Mohan, (Advocate of the High Court of Judicature for the State of Telangana, Arbitrator and Conciliator and Former Judicial Member , National Company Law Tribunal) on the topic “Alternate Dispute Resolution Mechanism – An Overview”.
- **20-01-2023** – An orientation programme on Client Counselling was conducted by the members of the Moot Committee for the students of 3ydc and 5ydc. It was conducted in two sessions.
- **04-02-2023** – A guest lecture was organized on the “functioning of CBI and ED” by Justice Ch. Ramesh Babu, Principal CBI Court, Hyderabad.
- **11-2-2023** – A guest lecture was organized by Ms. Chandana and Sri. A. Venkateswarulu on “Child Friendly Society”, who are representatives of Bachpan Bachao Andolan, Hyderabad Branch.
- **14/15-02-2023** – Intra college Client Counseling competition for the students of LL.B 3ydc and 5ydc was conducted in the college premises
- **25-02-2023** – Law Students Merit Festival was conducted in the college. Students who excelled in academics and those who recorded highest attendance were felicitated with medals and books. The Dean Prof. (Dr.) Gali Vinod Kumar and Board of Studies in Law, Dr. T. Aparna from Osmania University were guests on the day and the function was presided by Sri. P. Ramamohan Rao, President, VAE.
- **14-03-2023** – Prize Distribution Ceremony for winners in Co-Curricular activities was conducted in the college premises presided by Sri. P. Ramamohan Rao, President, VAE.
- **Dt :06-07-2023** - Lecture by Sri. T. Ramesh Singh, Income Tax Officer, IT Towers Hyderabad, on the topic “Direct Tax –An Overview” for the final year students of LL.B 3ydc and 5ydc.
- **Dt: 15.09.2023** – An orientation on Case-Analysis was conducted by Dr. L. Padmavathi, Asst. Prof for LLB 3YDC and 5 YDC students.
- **Dt : 16.09.2023** - Pendekanti Law College came up with new program " PLC Talks ", an acronym for Pendekanti Legal Community - Where, there is truly something for everyone, which offers a stage to its students to present on interesting and cut-edge topics. It is a showcase for students to discover, develop and present their great, well-formed ideas in given period of time.
- **Dt: 23.09.2023** - Ms. Shilpa Kotagiri, Company Secretary, took an extremely informative, enjoyable and above all valuable session on the topic “SUCCESS AFTER CERTIFICATION” for LLB 3YDC and 5 YDC
- **Dt: 23.09.2023** - Conducted a Preliminary round of inter-class case analysis competition for LLB 3YDC and 5 YDC students.
- **Dt: 30.09.2023** -The “Case Analysis Competition-2023 " final round was successfully held.
- **Dt : 07.10.2023** - Conducted an Orientation session on ‘Judgement Writing’ by Mr. A. Chandrashekar, Asst. Prof. for LLB 3 YDC and 5 YDC
- **Dt : 09.10.2023** – Conducted " GREEN HARBOUR" exhibition.

- **Dt: 11.10.2023** – Orientation Program on “**The need of Legal Awareness**” by Legal Aid Cell – Ms. A. Sreevani and Mr. G. Vaishnav Kumar
- **Dt: 13.10.2023**- Celebrated Bathukamma at the PLC campus.
- **Dt: 09.11.2023** - Legal awareness program conducted in Vasavi public school on the occasion of "Legal Services day"
- **Dt: 16.11.2023** – Guest lecture on the topic “Financial Accounting in Advocacy” by Mr. Sheikh Masood, Asst. Prof , Pendekanti Institute of Management for Final year 3 YDC and 5 YDC Students.
- **Dt: 18.11.2023 & 19.11.2023** – A Two-Day National Conference on "Dynamic of Corporate & Commerical Laws - Trends & Technologies" was conducted in the college premisies. The inaugural function was held on 18-11-2023. Hon'ble Justice Surepalli Nanda, Judge High court for the state of Telangana, was the Chief Guest, Smt. Vijayalaxmi, Dean & Head, Department of Law Osmania University was the Guest of Honour, Dr. A.V. Narasimha Rao, Director IFHE was the Keynote Speaker for the occasion. The function was presided by Sri. M. Krishnamurthy, Secretary, VAE. The valedictory function was held on 19-11-2023. Prof. Sri Krishna Deva Rao, Vice Chancellor, NALSAR, was the Chief Guest, Prof. N. Venkateshwarulu, Chairman, Board of Studies, was the Guest of Honour. The function was presided by Sri. V.M. Parthasaradhi.
- **Dt: 23.11.2023** – On the eve of “Constitution Day”, a Guest Lecture on “73 years of Constitution – Experiences and Expectations” was delivered by Prof. Dr. G.B Reddy, Professor and Director, Prof. G. Ram Reddy centre for Distance Education, Osmania University, For LLB 3 YDC and 5 YDC students.
- **Dt: 05-12-2023** - Legal awareness program was conducted in Pinnacle Institute of Hotel Managemet and Centre on 'Food Laws', 'Drugs and Law Enforcement', 'Sexual Harrassment of women at work Places' by the Legal Aid Committee.
- **Dt: 14&15-12-2023** – On the eve of Human Rights Day, Mr. Yusuf Hayath, Assistant Professor, MNLU, delivered lectures on the topics –“International Regime on Environmental Laws & Developments: Impact on Indian Laws” and “Judicial Interpretation on Free Speech and Expression vi-avis Cinematography, Censorship and Obscenity”.
- **Dt: 28.12.2023**- As a part of “The Invicta Club” Essay writing competition was conducted for all the 3YDC and 5 YDC students on the following topics-
 - i) **Right to privacy in digital age**
 - ii) **Be the change you want to see in others**
 - iii) **Is the climate change a bigger challenge for human beings ?**
- **Dt: 29.12.2023**- As a part of “The Invicta Club”, Debate competition was conducted for all the 3YDC and 5 YDC students on the following topics-
 - i) **AI vs Human Intelligence**
 - ii) **How effective is the electoral system in India?**
 - iii) **Has exam centric education system become obsolete?**

Graduating Batches of PLC - 2023



BA.LL.B. 5 years Course



LL.B. 3 years Course

Reminiscences

National Conference on “Dynamics of Corporate and Commercial Laws - Trends and Technologies”



Chief Guest - Hon'ble Justice Surepalli Nanda, Judge, High Court for the State of Telangana



Reminiscences



Srichakradhar, (3/3 LL.B.) Secured 4th place in Citizen Youth Parliament Competition



**Semi-Finalists of International Mediation Competition
(PSDS Kaartheik, Raja Chandra, Krishna Kanth)**

Reminiscences



**Participants in International Cross Moot Competition on Arbitration
Conducted by NYU, QMU London and National University-Singapore**



Legal awareness program conducted in Vasavi Public School on the occasion of Legal Services day



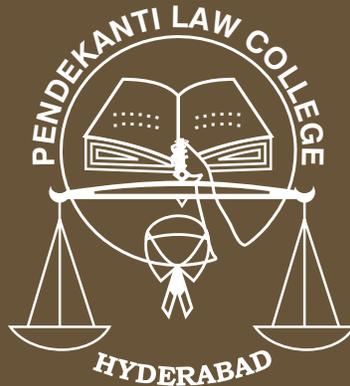
Winners of Intra College Case Analysis Competition - 2023



Faculty of Pendekanti Law College



Editorial Board of Lex Visio - 2023



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