# ILS Law College, Pune

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# PUBLIC LAW BULLETIN

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# MESSAGE FROM THE EDITOR(S)

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Tuesday

Dear All,

We are very happy to bring out the sixth volume of Public Law Bulletin. To this Bulletin also Dr. Jain , our mentor has written a short introduction focusing attention on the need for bringing cohesivity in the equality regime under Indian Constitution. We congratulate all the contributors for putting up this volume.

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# (A.) INTRODUCTION

In this short introduction, I want to grapple with a very seminal question. Whether Constitution of India has adopted an extremely compartmentalized and compromised conception of equality. This question assumes relevance because if we pay a close attention to the Constitutional Assembly Debates it becomes clear that the framers did not want to dedicate a distinct provision for entrenchment of equality as a constitutional value in Part III. Almost till the very end, the idea was to club it together with Right to life and personal liberty. It is also not clear as to why doctrine 'of only on the ground' was abruptly incorporated in Articles 15 and 16. Does anyone remember the colonial roots of this doctrine in all Government of India Acts, for example, see section 298 of Government of India Act 1935 "No subject of His Majesty domiciled in to be India shall on grounds only of "? for the purposes of this introduction I assume that equality regime under Indian Constitution is formal, colonial and therefore less humane. I envisage an equanimity base, anti-hierarchical conception of substantive equality.

It appears that along with the incorporation of the aforementioned doctrine in the guise of renumbering the constitutional value of equality, a separate article was drafted. Thereby dissecting the value of equality from right to life and personal liberty. This makes me to ask was it really a matter of renumbering and efficient drafting or in the guise of the same, Dr. B.N. Rau also almost completely revamped and transformed the anti-discrimination regime under our Constitution. I say so because none of the drafts of Fundamental Rights provisions be it of Dr. Ambedkar or of others, had any reference to the doctrine ‘of only on the ground of’.

It is also not clear why the person-citizen dichotomy is maintained in Articles 14-16. What is the rational for conferring right to equality before law and equal protection of

law on aliens and in the same breath deny them the protection against, say, sex discrimination to them? Does it not sound regressive and uncontemporary?

Even if it is assumed that at the time of framing of the constitution, this compromise was justified because we did not have any cohesive discourse on relational equality nor we were under the influence of LPG, but can we justify the rather complicated and incohesive equality regime under Articles 14-16 under the Constitution of India any longer? In the wake of substantive provisions and non-obstante clauses entangling into one another? To my mind a number of immutable characteristics like sexuality, physical and mental disability, age, etc. are undeserved exclusions from the list of prohibited grounds of discrimination under Articles 15 and 16. Besides the omissions of principles of 'equality under law' and 'equal benefits of law' sound Article 14 to be outmoded and behind the time.

Even if it is accepted that transformation, accommodation, participation and the redistribution are the primary goals underlying constitutional value of equality, what about striking a blow to the principal of anti-hierarchy? The present equality regime to my mind does not explicitly address the issue of anti-hierarchy, nor it throws adequate light on indirect and intersectional discrimination. Till very recently it was common understanding that Article 17 is an instrument to combat merely the social hierarchy but what about other hierarchies arising out of sexuality and bodily diversities?

Even if the phrase 'or any of them' might sound very progressive and ahead of its time, its non-invocation by the legislature and the courts has virtually reduced it to a dead letter. I have not come across any case or an earnest piece of legislation questioning, for example the intersectional discrimination faced by a 'Dalit disabled women'. Does intersection of grounds not aggravate the impact of discrimination? What about indirect discrimination? We have numerous cases where facially the law sounds very accommodating and inclusive but by not providing rights enabling conditions it closes

its doors on a number of vulnerable sections of societies, for example, by not providing for a disability rights sensitive policy the universities continue to exclude disabled teachers from its mainstream initiatives and fundamental activities. Has anyone ever heard a blind person being given the opportunity to be the paper setter in the UPSC exams or as a part of interview board for evaluation of successful candidates in services like IAS?

I do not have any objective answer to address the out of time and in-cohesive dimensions of equality regime under the Indian Constitution, nor is it appropriate for me as an individual to propose any alternate schema. Being aware and mindful of my degree of intelligence to map the complexities of the constitutional value of equality, I want to simply ignite the debate by way of this modest piece. However, about one thing, I am quite sure. It is definitely probable to shorten the pros of Articles 14-16 and redraft them as a cohesive thread, for example, can anyone articulate with ease the distinction between Article 15(4) and 15(5). Why in the presence of Article 15(1), for example, which is an omnibus non-discriminatory regime, do we require other provisions? Are these provisions surplussage, or making explicit which is implicit in Article 15(1)? This is only one amongst a variety of questions, one may subject Articles 14-16 too.

**~Dr. Sanjay Jain**

Disclaimer: The views expressed in this piece are the personal views of the author and do not reflect the opinion of either ILS Law College or the Indian Law Society.

# (B.) PUBLIC LAW IN THE NEWS

## SUPREME COURT

1. **West Bengal Government's Durga Puja funding:** A petition challenging the Calcutta High Court's verdict, refusing to interfere with the West Bengal Government's decision to fund the Durga Puja celebrations, has been filed before the apex court. The petitioners contended that there were no guidelines mentioned for tendering or spending Rs. 28 crores, which were earmarked by the government for the Durga Puja celebrations. They further contended that use of public money for religious activity was a clear violation of constitutional principles. The State Government however argued that the fund was essential for community policing activities. The apex court held that the state did have the discretionary power to do so, and hence refused to stay the operation of the Government Order in the interim.

2. **Supreme Court calls upon Madhya Pradesh High Court for the expeditious disposal of a criminal appeal:** Santosh,an electronic engineer and MBA graduate, had been convicted under Section 326 of the Indian Penal Code, by the Trial Court and sentenced to 5 years rigorous imprisonment. He appealed against the conviction before the Madhya Pradesh High Court.However, the parties to the case settled their dispute and entered into a compromise and also moved an application for the compounding of the offence. This was kept pending by the High Court, to be considered and heard with the final hearing of the appeal. He, thus, approached the High Court with a plea seeking the expeditious disposal of his case as due to its pendency, he was unable to get any employment. Furthermore, belonging to the Scheduled Tribes community, he could only obtain the benefit of compassionate appointment within 7 years from

the death of his father, who passed away during the pendency of the appeal in 2011. However, the High Court turned down this application. Thus, Santosh approached the apex court seeking expeditious disposal of his case by the High Court, as he would be unable to avail the opportunity of compassionate employment since he would soon become over-age. Keeping the facts and circumstances of the case in mind, the Supreme Court, requested the High Court to dispose of the criminal appeal as expeditiously as possible, preferably within a period of 6 months[Santosh v. State of Madhya Pradesh, Petition(s) for Special Leave to Appeal (Crl.) No(s). 9211/2018]

3. **Assessment of "Live transcription" technology for evidence recording:** A bench comprising of Chief Justice Ranjan Gogoi, Justice S. K. Kaul and Justice K. M. Joseph was hearing its suo moto initiative to tackle the alarming number of pending civil suits in the various High Courts. Senior Advocate Harish Salve, the amicus curiae in the matter, suggested that "live transcription" would prove to be an aid in the faster recording of evidence and would especially prove to be useful in international arbitrations to speed up the process. The Bench proceeded to record that a live demonstration of this technology shall be presented before the Attorney General, who court then offer his suggestions to the court.

4. **Moral Turpitude – a ground for denial of appointment in Judicial Service?** A three-judge bench of the apex court comprising of Justice Kurian Joseph, Justice Sanjay Kishan Kaul and Justice Navin Sinha directed the state authorities of Maharashtra to reconsider the candidature of Mohammed Imran, a successful judicial service aspirant, whose selection was cancelled on the ground of 'moral turpitude'. The Bench further observed that there cannot be any mechanical incantation of moral turpitude in order to deny judicial service appointments. The Bench said that "*every individual deserves an opportunity to improve, learn from the past and move ahead in life by self-improvement. To make past conduct, irrespective*

*of all considerations, an albatross around the neck of the candidate, may not always constitute justice. Much will, however depend on the fact situation of a case.*" [Mohammed Imran v. State of Maharashtra and Ors, Civil Appeal No(s). 10571 of 2018]

5. **Legislature never intends to create or provide for parallel jurisdiction:** The bench comprising Justice Ashok Bhushan and JusticeA.K.Sikri observed that when a statute provides for thecongizance of a particular cause by a particular court, it creates jurisdiction in that court alone. The reasoning afforded by the Bench was that the Legislature never provides nor creates parallel jurisdictions in two courts for hearing and deciding upon the same cause. [Om Prakash Agarwal v. VishanDayal Rajpoot &Anr., Civil Appeal Nos. 9051-9052 of 2018]

6. **PIL seeking use of ballot papers during the upcoming assembly and Lok Sabha polls dismissed:** An NGO named 'Nyay Bhoomi' approached the apex court seeking the use of ballot papers in the place of Electronic Voting Machines (EVMs), during the upcoming Lok Sabha and assembly polls. Their primary contention was that in order to ensure free and fair elections, EVMs should not be used, as they are capable of being misused. This PIL was dismissed by the apex court holding that *'every system and machine was capable of being misused and hence, doubts could be raised everywhere.'*

7. **Office of Uttar Pradesh CM under Lokayukta law?** A PIL has been filed by advocate Shiv Kumar Tripathi, seeking a direction to amend the Uttar Pradesh Lokayukta and Up-Lokayukta Act, 1975 to bring the Uttar Pradesh Chief Minister under the purview of the ombudsman. The plea stated that the existing status of the Act fails to make the ombudsman *"powerful enough to serve the purpose and object for which it was enacted"* and that this was essential to ensure effective control over the corrupt practices. The plea further added that "the

Lokayukta/Up-Lokayukta should be given independent police force which shall directly be under his administrative control."

8. **Victim can file an appeal against acquittal without seeking a leave to appeal:** The apex court, in a landmark ruling has held that a victim, as defined under Section 2(wa) of the Cr.P.C., aggrieved by an order of acquittal can file an appeal in the High Court, without seeking a leave to appeal. Justice Deepak Gupta, however gave a dissenting opinion from the majority view. Justice Madan B. Lokur, in his majority judgmentobserved that the rights of the accused by far outweigh the rights of the victim, and hence it is essential that there is some equalising of their rights as well as balancing of concerns, in order to ensure fairness of criminal proceedings to both the parties. [Mallikarjun Kodagali (Dead) represented through Legal Representatives v. State of Karnataka and Ors., Criminal Appeal Nos. 1281-82 of 2018]

9. **Corroboration of Extra-judicial confession of accused not necessary in all cases:** A Bench comprising of Justice R. Banumathi and Justice Indira Banerjee held that if the confession of the accused is voluntary and the same is proved to the satisfaction of the court, then conviction of the accused may be based upon the same. *"Rule of Prudence does not require that each and every circumstance mentioned in the confession with regard to the participation of the accused must be separately and independently corroborated."* To support this finding the Bench relied upon Madan Gopal Kakkad v. Naval Dubey and Another. [Ram Lal v. State of Himachal Pradesh, Criminal Appeal No. 576 of 2010]

10. **The Rafale Case:** A Bench headed by Chief Justice Ranjan Gogoi is hearing the pleas seeking a court-monitored investigation into the procurement of 36 Rafale fighter jets from France. The petitioners contended before the apex court that the government had committed 'serious fraud' in the purchase of these 36 Rafale

fighter jets from France. The Centre had handed over a 14-page document, titled "Details of the steps in the decision-making process leading to the award of 36 Rafale fighter aircraft order" to the petitioners in the present case. Furthermore, the pricing details were also filed in the court by the Centre in a sealed cover.

In the hearing on November 14, 2018, Advocate Prashant Bhushan was opposed by Attorney General K.K.Venugopal, when he wanted to submit certain information on the secrecy clause of the Rafale agreement. Mr. Prashant Bhushan argued that the Government was hiding behind the garb of secrecy clause and had failed to disclose the price of the Rafale jets. The Centre, however, tried to defend the secrecy clause by stating that their adversaries might get advantages if all the details of the pricing were disclosed. The Bench concluded that any discussion on the pricing of the fighter jets could only take place if the facts on the deal are permitted to come into public domain.

## HIGH COURT

### PATNA HIGH COURT:

1. **High Court grants bail to person accused under SC/ST Act as accused was lingering in police custody for 11 years**: Having regard to the inordinate delay in conclusion of trial and the unlikelihood of trial concluding in the near future, the High Court decided to grant bail to the accused. The appellant was an accused in offence relating to the carnage in which a number of persons were butchered to death under multiple sections of IPC, Arms Act and the SC/ST Act. Aggrieved by an order of the trial judge refusing grant of regular bail to him, he preferred the instant appeal under Section 14-A (2) of the SC/ST Act.It was noted that the report of the learned trial Judge revealed the case to be at the stage of prosecution evidence but no witness had turned up till the date of hearing of the

present appeal.[Avinash Sharma v. State of Bihar, Criminal Appeal (SJ) No. 827 of 2018, decided on 06-11-2018]

2. **High Court reiterates that State is making adequate efforts to achieve the objective of organic farming**: **A petition was filed** seeking mandamus against State for implementing organic farming policy and directing the respondent to encourage farmers of the State to opt for organic farming in order to save productivity of the earth and environment. The court noted that the averments in writ petition admitted that the State Government had taken a policy decision of encouraging farmers for undertaking organic farming, and for the aforesaid purpose, budgetary limits had been fixed and subsidies had been offered. As a part of the "Organic Corridor Scheme", organic corridors had been developed in villages adjoining National/State highways running by the side of Ganga river. The State submitted that it was planning to implement the scheme at a larger scale by 2022; and the entire process of converting agricultural operations to organic method being a long-drawn process, it would take a while before the results are visible. Hence, the High Court observed that the State was making efforts to achieve the objective of organic farming by 2022 and expecting results in such a short time would be chimerical. On that observation, the writ petition was dismissed. [Bihar Rajya Kishan Sabha v State of Bihar, decided on 09-10-2018.

**PUNJAB AND HARYANA HIGH COURT**:

1. **Selection by Select committee formed for promotion of IAS candidates is subject to judicial review**: A petition was filed against an order passed by Central Administrative Tribunal, Chandigarh where an Application filed by petitioner was dismissed and his prayer for re-consideration of his suitability for the Select List for promotion to the post of IAS was rejected. According to the

rules, regulations and the guidelines governing the appointment and the assessment for appointment, it was mandatory for reasons to be recorded.In the absence of valid reasoning, Tribunal's order was set aside [Satya Pal Arora v. CAT, CWP No. 24614 of 2016, decided on 15-02-2018]

2. **Under Article 21, it is the duty of State to ensure safety of run-away couples from dangers to their life, limb and liberty**: A writ petition was filed by the petitioners seeking protection from private respondents, since the petitioners apprehend danger to their life, limb and liberty from the hands of private respondents. The main issue that arose before the Court was whether the petitioners were entitled to get protection on the basis of apprehension of danger. The Court observed that the Constitutional philosophy completely eradicates discrimination on the grounds of castes, creed, religion, domicile etc. The petitioners in the present case had provided sufficient evidences of their age and it was proved that they were both majors who got married and were living together. Since both the petitioners are citizens of India, they have a right to live with dignity. The Court referred to its own decision in the case of *Pardeep Kumar Singh v. State of Haryana*, wherein several guidelines with regard to safety concerns of run-away couples were laid down by the Court. The Court held that the petitioners had every right to seek protection of their lives as the same has been guaranteed to them under Article 21 of the Constitution of India and it is incumbent upon the state to ensure the safety of such couples [Sushmita v. State of Punjab, CRM M No. 49692 of 2018 (O&M), order dated 13-11-2018].

3. **Court rules on jurisdiction of District Court to hear a petition under Section 25 of Guardian and Wards Act: A** petition was filed against the order of the lower court whereby the application of the petitioner under Order VII, Rule 11 of CPC was dismissed. The main issue that arose before the Court was whether the lower court had the territorial jurisdiction to hear the petition under Section 25 of

the Guardian and Wards Act, 1990 read with Section 10 of the Hindu Minority and Guardianship Act, 1956 and Section 26 of the Hindu Marriage Act, 1955. The Court observed that the application in respect of the guardianship of the minor is to be made to the District Court having jurisdiction in the place where minor ordinarily resides. The Court held that in the instant case the age of the child was 11 months and hence applying the rule laid down in *Sunita Jain's* case, the natural custody of such child would lie with the mother. Hence, the petition for the guardianship of the child was rightly instituted before the District Court of Khadur Sahib. Resultantly, the petition of the petitioner was dismissed and the order of lower court was upheld. [Tejbir Singh v. Baljit Kaur order dated 02-11-2018]

4. **Non-prosecution of writ of Mandamus, can lead to dismissal of writ: A** writ petition in nature of mandamus was filed for reinstatement of the petitioner who was a daily wage worker as Sewadar by Shiromani Gurudwara Parbandhak Committee. According to the petitioner, he was dismissed from service due to a complaint. The dismissal was by oral communication and that he was not provided any copy of termination order. This violated his natural right to be heard was infringed by respondent. The High Court took the view that petitioner had appeared only once before the Court and had earlier done the same on at least six occasions. Noting his unwillingness to continue this petition, it was dismissed for non-prosecution by petitioner. [Jagjeet Singh v. Shiromani Gurudwara Parbandhak Committee, decided on 30-10-2018]

5. **Condition prescribing surrender of passport cannot be imposed while granting bail:** The Punjab and Haryana High Court has given a ruling that criminal courts cannot place a condition of surrendering the passport upon the accused, while granting bail. Justice Daya Chaudhary clarified that though Section 104 of the Criminal Procedure Code (Cr.P.C.) allows the court, if it thinks

fit, to impound any document or thing produced before it, the court cannot undertake to impound the passport of any person, as the same can only be done by the passport authority under Section 10(3) of the Passports Act. The reasoning behind the same was that since a special law always prevails over the general law, Passports Act being a special law will prevail over the Cr.P.C. which is a general law. The Court furthermore held that though Section 437 of the Cr.P.C. did give discretionary powers to the courts to impose any condition necessary for granting bail, yet in light of the Passports Act, the court had no general power to impound passports. [Capt. Anila Bhatia v. State of Haryana, Criminal Misc. No. M-42638 of 2018]

**DELHI HIGH COURT**:

1. **Delhi High Court rules that it is not incumbent upon plaintiff anymore to lead evidence where defendant does not appear**:A suit injuncting the defendant from unauthorisedly broadcasting the songs over which the plaintiff had a copyright was decreed by the Court. The plaintiff Super Cassettes, filed a suit against the defendant (cable network) for infringement of its copyright in certain songs. The High Court noted that despite the service of summons and notice, the defendants did not put in appearance before the Court. In view of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 as well as the Delhi High Court (Original Side) Rules, 2018, the Court observed it to be a well-settled law that "it is no longer necessary in every matter, even when the defendant is not appearing, that the plaintiff has to lead evidence. The Court also noted that the filing of evidence can be exempted if, from the pleadings and documents relied upon, the suit can be decided."On perusal of the screenshots submitted by the plaintiff, the Court was satisfied that the defendant was infringing the copyright of the plaintiff. In such view of the matter, the Court decreed the suit in favour of the plaintiff and

granted an injunction against the defendant as prayed for by the plaintiff [Super Cassettes Industries (P) Ltd. v. I-Vision Digital LLP, CS(COMM) 905 of 2018, decided on 12-11-2018].

2. **Delhi High Court rules on scope of interference in case of suspension of Member from Assembly**: A petition was filed by a member of Delhi Legislative Assembly, Om Prakash Sharma seeking to set aside the motion passed by the Assembly whereby he was suspended for two subsequent sessions of the Assembly.The foremost question before the court was "under what circumstances and to what extent a High Court, exercising powers under Article 226 of the constitution of India, can interfere in the decision taken on the Floor of the Legislative Assembly." After perusing through Rules on Conduct of Procedure framed by the Assembly, the Court came to the conclusion that the conduct of the Petitioner satisfies the test laid down by the Supreme Court in *Amarinder Singh v. Punjab Vidhan Sabha*. The derogatory remarks were made on the floor of the House during a debate on a public issue and it had a direct connection and bears proximity to the duties, role, and functions of the petitioner as a legislator. Hence, the petition was, thus, dismissed [Om Prakash v. Legislative Assembly of NCT of Delhi, dated 30-10-2018].

3. **Role of Courts when complainant withdraws 498A Complaint: A** petition was filed for quashing of an FIR registered under Section 498-A, 406 and 34 IPC. The petitioner, who was the complainant in the above said FIR, contended that she had reconciled her disputed with the respondents- her husband and his family– and had started residing with them. She was present in-person before the Court and based on her submission that if the said FIR continued, it may cause disruption to her family life once again, the Court allowed the petition [Pooja Singh v. State (NCT of Delhi), dated 23-10-2018].

4. **Delhi High Court rules on abuse of process**: A Bench comprising of Justice Rajiv SahaiEndlaw, dismissed an execution first appeal filed against the order of Additional District Judge whereby appellants objection to the execution of a money decree sought by decree-holder against the judgment-debtor was dismissed. The High Court was of the view that the purpose of the Appeal was to delay the execution. The appellant and the judgment-debtors were hand-in-glove with each other and were not making a clean breast of state of affairs. The court observed that appellant-objector could not on one hand claim arms length distance from judgment-debtors and on the other hand represent their interest. The appeal was held to be an abuse of process of Court and thus dismissed [Charanjit Kaur Virk v. Premlata Sharma, dated 15-10-2018].

5. **Delhi High Courtdeclined to exercise jurisdiction in entertaining a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 holding the *seat* Arbitration to be in London**: The petition was filed under Section 34 in a matter arising out of a Time Charter Party Agreement entered into between the parties. The jurisdiction of the High Court under Part I of the Act was challenged as the *seat* of arbitration was at London, though the hearings were conducted in Delhi. The High Court perused the record and was of the view that a reading of the correspondence exchanged between the parties would clearly show that the parties did not arrive at a consensus for change of *seat* of arbitration from London to New Delhi. It is a decided point that *"venue cannot be construed as a seat of arbitration"*. Therefore, the Court held that it lacked jurisdiction under Section 34 of the Act. Resultantly, the petition was dismissed. [Dredging Corporation of India v. Mercator Ltd., decided on 10-10-2018]

**JAMMU AND KASHMIR HIGH COURT**:

1. **When can bail be granted in Prevention of Corruption case?:**A bail petition was filed by the petitioners under Section 497-A of the Code of Criminal Procedure, seeking bail in a matter involving offences under Sections 420,467, 468, 471 of the Ranbir Penal Code and Section 5(2) of J&K Prevention of Corruption Act, 2006.The main issue that arose before the court was whether the petitioners are entitled to get bail in a matter involving alleged offences of corruption and cheating.The Court observed that in the light of serious allegations against the petitioners, granting them bail would not be the appropriate thing to do. [Mohd. Kubir Malik v. State of J&K, order dated 03-11-2018].

2. **Dispute between private parties, Court cannot interfere under Article 226**: A writ petition was filed against the actions of private respondents 6 to 13, whereby respondents were interfering with the property owned by the petitioner.The main issue that arose before the Court was whether the writ petition filed by the petitioner was maintainable.The Court held that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons and that the remedy under Article 226 of the Constitution of India shall not be available except where violation of some statutory duty on the part of a statutory authority is alleged [Kuldeep Singh v. State of J&K, order dated 03-11-2018].

3. **Delay in initiating inquiry, can lead to the dismissal of petitioner: A** writ petition was filed against the order of respondent authorities, whereby petitioner was placed under suspension without there being any misconduct on petitioner's part. The main issue that arose before the Court was whether the actions of respondents were justified with regard to the suspension of the petitioner.The Court observed that the respondents communicated the order of suspension to the petitioner after a year of issuance of that order. The respondents had not initiated enquiry into the matter of petitioner, nor had the petitioner been charge-

sheeted even after 2 years of his order of suspension was passed. The prolongation of suspension period beyond two years can only be viewed as punitive which is not sustainable in law. The Court concluded that the actions of the respondent authorities cannot be held justified. The respondents ought to have initiated a proper inquiry into the matter within a reasonable time. Hence, the Court allowed the writ petition and quashed the order of respondents. [Babu Ram Sharma v. State, order dated 24-10-2018].

4. **Challenging an advertisement after accepting the conditions and applying for the post, is not allowed**: A writ petition was filed whereby the petitioners assailed the order of selection of medical officers, passed by the respondent authorities.The main issue that arose before the Court was whether the order passed by the respondent authorities was good in law.The Court observed that the petitioners had applied for the post of medical officers but couldn't qualify, however, it is pertinent to mention that the petitioners had read the advertisement and after accepting all the terms and conditions therein, applied for the position of medical officer. Yet, they challenged the advertisement and order of selection only after they could not qualify for the said posts and hence cannot be allowed to challenge the same. Accordingly, the petition was dismissed by the Court. [Sheetal Sharma v. State of J&K, decided on 05-10-2018].

**BOMBAY HIGH COURT**:

1. **Court clarifies the Application of Section 450 of IPC: A**criminal appeal filed against the judgment of the trial court whereby the appellant was convicted under Sections 450 and 354-A IPC along with Section 8 of the Protection of Children from Sexual Offences Act, 2000 was partly allowed by the High Court. The Trial Court convicted the Appellant. Aggrieved by the sentence, the appellant preferred the instant appeal. The High Court, after perusal of the

record, partly affirmed the judgment of the trial court to the extent it convicted the appellant under Section 354-A IPC and Section 8 POCSO Act. However, regarding Section 450 IPC, it was observed that an accused can be convicted for the offence punishable under the said Section only if another offence for which he has been convicted is punishable with imprisonment for life; otherwise, the conviction under Section 450 IPC is bad in the eyes of law. Since in the instant case, the other offences for which the appellant was convicted were not punishable with imprisonment for life, the Court acquitted him from the offence punishable under Section 450 IPC. The appeal was disposed of in the terms above [Hanumant v. State of Maharashtra].

2. **Court reiterates the scope of writ jurisdiction under the Arbitration Act:** A petition was filed against the order of the Arbitrator whereby petitioner's application challenging the arbitration proceedings was rejected. In view of the agreement between the parties, arbitration proceedings were commenced with a sole arbitrator. The replacement of this sole arbitrator with another arbitrator was challenged by the petitioner. The High Court relying on the case of *SBP and Co.* v. *Patel Engineering Ltd.*, observed that the High Court while exercising power under Article 226 or 227 of the Constitution, cannot entertain any petition challenging an interlocutory order passed in arbitration proceedings. In light of the above, the petition was dismissed [Suchitra Chavan v. Axis Bank Asset Sales Centre, dated 10-09-2018].

**UTTARANCHAL HIGH COURT**:

1. **Uttaranchal High Court rules that not a drop of untreated water from 'naalas' shall be released directly into river Ganges**:The Court gave directions to revive the Ganga, the 'living entity'. A PIL was filed in order to improve the conditions of major Ganga ghats in the state was filed. The area surrounding river Ganga

had been severely polluted at the hands of the people. The Court called for information from the Municipal Commission, Haridwar.

The Court also directed the respondents to:

- Invite tenders for installing 72 more CCTV Cameras to ensure that the area was regularly cleaned every three hours round the clock and was devoid of any litter so that there was no accumulation of garbage around the area.
- 100 state-of-the-art changing rooms and 300 toilets shall be constructed which were to be connected to the main sewerage line and no sewerage shall be permitted to be discharged directly into river Ganges.
- Pipes discharging sewage directly to the river shall be sealed and owner challaned.
- The pumping stations and treatment plants shall be functional as soon as possible.
- Drains were to be covered and properly cleaned.
- Make available sufficient funds for executing the above directions.

The petition was disposed of accordingly. [Narendra v. State of Uttarakhand, Writ Petition (PIL) No. 69 of 2018, Order dated 02-11-2018]

**KERALA HIGH COURT**:

1. **High Court rules on scope of Appeal under Section 37**: An appeal was filed against the order of the lower court, whereby the award of arbitrator passed in arbitration between the parties was decreed by the lower court.The main issue that arose before the Court was whether the lower court was justified in passing a decree in furtherance of the award passed by the arbitrator.The arbitrator had passed the award only after a careful consideration of the facts and

circumstances of the caseholding that the delay in completion of work was solely attributable to the appellants. Further, the respondent had sought damages for idling of men and machinery, which were duly given to him under the award passed by the arbitrator.The Court held that in a case where the appellant failed to establish any fault on the part of the respondent in completing the work under contract, within a stipulated period, then the appeal for setting aside the award cannot be held maintainable. Hence, the Court dismissed the appeal[State of Kerala v. IndirammaShanmughavilasomVeedu, order dated 02-11-2018].

2. **Live-in relationship of same sex couple is not illegal**: A Division bench hearing a habeas corpus petition filed by the partner of a lesbian held that persons of the same gender are entitled to be in a live-in relationship.The present petition seeking a writ of habeas corpus was filed by the petitioner alleging that her lesbian partner, Ms Aruna, had been illegally confined by her parents against her free will. The detenue had informed the petitioner that her parents had admitted her in a mental hospital. When the petitioner went to meet her in the said hospital, she was ready and willing to come along with her but the hospital authorities insisted for production of a court order to release the detenue.The question before the court was whether the detenue could be permitted to go along with the petitioner to lead a live-in relationship because both of them belonged to the same gender and could not solemnize a valid marriage between them.Relying on many Supreme Court judgments observed that the court cannot assume the role of parens patriae and curtail the liberty of a person who has attained the age of majority and held that even if parties are not competent to enter into wedlock, they have the right to live together even outside the wedlock.In the light of observations in case of *Navtej Singh Johar v Union of India,* discrimination on the basis of one's sexual orientation is violative of the fundamental right to freedom of expression and constitutional morality cannot

be martyred at the altar of social morality [Sreeja S. v. Commissioner of Police, decided on 24-09-2018].

**MADHYA PRADESH HIGH COURT**:

1. **Appointment to a post of guest lecturer, is not a vested right**: A writ petition was filed by the petitioner seeking a writ of Mandamus against the respondent authorities.The main issue that arose before the Court was whether an appointment for the position of a guest faculty can be claimed as a vested right.The petitioner was given joining by the respondent authorities to the post of guest faculty. Due to unforeseeable events, the petitioner was not allowed to perform his duties. The Court observed that an aspirant does not have a vested right to seek a writ from the Court for appointment to a particular post. Hence the writ petition was dismissed [Hemant Kumar Pandey v. State of Madhya Pradesh, order dated 02-11-2018].

2. **Under RTE, right of students to gain quality education is more important than protection of teacher's interest**: batch of writ petitions against government's shifting policy pertaining to appointment of guest teachers in government schools were being heard. It was held by the Court that the aim of Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) is to impart education to students and not to protect teachers.The petitioner was appointed as Samvida Shala Shikshak in a government school and had been, henceforth, working as a guest teacher in the government school. The government issued a circular containing shifting policies vide which petitioner was being replaced by another guest teacher. Aggrieved by the said circular, the petitioner preferred the instant writ petition before this Court. The High Court rejected petitioner's contentions against State policy stating that students are entitled to quality education directions that have the effect of students being taught by non-

meritorious teachers could not be issued. It was observed that the right of petitioners to be engaged as guest teachers was an equitable right and the same could not operate against students' right to education. The object of right to education under RTE Act is not to protect the teachers but to grant education to students; and if a child has to study, he is entitled to the best possible teacher to teach him.The writ petition was disposed of by issuing directives for framing a policy to fill posts of teachers in the State in a phased manner. [Saurabh Singh Baghel v. State of Madhya Pradesh, WP No. 18935 of 2018 decided on 11-10-2018]

**HYDERABAD HIGH COURT**:

1. **Writ of Mandamus dismissed for being misconceived:**A writ petition was dismissed at the admission stage by the High Court The petitioner filed a writ petition seeking the relief in the nature of writ of mandamus under Article 226 of the Constitution of India over the protection and preservation of his title and possession over the land which was being interfered with by the defendants. The Court agreeing with the defendants, stated that instead of resorting to the present writ petition along with seeking police protection, the petitioners should have approached the court by way of execution petition.Accordingly, with regard to the misconception of writ remedy, the petition was dismissed. [Tirumala Siva Prasad v. State of A.P.,2018 SCC OnLineHyd 262, order dated 17-04-2018].

**RAJASTHAN HIGH COURT:**

1. **High Court rules on removal of encroachments on public property**: The Court gave directions to remove all encroachments which hinder the use of public property.It was alleged that the plot which was allotted to the petitioner was encroached upon by the respondents. The area encroached upon included roads and parks which were meant for the public at large. The Court observed that

since the encroachments were hindering the use of public property, the land shall be liberated for use of Government lands, roads, designated park areas, and open lands. Accordingly, the Commissioner was directed to forthwith initiate lawful proceedings for the removal of the encroachments from roads and lands reserved for parks. Court also stated that no Civil Court shall grant any stay on the proposed removal of the encroachments specifically for such road and parks[Suraj Prakash Dave v. State of Rajasthan, S.B. CWP No. 10932 of 2016, order dated 31-10-2018].

**HIMACHAL PRADESH HIGH COURT:**

1. **Right to supply of water and electricity is a fundamental right under Article 21**: An appeal was filed seeking the right to water and electricity as being the basic necessities of life.The petitioner constructed a residential house against which eviction proceedings were initiated against the petitioner as the land in possession was owned by the State Government. The petitioner applied for the electricity and water connections, but both these amenities were denied on the absence of 'No Objection Certificate' issued by the Municipal Council.The respondents submitted that the same cannot be granted as the petitioner has not risen the construction after getting building plan sanctioned and had unauthorizedly occupied the Government land and raised illegal construction, without seeking prior approval of the authorities.The Court held that the prime consideration was whether the basic amenities of water and electricity shall be granted to the petitioner or not. It was stated that as they were an integral part of Right to Life within the meaning of Article 21 of the Constitution of India calls for immediate action. Thus, till the title dispute remains pending, for that considerable period the petitioner shall be granted the same on subject to their payment of requisite charges and shall remain purely an interim and *ad*

*hoc* measure till the title dispute was decided. Accordingly, the appeal was disposed of. [Madan Lal v. State of Himachal Pradesh,decided on22-10-2018]

**JHARKHAND HIGH COURT:**

1. **Wrongful computation of limitation period by the Arbitrator is ground for setting aside the award**: An arbitration appeal was filed before a Single Judge Bench under Section 37(1)(b) of Arbitration and Conciliation Act, 1996.The Contract was pertaining to the construction of a dam. The award was challenged by the Department by a petition under Sections 12, 13, 16 and 34 of the Act before the High Court. Impugned order's legality was in question on the ground that the claims of claimant were barred under the limitation law. Court observed that it would be wrong to completely immune finding in arbitration from judicial scrutiny in a proceeding under Section 34 or Section 37 in case of an error on the face of award.High Court was of the view that the finding by Arbitrator of the claims not barred by limitation was an error apparent on the face of the award. Therefore, the arbitration appeal partly succeeded and impugned order to the extent where time-barred claims of claimant were allowed was set aside. [State of Jharkhand v. Sutlej Construction Limited, dated 12-10-2018]

2. **No rights can flow from an unconstitutional scheme**: A writ petition was filed against the order of the respondent authorities whereby petitioner's claim, for appointment in place of his mother under the Female Voluntary Retirement Scheme, was rejected.The main issue that arose before the Court was whether the petitioner was entitled to appointment in place of his mother under the Female VRS Scheme.The Court observed that under the Female VRS Scheme, the female employee under the Coal Company was entitled to take voluntary retirement on attaining a particular age before the normal age of superannuation and nominate one of her dependents for permanent employment in Coal India Limited or its

subsidiaries. However, this scheme was declared unconstitutional by a Division Bench of this Court in the case of *Sumitra Devi v. Coal India Ltd. Kolkata,* L.P.A. No. 340 of 2016. If a scheme is declared unconstitutional then no legally enforceable right could flow from it.The Court held that since the scheme was declared unconstitutional, no person can claim benefit under such a scheme. Hence, the writ petition was dismissed [JitramManjhi v. Bharat Coking Coal Ltd. order dated 22-10-2018].

**KARNATAKA HIGH COURT:**

1. **Writs cannot be issued to escape criminal procedure**: While hearing a writ petition praying for quashing of criminal proceedings pending against the petitioner, held that relief under writ jurisdiction cannot be used to scuttle the investigation of a case.The petitioner contendedthat he was directly arrested and proceedings were started against him without a complaint or an FIR. It was observed that the scope of investigation and steps for investigation cannot be guided, controlled or stalled by filing a writ petition. Thus the Court held that a writ remedy cannot be resorted to in order to scuttle the investigation of a criminal case. [Ravi M.V. v. Amruthur Police, WP No. 49297 of 2018, decided on 16-10-2018]

2. While hearing a writ petition against an interlocutory order of the trial court in a suit pending between petitioner and respondent, held that the supervisory jurisdiction of a High Court under Article 227 can be exercised only if the inferior court has not proceeded within its jurisdiction.[Karnataka Neeravari Nigam Limited v. Shankar Construction Company, WP (C) No. 46389 of 2015]

**ALLAHABAD HIGH COURT:**

1. **Writ remedy cannot be used to grant protection against harassment:** A writ petition was filed seeking protection from the harassment and interference into

the personal lives of the petitioners, which they were being subjected to by the respondents.The petitioners were young men of the age of 20 and 22 years respectively, with the latter being identified as a transgender; not well educated and plied their trade as a saree-salesman and a dancer, earning modest wages. They stated that they had been living in the same residential area, had fallen in love and were living together. But due to threats from family members, the petitioners filed a writ petition seeking protection from harassment. The Court observed that as welfare state, it has a duty to ensure that the law and order in the state, as well as its overall security, are given the utmost importance and priority. However, it does not imply that every individual is to be accorded separate protection, something which is not even feasible for the state to provide. Hence, the Court dismissed the writ.[Gulfam Malik v. State of U.P., Writ C No. – 32683 of 2018, order dated 27-09-2018]

2. **Court orders that there will be no parental interference in the marital life of petitioner**: The petitioner and her husband are adults and living together out of their own free will. The private respondents – family members of the petitioner's husband – who did not approve of their marriage, were constantly harassing and threatening them and as such a serious danger was posed to their lives. The writ petition was disposed of holding that the petitioner was at liberty to live with her husband and that no person should be permitted to interfere in their peaceful living. In case any disturbance was caused in their peaceful living then the petitioners would have the liberty to approach the concerned police authority who shall provide immediate protection to them. [Shahin Bano v State of Uttar Pradesh, decided on 20-09-2018]

**OTHER NEWS**

1. Justice Ranjan Gogoi took office as the 46th Chief Justice of India on 3rd October, 2018, thereby making him the first person from the Northeast, to become the Chief Justice of India. He is the son of a former Assam Chief Minister Keshab Chandra Gogoi. Chief Justice Ranjan Gogoi shall have a tenure of 13 months, until 17th November, 2019.
2. CJI Gogoi's plan to reduce pendency: Justice Gogoi highlighted two major concerns – huge pendency of cases and inability of the poor to seek access to justice. The following are some of the measures to reduce pendency of cases:
   - Ban on leaves on working days, unless there is a case of emergency.
   - CJI to be apprised if any of the High Court or subordinate court judges fail to adhere to this regime. In case of such a situation, all judicial work would be withdrawn from the said judge.
   - CJI further suggested that infructuous cases should be first disposed off, after which appeals filed by convicts lodged in jail for criminal cases must be identified. Later the cases pending for more than five years must then be listed immediately and disposed of after hearing.
   - CJI also emphasised the necessity to expedite the process of filling in judicial vacancies.
   - Daily monitoring of cases in subordinate courts, as against quarterly checks.
3. The Supreme Court will be open to the general public on every Saturday, except declared holidays, from 10:00 a.m. to 1:00 p.m. This can be done by booking a "guided tour" on the official website of the Supreme Court. This portal was launched by Chief Justice Ranjan Gogoi. No fees shall be charged for the tour.

4. High Court issues directions to CBI and State CID in probe over Pansare-Dabholkar murders: A Division Bench of the Bombay High Court while examining the progress made by the CBI in Pansare-Dabholkar murder investigation, stated that the authorities must be proactive and take concrete steps to conclude the probe. While the CBI is investigating Narendra Dabholkar's murder, the State CID is investigating the murder of Govind Pansare.

5. In a relief to human rights activist Gautam Navlakha, civil rights activist and writer Anand Teltumbde, tribal rights activist Father Stan Swamy, the Bombay High Court has granted them protection from arrest till December 14 in the case regarding violence that took place at Bhima-Koregaon in Pune on January 1 2018.

6. The Income Tax Appellate Tribunal (ITAT), Mumbai bench held that amount received as compensation for sexual harassment is not liable to be taxed as income or profits and gains of profession under the Income Tax Act, 1961. Actress- Model Sushmita Sen had filed the appeal against the assessment, confirmation of penalty and addition of certain amounts by the Commissioner of Income Tax (Appeals) (CIT(A)). In appeal, it was argued that Sen had received Rs.1.45 Crore as compensation in lieu of a sexual harassment case filed by her against an employee of CCIL and hence the ITAT allowed the Appeal.

7. An Aadhaar linked biometric attendance system will soon be introduced in the Delhi District Courts. For this purpose, a circular asking all officials to furnish details, has been issued. The said circular also seeks the consent of the concerned officials to the Aadhaar based Biometric Attendance System.

8. No use of Aadhaar for Customer Verification by Telecom Service Providers: The Department of Telecommunication (DoT) has directed all the Telecom Service Providers to discontinue the use of Aadhaar for re-verification of already existing customers and issuance of new mobile connections, in order to comply with the

decision of Constitution bench in the Justice Puttaswamy case. The DoT instructed the service providers to delete the column asking for Aadhaar number in the customer acquisition form (CAF) and asked the service providers to prepare an alternative digital process.

## INTERNATIONAL TREATIES, CONVENTIONS, AGREEMENTS AND MOUS

1. Union Cabinet approves the signing and ratification of the Extradition Treaty between India and Malawi which will provide a legal framework for seeking extradition of terrorists, economic offenders and other criminals from and to Malawi.
2. Union Cabinet chaired by the Prime Minister approves the signing and ratification of the Extradition Treaty between India and Lithuania which will provide a legal framework for seeking extradition of terrorists, economic offenders and other criminals from and to Lithuania.
3. Union Cabinet approves the signing and ratification of the Bilateral Investment Treaty (BIT) between the India and Belarus on Investments. According to the Cabinet, "the Treaty is likely to increase investment flows between the two countries. The agreement is expected to improve the confidence of the investors resulting in an increase in FDI and Overseas Director Investment (ODI) opportunities and this will have a positive impact on employment generation."
4. The Union Cabinet approves the signing and ratification of the Extradition Treaty between India and Afghanistan which will provide a legal framework for seeking extradition of terrorists, economic offenders and other criminals from and to the Afghanistan.
5. Union Cabinet approves the signing of a Memorandum of Understanding (MoU) between India and Lebanon for cooperation in the field of agriculture and allied

sectors.According to the Cabinet, "the MoU will promote understanding of best Agricultural practices in the two countries and will help in better productivity at farmer fields as well as improved global market. The MoU will help to increase agriculture production and productivity by getting access to best practices and market worldwide. It will lead to innovative techniques for increasing production and productivity, leading to strengthening of food security."

6. The Union Cabinet approves the Agreement between India and Morocco on Mutual Legal Assistance in Criminal Matters. The Agreement will provide a broad legal framework for bilateral cooperation between India and Morocco in investigation and prosecution of crime, tracing, restraint, forfeiture or confiscation or proceeds and instruments of crime and be instrumental in gaining better inputs and insights in the modus operandi of organized criminals and terrorists, which in turn can be used to fine-tune policy decisions in the field of Internal Security.

7. The Union Cabinet approves signing of a Memorandum of Understanding (MoU) between National Small Industries Corporation Ltd. (NSIC) – a Public Sector Undertaking of the Ministry of Micro, Small & Medium Enterprises (MSME) of the Republic of India and JSC-Russian Small & Medium Business Corporation (RSMB Corporation), Russia. The MoU will be signed during the upcoming visit of Russian President to India.The MoU will provide a structured framework and enabling environment to the MSME sector of the two countries to understand each other's strengths, markets, technologies, policies etc.

8. Union Cabinet approves the signing of a Memorandum of Understanding (MoU) between India and Uzbekistan for increased cooperation in the areas of Trade, Industry, and Research & Development of Pharmaceutical products. In view of the importance of the growth of the pharmaceutical Industry in both countries

and importance of mutual cooperation in trade, production, research and development in the pharmaceutical sector, both Governments have been trying to establish a formal mechanism of bilateral cooperation.

9. Union Cabinet gives its ex-post facto approval to the Second Protocol amending the Comprehensive Economic Cooperation Agreement (CECA) between India and Singapore. Signing of the Second Protocol will enhance bilateral trade and will deepen the Economic Cooperation between India and Singapore.

# (A.) CASES ACROSS THE POND

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| 13 September 2018 | Supreme Court Decision 2017 Do16732 Decided September 13, 2018【Violation of the Animal Protection Act】[1]<br><br>(Supreme Court of South Korea) | The case deals with the question of what constitutes "cruel methods" of slaughtering an animal under the Animal Protection Act.<br><br>In the instant case, dog farm owner was charged with cruelly killing dogs in a slaughter house by electrocuting their mouths using a metal rod while the dogs were tied up, thereby violating the former Animal Protection Act.<br><br>The court convicted the dog farm owner and observed that a general slaughter method cannot be laid down as standard method given difference of characteristics among animals. It further laid down factors for determination of "cruel methods" namely degree and lasting period of pain inflicted on animals depending on the characteristics of each animal, |

[1] http://library.scourt.go.kr/SCLIB_data/decision/54-2017Do16732_AnimSla_jh.htm

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| | | specific method of use and form of killing and public sentiment at the time regarding the method used to kill or cause the death of that animal, |
| 25 October 2018 | Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited and Another[2]<br><br>Constitutional Court of South Africa) | The case pertains to eviction order issued by lower court to a mining company, allowing eviction of 13 families for the company to undertake mining activities.<br><br>The court held that there could be no eviction without consent of persons to be evicted and without adequate compensation for the land to be foregone. The court also made a reference to Section 2 of Interim Protection of Informal Land Rights Act 31 of 1996, which prohibits deprivation of informal land right without consent of person to be deprived. |

[2]https://collections.concourt.org.za/bitstream/handle/20.500.12144/34600/Full%20judgment%20Official%20version%2025%20October%202018.pdf?sequence=57&isAllowed=y
See also https://www.hrw.org/news/2018/11/06/south-africas-constitutional-court-protects-land-rights

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| 30 October 2018 | Rahube v Rahube[3]<br><br>(Constitutional Court of South Africa) | The case pertains to validity of Section 2(1) of the Upgrading of Land Tenure Rights Act 112 of 1991 (apartheid-era law), which *inter alia* automatically converted holders of land tenure rights into owners of property, without providing other occupants or affected parties an opportunity to make submissions and recognized men as head of the family and as legal land owners. This provision particularly impacted the women of colour who were unable to own property during apartheid and was challenged for being violative of women's rights<br><br>In the instant case the applicant brought the case against her brother who purported to evict her from her home where applicant has lived for more than 30 years.<br><br>The Court struck down the |

[3]https://collections.concourt.org.za/bitstream/handle/20.500.12144/34594/Full%20judgment%20Official%20version%2030%20October%202018.pdf?sequence=20&isAllowed=y
See also https://citizen.co.za/news/south-africa/2029892/african-women-to-get-land-back-after-concourt-judgment/

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| | | provision and upheld the rights of the applicant vis-à-vis property. The decision of the court was hailed as a landmark in terms of protecting women's right to equality and land ownership. |
| 31st October 2018 | Mst. Asia Bibi v. The State[4]<br><br>(Pakistan Supreme Court) | The case pertains to capital offence of blasphemy in Pakistan.<br><br>In the instant case a Pakistani Christian woman was convicted of insulting prophet Muhammad and was sentenced to death by hanging in 2010. Vide the judgment in 2018, the woman was acquitted for insufficient evidence[5]. |
| 13 December 2018 | Rajavarothiam Sampanthan v. Attorney General[6]<br><br>(Supreme Court of Sri Lanka) | The case revolved around two interesting questions the right of the Parliamentarian to continue in office in accordance with law and right of the citizen to be governed by a legitimate government.<br><br>The answers to both these questions |

[4] http://www.supremecourt.gov.pk/web/user_files/File/Crl.A._39_L_2015.pdf
[5] https://www.leappakistan.com/mst-asia-bibi-v-the-state-etc-death-sentence-for-blasphemy-quashed/
[6] 2018 SCC OnLine SL SC 74

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| | | essentially lie in Article 70(1) of the Constitution of Sri Lanka, which reads,<br><br>"The President may by Proclamation, summon, prorogue and dissolve Parliament: Provided that the President shall not dissolve Parliament until the expiration of a period of not less than four years and six months from the date appointed for its first meeting, unless Parliament requests the President to do so by a resolution passed by not less than two-thirds of the whole number of Members (including those not present), voting in its favour."<br><br>Placing reliance on this article, the Court held that the exercise of power by the President in dissolving the Parliament was outside the bounds prescribed in the Article as per which the President is expressly enjoined from dissolving Parliament until the expiration of a period not less |

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| | | than four years and six months from the date appointed for its first meeting; whereas the President dissolved the Parliament much earlier than the prescribed time limit i.e. after two and a half years from the date of its constitution.[7]<br><br>Editorial Note: This case is important since a number of Indian precedents like Madhav Rao are cited and it also makes a reference to Basic Structure doctrine. |
| 21 December 2018 | Decision no. 33 of 21.12.2018 for the interpretation of the provisions of Articles 1 (3), 6, 7, 87 and 134 (3) of the Constitution[8]<br><br>(Constitutional Court of Moldova) | The Court while deciding defence related competences of the President as also of the Legislature, it decided that the Parliament enjoys exclusive legislative competence and that there is no competition between the two. |

**ONGOING CASES:**

[7] https://www.scconline.com/blog/post/2018/12/24/sri-lanka-supreme-court-rules-overnight-dissolution-of-parliament-as-unconstitutional/
[8] http://constcourt.md/ccdocview.php?tip=hotariri&docid=680&l=ro

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| United States of America | The Supreme Court of United States is presiding over transgender military ban. The case has gained more traction with White House seeking Fast Appeal[9]. |

[9]https://www.nytimes.com/2018/11/23/us/politics/trump-transgender-ban-supreme-court.html
See also https://edition.cnn.com/2018/11/23/politics/military-transgender-ban-supreme-court/index.html

# (B.) VITAL CONSTITUTIONAL QUESTIONS

## THE RIGHT TO BE FORGOTTEN: AN INDIAN PERSPECTIVE

Our memory is hard to conceptualize. We remember some things, while we forget others. Some memories remain crystal clear, while some slowly fade away into the past. Our memories are like books at the public library; they remain on the shelf, but soon become worn down or simply lost. What causes us to forget is not totally clear, but a recent Stanford study suggests that our brains are meant to forget.[10] In fact, we would not be able to get through our day if we didn't forget.[11] However, the Internet and social media have caused some memories to become harder to forget, which begs the question: shouldn't some of those things be forgotten?

. There are countless examples where the Internet can get you fired, ruin your career, or even cause employers to snub you before the job interview. An instance occurred when a Canadian therapist was crossing the U.S. border to pick up a friend from the Seattle airport.[12] The border agent searched his name and found that five years earlier he wrote in an academic journal that he took LSD sometime in the 1960s.[13] As a result of this discovery, the border agent did not allow the Canadian therapist to enter the United States.[14] . A recent survey outsourced by Microsoft shows that seventy-five percent of U.S. recruiters and human resource professionals perform online searches of possible

[10] Keay Davidson, Brain is built to forget, research says MRIs in Stanford study show active suppression of memories, SFGate (Jan. 9, 2004), http://www.sf gate.com/news/article/Brain-is-built-to-forget-research-says-MRIs-in-2831647. php; see Lisa Trei, Psychologists offer proof of brain's ability to suppress memories, Stanford Report (Jan. 8, 2004), http://news.stanford.edu/news/2004/january14/memory-114.html.
[11] *id.*
[12] Stuart Jeffries, Why we must remember to delete - and forget - in the digital age, The Guardian (June 30, 2011), http://www.theguardian.com/technology/2011/jun/30/remember-delete-forget-digital-age
[13] *id.*
[14] *id.*

candidates.[15] One victim of this phenomenon was Stacy Snyder. When Snyder was twenty-five years old and training to be a teacher, she posted a MySpace photo of herself at a party. She was wearing a pirate hat and holding a red solo cup with the caption "Drunken Pirate." The Dean of Snyder's school said that she was promoting drinking and as a result, denied Snyder her teaching degree upon graduation. Though Snyder sued, the court found that her "Drunken Pirate" post was not protected speech.[16] So what do we do about this extensive, haunting, permanent, online record of our lives?

The right to be forgotten deals with the ability to control what personal data or information is accessible through search engines and other websites.[17] With the right to be forgotten, one could request a search engine to remove certain data that appears when someone searches their name.[18] But along with this power comes serious implications.

## Origin of the Right to be Forgotten: Google v. Angencia Espanola de Proteccion de Dato & Mario Costeja Gonzalez (APED)

### A. The Facts

On March 5, 2010, Mario Costeja Gonzalez filed a complaint with the AEPD. The complaint involved La Vaguardia Ediciones SL, a local Spanish newspaper, as well as Google Spain and Google Inc., collectively referred to as Google. Specifically, Gonzalez was upset about articles that were published in La Vaguardia many years ago, which contained announcements for a real estate auction related to attachment proceedings. All information involved in the

[15]Online Reputation in a Connected World, Cross-Tab Marketing Resources (Jan. 2010), http://www.job-hunt.org/guides/DPD Online-Reputation-Research overview.pdf
[16] Rosen, *supra note 4*
[17]Victor Luckerson, Americans Will Never Have the Right to Be Forgotten, Time (May 14, 2014), http://time.com/98554/right-to-be-forgotten/.
[18] *id.*

articles was true and was a result of Gonzalez not paying social security debts. Gonzalez initially requested the following: (1) that La Vanguardia remove or alter pages to remove his personal data; and (2) that Google remove or conceal this personal data so that it no longer appeared in the search results or in the links to La Vanguardia. Gonzalez contended that this information, though truthful, was no longer relevant because these proceedings had been resolved for a number of years and therefore should be removed.

**B.** Procedural Background

The AEPD ruled that La Vanguardia was legally justified. However, the AEPD also found Google responsible because Google engaged in "data processing" and was subject to the laws of the Directive. The AEPD determined that it had the power to prevent the access and dissemination of data when it compromises "the fundamental right to data protection and the dignity of persons in the broad sense." Google appealed the decision to the Audiencia Nacional (The National Court). In its order, the National Court stated that the question of whether a search engine is obligated to protect personal data, which a data subject does not want disseminated to third parties, depends upon the way the Directive is interpreted. The National Court then referred the case to the Court of Justice of the European Union (CJEU). The role of the Advocate General is to write an opinion when the CJEU hears cases involving new law. The Advocate General's opinions are not binding but are influential in the final decision.

On June 25, 2013, Advocate General Niilo Jaaskinen issued his advisory opinion. The Advocate General found that Google was not responsible under the right to privacy and should not be forced to remove links on its search engine. Specifically, the Advocate General held that while Google's search activities do

fit within the definition of "processing," Google did not meet the definition of "controller" with respect to the source of the material. Overall, the Advocate General's Opinion expressed the concern that a contrary ruling could have detrimental effects to the freedom of expression. The opinion states that this would entail sacrificing pivotal rights such as freedom of expression and information. However, the CJEU did not agree.

**C.** Holding

CJEU found that the intent of the Data Protection Directive of 1995 was to protect the right of privacy to its utmost. This led the Court to imply a new right - the right to be forgotten. The holding of the CJEU focuses on four interpretations of the Directive: (1) that the activities of search engines fit within the definition of "processing of personal data" and that the operator of the search engine also fits within the definition of a "controller"; (2) the activities are considered within the territory of the Member States when there is a branch or subsidiary in a Member State who directs its activities toward the Member State; (3) in order to comply with the Directive, the search engine is required to remove the requested search results; and (4) the data subject's right to privacy overrides the economic interest of the operator of the search engine, as well as the general public's interest, in having access to that information. Accordingly, these holdings interpret the Directive's intent to mean that the protection of privacy requires that Google remove the information.

The CJEU interprets the language of the Directive according to its overall intent. For example, the Court stated, "*in light of the objective of Directive 95/46 of ensuring effective and complete protection of the fundamental rights and freedoms of natural persons, and in particular their right to privacy, with respect to the procession of personal data, [these] words cannot be interpreted restrictedly.*" Again the Court stated

"*first of all, it should be remembered that ... Directive 95/46 seeks to ensure a high level of protection of the fundamental rights and freedoms of natural persons, in particular their right to privacy, with respect to the processing of personal data.*" The Court later stated that this broad protection is not absolute and is subject to a balancing of the opposing rights and interests concerned. However, there is little direction on how to implement this balancing test. The only example given is a data subject who is in the public sphere, causing the interference with rights to be justified with the general public's access to the information. Further, the Court stated that information that is deemed to be "*inaccurate ... inadequate, irrelevant, or excessive with relation to the purposes of the processing, that are not kept up to date, or that are kept for longer than is necessary unless required to be kept for historical, statistical, or scientific purposes*" is incompatible with the Directive and warrants a right to be forgotten. Accordingly, the data subject may request the removal of information from the search engine. If the search engine or controller does not grant the request, the data subject may bring suit against the search engine.

## Right to Privacy and Right to be Forgotten in India

### A. The Infamous Privacy Judgment

In a landmark verdict last year, the Supreme Court of India pronounced a pathbreaking judgment, overruling major precedents, declaring right to privacy as fundamental right stemming from Article 21 of the Constitution.[19] The judgment was celebrated and welcomed amidst much fervor and enthusiasm and was perhaps a significant stride towards recognizing the adverse impacts of the Internet and limiting the ramifications of Internet to uphold an individual's privacy. Whilst the judgment brought into the fore the right to be forgotten, its existence was most

[19] K.S. Puttuswamy v. Union of India, (2017) 10 SCC 1

explicitly articulated by Justice Sanjay Kishan Kaul by observing in his concurring opinion that "*the right of an individual to exercise control over his personal data and to be able to control his/her own life would also encompass his right to control his existence on the internet.*"

**B.** Previous Instances where Indian Courts dealt with the Right to be Forgotten

In the past, two Indian High Courts had an opportunity to deal with the right to be forgotten. Although they reached deviant conclusions, the central issue was a petition to redact personal data ingrained in the judgments of the court or to take down a judgment otherwise publicly available at large.

i) *Dharamraj Bhanushankar Dave* v. *State Gujarat*[20]

The Gujarat High Court dismissed the petition citing two reasons: first, failure of the petitioner to show relevant provisions of law applicable to the scenario or that a threat lies to life and liberty of the petitioner; and second, publication on a website does not amount to 'reporting', the term 'reporting' can only be construed in respect of law reports.

ii) *Vasunathan* v. *Registrar General*[21]

On the other hand, the Karnataka High Court ruled in favour of the petitioner and ordered the redacting of personal data of the petitioner from the judgment endorsing the ideas of modesty and reputation of the woman (petitioner).

**Data Protection Bill as prepared by the Justice SriKrishna Committee**

[20] 2015 SCC Online Guj 2019
[21] 2017 SCC Online Kar 424

The Data Protection Bill deals with the right to be forgotten as the ability of individuals to limit, de-link, delete, or correct the disclosure of personal information on the internet that is misleading, embarrassing, irrelevant, or anachronistic.[22] To achieve a delicate balance in what is the core issue i.e. deletion of disclosed or published information, when it interferes with someone else's right to free speech and expression as well as their right to receive information, the bill lays down a five criteria test[23] as follows:

The right to be forgotten may be adopted, with the Adjudication Wing of the Data Protection

Authority determining its applicability on the basis of the five-point criteria as follows:

(i) the sensitivity of the personal data sought to be restricted;

(ii) the scale of disclosure or degree of accessibility sought to be restricted;

(iii) the role of the data principal in public life (whether the data principal is publicly recognisable or whether they serve in public office);

(iv) the relevance of the personal data to the public (whether the passage of time or change in circumstances has modified such relevance for the public);

(v) and the nature of the disclosure and the activities of the data fiduciary (whether the fiduciary is a credible source or whether the disclosure is a matter of public record; further, the right should focus on restricting accessibility and not content creation).

[22] Michael J. Kelly and David Satola, The Right to be Forgotten, University of Illinois Law Review (2017) at p. 1.
[23] These criteria constitute a slight modification of the criteria developed in Google's internal policy. See, Luciano Floridi et al, Report of the Advisory Council to Google on the Right to Be Forgotten (February 2015) p. 7-14

However, this test, if implemented may suffer from the following fallouts and impediments:

*i) Excessive Delegation To Data Protection Authority*

Under the bill, the right to be forgotten entails an evaluation by a public entity i.e. Data Protection Authority as to whether the link that is requested to be deleted satisfies any of the grounds of removal enumerated under Section 27 of the Bill. If an an *executive body* is delegated with the onus to decide, on an ad-hoc basis, which right to be forgotten requests are to be complied with, such a body would suffer from illegality due to non issuance of any explicit principles guiding the body how to decide which requests are legitimate enough to trump the right to free speech. This is due to the Doctrine of Excessive Delegation which restricts the delegation of power to an executive body to make regulations without outlining the "*standards for guidance*" by the Legislature.[24] Legislations have consistently been struck down in cases wherein no legislative guidance was issued on how to exercise the delegated power.[25] In the absence of any discernible guidelines, such a delegation would be unconstitutional.

*ii) Vagueness*

The ambiguity of the terms allows wide discretion to be exercised by the private bodies in evaluating each request, which might lead to abuse.[26] It has been held that a statute can be void for vagueness, if the restrictions imposed

[24] Kishan Prakash Sharma and Ors.etc. v. Union of India and Ors, AIR 2001 SC 1493, ¶ 18.
[25] Confederation of Indian Alcoholic Beverage Companies v. State of Bihar, (Civil) Writ No. 6675/2016, ¶ 85.11
[26] Eloise Gratton& Jules Polonetsky, PRIVACY ABOVE ALL OTHER FUNDAMENTAL RIGHTS? CHALLENGES WITH THE IMPLEMENTATION OF A RIGHT TO BE FORGOTTEN IN CANADAÉLOÏSEGRATTON (2016), *available at*http://www.eloisegratton.com/blog/2016/04/28/challenges-with-the-implementation-of-a-right-to-be-forgotten-in-canada/

are not explicated intelligibly.[27] Vague statutes are unconstitutional as they violate the rule of law by not granting a fair warning to the citizens before penalising them.[28] The terms employed in the right to be forgotten are not grounded in constitutional discourse; rather they are left open-ended and subject to personal proclivities, hence would be liable to be struck down for vagueness and ambiguity, in case such terms were to be employed in a statue effectuating the right to be forgotten in India.

*iii) Over-broadness*

A statute is over-broad if the restrictions delineated therein are not constitutionally valid.[29] The restrictions enumerated under Article 19(2) are exhaustive and nothing which is not included under Article 19(2) can be read as a permissible restriction on right to freedom of speech.[30] This was demonstrated emphatically in *Shreya Singhal* wherein Nariman J. struck down Section 66A of the Information Technology Act, 2000 by stating that restrictions such as "*information that may be grossly offensive or which causes annoyance or inconvenience"* are undefined and hence are violative of Court's exhortations that require each restriction on Article 19(1) to be "*couched in narrowest possible terms*." Similarly, the right to be forgotten in its present form as seen in the Data Protection Bill envisages restrictions that are not only vague, but also not listed under Article 19(2). Thus, the grounds of removal are impermissible under Article 19(2) and hence the entire conception suffers from over-broadness, effectively rendering it void.

[27] Shreya Singhal v. Union of India, AIR 2015 SC 1523, ¶¶ 69, 82
[28] Kartar Singh v. State of Punjab, JT 1994 ( 2 ) SC 423, ¶ 77
[29] ChintamanRao v. State of Madhya Pradesh, AIR 1951 SC 118, ¶ 9
[30] Ram Jethmalani v. Union of India, (2011) 8 SCC 1, ¶ 80; OK Ghosh v. EX Joseph, AIR 1963 SC 812, ¶ 10

**The Way Forward**

The right to be forgotten represents a journey in reverse. Man, who invented the internet is suddenly aware of its prowess but is only partially ready to take on and tackle the same. When it comes to right, it brings a precarious task of striking a balance between rights of individuals and internet giants; with too much power in either of them presenting an opportunity of abuse. However, time is apposite to dive into the problems and find appurtenant and sustained solutions.

# (C.) INTERSECTION(S) OF PUBLIC LAW

"*Constitution is not a mere lawyers document, it is a vehicle of life, and its spirit is always the spirit of the age.*" – **B.R. Ambedkar**

Hans Kelsen describes a legal system as hierarchically arranged *norms* with *grundnorm* as the ultimate locus of foundation conferring validity on these *norms*. Constitution of India, or to be precise, its basic structure is the *grundnorm* of all laws in this country. This living document is the protector and the regulator of each individual. Ergo, convergence of constitutional law with other statutory laws is inevitable.

**Constitution and Specific Relief Act, 1963**

*In Pradeep Bhargava and Another v. Smt. Ram Pyari and Others*[31]the Delhi High Court was dealing with effect of Article 300-A on the provisions of the Specific Relief Act. The question referred to the larger bench by the Single Judge was as to whether a suit for specific performance is maintainable in view of the provisions of Article 300-A which provides that, "*No person shall be deprived of his property save by authority of law.*"

The Court analysed the nature and purpose of the remedy of specific performance for which it referred *American Jurisprudence (Second (8) Edition, Volume 71)* and *Halsbury's Laws of England, Fourth Edition, Volume 44, (9) (para 401)*. The Court further observed that "save by authority of law" reflected that it is a prohibition of unauthorised governmental action, against private property, as there can be no question of one private individual being authorised by law to deprive another of his property. Article 300-A was neither intended to prevent wrongful individual acts nor to provide protection against merely private conduct. Relying on the decision of Supreme Court in

[31]ILR (1992) 2 Del 677

*Smt. Vidya Verma v. Dr. Shiv Narain Verma*[32] the Court observed that a person whose rights of property were infringed by a private individual must seek is remedy under the ordinary law.

Finally answering the reference in the affirmative, the Court held that, "Suit for specific performance of contract of sale of immovable property lies to enforce rights under contract which the law of specific relief recognises. Article 300A of the Constitution has no effect on the provisions of the Specific Relief Act relating to agreement to sell an immovable property."

**Constitution and Criminal Law**

In *Subramanian Swamy* v. *Union of India*[33] the Supreme Court dwelled upon the constitutional validity of Sections 499 and 500 of the Indian Penal Code, 1860 and Sections 199(1) to 199(4) of the Code of Criminal Procedure, 1973.

The contentions made on behalf of the Petitioners were that freedom of thought and expression cannot be scuttled or abridged on the threat of criminal prosecution and made paraplegic on the mercurial stance of individual reputation and of societal harmony, for the said aspects are to be treated as things of the past, a symbol of colonial era where the ruler ruled over the subjects and vanquished concepts of resistance; and, in any case, the individual grievances pertaining to reputation can be agitated in civil courts and thus, there is a remedy and viewed from a prismatic perspective, there is no justification to keep the provision of defamation in criminal law alive as it creates a concavity and unreasonable restriction in individual freedom and further progressively mars voice of criticism and dissent which are necessitous for the growth of genuine advancement and a matured democracy.They further argued that free speech includes

[32]AIR 1956 S.C. 108
[33] (2016) 7 SCC 221

the right of propagation of ideas, and the freedom of speech and expression cannot brook restriction and definitely not criminal prosecution which is an anathema to free speech. Reasonable restriction cannot assume any disproportionate characteristic in the name of reasonableness, for the concept of reasonableness, as a constitutional vehicle, conceives of the doctrine of proportionality. As the impugned provisions do not meet the test of proportionality, they do not withstand the litmus test as postulated under Article 19(2) of the Constitution.

The assertion by the Respondents was that the reasonable restrictions are based on the paradigms and parameters of the Constitution that are structured and pedestalled on the doctrine of non-absoluteness of any fundamental right, cultural and social ethos, need and feel of the time, for every right engulfs and incorporates duty to respect other's right and ensure mutual compatibility and conviviality of the individuals based on collective harmony and conceptual grace of eventual social order.

The Court observed that, "*The submission that defamation is fundamentally a notion of the majority meant to cripple the freedom of speech and expression. It is too broad a proposition to be treated as a guiding principle to adjudge reasonable restriction. There is a distinction between social interest and a notion of the majority. The legislature has exercised its legislative wisdom and it is inappropriate to say that it expresses the notion of the majority. It has kept the criminal defamation on the statute book as in the existing social climate it subserves the collective interest because reputation of each is ultimately inhered in the reputation of all. The submission that imposition of silence will rule over eloquence of free speech is a stretched concept inasmuch as the said proposition is basically founded on the theory of absoluteness of the fundamental right of freedom of speech and expression which the Constitution does not countenance.*"

The Apex Court onexamining the impugned provisions and interpreting the pertinent facets of the constitutional provisions, upheld the constitutional validity of Section 499 and 500 IPC and section 199 CrPC.

**Constitution and Torts**

In *S. Nambi Narayanan* v. *Siby Mathews and Ors.*[34] the Supreme Court while dealing with the arrest of an ISRO scientist by the State Police regarding espionage without any evidence on record also dwelled on the concept of Constitutional Tort. Nambi Narayanan, the present Appellant, was ISRO's project director for development of cryogenic technology when he was arrested by the Kerala Police on the allegation that he was involved in leaking official secrets to a spy racket involving Maldives nationals. He was detained for over 50 days and was allegedly subjected to torture at the instance of officials of Kerala Police and Intelligence Bureau. The case was later taken over by the CBI, which found that the case baseless, and filed a closure report. This report listed several lapses committed by the officers of Kerala Police and recommended action against them. The Kerala Government then issued a notification and directed further investigation in the case. This action of the state was challenged by the Appellant before Kerala High Court, which had upheld the notification, consequent to which Narayanan approached the Supreme Court.

The bench headed by CJI Dipak Misra observed, "*the entire prosecution initiated by the State Police was malicious and it has caused tremendous harassment and immeasurable anguish to the appellant. It is not a case where the accused is kept under custody and, eventually, after trial, he is found not guilty. The State Police was dealing with an extremely sensitive case and after arresting the appellant and some others, the State, on its own, transferred the case to the Central Bureau of Investigation. After comprehensive enquiry, the closure report was filed. An argument has been advanced by the learned counsel for the State of Kerala as well as by the other respondents that the fault should be found with CBI but not with the State Police, for it had transferred the case to CBI. The said submission is to be noted only to be rejected. The criminal law was set in motion without any basis. It was initiated, if one is allowed to say, on some kind*

[34] (2018) 10 SCC 804

*of fancy or notion. The liberty and dignity of the appellant which are basic to his human rights were jeopardised as he was taken into custody and, eventually, despite all the glory of the past, he was compelled to face cynical abhorrence. This situation invites the public law remedy for grant of compensation for violation of the fundamental right envisaged under Article 21 of the Constitution. In such a situation, it springs to life with immediacy. It is because life commands self-respect and dignity.*" [35]

The Court further observed that, "*...there can be no scintilla of doubt that the appellant, a successful scientist having national reputation, has been compelled to undergo immense humiliation. The lackadaisical attitude of the State Police to arrest anyone and put him in police custody has made the appellant to suffer the ignominy. The dignity of a person gets shocked when psycho-pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy. We are absolutely conscious that a civil suit has been filed for grant of compensation. That will not debar the constitutional court to grant compensation taking recourse to public law.*"[36]

The apex court, while granting compensation of Rs. 50 Lakhs to the Appellant held that, "*Reputation of an individual is an insegregable facet of his right to life with dignity.*" The court further constituted a committee headed by former Supreme Court Judge Justice D. K. Jain to inquire into the role of police officers in the conspiracy against him.

[35] Para 34
[36] Para 40

# (D.) APPURTENANT SCHOLARSHIP

1. **International Journal of Constitutional Law**[37]

   The underlying theme for the July 2018 edition (Volume 16, Issue 3) is Constitutional silence. It makes a delightful reading for any person interested in the nitty-gritties of Constitutional interpretation.

2. **The Constitution of India: Symbol of Unity in Diversity, MP Singh and Surya Dev**[38]

   The article makes an interesting read to understand the resilient nature of the Indian Constitution, having sustained, the changing times and dynamics, largely at the hand of proactive judiciary.

3. **Courts of India: Past to Present**[39]

   The coffee table book, steered by an Editorial Committee headed by Justice S.A Bobde, introduces the complexities of the Indian judiciary to common public in technical and non-technical manner and we at Centre for Public Law are thrilled to have had our faculty coordinator Dr. Sanjay Jain as one of the contributors to the book.

[37] https://academic.oup.com/icon/issue/16/3
[38] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=897021
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## (E.) PUBLIC LAW ON OTHER BLOGS

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2. https://www.livelaw.in/top-stories/-73-women-judges-high-courts-govt-parliamentary-panel-142079
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# (F.) MESMERIZING QUOTES

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**DR. D.Y. CHANDRACHUD J.**

in

Indian Young Lawyers Association v. State of Kerala, 2018 SCC OnLine SC 1690

*The Indian Constitution is marked by a transformative vision. Its transformative potential lies in recognizing its supremacy over all bodies of law and practices that claim the continuation of a past which militates against its vision of a just society. At the heart of transformative constitutionalism, is a recognition of change*.

~

**B.R. AMBEDKAR**

*However good a Constitution may be, if those who are implementing it are not good, it will prove to be bad. However bad a Constitution may be, if those implementing it are good, it will prove to be good.*

~

**HENRY WARD BEECHER**

*Laws are not masters but servants, and he rules them who obeys them.*

# (G.) CONTEST

The Preamble to the Constitution of India occupies a central position in constitutional jurisprudence. Unlike the Preamble to a Statute, the Preamble of the Indian Constitution was discussed and adopted similar to all of its provisions and thus forms a part of the Constitution. It states the noble purposes of the Constitution and the vision of its makers, it describes the nature of our polity and also mentions the very source of our Constitution. Its significance in understanding the Constitution cannot be understated and thus the following puzzle involves the identification of the core values that permeate our constitution as declared in the Preamble.

| | |
|---|---|
| B C V M E Q U A L I T Y V N X | SOVEREIGNTY |
| L L A O N P A E O I A N N K N | EQUALITY |
| S X E T E P C Y C I T I Z E N | SECULARISM |
| E O Y T N G I E R E V O S B Y | SOCIALISM |
| C V M P A F R A T E R N I T Y | REPUBLIC |
| U G M V P T L B Q H E N T G N | WELFARESTATE |
| L A A L H T S Y A H R J E A M | DEMOCRACY |
| A A Z D D V D E M O C R A C Y | CITIZEN |
| R L H F O E Z T R L M M P J L | JUSTICE |
| I R O A M V I C I A O X Y K L | FRATERNITY |
| S F U B Q I S U K C F A Z F Z | |
| M S O C I A L I S M P L L W M | |
| Z N Q I T G X H O G S V E H E | |
| X E P S Z R E P U B L I C W J | |
| O F S I E C I T S U J S B A Y | |

# PUBLIC LAW BULLETIN

CENTRE FOR PUBLIC LAW AT ILS LAW COLLEGE, PUNE

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