ILS Law College, Pune

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THEME: SEXUAL HARASSMENT AND RULE OF LAW

PUBLIC LAW BULLETIN

CENTRE FOR PUBLIC LAW AT ILS LAW COLLEGE, PUNE

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A. MESSAGE FROM THE EDITOR

Date: July 18, 2019

Thursday

Dear All,

We are pleased to bring out the ninth volume of the Public Law Bulletin themed on Sexual Harassment and Rule of Law which is incidentally also the first issue of this academic year 2019-2020. We congratulate all the new newly recruited content contributors of PLB for achieving the feat of accomplishing the publication. On the cusp of second cycle of accreditation of our college by National Assessment and Accreditation Council, the approach of Supreme Court in tackling the sexual harassment allegations leveled by a former lady staff against sitting Chief Justice of India is bound to dampen the spirit of students of law. Had the Supreme Court not embroiled itself in the controversy and resorted to the due process of law, it would have upheld the height and legacy it has reached over the years. The Supreme Court of India which lectured the entire political establishment to be sensitive to the social menace of sexual harassment in *Vishaka* v. *State of Rajasthan*[1] looked very blunt in setting its one house right by maintaining neutrality. We hope that the court will bounce back and engage in damage control exercise by providing the appropriate redressal to the victim.

Bombay High Court also has handed down a number of controversial judgments viz. Maratha reservation judgment, constitutional validity of Section 376E of the Indian Penal Code requiring closer [2] scrutiny. The stand of Bombay High Court on the interpretation of Article 342A is extremely thought provoking. By placing reliance a contextual interpretation on the word 'central', the court divested Hon'ble President of India of his power to notify the list of backward class in the states. This stand appears to be in acute conflict Cl. (1) of Article 342A.

While dealing with the constitutional validity of Section 376E of the Indian Penal Code, the Bombay High Court appears to have preferred the conviction model over the repeat offender model. Its observation that in America, rape is an offence against individual whereas it is an offence against entire society in India seems to be fatally flawed as around the world, criminal law is perceived as the species of public law and criminal offences are understood as not only against individuals but against the state and society as a whole.[3]

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[1] (1997) 6 SCC 241.

[2] https://www.livelaw.in/top-stories/maratha-reservation-bombay-high-courts-judgment-145949

[3] Mohd. Salim Mohd. Kudus Ansari v. The State Of Maharashtra And Anr, https://barandbench.com/wp-content/uploads/2019/06/Bombay-HC-Section-376-e-Judgment.pdf

Adding to these controversies is an interim order[4] passed by the Supreme Court yesterday in respect of the theatrics in Karnataka State Legislative Assembly. Although the Hon'ble Supreme Court restrained from interfering with the call of the speaker on resignations of the rebel MLAs, by giving the privilege to these rebellions (MLAs) to take a call on their presence during the confidence vote motion, the court virtually suspended the application of Anti Defection Act in respect of these members. How could it be that though the speaker can take a call on resignation yet the rebellion MLAs be exempted from the operation of whip of the ruling party.

Amongst these controversial developments was a silver lining with a spectacular victory of India in the International Court of Justice with the court accepting the contention of India to provide Mr. Kulbhushan Jadhav by a majority of 15:1 and staying the execution of death penalty. [5]

We hope that the faculty and the students would engage in a constructive and critical analysis of judicial process by focusing on the aforementioned judgments. We wish the team all the very best.

Ms. Vaijayanti Joshi	**Dr. Sanjay Jain**	**Mr. D.P. Kendre**
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[4] https://www.indiatoday.in/news-analysis/story/karnataka-speaker-unfetterd-rules-supreme-court-but-kumaraswamy-govt-still-not-safe-1570315-2019-07-17

[5] https://www.icj-cij.org/files/case-related/168/168-20190717-JUD-01-00-EN.pdf

B. OBITUARY

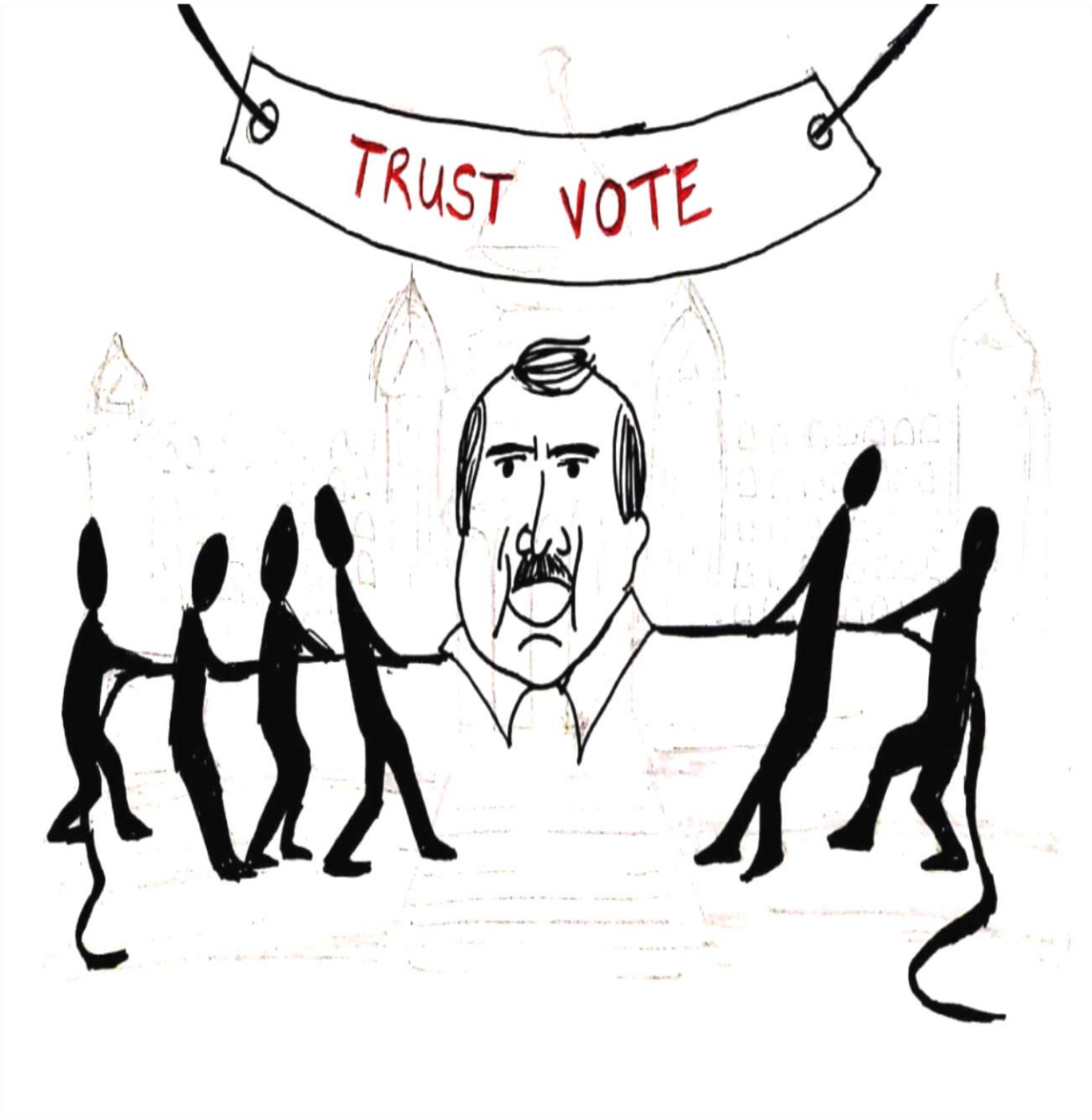
Padma Shri Prof. N. R. Madhava Menon

(*Father of Modern Indian Legal Education*)

4 May 1935 – 8 May 2019

C. CARTOON AREA

~ *Artistic work of*: Rudhdi Walawalkar, IV B.A. LL.B.



D. CARTOON AREA

~ *Artistic work of*: Shweta Tambade, II B.A. LL.B

E. PUBLIC LAW IN THE NEWS

~ *Compiled by*: Adithi Rao, IV B.A. LL.B.

1) SUPREME COURT

- Manohar Pratap v UOI Writ Petition (Civil) No.780/2019
  Directions issued to control outbreak of Acute Encephalitis Syndrome across Bihar: This outbreak that resulted in the death of about 150 children in different districts of Bihar has drawn attention to matters of grave concern relating to public medical care facilities, nutrition and sanitation/hygiene in Bihar. The crisis also came to be aggravated due to the lack of adequate medical facilities, ICUs and other medical equipment in the hospitals across the state. The petitioners in this writ petition contended that the Right to Life, guaranteed as a fundamental right under Article 21 of the Constitution of India has been violated as a result of the State's inability to address the crisis adequately. The vacation bench headed by Justice Sanjiv Khanna granted 7 days to the state and the UOI to bring the situation under control.

- Jagisha Arora v The state of UP. 2019 SCC OnLine SC 766
  SC orders release of Journalist Prashant Kanojia: A vacation bench comprising of Indira Banerjee and Ajay Rastogi granted bail to journalist Prashant Kanojia in a habeas corpus petition filed by his wife. Mr. Kanojia was arrested for allegedly making objectionable comments against Uttar Pradesh Chief Minister Yogi Adityanath on social media. A Suo Moto FIR was lodged against him by the UP Police under Section 500 of the IPC and Section 66 of the IT Act. While granting bail the bench remarked that even though they could not appreciate Mr. Kanojia's tweets he cannot be put behind bars for the same. The court observed certain irregularities in his arrest. Firstly, a non-cognizable offence like S.500 IPC can be taken only on a private complaint before the Magistrate. Secondly, arrest was made by policemen who were in plain civil clothes. Further, the arrest was conducted without an arrest memo. Lastly, as both the offences in this case were bailable offences, he was bound to be released as per S.436 of the Cr.PC. Therefore the arrest and remand was held to be illegal, resulting in deprivation of personal liberty guaranteed under Article 21 of the Constitution of India.

- Abdul Kuddus v. Union of India (Civil appeal arising out of SLP(C) No. 23127 of 2018)
  Appeals against non-inclusion in the National Register of Citizens (NRC) is maintainable only when a Foreigner Tribunal has not already decided nationality:

The Supreme court in a bench comprising of Justices R. Gogoi, S. Khanna and D. Gupta were of the opinion that when the name of a person, included in the NRC in Assam, is deleted on being declared as an illegal immigrant, such decision will be binding and will prevail over the government's decision to include the person's name in the NRC. The SC applying the principle of Res- Judicata held that a person is not entitled to a second round of litigation before the Foreigners Tribunal and that he cannot be allowed to double dip. Therefore, a person declared as an illegal immigrant cannot seek re-decision except under special circumstances.

- Sandeep Vinod Kumar Singh & Anr. v Election Commission of India Writ Petition(s)(Civil) No(s). 501/2019
  PM Narendra Modi Biopic stalled by Election Commission, SC refused to interfere: A writ petition was filed questioning the decision of the Election Commission to stall the release of the film showcasing the life and events of the current Prime Minister Modi. The EC in view of the General Elections had held that the film cannot be released during the operation of the Model Code of Conduct (MCC). The petitioners argued that the order violates their right to freedom of speech and expression under Article 19 of the Constitution. Further, they claimed that the film is not a tool of political propaganda, but rather an inspiring work. They also submitted that a two-minute trailer was not sufficient to decide whether the film would impact the level playing field during elections. The court directed the EC to watch the film, finalize its decision and submit its report in a sealed cover to the court. The EC accordingly passed an order in exercise of its powers under Article 324 of the Constitution of India and held that any biopic which may serve the purpose of any political entity or individual with regards to furthering their electoral campaign shall not be displayed in any electronic form during the operation of MCC.

- M. Siddiq (D) thr. L.Rs v. Suresh Das and Ors. (2019) 4 SCC 656
  Ayodhya Land Dispute, SC to hear the plea if Mediation fails: The SC despite lack of consensus and earlier unsuccessful attempts to amicably resolve the 70-year-old Babri Masjid case, issued directions for mediation. The court clarified that there were no legal impediments, under Or. 1. R. 8(2), (3) & (4) and/or Or. 23 R. 3-B of the CPC, to making a reference to mediation for settlement of disputes. The mediators appointed were former Supreme Court Judge Retd. Justice Fakkir Mohamed Ibrahim Kalifulla, Sr. Advocate Sriram Panchu, and Sri Sri Ravi Shankar. Other directions were also given, such as maintaining confidentiality of the sessions, conducting in-camera proceedings, taking legal assistance as and when required and finally completing the process and reporting to the court within four weeks.

- BK Pavitra v Union of India, 2019 SCC OnLine SC 694, decided on 10.05.2019
  Constitutional validity of the Karnataka Reservation Act, 2018. The Act passed by the Karnataka State Legislature adopts the principle that consequential seniority in

service is not an additional benefit but is a consequence of the promotion which is granted to members of the Scheduled Castes and Scheduled Tribes. A similar act was passed in 2002, the validity of which was challenged in BK Pavitra v Union of India (2017) 4 SCC 620. It was held in Pavitra's case that Sections 3 and 4 of the Reservation Act, 2002 were ultra vires Article 14 and 16 of the Constitution and that a study on the aspects of the inadequacy of representation, backwardness and the impact on overall efficiency needs to be conducted before providing for reservation. Subsequently, the state government constituted the Ratna Prabha Committee which submitted a detailed report in 2017. The government on the basis of this report enacted the 2018 Act, which was challenged in this petition. The apex court in the bench comprising of Justices U.U. Lalit and D.Y. Chandrachud upheld the validity of the Act on the following grounds:

i. *That the infirmities in the 2002 Act has been considered and addressed by the report submitted by the committee.*

ii. *That the reservations are not an exception to the rule of equality rather they are the true fulfillment of effective and substantive equality by accounting for the conditions into which different people are born. It is intrinsic to equal citizenship and draws a connection between Article 16(1) and 16(4) of the constitution i.e. between formal and substantive equality.*

iii. *That this Act would not lead to the creation of a creamy layer as merit should not be limited to narrow criteria such as one's rank in standardized exams, but rather must flow from the actions a society seeks to reward. Hence the efficiency of administration was not at odds with the principle of meritocracy.*

iv. *That the provisions regarding retrospectiveness recommended by the Ratna Prabha Committee were neither arbitrary nor unconstitutional.*

- Indibility Creative Pvt. Ltd. v. Govt. of West Bengal 2019 SCC OnLine SC 520, decided on 11.04.2019

SC Orders West Bengal to Lift Ban on Bhobishyoter Bhoot : The SC accepted an appeal against the State of West Bengal which prohibited the screening of the movie "Bhobishyoter Bhoot" on grounds that it may hurt public sentiments and cause public disorder and chaos. The appellants received a letter from the police authorities stating that the content of the movie was not fit to be played in theatres. Thereafter, the police authorities were alleged to have stopped the screening of the movie in various public theatres. The Court observed that the Central Board of Film Certification (CBFC) is the ultimate authority in India to decide whether a movie should be screened or not in public. As the movie already received a CBFC certificate, the Court held that the state has acted as a "super-censor" and has directed it to make sure that no problems are caused regarding the screening of the

movie in public theatres. The Court also directed the state to pay Rs. 20 Lakhs to the appellants for the troubles and losses faced by them.

- Indu Kabul v Union of India (Decided on 25/06/2019) W.P. (Criminal) No. 168/2019 **SC refuses CBI enquiry into the murder case of Darvesh Yadav, the newly elected lady President of UP Bar Council who was shot dead in Agra Civil Court.** The bench comprising of Justices Sanjiv Khanna and Justice B.R. Gavai rejected a writ petition filed under Article 32 of the Constitution. The court merely stated that it was not inclined to entertain the petition. The petitioner was however asked to approach the jurisdictional High Court(s) in respect of the reliefs prayed.

- Director Transport Department UT Administration of Dadra and Nagar Haveli v Abinav Patel (Decided on 07/05/2019)
The apex court held that a migrant Scheduled Tribe (ST) can be given reservation in the Union Territory of Dadra and Nagar Haveli. The bench noted that the presidential order gave the benefit to the ST's on the basis of 'residence' and not on the basis of 'origin'. It further held that altering the word 'resident' to mean origin would be impermissible.

2) HIGH COURT

MEGHALAYA HIGH COURT

State of Meghalaya v. Amon Rana and Ors. (24/05/2019)
Held that statements such as 'India ought to be a Hindu Rashtra' are flawed. A Division bench of the High Court set aside a previous judgment of a single judge of the same court which said "India ought to be a Hindu Rashtra". A single judge had courted controversy when he had in a case involving the domicile certificate of a local resident considered the effects of illegal immigration into India and suggested "Hindu Rashtra" as a solution to protect the Hindu way of life. The Division Bench categorized the judgment and the remarks of the single judge as "legally flawed and inconsistent with the Constitution.

BOMBAY HIGH COURT

Amritpal Singh Khalsa v. Maharashtra State Bureau of Textbooks Production and Curriculum Research and Ors. (18/04/2019)
No 'insulting' references to Bhindranwale in Maharashtra's Textbook: A writ petition praying for the deletion of the reference of Sikh leader Jarnail Singh Bhindranwale as a "terrorist" in relation to Operation Blue Star from Class XI textbooks was dismissed by the High Court. The petitioner alleged that the authorities have spread vicious propaganda against the Sikh Movement and have harmed their religious sentiments by equating leaders they consider as "shaheeds"

to terrorists. The Court rejected their arguments and observing that Operation Blue Star was taken up as military expedition to evict the terrorists who were hiding in the Golden temple held that the Court need not interfere with such depiction.

Dr. Jishri Laxmanrao Patil v. Chief Minister of Maharashtra and Ors. (Decided on 28/06/2019)

Bombay High Court upholds reservation for Marathas: A Bench of Justices Ranjit More and Bharti Dangre held that the Maharashtra State Reservation (of Seats for Admission in Educational Institutions in the State and for Appointments to the Posts in the Public Services under the State) for Socially and Educationally Backward Category (SEBC) Act, 2018 is constitutional. The Bench noted, "We hold and declare that the report of the Gaikwad Commission has set out the 'exceptional circumstances and extra-ordinary situations' justifying crossing of the limit of 50% reservation as set out in the Indra Sawhney case (Supreme Court)" and hence upheld the classification of the Marathas as an "Socially and Educationally Backward Class" as constitutionally valid. However, the court quashed the 16% quota by calling it "not justifiable" and said it should not exceed 12% for education and 13% for jobs as recommended by the Maharashtra State Backward Class Commission (MSBCC).

UTTARAKHAND HIGH COURT

Ruchika Tomar v. State of Uttarakhand (01/05/2019)

Daughter's daughter, daughter's granddaughter or daughter's grandson cannot be denied the benefits of welfare schemes available to family of a freedom fighter. The court held that such relations cannot be discriminated against on the basis of gender. Among 5 petitions filed in the court, the leading petition of Ruchika Tamar challenged the action of the state government in denying her benefits available to dependents of freedom fighters under various schemes and the Uttar Pradesh Public Services (Reservation for Physically Handicapped Dependents of Freedom Fighter and Ex-Servicemen) Act, 1993. The High Court held that relations traced through the daughter should also be covered under the Act.

MADRAS HIGH COURT.

S. Muthukumar v. TRAI (03/04/2019)

Bans Tiktok, asks Centre to pass laws to protect kids : The Madurai bench of the Madras High Court issued an order prohibiting the download of the TikTok mobile app. The petitioner highlighted widespread circulation of pornography, the exposure of children to disturbing content, their susceptibility to paedophiles, degrading culture, social stigma and medical health issues between teens, as reasons for filing the petition. He also cited 159 deaths in India due to incidents involving selfies. The bench affirmed that addictive apps like TikTok spoil the future and the

minds of youngsters. It infringed the privacy of individuals who were pranked or made a subject of mockery by third parties.

P.V. Krishnamoorthy v. The Government of India and Ors. (08/04/2019)
HC quashes land acquisition for expressway in Tamil Nadu : The notification issued under Section 3A of the National Highways Act 1956 for acquiring land for the ambitious Chennai-Salem 8 lane National Highway was quashed by a division bench. The notifications were quashed on the ground that prior environmental clearance under the Environment Protection Act 1986 was necessary before acquiring the requisite land for the Highway. The division bench rejected the argument advanced by the Centre, TN govt., and NHAI that environmental clearance was not needed at the time of "securing" the land for highway construction and that it was needed only at the time of actual laying of the road. The Court termed this argument as 'putting the cart before the horse'.

R. Renganathan v. State of Tamil Nadu and Ors. (04/04/2019)
HC bans tuitions by government teachers: The Court has directed the State Government to take action against the teachers who receive salaries from the government and also conduct private tuition classes for monetary gain. The Court held that according to the Tamil Nadu Government Servants Conduct Rules, taking tuitions or engaging in other business by a teacher is misconduct. The Court thereafter directed the government to issue instructions to all educational institutions stating that teachers and public servants shall not involve in any trade or business including taking tuition classes. The Court has also directed the state to provide Toll Free telephone numbers, enabling the students, parents, interested persons, and the public in general to register complaints regarding indiscipline, irregular or illegal activities, sexual harassment, etc. It held that the number must also be usable for informing the authorities regarding teachers carrying tuitions or other trade activities.

Arun Kumar & Sreeja v. Inspector General of Registration and Ors. (22/04/2019)
Marriage between woman and transwoman is Vaild : In a noteworthy judgment, the Madras High Court instructed the relevant authorities to register a marriage between a man and a transwoman. The authorities contended that a transwoman cannot be treated as a "bride" as per Section 5 of the Hindu Marriage Act, 1955. Allowing the writ petition, the Madras High Court referred to the principles established in the judgments of the Supreme Court such as NALSA (Recognition of Transgenders), Puttuswamy (Right to Privacy), and Navtej Singh Johar (Decriminalization of Homosexuality) and observed that "personhood" of transgender is recognized under the Constitution. The Court held that gender identity falls within the domain of a person's personal autonomy and involves their right to privacy and dignity and that it is not for the authorities to question the self determination of a transwoman.

State of Tamil Nadu and Ors. v. J. Vibin and Ors. (30/04/2019)

Allotment of a medical seat to a disabled who was denied the seat. The Madras High Court has directed the allotment of a medical seat to a physically disabled student who cleared the entrance examinations of NEET. The student was denied a seat as the recent Medical Council of India (MCI) Rules only allow disability up to a threshold of 40% and the student has more than 90% blindness. The Court holding the MCI Rules to be discriminatory, quoted the example of Dr. Y.G. Parameshver (India's first blind doctor with many accolades to his name) and dismissed the writ appeal filed by the State of Tamil Nadu.

P.Ulagnathan and Ors. v. The Government of India and Ors. (Decided on 17/06/2019)

Asylum Seekers not always Illegal Migrants: In a plea by 65- Indian-origin Tamil refugees, residing in a refugee camp in Trichy, Chennai since 1983, the court directed the Centre to consider their applications for Citizenship, notwithstanding their status as "illegal immigrants" under S.2(1)(b) of the Citizenship Act, 1955. The bench observed that the petitioners were genealogically Indians, merely sent to Sri Lanka as laborers in the tea estates. Furthermore, they had the clear intention to make India their permanent domicile. Respondents contended that they were not eligible to demand citizenship as a right as they do not possess valid documents as prescribed under S.5(1)(c) of the Act. The court dismissed this argument and held that the petitioners had the right under Article 21 of the Constitution of India which applies to all persons, citizens and non-citizens alike as well as to refugees and asylum seekers. These refugees have been living in camps for almost 35 years, under surveillance and restricted conditions which offends their right under Article 21 of the Constitution of India. Hence the court issued directions to the Central Government to address this situation in a humanitarian manner.

MANIPUR HIGH COURT

Kishorchandra Wangkhem v. The Dist. Magistrate, Imphal West and Ors. (08/04/2019)

HC orders release of Manipuri journalist Kishrochandra Wagkhem, who was detained under the National Security Act on November 27, 2018. Mr. Kishrochandra who was arrested for making Facebook posts against the Prime Minister and the Manipur Chief Minister, was released from detention by the Manipur High Court in April. He was arrested and charged under Section 124 (relating to Sedition) of the Indian Penal Code, 1860. The case arose out of a habeas corpus petition filed against the detention order which held him in custody for his remarks. He had commented that the Chief Minister of Manipur was a "puppet" of the PM and made other critical comments on certain policy matters. The Court found it unjustified for the Ministers to take offence of opinions of a citizen. It

dismissed the petition on the grounds that the detaining authority did not provide him with copies of the posts in question, depriving him of the opportunity to make an effective representation against the order.

DELHI HIGH COURT

Hari Kishan v. State (NCT of Delhi) - (31/05/2019)
Mere Possession of Arms will not attract an offence: The Delhi High Court quashed an FIR registered against the appellant under Section 25 of the Arms Act dealing with possession of deadly weapons. The appellant was found having a cartridge in his bag and thereafter, the police registered an FIR against him. The Court observed that the word "possession" as used in Section 25 has been held to mean conscious possession which was not in the present case. The Court reiterated the importance of awareness and consciousness while carrying a weapon while allowing the appeal.

CALCUTTA HIGH COURT

People for better treatment (PBT) v West Bengal Medical Council (WBMC) & ORS. (Decided on 14/06/2019)
No directions in petition concerning the strike of junior doctors: This writ petition arose in consequence of a strike by Junior Doctors across West Bengal that ensued after a junior doctor in a government hospital was attacked by the relatives of a patient who lost his life. The Calcutta High Court refused to issue any specific direction in this PIL filed against these striking doctors. The court opining that Right to health is given the most priority among the various shades of the right to life reminded the doctors of their Hippocratic Oath and their fundamental and primary duty to serve people. The court also ensured that adequate protection would be provided to the hospitals and all places of work of the doctors and urged them to reconcile their differences with the state government.

BILLS and LEGISATIONS[6]

1. **Goan Government's Proposed HIV Bill**
   The Government of Goa is planning to come with a Bill relating to HIV test of the bride and bridegroom before marriage. The agenda that was brought to the light by the Law department of the Goa Government for this mandate was to curb the threat of the spread of the AIDS disease in the state and with the aim that a person should not be affected by the same pursuant to non-disclosure or ignorance. The issue of the confidentiality of the test results was also raised as to which the Government assured that it shall not be mentioned on the marriage certificate of an individual.

2. **The National Investigation Agency (Amendment) Bill, 2019**
   The Lok Sabha passed an Amendment Bill to amend the National Investigation Agency (NIA) Act, 2008 which was passed after the incidence of the Mumbai attacks allowing NIA to probe terrorist acts against Indians and Indian interests abroad. The purpose of the bill is to strengthen and add teeth to the NIA by conferring more powers on them. Post this bill, the NIA will be conferred powers to probe matters of cybercrimes and human trafficking. The Bill further grants more powers pertaining to the establishment of the special court which has the jurisdiction to entertain only those cases investigated by the NIA. The earlier Act allowed the central Government to establish the Special Court for the trail of that offence but it has now enhanced the power by allowing the Central Government to designate the Sessions Court as the Special Court for the trial of the scheduled offences. However, it has to be done after consultation with the Chief Justice of High Court which has the superintendence over the Sessions Courts.

3. **The Aadhaar and Other Laws (Amendment) Bill, 2019.**
   This Bill passed by the Parliament to allow the citizens of the country to make the voluntary use of the Aadhaar Card. It brings forth an amendment to the Aadhaar Act, 2016 to allow the Citizens to give their Aadhaar on voluntarily basis for the purpose of KYC (Know your Customer) for the bank account or getting new mobile connections. The Bills mainly stipulates two reforms to the former Act. Firstly, it allows a child to refrain from being a part of the Biometric ID programme upon attaining majority and secondly, lays down the stringent punishment for the agencies who violate the provisions put forth by the law and breach the privacy of an individual. It also seeks to delete Section 57, which pertains to usage of the Biometric details of an individual by the private entities and hence the deletion would prevent the refusal of the services or the ongoing one by the private entities.

[6] The bills and legislations section has been compiled by Mr. Pranay Jaiswal, IV B.A. LL.B., ILS Law College, Pune.

4. **Jammu and Kashmir (Reservation) Amendment Bill, 2019.**
   The Bill proposes to make an amendment to the Jammu and Kashmir Reservation Act, 2004 in order to include the persons residing in the areas adjacent to the International Border in the purview of the reservation along with the people actually living in the areas adjacent to the Actual Line of Control. The bill aims to provide the 3 percent reservation to the residents near the International border who face the menace of cross border firing in Jammu & Kashmir whereas it was earlier provided only to the youth who lived within the area of 6 kms of LoC J & K. It further provides that the seven-year compulsory residence near the LoAC will also be applicable to the persons near the International Border.

5. **Indian Medical Council (Amendment) Bill, 2019.**
   The Bill aims to supersede the Medical Council of India for the period of 2 years and would be overlooked by the Board of Governors. The bills intends to ensure accountability, stability and transparency of medical education across the country. The bill was the result of persistent malicious and corrupt practices that prevailed in the council. Certain allegations were raised to the credibility and competence of the council and hence preventive measures are being adopted in the form of the bill. The Apex Court had appointed an Oversight committee to supervise the functioning of the Medical Council which submitted its report stating the non-compliance of their instructions.

F. CASES ACROSS THE POND

~ *Compiled by*: Nihar Chitre , IV B.A. LL.B.

DATE	NAME OF THE CASE AND COURT	DECISION
11/06/2019	Letsweletse Motshidiemang v. Attorney General.[7] (Botswana High Court)	Botswana High Court decriminalised homosexuality and struck down S. 164(a), 164(c) and 165 of the Penal Code, 1964. The Court opined that while public opinion is relevant in matters of constitutional adjudication, it is not dispositive. According to the court, public opinion is trumped by the human rights "triangle of constitutionalism", namely liberty, equality and dignity. The Court relied on judgments from the US, the UK and India.
18/04/2019	Male H. Mabirizi K. Kiwanuka v. Attorney General.[8] (Uganda Constitutional Court)	The Constitutional (Amendment) Act No. 1 of 2018, which removed the age limit for the President and Local Council Chairperson, was declared constitutionally valid. The Court referred to various judgments passed by the courts of different countries on the basic-structure doctrine and also referred to the landmark judgment of the Supreme

[7] https://www.scconline.com/blog/post/2019/06/18/botswana-hc-colonial-era-law-criminalizing-homosexuality-struck-down-for-being-ultra-vires-the-constitution-reliance-placed-on-sc-of-indias-judgment-in-navtej-singh-johar/

[8] https://www.scconline.com/blog/post/2019/05/21/uganda-sc-constitutional-amendment-removing-age-limit-for-the-president-does-not-violate-the-basic-structure/

		Court of India, in *Kesavananda Bharati v. State of Kerala.*[9] Quoting the judgment, the Court stated: *"According to the doctrine, the amendment power of Parliament is not unlimited; it does not include the power to abrogate or change the identity of the constitution or its basic features."* The Court also stated that *"while Parliament has wide powers to amend the Constitution, it did not have the power to destroy or emasculate the basic elements or fundamental features of the Constitution."The Constitutional Court declared that the basic structure or features of the Constitution rest on the basic foundation of the Constitution. The basic foundation of the Constitution is the dignity and the freedom of its citizens which is of supreme importance and cannot be destroyed by any legislation made by the Parliament.*
04/04/2019	NoordeenLebbe Mohamed Raseek v. Mawanella-Hemmathagama Multi-Purpose Co-operative Society Ltd.[10] (Court of Appeal, Sri Lanka)	M.M.A. Gaffoor, J. allowed a land owner's application seeking a writ of mandamus for derequisitioning his land and building. The Court relied on excerpts from H.W.R. Wade's commentary on Administrative Law[11] to opine that no discretion is unfettered and absolute in the public sphere. Even if the empowering statute does not expressly require any jurisdictional fact to be present for the exercise of power, it will be held invalid if the public authority has acted in total disregard for the purpose for which such

[9](1973) 4 SCC 225

[10]http://courtofappeal.lk/index.php?option=com_phocadownload&view=category&id=103%3Aapril2019&Itemid=136&limitstart=20#

[11]5th Edn. at page 353

		discretion/power was vested in him.
07/06/2019	RubasinGamageIndikaAthula v. Inspector General of Police[12] (Supreme Court of Sri Lanka)	The Supreme Court of Sri Lanka in an application alleging a violation of the fundamental rights of the applicant, decided whether disqualification from Public employment on the basis of marital status violates Article 17 and 126 of the Constitution of Sri Lanka? Respondents referred to Air India v. Nergesh Meerza[13], where the Supreme Court of India held that, "*Based on reasonable classification requiring air hostesses to be unmarried for period of four years after getting employment was not a violation of the equality provision, however, requiring them to leave employment after having children was against the equality provision*." The Court found that there was no discrimination by the State and such condition was well drafted for the specified post. Hence it was held that there were no violation of the fundamental rights of the petitioner.
13/05/2019	Rana Abdul Khaliq v. State.[14] Supreme Court of Pakistan	A full bench of the Supreme Court of Pakistan held that Anticipatory Bail is an extraordinary remedy in criminal law. A person seeking pre- arrest bail must demonstrate malafide intention in arrest. Reliance was placed on *Hidayatullah Khan v. Crown*[15] wherein it was held that, anticipatory bail is granted to protect innocent beings from abuse of process of law. Therefore, a petitioner who seeks anticipatory bail must be

[12]2019 SCC OnLine SL SC 4
[13](1981) 4 SCC 335
[14]2019 SCC OnLine Pak SC 6
[15]1948 SCC OnLineLah 20

		able to demonstrate that the intended arrest is with malafide intentions or is an abuse of process of law, wherein Court must not hesitate to rescue the innocent. The court held that in the case at hand these conditions were unfulfilled.
24/05/2019	EG v. Attorney General Nairobi, High Court of Kenya [16]	The Court observed that decriminalizing homosexuality would pose a threat to the institution of marriage protected under Article 45 of the Constitution of Kenya, which provides that family is a natural and fundamental unit of society and a necessary basis for social order, and shall enjoy the recognition and protection of the State; and, that, *"every adult had a right to marry a person of the opposite sex, based on the free consent of the parties."*
28/06/2019	Scott Harris, in his official capacity as the State Health Officer, et al. v. West Alabama Women's Center et al.11 [17] Supreme Court of United States[18]	The U.S. Supreme Court declined to consider Alabama's bid to revive the abortion law which would effectively ban the abortion procedure known as dilation and evacuation or more commonly known as "dismemberment abortion(s)" after the second trimester or 15 weeks of pregnancy. The Supreme Court upheld the lower court ruling that struck down the law, which would have criminalized the dilation and evacuation method. For now, the conservative judges have agreed not to hear the writ filed in the Supreme Court.

[16]http://kenyalaw.org/caselaw/cases/view/173946/

[17] https://uk.reuters.com/article/us-usa-court-abortion/supreme-court-declines-alabama-bid-to-revive-abortion-restriction-idUKKCN1TT1XZ

[18] For further reading, https://time.com/5617322/scotus-rejects-abortion-appeal/

		Justice Thomas wrote in his judgment,"The notion that anything in the Constitution prevents states from passing laws prohibiting the dismembering of a living child is implausible." The lower court found that Alabama's law was an infringement on a woman's constitutional right to abortion recognized in the landmark 1973 Roe v. Wade ruling.

G. VITAL CONSTITUTIONAL LAW QUESTION

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THE KING WHO DOES NO WRONG

For the longest time, the King or the Sovereign was the sole dispenser of justice to the aggrieved masses. It was believed, that such a ruler could do no wrong and was indeed divine. He was born and trained to rule justly, and any verdict he delivered was assumed to be so, because it was God who guided him in times where a crime was to be adjudged. All of these Kings were to apply the law to the masses and settle their grievances, but were themselves immune to it in their personal actions. It was believed that the King could do no wrong and when he did, he must have had a rational reason or even in cases where the King's crimes were reprehensible, it was God who was guiding him and hence itwas not an act of his own. Such divine theories freed the justice deliverers from the watch of the law.[19]

Cut to a modern justice system, which is mostly democratic, and has separate organs to perform its role truthfully, consciously and without interference from the other organs. The Judiciary being justice deliverers in a modern society, sits in a position of immense power, where they routinely apply the aspects of substantive and procedural law that the Legislature makes. After giving a fair chance to both sides to lead evidence, they come to a decision which alters the course of life for the accused as well as the complainant forever. This puts the Judge in a position of extreme importance, as it is he who decides, whether the evidence led satisfies the requisite standard to hold someone in the wrong and punish him for the same. In a world of growing democracies, Judges still decide the fate of all those approaching their door, and could rightly be called the Kings of our time.

Modern society has not been entirely ignorant of their King's actions. Judges are called out, (but not as frequently as Directors or Producers[20]), for their acts of sexual harassment against colleagues in the workplace. In 1991, Anita Hill was one of the first women to call out US Supreme Court nominee Clarence Thomas for his acts of sexual harassment when he was her superior at the Department of Education (DOE) and

[19] See The Divine right of kings, available at https://www.britannica.com/topic/divine-right-of-kings
[20] See Manasi Gandhi, Blurred Lines-Between the Artist and his Art, 11(2) Socio-Legal Rev.67 (2015)

subsequently at the Equal Employment Opportunity Commission (EEOC).[21] Her hearing was one of the turning points in the feminist struggle for equality in the workplace when it laid down and debated grey areas of appropriate workplace conduct and age old stereotypes of how women behaved.[22]The past year saw Christine Ford, call out another Supreme Court nominee Brett Kavanaugh for acts of harassment he committed against her when he was in high school. Both the hearings went on, and ultimately after the vote, which favored the Defendants on the narrowest of margins, confirmed them to serve on the bench of the Supreme Court of the United States.

This year, the Chief Justice of India was also called out by one of his former staff members, alleging that he had harassed her sexually in the month of October 2018, followed by instances of mental harassment by terminating the services of her and her family members, from the Supreme Court itself and the PoliceForce respectively.[23] The events took an ugly turn, when the Chief Justice sat with two other judges in a hearing that had no person representing the victim. In the hearing mentioned by the Solicitor General as "A matter of grave importance affecting the independence of the judiciary", the Chief Justice, the very person accused of reprehensible conduct in the complaint, ended up stating that he had done no wrong and that the allegations were a conspiracy to oust him from his position. The order which was so passed after the hearing was highly irregular. The judicial order stated that the same was not a judicial order, was signed by only two judges without the CJI signing even though he was present for the hearing and to top it all of was concluded with a subtle gag order requesting the media to be responsible in followingsuch stories any further.[24]What also deserves mention here is the fact that it was the Chief Justice himself who had, from his very first day in office as CJI, discontinued or dissuaded the practice of mentioning. He had said "If someone is going to be hung –Yes, if someone's home will be demolished – Yes... otherwise No." Another question is as to when the Solicitor General could have made the mentioning considering the day before the hearing was a Sunday. Also did the SC sit for this hearing on a day it was not supposed to sit? Instead of providing the victim

[21] See *Anita Hill's Testimony and Other Key Moments From the Clarence Thomas Hearings, available at* https://www.nytimes.com/2018/09/20/us/politics/anita-hill-testimony-clarence-thomas.html

[22] See Sarah Pruitt, How Anita Hill's Testimony made America Cringe- And Change, available at https://www.history.com/news/anita-hill-confirmation-hearings-impact, also See Jill Niebrugge-Brantley, A Feminist Writes about the Anita Hill-Clarence Thomas Conflict, available at http://chnm.gmu.edu/courses/122/hill/brantley.htm

[23] See Jeffrey Gentleman, *India's Chief Justice Is Accused of Sexual Harassment, available at* https://www.nytimes.com/2019/04/20/world/asia/india-chief-justice-sexual-harassment.html

[24] See UtkarshAnand,Sexual Harassment Charges: CJI RanjanGogoi Heads Bench, But Does Not Sign the Order, available at https://www.news18.com/news/opinion/sexual-harassment-charges-cji-ranjan-gogoi-heads-bench-but-does-not-sign-the-order-2110145.html

with legal aid or assuring a fair opportunity at trial, the Chief Justice went into the merits of the case *ex parte.*

After receiving severe backlash for violating the most basic rules of natural justice, like '*nemo judex in causa sua*' and '*audi alterem partem*'[25], an internal committee of three supreme judges was set up to look into the matter. This committee ended up clearing the Judge of allcharges and released no report of the proceedings, the evidence led or the findings thereof.[26]It should also be noted that the organisation of the committee itself was mired with controversy as Justice N:V. Ramona had to recuse from the proceedings after the complainant raised an objection to his continuance in the committee. The controversy not ending there also saw the complainant withdrawing her complaint after she was denied legal assistance during the proceedings, denied access to the records being made of her statement among other reasons she explained in an open letter. All of this murkiness in the dealings of such a sensitive case, still leaves a hint of that obeisance and ignorance that was attributed to the divine sentinels of Justice. This very much leaves us with an impression, that our modern systems although elaborately fashioned to ensure equality before the law and equal protection of the law, still reek of our archaic mindset that our Kings can do no wrong while they reign.

One of the cardinal rules of Criminal Law is that an accused is innocent until proven guilty. This presumption of innocence puts the burden on the one charging the accused to prove his guilt beyond reasonable doubt. This rule ensures that the prosecution prove the crime by its own accord, without forcing a statement out of or solely relying on a confession made by the accused. The victim's own retelling of the crime is vital, she is not only the victim but also a major witness in the events that have transpired. In this situation, it becomes important to test her knowledge and memory of the events, to decide the facts which are disputed in question. However, the character or past conduct of the witness also becomes admissible when it is relevant to the facts of the case.[27] This piece considers the administration of justice and the approach taken by lawyers and judges to conduct enquiries into such issues in conflict and the conclusions that they reach on the basis of this trial.

[2525] The latin maxims mean that 'one must not be a judge in his own case' and 'both sides must be heard before passing a verdict'.

[26] See https://www.bbc.com/news/world-asia-india-48177737

[27] See Section 5, Section 146 and Section 155 of the Indian Evidence Act,1872.

Her*[28] Consent

Defense counsels have often used the character shield to defeat the claims of the victim. In the *Mathura Rape* case, the victim's allegations of rape were sidelined by her status as a tribal and her implicit consent to sexual intercourse by being a woman of loose morals. The entire evidence led against the accused was defeated when the Judge ruled that there was a possibility that rape was alleged to conceal her sexual intercourse from her lover. That her hymen was ruptured earlier and her vagina could easily allow two fingers was seen as an indicator as to her promiscuous behavior. Being a woman habituated to sexual intercourse, such a woman's consent was considered immaterial and she was deemed to have consented to such a sexual act. The Sessions Judge, thus acquitted both policemen for having raped the minor tribal girl. The High Court set aside this order on the grounds that since Mathura was a stranger to the policemen, it was improbable that she would make sexual overtures towards them to satisfy her lust. They concluded that her surrender was under the influence of the rapists' authority and hence amounted to 'passive submission'. This conviction was again reversed by the Supreme Court as they presumed the victim's consent on the grounds that '*she raised no alarms*' or '*showed no struggle*' in her defense.[29] This led to a huge public uproar on how rape laws were ultimately defeated when it came down to the determination of consent to the act by the victim. This led to the Criminal Law Amendment in 1983, which set forth a new provision that during trials where the accused is charged of rape, if the victim states that she has not consented to the act, it shall be presumed by the Court that she did not consent.[30]This meant, that the party could not go into prior sexual histories of the victim or her character to determine whether her consent was presumed for the act in question. In the case of *Narendra Kumar v State*, the Court dealt with a case where the allegation was that the victim of rape was herself an unchaste woman and of easy virtue. Here, the court held that "*in view of Sections 53 and 54 of the Indian Evidence Act, unless the character of the prosecutrix itself is in issue, her character is not a relevant factor to be taken into consideration at all*".[31] This put a fetter on the Defence, restricting the evidence it could lead to prove that the victim has consented to the sexual intercourse,by making her past sexual history or chastity irrelevant.

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[28] *the word Her is representative of victims who are men, women or belonging to the LGBTQI+ community.

[29] See Anubhav Pandey, Case Analysis-Tukaram v State of Maharashtra, available at https://blog.ipleaders.in/case-analysis-tukaram-and-another-v-state-of-maharashtra-mathura-rape-case/

[30] Section 114A of the Indian Evidence Act

[31]NCT of Delhi, MANU/SC/0481/2012 and also State of UP v PappuYunus and Anr, AIR 2005 SC 1248

Her Motive

Even after the amendment, the victim's evidence was limitedbarely to the issue of the facts surrounding the sexual act. Before proceeding to the merits in dispute, character of the witness became relevant to identify the existence (if any) of any motive for taking offense to the accused's actions. In the Anita Hill hearings, she was repeatedly asked why she moved from the Department of Education (DOE) to the EEOC with Clarence Thomas if he had already sexually harassed her during their time at the DOE. In response, she stated her ambition of working for civil rights as there as on why she transferred despite Thomas' conduct. As Anita Hill described how his conduct at the DOE of repeatedly asking her out on dates and not taking no for an answer progressed to explicitly describing pornographic details, his sexual prowess and jokes about pubic hair at the EEOC, the debate in media circles ranged on whether she stayed silent to jumpstart her own career at the EEOC.[32]This narrative inherently puts meaning to a woman's ambitions, that harassment in order to be culpable must be of such intensity that the woman is forced to quit her job and staying back to ensure her personal growth means that the harassment was not as severe to warrant anyaction. This narrative is prejudiced to infer that women use powerful men as a springboard to boost their career and 'cry foul' of past events when they have something to gain out of such 'charade'.

Her past criminal records.

Most courts do not accept past convictions of an accused as a mirror to the case at hand. However, the criminal records of the parties becomes admissible when relevant. This provision which leaves room for much ambiguity as to what is 'relevant' enough to be admitted in a given case, allowsjudges and advocates to rake up criminal issues from the witness' past to shake and break her credibility as a truthful victim. In one particular case, the defense brought in evidence to prove that the prosecutrix has in the past compromised a rape trial.[33]Similarly, in another case where a domestic help accused her employer of raping her, the Judge made several observations concerning the alleged tendency of domestic workers to falsely accuse their employers of rape in order to coerce them. He also noted that there was a pending case of theft filed by the accused against the prosecutrix.[34]In the CJI's case the victim was questioned on her filing a criminal case against another under the SC/ST Atrocities Act. Even after the

[32] See Suzanne Garment, Why Anita Hill Lost, available at https://www.commentarymagazine.com/articles/why-anita-hill-lost/

[33]Papuria v State of Rajastan, 1995 Scc Online Raj 321, Virender v State of Haryana, (2010) SCC online P&H 4332: (2010) 4 RCR (Cri) 471

[34] See SoumyaMaheshwari, The Language of Evidence in rape Trials, 10- Socio Legal Rev 1(2014).

victim clarified that the case was filed in 2016 and that a settlement had been reached, her character was besmirched by the CJI in his own hearing by calling her a woman with a '*criminal background*'. Such character assassinations based on the past conduct of the victim throws open a ground to assume that such complainants make complaints because they have a record offalselycomplaining against others or to assume that they act with an attitude of vengeance for cases filed against them. This suggests that such victims are prone to prosecute maliciously and hence cannot be credited to be truthful when it comes to stating their side in a harassment claim.

Her resistance and reaction

The Judiciary has, owing to their personal notions and societal biases, created a stereotype of a rape victim. Consequently, the Court compares the victims in relation to the stereotypes that they ought to embody and rejects their testimonies when they do not adhere to such stereotypes. A striking phenomenon in the judicial attitude is to find some agony during the act or after it and an emotional trauma that has subsumed the victim post the attack. This has to be understood in the context of Section 280 of the CrPC where the Judge has to make a note in the Court transcript on the demeanor of a witness during examination.[35]In the Mathura rape case, consent was deduced from the fact that the woman raised no sound alarm or did not resist vociferously when the attack happened. The fact that there were no bodily injuries on the victim which would have occurred, had she resisted, has led to acquittals in the past.[36] In the case of *Raja v State of Karnataka*, while acquitting the appellants in a case of gang rape, the judge held that:

"*the post incident conduct and movements are also noticeably unusual. Instead of hurrying back home in a distressed, humiliated and a devastated state, she stayed back in and around the place of occurrence, enquired about the same from the persons she claims to have met in the hours of night, returned to the spot to identify the garage etc…Her confident movements alone past midnight, in that state are also out of the ordinary…The medical opinion that she was accustomed to sexual intercourse when admittedly she was living separately from her husband also has its own implication.*"[37]

Although there is no set psychological pattern of appropriate reactions of a victim of sexual offenses, the judiciary expects the victim to fit a stereotypical profile of a rape victim. This would mean that the victim should have struggled through the act,

[35] See Bajpai and Mendiratta, Gender Notions in Judgments of Rape Cases: Facing the Disturbing Reality, 60 JILI (2018) 298
[36]Mohd. Habib v. State (1989) [8]
[37] (2016) 10 SCC 506

endured injuries and should be traumatized by the sexual act. Victims must also show their continuing agony at trial to 'inspire the Court's confidence' in her testimony. In the Kavanaugh hearings of 2018, Ms. Ford's lawyers produced her therapist's notes from 2012 to the Senate to show that she hassuffered the trauma of the incident years after her high school had ended. Thus, the prosecution also negotiates with the current fallacies of the stereotyping mechanism to prove that the victims 'acted as such'. This is particularly detrimental as it puts all victims on a similar ground without understanding that some may have chosen to move on from its violent past and not let it shatter them as is expected out of them by Judges.

Her sole voice

It is an established rule of evidence law, that a witness testimony must be corroborated. Although, some cases have proceeded to convict on the unshakable testimony of the victim,[38] the rule by and large is to demand back-up for charges levied on the accused. In the case of Anita Hill, she had already testified once before the FBI before the Senate confirmation hearings began and by and large remained true to her statement even at the hearings. Moreover, she also took a polygraph test which conclusively determined that what she was saying was true. Inspite of this 'unshakable testimony', Clarence Thomas walked free. No other co-workers of Thomas or Hill were called to corroborate or deny the charges, although the case was one that could have left a lasting mark on the judicial destiny of America. When we look at the Brett Kavanaugh incident, we find that Christine Ford had, anonymously and in private,contacted her local Congresswoman and a newspaper informing them of her harassment charges when she learned that Brett Kavanaugh was on the list of nominated candidates to the Supreme Court. When the charges were made public, two other women also came out with charges against the same man. However, only Ms. Ford was put on trial. The hearings called no one else involved in the incident or the other women who claimed to have been harassed subsequently. FBI investigations into witnesses seemed rushed and in no mood to question the accused himself, or insist that he take a polygraph too, to even things out.[39] This led to a drama of '*he said-she said*', where the women ended up having no reliable corroboration to prove an incident that was so personal and traumatic to them, and the man got away because of not having enough proof. Cases against Harvey Weinstein show how multiple women need to levy the same charges against a man to make society take notice of their claims. The issue is not that a witness has to be

[38] Public Prosecutor v TeoKeng Pong, (1996) 3 SLR 329

[39]See Abigail Abrams,Here Are All the People We Know the FBI Talked to for the Kavanaugh Report, available at https://time.com/5415845/kavanaugh-fbi-investigation-witnesses/

corroborated at all and must be believed in all circumstances, it is that the justice system doesn't want to corroborate statements when it is their kings who are on trial.

Her timing

Crimes are meant to be prosecuted promptly because of the fear that witnesses shall lose memory of the events that have transpired and other circumstantial evidence shall lose their probative value. However, our society faces power dynamics in such a lopsided manner that victims of sexual crimes have not been the most '*diligent members*' in the eyes of the law while filing these complaints. This delay has been a major question mark in the minds of people as well as Judges while evaluating the substance of the claim.[40] Although it is not necessary that an FIR be filed immediately, a delay, especially an inordinate one will be called into question.[41]A delay of 15-20 days between the commission of the crime and its filing raises eyebrows on its promptness.[42] Longer delays have only been occasionally condoned based on the explanations given for them. In *State* v. *Samji Isarya Gavit*,[43]a prosecutrix filed an FIR in 2014, complaining of rape on multiple occasions by her father when she was in the 7th standard, i.e around 2008. She got pregnant as a result, and was made to undergo an abortion. When the abuse continued, she complained to her mother, but her mother was also threatened by her father, and thus, the victim had found no reprieve. Unable to bear the abuse, she left home and started residing with a lady she claimed was her maternal aunt. On attaining majority, she made an application to the court for an order to allow her to reside with her maternal aunt, which was granted. Her father kept threatening to kill her, prompting her to finally lodge a complaint against him. She was an adult at the time of filing the complaint, but according to the Special Court was below 15 years when the abuse happened. The Special Court displayed sensitivity towards the prosecutrix while dealing with the arguments raised by the accused against her. To the allegation that her version is doubtful because she did not go to the houses of her relatives nearby, the Special Court stated that this would have been because she feared that no one would have believed her. With respect to the delay in reporting, the Special Court accepted her explanation that she was afraid of tarnishing her reputation and that of her father and was thus avoiding the lodging of the complaint. The Special Court observed, "*delay in lodging the complaint in the cases like this is inconsequential as no daughter would like to rush*

[40] See James Arkin, Amy McGrath flip-flops on Kavanaugh vote- in 1 day, available at https://www.politico.com/story/2019/07/10/amy-mcgrath-brett-kavanaugh-1405832

[41] State of Andhra Pradesh v M Madhusudhan Rao, (2008) 15 SCC 582.

[42] State v Sonu @ ShahbazShabbir Khan, Spl (C) S.C. No. 289 of 2014, decided on 22.01.2016 (Pune).

[43]SESSIONS CASE No.16/2015 decided on 03.09.16 (Nandurbar), See also Study on the working of Special Courts under the POCSO Act, 2012 in Maharashtra.

*to the police station immediately to lodge complaint against her own father alleging sexual intercourse by him unless that stage is reached."*Even though none of her family members were examined by the prosecution, the Special Court noted that "in case like this an attempt is always made to cover up the act" and their non-examination is therefore not fatal to the case. The accused was convicted.

However, this sensitivity is not seen among all those practicing the law and often vengeful motives are attributed without reason when crimes are reported late. In the in-house hearings against the CJI, the victim was repeatedly questioned on why she had filed the complaint '*so*' late.Despite her explanations, the committee failed to believe that she had any just cause for a 6 month delay to report a case that wrecked her life.[44] This very attitude fails to take into account that sexual harassment/rape victims could prioritize their fear and personal safety, the reaction of their family, the repercussions on their career, the gruesome process of trial etc. before gathering the courage to file a case. The maxim '*vigilantibus et dormientibusjurasubveniunt*'[45] totally fails to take into account the constraints that victims may have had that took them so long to file a case.

The Verdict

Our Constitution envisages equality before the law and equal protection of the law. Criminal jurisprudence mandates that guilt must be proved beyond reasonable doubt to justify punishment. This means that the balance is already tilted against a victim approaching the doors of justice. Furthermore, they have to go through all these cumbersome processes of evidence to ensure that their character is understood appropriately and that they are deemed truthful to the core. Any deviation from the stereotypes or patterns that are expected from victims are discarded as deviant and unfathomable behavior. This demandsthat a victim be of unmeasurable quality and virtue, to determine if she even deserves justice in the first place. Rape shields that the law creates in terms of prohibiting attacks on past sexual character or presumption of non-consent are all trivialized when such evidence tactics are used to defeat her case even if she is unshakable in the testimony she presents. Instead of following the ingredients of the offense and the evidence that can be used to prove it, the justice system gets into an unwarranted discussion on the morals and character of the victims to support their theory that it is the victims past and her behavior that are the 'peculiar facts and circumstances' that must be taken into account in a wholesome manner. A fair

[44] See Yamunan and Chakravarty, Interview: 'I've lost everything. Financially, mentally, everything,' says ex-SC staffer in CJI case, available at https://scroll.in/article/922751/interview-ive-lost-everything-financially-mentally-everything-says-ex-sc-staffer-in-cji-case

[45] means that law would come to the aid of those who are diligent and not those who sit over their rights.

trial is a utopian dream when the connotations provided to character evidence are itself highly tilted. Putting two women judges on the panel or using a woman prosecutor to cross a victim are all tokenistic measures that we have developed to make sure this world believes the illusion that the trial is empathetic and non-judgmental. However, when these women in power themselves make irrational assumptions of how victims ought to have acted, then their woman-ness seems to be of no furtherance to the victim's cause or the theory 'that empathy arises from a common source of suffering-Men'. We have managed to dupe the world when we say that the Chief Justice is only the first among his equals, but his trial is decidedly kinglike. It was already one-sided and bound to fail. As another shattered women went back home pushing back scores of victims from speaking their side, the King goes back to adorn his throne and punish those who 'conspired' to oust him.[46]

[46]A committee has been instituted to inquire into the conspiracy angle that the CJI cited.

H. INTERSECTION OF PUBLIC LAW

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The Right to be Forgotten and the Right to be Left Alone vis-à-vis "MeToo" Allegations of Sexual Harassment

Introduction

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.[47] In fact, we would not be able to get through our day if we didn't forget.[48] 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?

Whether we like it or not, we now live in a world where the Internet records everything we do. Facebook alone has nearly 500 million members who spend 500 billion minutes per month on the site.[49] The average Facebook user shares 25 billion pieces of content each month and creates 70 pieces of content each month. These online records show over a decade's worth of decisions which, unlike those in our brains, cannot be forgotten. Where our memories fade, the Internet never forgets. At the drop of a hat, friends, family members, acquaintances, and even strangers can call up these records, and worse, they can use them against us.

The Internet has become a prevalent part of our lives and our ability to access information has increased exponentially. 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.[50] The border agent searched his name and found that five years earlier he wrote in an academic journal that he took LSD

[47] 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.

[48] *id.*

[49] Jeffrey Rosen, The Web Means the End of Forgetting, N.Y. Times (July 21, 2010), http://www.nytimes.com/2010/07/25/magazine/25privacy-t2.html?page wanted=all.

[50] 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

sometime in the 1960s.[51] As a result of this discovery, the border agent did not allow the Canadian therapist to enter the United States.[52] . A recent survey outsourced by Microsoft shows that seventy-five percent of U.S. recruiters and human resource professionals perform online searches of possible candidates.[53] 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.[54] So what do we do about this extensive, haunting, permanent, online record of our lives?

As recently as in June 2019, the Delhi High Court curtailed a reputed online news portal, *The Quint*, from consistently republishing articles based on complaints of sexual harassment, where women remained anonymous. Justice Pratibha Singh observed that "The Me Too" movement cannot transcend to become a "sullying you too"movement forever. By holding that such republication of articles on multiple digital/electronic platforms would create "a permanent atmosphere of suspicion and animosity" and "severely prejudice the plaintiff's personal and professional life", the court sailed on a river which could now diverge into several tributaries of legal issues, most prominently being the recognition of the Right to be forgotten in India and the extent of this right, especially so in sexual harassment cases.

Genesis of the Right to be Forgotten: A Right which the World Owes to the European Union

The E.U. places great value on personal honor.[55] These values were "born out of the 19th Century French and German legal protections that once permitted honor-based dueling." This personal honor has been translated to strong protection of the right to privacy.[56] As stated in the novel, Who Controls the Internet?, "For many purposes, the European Union is today the effective sovereign of global privacy law." This high regard for privacy resulted in the general expansion of privacy laws to include the right to be forgotten. The right to be forgotten "can be considered as being contained in the

[51] *id.*

[52] *id.*

[53]Online Reputation in a Connected World, Cross-Tab Marketing Resources (Jan. 2010), http://www.job-hunt.org/guides/DPD Online-Reputation-Research overview.pdf

[54] Rosen, *supra note 4*

[55] Amir Mizroch et al., EU Orders Google to Let Users Erase Past: Surprise Decision Could Prove Highly Disruptive to Search-Engine Operators, The Wall St. J. (May 13, 2014), http://www.wsj.com/news/articles/SB10001424 052702303851804579559280623224964 (subscription required).

[56] See Adam Liptak, When American and European Ideas of Privacy Collide, N.Y. Times (Feb. 27, 2010), http://www.nytimes.com/2010/02/28/weekinre view/28liptak.html.

right of the personality, encompassing several elements such as dignity, honor, and the right to private life."[57]

The E.U. protected this right of privacy before the Internet through the Data Protection Directive, which was passed in 1995. But as technology, and particularly the accessibility of personal data on the World Wide Web, increased, the E.U. had to consider the Internet's implications for the Directive. With the landmark decision of *Google Spain* v. *AEPD*, the E.U. officially recognized that the long standing right of honor - or the right to be forgotten - applies to the Internet. This case marks the origin of the right to be forgotten in relation to the Internet. Not only did this decision officially create a right to be forgotten, it also created extraterritorial impacts on the global nature of the Internet.[58]

A wide range of scholars, politicians, and industry leaders reacted to the ECJ's ruling. Critics noted issues surrounding free speech, the public's right to information, and potential administrative burdens. Meanwhile, supporters hailed the ruling as a major step in protecting the individual privacy of EU citizens.

Google has a large stake in the right to be forgotten, since it is responsible for the vast majority of internet searches in the EU. Within days of the ruling, Google's executive chairman Eric Schmidt stated that "Google believes, having looked at the decision which is binding, that the balance that was struck was wrong." In addition, a Google spokesperson stated that the process was "logistically complicated" and that figuring out how to handle the requests could take "several weeks." On May 29, 2014, Google launched a web form that allows EU citizens to request the removal of URLs in compliance with the ruling, and this web form is now the primary way to exercise one's right to be forgotten. One can find a link to the web form on Google's page for web search removal requests of all types.

A few months after the ruling, Google published a transparency report providing data on all of the removal requests received since the request process started in May 2014. By January 30, 2015, Google had received 208,821 requests; each request can cite multiple URLs for removal. At this point, Google had evaluated 759,307 URLs total. The company granted link removals for only 40.3% of them, denying removal for over half of the links. The transparency report continually updates as Google continues to evaluate requests.

Meanwhile, Viviane Reding, the vice president of the European Commission, supported the Costeja ruling as "exactly what data protection reform is about ... empowering

[57] Tom Gara, The Orgins of the 'Right to be Forgotten': Sir, I Demand a Duel, The Wall St. J. (May 14, 2014), http://blogs.wsj.com/corporate-intelligence/2014/05/14/the-origins-of-the-right-to-be-forgotten-sir-i-demand-a-duel/.

[58] Michael L. Rustad & Sanna Kulevska, Reconceptualizing the Right to Be Forgotten to Enable Transatlantic Data Flow, 28 Harv. J. Law & Tec. 349, 376 (2015).

citizens to take the necessary actions to manage their data." Reding is one of the most prominent figures leading the push to develop and extend the right to be forgotten. She was instrumental in helping to develop the Directive that would extend the right past the Costeja ruling.

Google assembled a group of ten panelists, the Google Advisory Council, to visit seven European capitals to discuss the right to be forgotten with citizens and policy makers throughout late 2014 and into 2015. The panelists represented various groups with differing stances on the issue, and comprised of two Google executives, the former Director of the Spanish Data Protection Agency, a former German Federal Justice Minister devoted to defending privacy rights, the founder of Wikipedia, and various experts in technology law issues. According to Google's website, it is "seeking advice on the principles [it] ought to apply when making decisions on individual cases." The head of France's data protection body said "the debates were more about getting good PR for Google" in their fight against the right to be forgotten.

Media organizations expressed concerns about the potential free speech effects of the ruling. Within a couple of months of the ruling, journalists and news organizations claimed that they began to receive notifications from Google that their articles had been removed from certain Google search results due to the EU ruling. Some felt these moves overstepped certain free speech boundaries and clashed with the public's interest in accessing important information about public figures. James Ball of the Guardian wrote critically about the supposed removal of links to Guardian articles relating to public figures that were on trial or resigned from their jobs due to controversy. He criticized the EU for the ruling, and lamented that Google was "clearly a reluctant participant in what effectively amounts to censorship." In another case, BBC's Robert Peston complained about Google de-listing blog posts critical of Stan O'Neal, the former head of Merrill Lynch. The concern was that O'Neal, a public figure, was able to hide this critical content when someone searched for his name on Google. Google quickly corrected that it only de-listed the link for one of the commenters on the article (presumably upon request from the commenter); the link remained for a Google search of "Stan O'Neal." Thus, the vital public interest in the information was protected. However, this confusion highlighted some of the nuances and the complexity of the de-linking procedure, and suggested that there are issues of clarity that the right still has to overcome. Furthermore, some commentators suggested that Google's initially overzealous removal of search results was a "publicity stunt" by the search giant to stir up disapproval for the right to be forgotten. Andrew Orlowski of The Register suggested that Ball "walked into the trap" of Google's plan. A representative from the BBC who attended the Google Advisory Council's London meeting stated that the news organization felt "some of its articles had been wrongly hidden." Around the same time, the BBC announced that it would publish a continually updated list of articles removed by Google under the rule.

However, this initial overzealous removal, coupled with Google's stated goals for its Advisory Council, suggested that the company is struggling with the vague wording of the ruling, which left open significant questions about exactly what types of information should and should not be de-linked. Theoretically, each member state's data protection authority has some room to determine what should be "forgotten" in their state, as long as these rules fit within the EU's prescribed framework. In Google's Transparency Report, it has provided examples of what types of links it has and has not removed. Luciano Floridi, a professor of information ethics and a member of the Google Advisory Council, noted that the council had "spent quite some time" addressing such questions.

Analyzing the Indian Perspective on the Right to be Forgotten

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.[59] 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 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*[60]

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*[61]

[59] K.S. Puttuswamy v. Union of India, (2017) 10 SCC 1
[60] 2015 SCC Online Guj 2019

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).

C. Data Protection Bill as prepared by the Justice SriKrishna Committee

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.[62] 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[63] 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).

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

[61] 2017 SCC Online Kar 424
[62] Michael J. Kelly and David Satola, The Right to be Forgotten, University of Illinois Law Review (2017) at p. 1.
[63] 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

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.[64] Legislations have consistently been struck down in cases wherein no legislative guidance was issued on how to exercise the delegated power.[65] 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.[66] It has been held that a statute can be void for vagueness, if the restrictions imposed are not explicated intelligibly.[67] Vague statutes are unconstitutional as they violate the rule of law by not granting a fair warning to the citizens before penalising them.[68] 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.[69] 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.[70] 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*

[64] Kishan Prakash Sharma and Ors.etc. v. Union of India and Ors, AIR 2001 SC 1493, ¶ 18.
[65] Confederation of Indian Alcoholic Beverage Companies v. State of Bihar, (Civil) Writ No. 6675/2016, ¶ 85.11
[66] 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/
[67] Shreya Singhal v. Union of India, AIR 2015 SC 1523, ¶¶ 69, 82
[68] Kartar Singh v. State of Punjab, JT 1994 (2) SC 423, ¶ 77
[69] ChintamanRao v. State of Madhya Pradesh, AIR 1951 SC 118, ¶ 9
[70] Ram Jethmalani v. Union of India, (2011) 8 SCC 1, ¶ 80; OK Ghosh v. EX Joseph, AIR 1963 SC 812, ¶ 10

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.

Conclusion: Public Interest v. Right to be Forgotten

One of the most appurtenant exceptions carved out to an individual's right to be forgotten is that the sovereign states' must provide for laws to protect the freedom of speech and expression while balancing it with the former. Journalistic, academic, artistic and literary purposes are some of the pertinent exceptions.

However, Devika Agarwal, in her post on Right to be forgotten in the Age of MeToo campaign,[71] asks us a few questions which we are left to ponder with:

1. What should triumph in sexual harassment cases, the public interest in having information about an accused/perpetrator or an individual's right to privacy?
2. What impact does the verdict of the Delhi High Court have on the right to freedom of speech and expression?
3. Is taking recourse under defamation law a more viable remedy instead of right to be forgotten claims?

[71] https://www.firstpost.com/tech/news-analysis/what-does-right-to-be-forgotten-mean-in-the-context-of-the-metoo-campaign-6846401.html

I. APPURTENANT SCHOLARSHIP

~ *Compiled by*:

1. **Ackerman's Claims Rebuffed**
   https://indconlawphil.wordpress.com/2019/07/14/the-view-from-nowhere-bruce-ackerman-and-indias-revolutionary-constitution/
   A very important blog post critiquing Bruce Ackerman's chapter on India appearing in his recently published book Evolutionary Constitutions. Gautam argues that almost none of Ackerman's claims about India's experiences with "revolutionary constitutionalism" hold water.

2. **A One Sided Justice**
   This is a very important read from one of the insiders of the Supreme Court, Justice Lokur has castigated the entire process resorted to by the Chief Justice of India Ranjan Gogoi as coloured with 'institutional' bias. He inter alia observed "*Though the sitting was unprecedented and extraordinary, what is even more unprecedented and extraordinary is that the record of proceedings did not indicate the presence of the CJI on the Bench. In other words, either the news reporters were seeing and hearing the equivalent of Banquo's ghost in Court No 1 or the record of proceedings was incorrect – tampering with the record may be too strong a word.* "
   (Read more: https://indianexpress.com/article/opinion/columns/justice-ranjan-gogoi-sexual-harrassment-case-clean-chit-supreme-court-5741244/)

3. **Intersectionality at 30: The Margins of Anti Essentialism, Intersectionality and Dominance Theory,** *Essay by Devon W. Carbado & Cheryl I. Harris* in Vol. 139, Harvard Law Review
   (available at: https://harvardlawreview.org/2019/06/intersectionality-at-30-mapping-the-margins-of-anti-essentialism-intersectionality-and-dominance-theory/)
   It is a vital piece taking stock of 30 years of scholarly responses to the groundbreaking article *Kimberlé Crenshaw's* Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics. ". In this, the authors advance three broad claims: Firstly, they argue that scholars had anachronistically collapsed intersectionality into theory of anti essentialism thereby perceiving mutually exclusive dichotomy of dominance theory and intersectionality. Secondly, scholars have not taken into account of how dominance theory and intersectionality share a dichotomous conceptions of equality hovering around sameness and difference. Although dominance theory and

intersectionality are common bedfellows, but there is also friction in their interaction in respect of framings of race and gender.

4. **Social Norms and the Internal Point of View: An Elaboration of Hart Genealogy's of Law, Philip Petit** (*Oxford Journal of Legal Studies*, Volume 39, Issue 2, Summer 2019, Pages 229–258, https://doi.org/10.1093/ojls/gqy039)
   Prof. Philip Petit has accomplished the vital task of filling a kind of void in HLA Hart's Analysis by engaging with two important issues: How primary rules originated and upon whose internal point of view, they sustained. This article is a must read for all those who want to analyse and study the celebrated work of Prof. HLA Hart, The Concept of Law.

5. **Sanjay S. Jain and Saranya Mishra, "Non-abyssal and Ableist Indian Supreme Court: The Abyssal Exclusion of Persons with Disabilities" (OxHRH Blog, July 2019) <non-abyssal-and-ableist-indian-supreme-court-the-abyssal-exclusion-of-persons-with-disabilities>**
   This article which is incidently co-authored by Dr. Sanjay Jain along with Saranya Misra, is a very provocative commentary on indulgence of apex court of India in ableism (privileging the able bodied over persons with diabilities). They locate their enquiry through the theoretical trope of abyssal exclusion evolved by the famous Spaniard thinker Boaventura de Sousa Santos.

J. PUBLIC LAW ON OTHER BLOGS

~ *Compiled by*: Bhargav Bhamidipatti, IV B.A. LL.B.

Live Law

1) **Scope Of Article 226 Of The Constitution Of India: Important Judgments [Part-1]**

https://www.livelaw.in/know-the-law/scope-of-article-226-of-the-constitution--145328

2) **Scope Of Article 226 Of The Constitution Of India: Important Judgments** [Part-2]

https://www.livelaw.in/know-the-law/scope-of-article-226-of-the-constitution-of-india-important-judgments-part-2-145378

3) **Lok Sabha Passes Bill To Overturn SC Decision On Subject-Wise Reservation For Teaching Posts** [Read Bill]

https://www.livelaw.in/news-updates/lok-sabha-passes-bill-overturn-sc-decision-on-subject-wise-reservation-for-teaching-posts-146012

4) **Sr Adv KTS Tulsi Introduces Bill In RS To Make Sexual Crimes Gender Neutral** [Read Bill]

https://www.livelaw.in/news-updates/kts-tulsi-introduces-bill-to-make-rape-gender-neutral-offence-146304

5) **Can The Court Order Deposit Of Cash As A Condition Precedent For Granting Anticipatory Bail**?

https://www.livelaw.in/know-the-law/deposit-of-cash-as-a-condition-precedent-for-granting-anticipatory-bail-146280

6) **Duty Of Care Does Not End With Surgery; NCDRC Orders Hospital And Doctors To Pay 31 Lakh To Deceased Patient's Family** [Read Order]

https://www.livelaw.in/news-updates/duty-of-care-does-not-end-with-surgery-ncdrc-orders-bombay-hospital-and-doctors-to-pay-31-lakh-to-deceased-patients-family-146258

7) **Cabinet Approves The Transgender Persons (Protection of Rights) Bill 2019**

https://www.livelaw.in/news-updates/cabinet-approves-the-transgender-persons-protection-of-rights-bill-2019-146251

8)**It is well established that once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. Resultantly, the order impugned before the Supreme Court became an order appealed against and any order passed thereafter would be an appellate order and attract the doctrine of merger despite the fact that the order is of reversal or of modification or of affirming the order appealed against and including is a speaking or non-speaking one: Supreme Court_**

https://www.livelaw.in/top-stories/even-brief-judgments-of-supreme-court-are-binding-precedent-146248

9)**Inter-State Sales Between Successor States After Reorganization Cannot Be Treated As Intra-State Sales: SC** [Read Judgment]

https://www.livelaw.in/top-stories/creation-of-a-new-political-state-must-be-given-full-legal-effect-146209

10) **ICC Convicts Ntaganda 'The Terminator' Of War Crimes And Crimes Against Humanity** [Read Judgment]

https://www.livelaw.in/foreign-international/icc-convicts-ntaganda-the-terminator-of-war-crimes-146208

11)**Recent Supreme Court Judgments On Domestic Violence Act [2006-2019]**

https://www.livelaw.in/top-stories/supreme-court-rulings-on-domestic-violence-act-146204

12)**Parliament Passes Aadhaar Amendment Bill [Read Bill]**

https://www.livelaw.in/news-updates/parliament-passes-aadhaar-amendment-bill-read-bill-146188

13)**Obligation To Wear Helmet While Riding Motorcycle Cannot Be Exempted For Religious Reasons, Rules Germany's Top Court**

https://www.livelaw.in/foreign-international/sikhs-not-exempted-from-wearing-helmet-germany-top-court-146154

In India, there is a statutory exemption [Proviso to Section 129 MV Act] for Sikh Men from wearing helmet while riding/driving motor cycle. Some Indian states like Delhi and Punjab exempt Sikh women also.

14**Legal Validity of Fatwas And Religious Dictates_**

https://www.livelaw.in/know-the-law/legal-validity-of-fatwas-and-religious-dictates-146153

15) **Caribbean Court Of Justice Interprets Constitutional Provisions On Anti-Defection And No-Confidence While Upholding The Fall Of Guyanese President's Government [Read Judgment]**

https://www.livelaw.in/foreign-international/caribbean-court-of-justice-interprets-constitutional-provisions-146143

16) **One Nation One Vote, Towards A Unitary Form Of Govt ?**

https://www.livelaw.in/columns/one-nation-one-vote-towards-a-unitary-form-of-govt--146095

17**In Indian Lynchings, Law Is An Accomplice**

https://www.livelaw.in/columns/in-indian-lynchings-law-is-an-accomplice-146080

18) Ju**dicial Review: Only Palpably Arbitrary Decisions Of Executive In Economic Matters Can Be Interfered With: SC [Read Judgment]**

https://www.livelaw.in/top-stories/only-palpably-arbitrary-decisions-of-executive-can-be-interfered-by-judicial-review-146009

19)**Authoritarian Mindset Against RTI: Will CIC Break The Iron Walls Of CEC?**

https://www.livelaw.in/columns/authoritarian-mindset-against-rti-will-cic-break-the-iron-walls-of-cec-145992

20) **Rafale, Sabarimala, Ayodhya& More : Major Events To Look Forward To After SC Reopens**

https://www.livelaw.in/top-stories/major-events-to-look-forward-to-as-sc-reopens-145978

21) **Need For Effective Marriage Laws For Non- Resident Indians (NRIs)**

https://www.livelaw.in/columns/marriage-law-legislations-for-non-resident-indians-nris-145960

22)**There Is No Constitutional Bar To Reservation Exceeding 50% : Bombay HC In Maratha Quota Case [Read Judgment]**

https://www.livelaw.in/top-stories/maratha-reservation-bombay-high-courts-judgment-145949

23)**Bombay HC Upholds Maratha Reservation**

https://www.livelaw.in/top-stories/maratha-reservation-bombay-hc-145929

24) **Defects in Tenth Schedule: Perpetuating Constitutional Sin of Defections**

https://www.livelaw.in/columns/defects-in-tenth-schedule-perpetuating-constitutional-sin-of-defections-145913

25)**Two High Court judgments delivered this month have restated certain important constitutional principles.**

https://www.livelaw.in/columns/civil-rights-at-the-bar-of-the-high-courts-145851

26)**The Nature of the Oath and its form has a legal sanctity. Is an oath an empty ceremony? Does it have any legal consequence? What if the oath is not properly administered?**

https://www.livelaw.in/columns/the-shapath-legal-journey-of-oath-taking--145827

27) **Obiter Dicta And Ratio Decidendi-A Tug of War**

https://www.livelaw.in/columns/obiter-dicta-and-ratio-decidendi-a-tug-of-war-145796

28) **Section 482 Cr.P.C : Recent Supreme Court Judgments**

https://www.livelaw.in/top-stories/section-482-crpc-recent-supreme-court-judgments-145758

29) **Citizenship Dilemma : Delay By Foreigners Tribunals Adding To The Woes Of 'D' Marked Voters Of Assam**

https://www.livelaw.in/columns/d-voters-in-assam-foreigners-tribunal-assam-145728

30) **Prashant Kanojia's Case: A Strange Kind Of Justice**

https://www.livelaw.in/columns/kanojia-gets-bail-a-strange-kind-of-justice-145604

Indian Constitutional Law and Philosophy

1) **The Karnataka High Court's Troubling Decision on the Right to Education Act**

https://indconlawphil.wordpress.com/2019/06/23/the-karnataka-high-courts-troubling-decision-on-the-right-to-education-act/

2) **Notes from a Foreign Field: "The Time has Come" – the Botswana High Court and the decriminalisation of homosexuality**

https://indconlawphil.wordpress.com/2019/06/12/notes-from-a-foreign-field-the-time-has-come-the-botswana-high-court-and-the-decriminalisation-of-homosexuality/

3) **The Kanojia Bail Order: Two Constitutional Issues**

https://indconlawphil.wordpress.com/2019/06/12/the-kanojia-bail-order-two-constitutional-issues/

4) **Notes from a Foreign Field: A Critique of the Kenyan High Court's Homosexuality Judgment**

https://indconlawphil.wordpress.com/2019/05/28/notes-from-a-foreign-field-a-critique-of-the-kenyan-high-courts-homosexuality-judgment/

Public Law for everyone (blog)

1) **Brexit, the Executive and Parliament: A response to John Finnis**

https://publiclawforeveryone.com/2019/04/02/brexit-the-executive-and-parliament-a-response-to-john-finnis/

2) **Political Pragmatism and Constitutional Principle: The European Union (Withdrawal) Act 2018**

https://ssrn.com/abstract=3252985

K. MESMERIZING QUOTES

~ *Compiled by*: Rajmohan CV, V B.A. LL.B.

The essence of constitutionalism in a democracy is not merely to shape and condition the nature of majorities, but also to stipulate that certain things are impermissible, no matter how large and fervent a majority might want them

– George Will

In questions of power, let no more be heard of confidence in man, but bind him down from mischief by the chains of the constitution

– Thomas Jefferson

Liberty is not something a government gives you. It is a right that no government can legally take away

– A.E. Samaan

Don't interfere with anything in the constitution. That must be maintained, for it is the only safeguard of our liberties

– Abraham Lincoln

The strength of the constitution lies entirely in the determination of each citizen to defend it. Only if every single citizen feels duty bound to do his share in this defense are the constitutional rights secure

– Albert Einstein

Constitution is not a mere lawyers document, it is a vehicle of Life, and its spirit is always the spirit of Age

– Dr. B. R Ambedkar

Constitutional democracy, you see, is no romantic notion. It's our defense against ourselves, the one foe who might defeat us

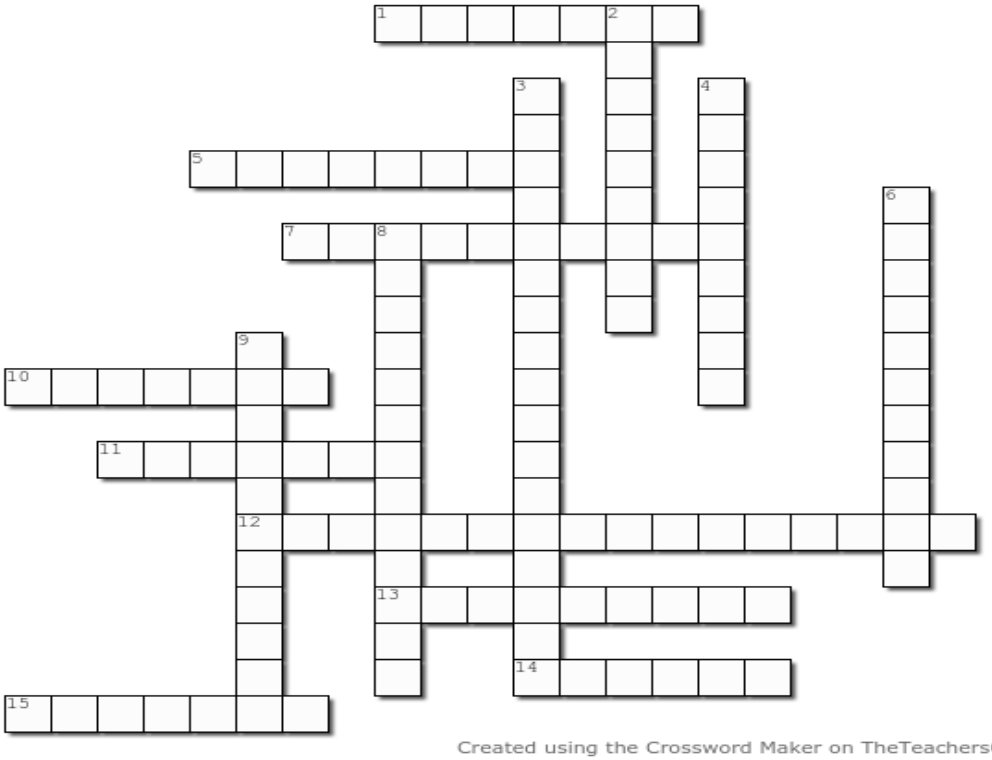
– Bill Moyers

L. CONSTITUTIONAL PUZZLE CONTEST

Designed by: Bhargav Bhamidipatti, II B.A. LL.B.

Name:_____

Complete the crossword puzzle below



Created using the Crossword Maker on TheTeachersCorner.net

Across

1. The Petitioner in the First Judges Case
5. The UNHCR strives to protect the interests of _____.
7. Which script of the Hindi language forms the official language of the Uniom
10. Maximum period an accused can be remanded in police custody is _____ days.
11. The SC Case Deep Chand v. UOI discusses the Doctrine of _____
12. Seventh Schedule of the Constitution embodies the _____
13. The petitioner in the case which first held 'equality is antithetic to arbitrariness '
14. The Panchayati Raj system was first initiated in which district of India
15. Representative standing and _____ standing, are either of the two standing necessary to file a PIL

Down

2. Part XIV-A of the Constitution of India deals with _____
3. The petitioner in the case widely considered to be the first PIL
4. The Finance Commission submits its report to the _____
6. Chapter IV of Part XII of the Constitution of India was inserted by the Constitution (_____) Amendment Act, 1978.
8. Ex-Officio Chairman of the Council of States
9. The power of the President to issue an ordinance is _____ power

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