University Institute of Laws Bulletin

(A Venture by Panjab University's Regional Centre, Ludhiana)

INAUGURAL ISSUE

2023 Edition

Vol.-1 Issue-1
(January)

UIL BULLETIN

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SPIRITUALITY AND LEGAL PROFESSION

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The legal profession has been witness to magnificent personalities like Justice P.N.Bhagwati, Justice Krishna lyer, Justice D.Y. Chandrachud, Adv. Kapila Hingorani, Adv. Veena Sethi, Mr. Kuldip Nayyar, Adv. M.C. Mehta and the like. They have been beacon of light standing as light houses to rudderless individuals, maneuvering them out of darkness by providing fairness and justice.

Lawyers and Judges of tomorrow are taught a great deal in a very short period of time: complex doctrinal concepts, skills, trained to argue, to mediate, to analyze, to research, to write, to compete and even economic realities of modern practice. Yet in spite of all these, recent years have been replete with widespread criticism of the way lawyers practice and judges decide. We are all observers to large number of cases of unprofessionalism and misdemeanor conducted by the legal professionals. John C Buchanan in his research work titled 'The Demise of Legal Professionalism: 'Accepting Responsibilities and lmplementing Change', published in Valparaiso University Law Review goes on to state, “few people, lawyers or laymen, can deny that the legal profession is now largely viewed negatively. Some may blithely dismiss this negativity as the price lawyers pay for their role in society – a role which often requires them to take on grossly unattractive causes. Duty has always demanded and always will demand that lawyers' risk being understood.” Much of the public views lawyers as self-interested profiteers striving on the problems and even the tragedies of others. There are reports of burnout, disillusionment and stress abound among the legal professionals. A poll conducted in California found that seven out of ten attorneys would change careers if they had the opportunity. A study by John Hopkins University researchers found that lawyers are more likely to be depressed than members of 103 other occupations.

If we consider other modern professions, there has been a gradual growing interest towards spirituality and its positive implications on the life of the professionals. Spirituality in professional life is not new or radical. Doctors, nurses, mental health professionals, social workers and even educators have been instilling spirituality in their professional lives. Health care has moved from disease centric approach to a patient centric approach. The research has discovered that both professionals and their patients/clients derive substantial benefits when spirituality shapes service and practice. Mere mention of spirituality can arise mixed and uncertain feelings due to many reasons, important being as to the blurry ways in which spirituality should be or could be defined. Defining spirituality is a task best suited to philosophers and theologians than lawyers but still some questions need to be answered. Firstly, is spirituality any different from religion? Secondly, is spirituality different from ethics? Answering the first question, it is stated that spirituality and religion or not synonym though they are interconnected. Religion entails a belief system with doctrines, established set of practices followed by its adherence to assist them in drawing closer to the divine, whereas there could be varied and spiritual traditions within a single religion. While providing answer to the second question, it's stated that professional ethics are acceptable set of rules upon which members of that profession agree. As ethics are derived from deeply rooted moral standards, they are often discussed as spirituality. But do ethics motivate an individual to the higher standards than that mandated by the rules? This has been very well answered by W. Perkins in his research article 'Virtues and the Lawyer', published in The Catholic Lawyer, where he exponents, “rules do not teach us how to become the kind of person we ought to be, nor do the rules bestow on us the honesty and Insight needed in order to determine what ought to be done”. Ethics is rule based and often legalistic prescribing a minimum rather than a maximum. Ethics focus on outward conduct rather than internal motives or disposition. They cannot empower a lawyer to be caring and courageous. Spirituality has two distinct aspects. One, spirituality is inwardly oriented, calling for self - realization, introspection, serious assessment, self-reflection and not self-centeredness. Second, spirituality has outward expression that constitutes compassion, service, and willingness to sacrifice. Unlike traditional service or healing professions, medicine or theology, law practice has a competitive adversarial reputation which can be seen inconsistent with spirituality as popularly perceived.

Law schools generally face the problem when they attempt to integrate spirituality with teaching advocacy. At the onset, blend of law study and spirituality appear to be an incompatible one. While integrating law and spirituality, one comes across some difficult concerns. Firstly, are the elements of spirituality inconsistent with law practice? Secondly, does modern legal work please accommodate spiritual life of employees and clients? Lastly, how should a lawyer respond when their sense of spirituality conflicts with their desires or wishes of their clients? These are some difficult questions but attention to spirituality can bring self-reflection and outward manifestation. lt will increase the level of satisfaction that lawyers perceive and their role. Satisfaction with law practice is reportedly low among today's best practitioners. There is general feeling of

emptiness. Greg K. McCann in his research paper rues "Report after report tells us that lawyers experience psychological unrest at much higher levels than non-lawyers……. One third of all attorneys suffer from either depression, alcohol, or drug abuse… 60% lawyers say that they would not recommend the law as a career to their own children". Naturally there may be many reasons to it and casual foray into spirituality is not a panacea for the ills that plague the legal profession, yet perhaps a link to spirituality may be the start of a new way of looking at those ills and contemplating a cure. Jill Channer in the article 'Just say Om: Harried Lawyers Still their Minds with Yoga and Meditation', states "Lawyers who tap spirituality even in the face of professional disappointments and failures, something great provides a continuing sense of personal peace and consolation". Viewing practice as a spiritual undertaking beyond the narrow scope of the task at hand, may lead to more rewarding view of professional life. This will bring change in the attitude of the lawyers in serving the clients. They will be serving clients as a companion, helper, and healer, rather than disgruntled professional. Lawyers get more opportunities to minister than others. He gets hosts of occasions to serve his clients. A client tells a story of marriage, or a business partnership gone bad. He talks of an accident, or an injury suffered and discuss a painful business decision that could put dozens of people out of work. The legal problem may often be the byproduct or symptom of client's difficulty rather than the heart of the problem itself. Spirituality will bring patience and make a lawyer a better listener too. As Walter H. Bechkham III envisages, "We also must remember that client care is an integral part of a job, and that part of that care is in learning to become better listeners…… We must listen to clients and understand that a problem often has an economic, psychological or spiritual component". The quest towards more holistic lawyering is better accomplished by lawyers who are attuned to the spiritual needs of their clients by grappling first with their own.

For all this, our law schools and legal education system is also at fault. We train lawyers to be knowledgeable, competent, and ethical but forget the fourth intangible element that is spiritual perspective. The judges, lawyers and law students need to re-discover the spiritual roots and functions of the legal profession. Legal profession is sacred because what we were called to do as lawyers and judges involve some of the more morally compelling decisions. For that we need to bring pure hearts and clean hands to every task. Lawyers and judges are bearers of light that can lead individuals out of darkness and loneliness, lead nations out of caves of injustice and oppression into the sunlight of justice and peace. Lawyers and judges do not bring justice by finely tuned intellectual skills but with spiritual wells with compassion in the heart and tear in the eyes. Emotional and spiritual intelligence must rest right next to a mental intelligence. Judges and Lawyers are called to administer justice, to be the caretakers of a process that attempts to bring order to chaos and to restore human dignity and respect. Hence, like a physician, it's important that legal professionals are spiritually whole to guide a process that has justice and fairness as its goal.

There is a popular saying that "There is a thin line between love and hate." There is a thin line between depravity and saneness, between criminality and nobleness. All of us, walk that line every day. To pretend that we are immune from crossing over is the greatest fallacy of human development. Therefore, daily spiritual practices bring out emotional and mental strength that keep us from crossing those thin lines. Spirituality is nurtured through meditation, for others it is prayer or nature. For some, it is found within the context of their faith or religious traditions. The problem with the legal profession is not the ability to agree on a medium of spirituality but the passive acceptance that spirituality does not exist or matter within the confines of our work. This one profession seems more like a business than a sacred calling. lf judges and lawyers ought to provide justice, then they must hold up their actions and thoughts to the higher standard humanly possible. General feeling is that standards are unrealistic and unobtainable. Legal professionals are not compensated sufficiently to engage in this emotional and psychological exploration. Reality is that this is the truth. One is not paid enough. Yet, that is not why one should do this sacred work. There is loftier calling. The Robe tugs the legal professionals to do something great. lt calls them to hear the voices of the voiceless and find an oasis of justice in deserts. lf one does that then not only the legal profession would see its glorious days back revitalized, but our nation India will be considered a just state to live in.

STATUS ANXIETY & THE POWER OF SNUB: CAN THE PRINCIPLE OF FRATERNITY CLEAR THE AIR?

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The more things change, the more they remain same. The timeless character of Karna, in Mahabharata makes me co-relate him with today's being. His desire to marry Draupadi and her rejection as him being a charioteer's son and also his urge to defeat Arjuna in the tournament of archery, a match he could not play because he wasn't a kshatriya, state Karna's desire of the social acceptance and the society's arrogance of rejection. Though in the latter part of the epic he realizes his original identity as kshatriya but one can witness the identity crisis in Karna throughout because of the non-acceptance. Karna was a versatile persona, with a tragic struggle over his identity, who faced inequality based on the caste discrimination, social rejection and much more. He was a victim of status anxiety and the power of snub. Karna was from a time when in a society, the hierarchical mobility was comparatively rigid than the present, so he could not easily evade the status anxiety trait of his personality and craved for society's recognition, however, Draupadi and Arjuna could not take kindly to his elevation, resulting in an inevitable conflict. William James in his book 'The Principles of Psychology', writes that "if no one turned around when we entered, answered when we spoke, or minded what we did, but if every person we met 'cut us dead' and acted as if we were non-existent things, a kind of rage and impotent despair would well up in us." Hence, the desire for elevation of status and the need for its recognition as well by others has always been a part of individual's concern, but the society does not have the wisdom for being more accepting.

With the advent of democracy, the hierarchical mobility was made comparatively more flexible. India always being a multi caste and class society drafted the Constitution in such a way so as to redesign the society on the parameters of equality. The law, thus, laid the principle of affirmative action, stating it as the positive discrimination, so as to break the rigid division within the society and bring a balance amongst all the sections of people. As the Indian Constitution aims for equal society, the rise of one section poses a threat to the others. Law is promoting the elevation of status but the historically privileged classes not only refuse to accept this elevation but also use social institutions as a tool to snub, which results in the continuation of social prejudices. K.R. Narayana, the former President of India and a Dalit, once confessed in an unguarded movement that he was not allowed to forget his origins even in Rashtrapati Bhawan quotes Gurcharan Das in his book 'The Difficulty of Being Good'. This makes us conclude, that even though the society has changed and made the elevation relatively easier and possible, than at the times of Karna, but even then, the elevation of the status doesn't douse one's anxiety because our sense of identity, apart from the elevation, is held hostage to the opinion and acceptance of others. 'We may not admit it, but the truth is that we all seek to be loved by the world...No human being is immune from this weakness', states Allain de Botton in the book, 'Status Anxiety'.

So, because the power of snub and status anxiety are the prevailing concerns which have pervaded throughout the history of humankind, hence, there is an utter need to investigate and search for the best possible solutions. The route to this search could be by exploring the law through a lens of spirituality. One such route is exploring the Divine law itself. Bhagwat Gita shows a way, stating that a person should strive for happiness but without associating it with the desire (Sattva). The principle can be applied on Karna's problem of status anxiety. Even though Karna himself knew that he was a great warrior, but he still wanted his social status at par with Kshatriya clan. He had a desire for social acceptance in order to be happy and contentful. Had he not strived for this desire to the fulfilled he would probably have been better off and wouldn't have faced the conflict with the self and the society. Sikhism also talks about the philosophy of 'Sarbat da Bhala', which means the well-being of entire human race, as the objective is to promote universal brotherhood and oneness of humanity. If this philosophy is applied on the forces of snub the conflict would come to an end. This is the consideration of the divine or natural law, which has been our experience since last many decades; but can we also truly explore manmade laws spiritually? In next few paragraphs I'll try to quench this thirst and find out the answers for the issue in hand. For this I'll explore the philosophy of Fraternity under the Indian Constitution, an oeuvre, which I feel is not a text but a living tradition, a spiritual law drafted by the saintly members of the Constituent Assembly.

Fraternity is a bond and a feeling between people acting within the public and private sphere. Katherine A. Chandler's idea of social fraternity states that fraternal bond does not relate to the shared use of goods but shared feelings. Dr. B.R. Ambedkar, while submitting the Draft Constitution stated that 'the need for fraternal concord and goodwill in India was never greater than now.' However, I feel the principle never goes out of fashion. It was required during the times of Mahabharata and should be

strengthened even today, as the current times are also marked with the similar set of problems though the gravity may differ. Fraternity is not only a legal principle but also a spiritual feeling. It cultivates within a person quality of public empathy which is equivalent to Durkheim's philosophy of social solidarity. It helps us to accept, relish and acknowledge the differences in people living around us without taking them as competition, irrespective of what they wear, how they look, what Gods they worship, the language they speak, their sexual orientation. The philosophy of fraternity develops within us an emotional attachment and acceptance towards these differences. Human Dignity in all aspects becomes our priority and feeling of jealousy, anger, non-acceptance evades, generating solidarity, the idea of standing together, an immutable feeling that we are together. The feeling of fraternity makes you humble and adaptable towards the elevation of other individuals. You accept their growth positively, in the same way they honour your status in the society. Individuals become reasons for each other's progression and not forces of snub, leading to positive mindset and elimination of anxieties. This is also one of the attributes of the philosophy of Ikigai, a Japanese notion of 'meaningful being.'Empathy is also an attribute to the fraternity, where the other's pain is felt as if one's own and you stand with the others during the days of their adversity so that they reciprocate it during your testing times. Noam Chomsky's theory of Universal Social Protection is synonym to fraternity. However, human nature is not conducive to such cordial adaptability but a legal and spiritual force can gradually bring a change. It is pertinent to mention that the fraternity is a feeling and so is the status anxiety, that is, the problem as well as the solution both are psychological in nature. To understand the depth and layers of status anxiety, forces of snub and to develop the feeling of fraternity is, thus, a long journey.

Indian Judiciary has played a limited but efficient role in highlighting the importance of fraternity in developing an accommodating society. In *Indira Sawhney v UOI Case*, while defending the practice of reservation the principle of fraternity was made the basis. It is a rare example where the court held the fraternity as a means to achieve the equality rather than the affirmative action. Justice Thommen, though dissented in this case, but the role of fraternity in providing equality finds echoes in all opinions, including his. Underlining, the promise of fraternity he stated that reservation could not pose a threat to the relationships between various social groups. Similarly, in *Shri Raghinathrao Ganpatrao v UOI Case*, the court rejected the princely class as the privileged class making the idea of fraternity as an objective to be fulfilled. Quoting Dr. B.R. Ambedkar, the court held, with several disruptive forces, such as religion, caste, language, the idea of fraternity is imperative to ensure the unity of the nation through the shared feeling of common brotherhood. The court hence, felt that the princely class would be a threat to a conducive social environment. In *Nandini Sundar v State of Chattisgarh Case*, the principle of fraternity was used as a buffer to the unchecked state powers. The court held that it was important for the state to uphold human rights and strive for the promotion of economic policies so as to encourage the equality in society. The court equated the respect for fraternity as an aspect of constitutionalism.

Tracing back the story of Karna, a reference must be made of John Campbell's view that, 'Every religion is true one way or another, it is true when understood metaphorically but when it gets stuck in its own metaphors, interpreting them as facts then you are in trouble". In other words, religion, in praxis, is a metaphor. Thus, the tale of Karna in spite of being an ancient individual experience symbolizes the suffering which is experienced by the under-privileged classes of today, generally owing to the status anxiety. Traditionally, the Divine law showed the way but in modern times people expect the State made laws to address their issues of discrimination, anxieties and inequalities. It is thus the Constitution, that owes this responsibility and holds together the idea of justice, equality, liberty and fraternity as the prerequisites for an equitable society, amongst which, I feel convinced, therefore, that the principle of fraternity is the most radical legal principle which needs to be strengthened so as to address the forces of snub and status anxiety. Ironically, the principle remains least understood and discussed, most importantly scarcely practiced and promoted when compared with the other three pillars of Indian Preamble, those are Justice, Liberty, and Equality, and that is where the due priority should be given to the building upon the idea of fraternity as it will have a positive implication for the other three as well and thereby, envisioning a society where there will be less fateful tales as that of Karna, also making the constitution a 'North Star' as stated by Hon'ble Chief Justice of India and 'Holy Book' as envisioned by Hon'ble Prime Minister of India.

TOWARDS A SOCIALLY RESPONSIBLE CRITICISM OF ADJUDICATORY LEADERSHIP

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I am happy to contribute to the research Bulletin of University Institute of Laws (UIL) and wish to compliment Professor Aman Amrit Cheema, Director, and Professor Ashish Virk, as also all colleagues and staff of the Institute for completing two decades of dedication to the vision of learning the 'value and ethics based integrated learning'. In many ways, Punjab has been a home for my thinking about law and justice.

It was in Panjab University's Department of Laws that I led the first of the five UGC regional workshops on 'Towards Socially Relevant Legal Education'[1] and delivered a set of Mehr Chand Mahajan Lectures on *Supreme Court and Politics* published in early 80s.[2] I dare say that influential epistemic communities were thus born for betterment of legal education and securing greater judicial accountability in India.

I am delighted at this new literary venture that speaks both to the disjuncture (law *and* society) and conjuncture (law *in* society). It was rather long ago (in 1966 when I had the privilege of teaching with Professor Julius Stone at the Department of Jurisprudence and International Law, University of Sydney) that I fully realized the truth of his saying that human life in society were not two different things but one continuous and long intertwining.

II

In this short paper, I reiterate, some of themes on which I have written extensively. I like one meaning /usage of the word 'reiterate' which is 'to do or perform again' rather than emphasising or repeating what was done or said earlier. What I name as Socially Responsible Criticism (SRC, hereafter) is always a creative performance rather than a retelling of one's views in the past. SRC is a form of responsible criticism of adjudication that, in the short as well as long run, fosters the independence of judiciary an essential dimension of a rule of law society. And in my view the rule of law is the name of an endeavour to make power more accountable, governance increasingly just, and State progressively ethical.[3]

We do not have an abundance of writing of how one came to a career in law teaching—and that is a sad lack which I have sought to redress by writing critical obituaries of law teachers in the pages of the *Journal of Indian Law Institute* and *Supreme Court Cases*. But that does not fully redress the lack. Today's students, even teachers, have (and those to come in future generations would achieve) little or no institutional memory of how law teachers have struggled, in difficult times, to innovate pedagogy and curriculum and pioneered legal writing and research. I hope that the Institute finds some ways of attending to the tasks of retrieval of lost institutional memories.

I always ask here, possibly a wrong, question: to whom are the legal academics responsible? What social responsibility is on display when they ask that justices should be socially more responsible? It is obvious that justices and legal academics, along with all other professionals, owe a duty to themselves and others to leave the world a little better place than one found it. What constitutes that 'better' is a vexed question but at least the Indian Constitution offers some answers through the Preamble, Parts III, IV, and IV-A.

Our Constitution provides a vision of life and/in society, and it abridges the distance between being a sincere citizen and an ethically inclined moral person/agent. Of course, it does not exhaust the idea of good or just, but it does give us a map, and a compass, of constitutional ethics. How many of us view the Constitution as such is an empirical question, but any attempt at grasping the law in books, or in action, needs to be evaluated as marked by some understanding of constitutional ethics.[4]

One major difference between justices and academics is that the former are oathed citizens whereas the academic critics are un-oathed. That difference is not mitigated by Part VI-A of the Constitution; both citizens and legal academics are bound by the duties which bind all citizens. Oath implies additional role obligations, specific to the high constitutional office, unless one were to discount oaths as a relic and ritual without any consequence.

If one were to think so, it has to be also acknowledged that we do not have valid responsible reasons for saying this, especially because we do not know how Justices subjectively, or inter- subjectively, regard the oath. Is any empirical research in this area possible?

Was the so-called Judicial Revolt', in 2018, by four justices of the Supreme Court, a violation of judicial oath? Does the oath only apply to all justices in their adjudicative work and not on the administrative side? Should the Third Schedule of the Constitution further remain hostile to judicial recusal? A five-judge Bench in the *NJAC Case*[5] issued in fact, two separate decisions-one, on the National Judicial Commission and second on recusal. Some justices went so far as to maintain that judicial recusal may violate the oath and the defence of institutional necessity to decide a case forbids recusal. Not merely is this judgment not read or discussed but remains ignored by the summit justices themselves as if it were not the law declared under Article 141 of the Indian Constitution! Should a constitutional amendment proceed to define what may the expression 'to do justice without fear

it were not the law declared under Article 141 of the Indian Constitution! Should a constitutional amendment proceed to define what may the expression 'to do justice without fear or favour', or 'affection and ill-will' and to uphold 'the sovereignty and integrity of India' mean after all, or leave the matter to constitutional conventions and judicial traditions? And how does one draft such amendment that does not violate the constitutionally guaranteed independence of judiciary as an aspect of the rule of law and democracy enunciated as the basic structure of the constitution?

Anyway, many a legal and political scientists indulge in offering opinions on Supreme Court's performance at a moment's notice. Freely expressed opinions are the heart and soul of democracy. But one expects more from those who claim to be the specialists who judge the judges. One expects a reasoned judgment which is more convincing, socially, and ethically. How often do we encounter this? The specialist is taken seriously because she offers her views after a lot of studies and research. When she merely offers an opinion, she may not masquerade at the same time as an expert, unless it is at all justifiable to do *power politics* in the guise of legal and social science research. Of course, law academics ought to pursue *constitutional politics* as justices do, an activity open to theoretical disagreement but are never entitled to pursue power politics in disguise and by other means.

One simple difference between a judgment (which is described as the Opinion of the Court!) is that it is based on argumentation by Counsel, a brief record of the arguments presented at the Bar, careful consideration of the evidence on record, and a reasoned decision in a particular case or controversy. We must ask of ourselves as legal academics how often do we go through a detailed exploration of materials, arguments, and the judicial outcomes, which are wholly or partially read in public the open court and regularly published? Further it may be useful also to ask: In how many realms of life are the decisions we take reasoned and recorded?

Further, do we know at all, indeed, how to *read a judicial decision*? (This was nearly a semester long seminar which I led at Delhi University, attended not just by law students and some colleagues but by other faculty as well!) I used to tell them that while no one may teach another how to read, I can certainly tell folks how *not to read!*

III

This theme may be pursued by drawing several distinctions in reading and studying judgments. First, there is a contingent *outcome-based* evaluation as distinct from the *structural evaluation* of judicial decisions. The latter is far more difficult than the former. A study of courts for 75 years working requires what Karl Llewellyn used to call an examination of a formal style and the grand style. The distinction is not without its pitfalls, but I find it broadly useful in the study of the Supreme Court of India (SCI) which pursues both.

The former 'is that mode of decision and opinion writing which proceeds from the "orthodox ideology" of a closed system of pre-existing law applied mechanically by the judges who disclaim creation in the process and think of their technique as involving mere deduction from ascertained premises. The "Grand Style," in contrast, assumes a duty on the part of the court to carry on a continuous judicial review of judge made law, to "view precedents as welcome and very persuasive' , but ... 'to test a precedent almost always against three types of reason before it is accepted': the reputation of the opinion-writing judge; principle, which means 'no mere verbal tool for bringing large-scale order into rules'. But 'a broad generalization which must yield patent sense as well as order'; and, finally, policy, 'in terms of prospective consequences of the rule under consideration, comes in for explicit examination by reason in a further test of both the rule in question and its application'. [6]

Decisions that inaugurate basic structure doctrine, social action litigation (still miscalled public interest litigation)[7], invent judicial collegium, adopt standards of constitutional morality over and above public, social, and even legislative morality, for example, are Indian illustrations of Grand Style of decision-making. But not all decisional patterns are beyond reckoning or predictability. Llewellyn addressed to resolve the growing 'crisis in confidence' of the American Bar who 'have had their eyes riveted on doctrine, on the "rules" of law, when they should have been watching the decisional process to detect factors which were bothering or helping a given court in reaching its decisions. The lawyer should study his court as assiduously as he studies "law", he insisted. And he famously used to say in their first class to his law students: at Chicago Law School: '*Look at not what judges say, but what they do with what they say'*. In understanding judicial interpretation in India, we need to look at both the said and the unsaid.

Second, should we not bear in mind the distinction between power politics and constitutional politics? If the quality inherent to former is partisanship then disinterestedness and constitutional neutrality are the hallmarks of judging. It is only when a legal commentator can demonstrate a systemic fading of judicial virtues that she can legitimately critique judicial performances. Distinctions based on integrity of right structures (this phrase comes from Ronald Dworkin) and decisions that seem systemically capitulate, to power, need to be clearly and cogently demonstrated. All too often scholarly criticism of judicial performance as being the 'executive court', for example, is just an act of lazy self-indulgence-- expression of personal opinions rather than based on understanding of any hard and harsh realities of judicial process.

Third, academic understanding has to grasp the distinctions among constitutional judicial process as a 'Miracle', 'Surrender' and 'Hope'.[8] I need only add Niklas Luhmann's articulation of contingent expectations (which do not

survive the experience of disappointment) and normative expectations (which survive and are reinforced by the destruction of the existential expectations). We must also ask, when judging the justices, how far the overload of the former is justified in the constitutional judicial review process, and what normative expectations of constitutional judicial review stand justified.

IV

You may well contest the distinction between law and politics. But please note that I don't talk about all the *domains* of law and of all *kinds* of politics. I found it useful, when in a classroom, to identify state law's domains in four letters: LAIE (Legislation, Administration, Interpreation, and Enforcement). Each has vast, even plenary powers but each is also constrained by the juristic invention of meanings used in the words of law. One may further describe LAIE as the web of law![9]

As concerns kind of constitutional powers, one may draw a bright line between 'democratic' and partisan/authoritarian politics. What describes the Indian system the most accurately is the idea of a limited government, in which all powers are *supreme* within their jurisdiction/competence, and none is *sovereign*. This is precious bright line, which enables us also to define or describe 'undereach' as well as 'overreach' of all constitutional powers. A transformative constitutionalism does not endow any unlimited constitutional power on any organ of the State, including the judiciary; it changes the order of things but always within the limits of constitutional law, which celebrates (to put in the classical Indian scriptural sense) *marayda.*

The constitution is perhaps best understood as defining the thresholds and limits of supreme power to do things with words and rules. And such constitutional discipline is above all best manifest in the dilemmas and difficulties of judicial interpretation rather than in any other domain of the state.

Endnotes

1. Amita Dhadha (ed), *Selected Writings of Upendra Baxi, Vol 3 Legal Education,* (UK, Oxford, Oxford University Press, 2023 forthcoming). This volume brings deftly together all different writings on educations especially legal education and socio-legal research.

2. Upendra Baxi, *The Indian Supreme Court and Politics* (Lucknow, Eastern Book Company, 1980).

3. But one must attend to Jacques Derrida's reminder that there is accordingly a certain degree of incommensurability between the ‗particular' (the singular other) and the ‗universal' (duties of responsibility to suffering others). Derrida is thus right to reproach those whom he calls ‗the knights of responsibility ‗when they fail to recognize that acting responsibly (towards some) paradoxically involves behaving irresponsibly (towards others.)'

4. See on constitutional ethics, Rajeev Bhargava (ed), *Politics and Ethics of the Indian Constitution* (Delhi, Oxford University Press, 2009).

5. ee the analysis in Upendra Baxi, ‗Demosprudence and Socially Responsible/Response-Able Criticism: The NJAC Decision and Beyond', *NUJS L. Rev*. ,9:153 172, (2016), See, more generally, Upendra Baxi, 'Constitutionalism as a Site of State Formative Practices', *Cardozo L. Rev.*21:1183–1210 at 1187-1193(1999-2000); see, however, ‗Preliminary Notes on Transformative Constitutionalism', in *Transformative constitutionalism: Comparing the apex courts of Brazil, India and South Africa*, 19-47; Oscar Vilhena, Upendra Baxi and Frans Viljoen, ed; Pretoria, University of Pretoria Law Press, PULP, 2003.)

6. See his, *The Common Law Tradition: Deciding Appeals* (Boston, Little Brown & Co, 1960) at 36. See also, William Twining, *Karl Llewellyn, and the Realist Movement* (Cambridge, UK, Cambridge University Press, 2012, 2nd edition)

7. See his, *Law as a Social System*, (Oxford: Oxford University Press, 2004; trans. K Ziegert,); see further, Andreas Philippopoulos-Mihalopoulos, *Niklas Luhmann: Law, Justice, Society* (London, Routledge, 2010).

8. See Rajeev Dhavan, *The Constitution of India - Miracle, Surrender, Hope* (Delhi, Universal/LexisNexis, 2017).

9.It is tempting to expound dangers inherent in ‗dark web (such as illicit accessing of prohibited materials, varieties of cybercrimes), as also the advantages (for example, avoiding many regimes of censorship) but I do not examine it here, given the space constraints.

REFORMS UNDER ENFORCING CONTRACTS TO SPEED UP THE RESOLUTION OF COMMERCIAL DISPUTES IN INDIA

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Ministry of Law & Justice, Government of India

The endeavour of the present government is to make India a global manufacturing hub. The initiative in this direction was lead by Prime Minister Sri Narendra Modi when he gave a clarion call for —Make in India in 2014 and since then the Government of India has placed great emphasis on improving its ease of doing business rankings and introduced various reforms in order to attract foreign investment.

Enforcing commercial contracts requires the involvement of both the government and the judicial system. However, it takes nearly four years (1,440 days) in India to resolve commercial disputes. [1] This may be due to reasons such as high existing pendency of cases, and complex litigation procedures.[2] In 2013, there were 32,656 civil cases pending in various high courts, of which 52% were commercial disputes.[3]

World Bank Report on Doing Business report till 2020 used to measure regulations that enhance business activity and those that constrained across 11 indicators. Department of Justice (DoJ) was made the nodal department for the Enforcing Contract indicator and coordinate with the judiciary in introducing the reforms. The performance of any country in —Enforcing Contracts indicator is measured against the time taken for disposal of a commercial dispute; costs involved in resolving a commercial dispute; the quality of judicial processes and good practices followed by the commercial courts.

Based on the recommendations of the Law Commission made in its 253rd Report, a Bill namely, the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 was introduced in the Rajya Sabha on 24th April, 2015. As Parliament was not in session and urgent steps were needed to be taken, the Commercial Courts, Commercial Division and Commercial Appellate Division in High Courts Ordinance, 2015 was promulgated on 23rd October 2015.

The key legislative intention of the law makers to introduce the Commercial Courts Bill, 2015 was to *—ensure that commercial cases are disposed of expeditiously, fairly and at reasonable cost to the litigant|| and it was envisaged that the Act would accelerate economic growth, improve the image of the Indian justice delivery system; and improve the faith of the investor world in the legal culture of the nation.*[4]

The proposal to provide for speedy disposal of high value commercial disputes has been under consideration of the Government for quite some time. The high value commercial disputes involve complex facts and question of law. Therefore, there is a need to provide for an independent mechanism for their early resolution. Early resolution of commercial disputes shall eate a positive image to the investor world about the independent and responsive Indian legal system.

However, the government promulgated an Ordinance on 3rd May, 2018 amending the Commercial Court Act, 2015 with a view to expand the scope of commercial courts in India and improve India's ranking on the Ease of Doing Business Report released by the World Bank. The 2018 Ordinance made certain key changes to the Act including (i) changing the short-title of the Act to the Commercial Courts Act, 2015; (ii) reducing the specified value of a commercial dispute from Rs. 1 Crore to Rs. 3 Lakh; (iii) creation of commercial courts (where High Court had original jurisdiction) and commercial appellate courts at the district level. The 2018 Amendment amended Section 3 and 4 of the Act to create commercial courts and appellate fora at the district level. The Amended Section 3 of the Act authorised the State government, in respect of High Courts having original jurisdiction, to set up commercial courts at the district judge level. The State government was empowered to determine the pecuniary value of such commercial courts at the district judge level, which could not be less than Rs. 3 lakhs but not more than the pecuniary jurisdiction of the district court. In addition, in areas where the High Court did not exercise original civil jurisdiction, the State government can constitute commercial courts below the level of a district judge.

The Delhi High Court has noted that legislature did not intend to cover all disputes arising out of commercial transactions but only opted to specify only twenty two transactions, as transaction's, disputes arising wherefrom will constitute commercial disputes.[5] These commercial transactions are ordinary transaction of four identified classes of persons namely, merchants, bankers, financers and traders.

The most important enforcing contract reform is reduction of time taken for resolution of a commercial dispute. In order to achieve this objective in the Commercial Court Act, 2015 the CPC provisions were amended, a concept of Pre-Institution Mediation Settlement (PIMS) and Case Management Hearing were introduced.

The amendments to the CPC contemplated time bound completion of pleadings, filing of evidence, trial and pronouncement of judgment. After the Plaintiff files the suit, it may seek leave to file additional documents within 30 days of filing the suit.[6] The Defendant is required to file its written statement within 30 days and not later 120 days from the date of service of summons.[7] The Parties are to then

complete inspection of documents within 30 days from date of filing the Written Statement (or Written Statement to the Counterclaim), which can be extended by the Court to a maximum of 60 days.[8] The Statement of admission and denial of documents has to be filed within 15 days of the completion of inspection or any later date fixed by the Court.[9]

An international practice of pre-trial conference or case management hearing has been introduced in India under the Commercial Courts Act, 2015 for the first time through a new Order inserted into the CPC.[10] This allows the Court to make a time line, and fix dates for the proceedings of the matter. The first Case Management Hearing has to be held by the court within four weeks from the date of filing of affidavit of admission or denial of documents by all parties to the suit. Arguments have to be closed within six months of the first Case Management Hearing. It provides that no adjournment for Case Management Hearing would be entertained for the sole reason of non-appearance of counsel. If such application had been made in advance, it would be accepted, upon payment of costs. Non-compliance with Case Management Hearings shall be condoned by the Court only upon payment of costs, but it might also result in forfeiture of the party's right to conduct the suit. In extreme cases of willful non-appearance, the Court has the discretion to dismiss the plaint.

The Court is required to hold the first case management hearing not later than 4 weeks from the admission/denial of documents by the parties.[11] At the Case management hearing the Court may pass orders framing issues between the parties, fixing dates for recording evidence, fixing dates by which written and oral arguments are to made, setting time limits for parties and their advocates to address oral arguments etc.[12] In fixing such dates the Court is to be mindful that arguments should be closed not later than 6 months from the date of the first case management hearing.[13] The disputing parties are also required to submit their written arguments four weeks prior to commencing oral arguments.[14] The Commercial Court is then required to pronounce its judgment within 90 days of the conclusion of the arguments.[15]

The Commercial Courts (Amendment) Act, 2018 introduced a new Section 12A providing for mandatory pre-institution mediations and settlement (PIMS) in all cases, other than those cases which require any urgent interim relief. Such pre- institution mediation has to be conducted through Authority authorized by the Central Government. The process of pre-institution mediation has to be completed within a period of three months, extendable by two months with consent of the parties, from the date of application made by the Plaintiff. Time spent in pre- institution mediation shall not be computed for the purpose of limitation under the Limitation Act, 1963. If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator. The Settlement arrived at under this provision shall have the same status and the effect as if it is an arbitral award on agreed terms under sub- section (4) of Section 30 of the Arbitration and Conciliation Act, 1996.

The government has created a Task force on enforcing business contracts as part of its efforts to improve India's ease of doing business rankings. It was constituted under the Chairmanship of Secretary, Department of Justice, with members from the Department for Promotion of Industry and Internal Trade (DPIIT), Department of Legal Affairs (DoLA), the High Court of Delhi, Bombay, Karnataka and Calcutta and the Law Departments of Delhi, Maharashtra, Karnataka and West Bengal and the e-Committee of the Supreme Court. The Task Force has held 12 meetings so far. The concerted efforts of the Government and the Indian judiciary in implementing reforms under the —Enforcing Contracts Indicator has led to India's rank improving to 163rd rank in 2020 from 186th in 2014. This jump of 23 ranks is a result of the game-changing reforms undertaken by the government over the past 6 years.

Enforcing Contracts indicator under the World Bank's Doing Business assessment process measures three key parameters, namely the time estimates, cost estimates, and the quality of judicial process index with 18 point score. Time estimates for commercial cases includes time taken during filing and service phase, trial and judgment phase, and enforcement of judgment phase. Cost estimates for commercial cases include attorney fees, court fees (upto judgment only) and expert fees, and enforcement fees. Quality of Judicial Process Index consists of assessment of reforms in the court structure and proceedings, case management, court automation, and alternative dispute resolution.

Following are some of the key reforms undertaken in Enforcing Contracts indicator in this year:

The Department of Justice, Ministry of Law and Justice has spearheaded following steps for exclusive and focused attention to resolve commercial disputes expeditiously and strengthen the —Enforcing Contracts regime and institutionalized these steps in collaboration with judiciary, as follows[16]:

I. For speedy resolution of commercial cases, the government introduced the Commercial Courts Act, 2015 (as amended in 2018) which led to establishment of —Dedicated Commercial Courts' at district level in Delhi and Mumbai. The specified value of commercial cases to be resolved in these commercial courts is starting from Rs. 3 lakhs. These courts have exclusive jurisdiction as well as exclusive manpower. There are 35 Dedicated Commercial Courts in Delhi including 2 paperless digital commercial courts; 6 Dedicated Commercial Courts in Mumbai; 10 Dedicated Commercial Courts in Bengaluru(8 Urban and 2 Rural), and 2 Dedicated

Commercial Courts in Kolkata and 2 more to be set up. This structural reform introduced by the government is aimed at facilitating settlement of commercial disputes expeditiously for litigants and lawyers and at the same time instill confidence in the corporate investors.

ii. To promote fair and unbiased adjudication of commercial matters, the government in collaboration with the judiciary is implementing eCourts project. Under this project, for enhancing judicial transparency and court automation, —Random and Automatic Allocation of commercial cases has been made operational. All newly filed commercial cases in the Dedicated Commercial Courts are automatically and randomly allocated to the judges using the latest Case Information System (CIS 3.2) software.

iii. Case Management Hearing or pre-trial conference facility under CPC Order XV-A of the Commercial Courts Act, 2015 introduced by the government has been made operational by this government for all commercial cases in Delhi, Mumbai, Bengaluru and Kolkata. It is held before the trial and narrows down contentious issues/evidentiary questions, expedites trial process and discourages any delay tactics. The aim is to speed up case disposal by streamlining the trial process, thus benefitting the litigants as well as lawyers.

iv. To reinforce the Prime Minister's flagship Digital India program, the initiatives under Enforcing Contracts indicator have galvanized efforts such as “e- Filing Facility . e-filing has made filing of cases real time and online which means that cases can be filed by a lawyer from home or any location, any time 24x7. e- filing system is aimed at promoting paperless filing and create time and cost saving efficiencies by adopting technology-driven solution to file cases before courts in India.

v. —e-Summons is the process of issuing and serving the summons electronically through email followed by SMS alert which is generated through eCourt Services Portal is fully operational in Delhi and Mumbai Courts. This pioneering initiative of the government in consonance with the Digital India vision will save time and resources by automatically delivering the summons to parties in dispute. A Software patch for consuming database of companies registered with the Registrar of companies, Ministry of Corporate Affairs has been developed to facilitate sending of online summons in commercial disputes and is operational in the commercial courts of Bengaluru, Mumbai and Delhi.

vi. The government introduced the Commercial Courts (Amendment) Act, 2018 that ushered in game-changing policy initiative of —Pre-institution mediation and settlement of commercial cases where no urgent interim relief is contemplated and for this purpose, through subject expert mediators empanelled by the District Legal Services Authorities. The Pre-Institution of Mediation & Settlement (PIMS) Rules, 2018 (as amended in 2020) has been notified. This has led to dispute avoidance and reduced clogging of cases in commercial courts. In addition, it has boosted investors' confidence in contract enforceability regime.

vii. The vision of Digital India and the eCourts project is to transform the judicial system of the country by ICT enablement of courts. In order to enhance judicial productivity, both qualitatively & quantitatively, making the justice delivery system accessible, cost effective, reliable and transparent, —Electronic Case Management Tools (ECMTs) has been introduced for both Judges and lawyers. Integration of Electronic Case Management Tools in one digital platform has been done which is a key reform under Enforcing Contracts in World Bank's Ranking.

viii. JustIS app is an essential tool for Judicial Officers and has been made available exclusively for India's judicial officers to empower them. It gives a quick glance of the number of listed cases on the present day, undated cases, received by the Institution and by transfer in the last month, current pending and disposed commercial matters in the current month. The eCourts app aims to enhance judicial productivity and workflows by providing case information with speed and accuracy to lawyers and litigants.

ix. The government has recognized that an effective and faster system of resolution of high value commercial disputes needs specialized forums for expeditious adjudication. Special Commercial Benches in High Courts have been set up in Delhi, Allahabad, Orissa, Jammu & Kashmir, Sikkim, Patna, Madras and Andhra Pradesh High Courts to hear high value commercial cases above Rs. 500 crores.

x. 23 High Courts have established Designated Special Courts for infrastructure projects. High Court(s) of Calcutta, Karnataka, Allahabad and Madhya Pradesh High Courts have allocated specific days in a week for hearing of such matters so that these courts function as dedicated courts for infrastructure contracts on such days.

xi. e-Committee, Supreme Court has enabled compliance of three adjournment Rule by creating the facility of colour banding. The colours provide

information regarding the number of adjournments in a case.

xii. Dedicated Websites for Commercial Courts have been developed for the High Courts of Bombay, Calcutta, Karnataka and Delhi.

Department of Justice, Ministry of Law and Justice, as the nodal department has been monitoring an array of legislative and policy reforms to strengthen the —Enforcing Contracts regime for Ease of Doing Business in India in coordination with e-Committee, Supreme Court of India and the High Courts of Delhi, Bombay, Calcutta and Karnataka. In close collaboration with all of them, Department of Justice has been aggressively pursuing various reform measures to create an effective, efficient, transparent and robust 'Contract Enforcement Regime'.

The portal is envisioned to be a comprehensive source of information pertaining to the legislative and policy reforms being undertaken on the —Enforcing Contracts parameters. It includes the latest data related to the functioning and disposal of commercial cases in the Dedicated Commercial Courts of Delhi, Mumbai, Bengaluru and Kolkata. These Dedicated Commercial Courts have been established for speedy resolution of commercial disputes and boast of dedicated infrastructure and exclusive judicial human power.

In order to make access to information on commercial court and related services easy, the portal contains several features such as details/links of the Dedicated Commercial Courts in Delhi, Mumbai, Bengaluru and Kolkata ; instructive videos related to e-filing, advocate registration; manuals on using the Electronic Case Management Tools(ECMTs) like JustIS app for judicial officers and e-Courts services app for use by lawyers (developed by the e-Committee, Supreme Court of India) and a repository of all related commercial laws for ready reference.

The new portal also hosts online reporting by all High Courts regarding the Mediation and Arbitration centres annexed to the Commercial Courts in order to monitor and promote institutional mediation & arbitration by way of Pre-institution Mediation and Settlement(PIMS) of commercial cases. PIMS has been introduced with the aim of reducing pendency of cases and to promote mediation as a viable dispute resolution alternative in commercial cases.

xiii. A three-month online certificate course on Business and Commercial Laws has been launched in collaboration with National Law University, Delhi.

xiv Ease of Doing Business Portal- DOJ has also launched the Enforcement of Contracts Portal which provides a comprehensive source of information on reforms being undertaken on the —Enforcing Contracts parameters.[17]

The Enforcing Contracts reforms should be strictly implemented under the 25 High Court jurisdictions in India so that the objective of speedy resolution of commercial disputes will be implemented all over India.

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6. Order XI R(4)
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ADMINISTRATION OF JUSTICE IN DOMAIN NAME DISPUTES: A CRITICAL ANALYSIS OF DISPUTE RESOLUTION POLICIES

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Abstract

Access to justice does not merely include access to the forum, rather it includes the aspects of fairness, equality, legal aid, legal awareness, public confidence in the justice system, etc. Despite being praised as an efficient mechanism of dispute resolution, the UDRP and other similar policies (DRPs) have several flaws, which prevent effective access to justice in domain name disputes or which reduce the confidence of the aggrieved party in the policy framework. In this paper, the authors have made a critical analysis of some of the Dispute Resolution Policies (DRPs) in light of relevant suggestions.

Keywords: Dispute Resolution Policies (DRPs), IPR, cybersquatting, administration of justice.

I. INTRODUCTION TO THE PROBLEM OF DOMAIN NAME DISPUTES

"In the digital world of today, one can say almost nothing is local".

-John W. Henry

The Internet and the digital realm have opened large avenues of success in the legal field across the globe. It is much evident from the UNCTAD report published in 2021 (UNCTAD, 2021). The report has underlined the dramatic surge in e-commerce amid the COVID-19 restrictions globally. However, as a dark side of the digital world, legal issues and disputes like privacy breach, breach of contract, defamation, and cyber-fraud have cropped up recently. Apart from the above disputes, the internet has also posed threat to intellectual property rights (IPRs), especially the trademark rights of individuals. A peculiar form of dispute often arises due to unauthorized registration and use of the domain name of a company or a well-known mark, (such as Mercedes-Benz) for attracting profits and customers. Such disputes pertain to the problem of "cyber-squatting". The WIPO has defined it as the act "involving the pre-emptive, bad faith registration of trademarks as domain names by third parties who do not possess rights in such names" (WIPO, n.d.).

A domain name is often considered as "addresses of the Internet", which is also used for the purpose of sending e-mail messages and also to find web pages (BitLaw, n.d.). Some famous examples of domain names are".com", ".org", ".net", ".edu", ".gov" etc. These all are examples of the top-level domain (TLD) name. However, the problem of domain name disputes, especially, cyber-squatting, revolves around the unauthorized use of "second level" domain names which are "directly to the left of the TLD name. For example, "www.mercedes-benz.com", the word "mercedes-benz" is the second level domain. It is this name that acts as an extension of a trademark over the internet. Therefore, it can be appropriately said that such unauthorized registration of domain names constitutes an act of trademark violation over the internet.

DRPs as ODR framework for domain name disputes

As far as the ADR in domain name disputes is concerned, the Internet Corporation for Assigned Names and Numbers (ICANN), a non-profit organization came out with the policy called the Uniform Domain Name Dispute Resolution Policy (UDRP) in 1999, which lays down the online dispute resolution mechanism for resolution of domain name disputes. On the same line, various countries have formulated such policies (DRPs), some of which include .IN Dispute Resolution Policy (INDRP) of India, .eu Alternative Dispute Resolution Rules of European Union (EU), .usTLD Dispute Resolution Policy of USA, the CNNIC ccTLD Dispute Resolution Policy (CNDRP) and Rules of china, .au Dispute Resolution Policy Rules (.auDRP) of Australia, etc.

II. GAPS IN DOMAIN NAME DISPUTES POLICIES: UDRP & .INDRP

The author critically analyses and found the gaps in policies mainly The Rules for Uniform Domain Name Dispute Resolution Policy (UDRP), and .IN Dispute Resolution Policy (INDRP) Rules of Procedure.

A. The Rules for Uniform Domain-Name Dispute-Resolution Policy (UDRP)

The UDRP rules govern the arbitration proceedings involving the most important generic top-level domains (gTLDs), such as ".com", ".net", ".org," ".biz" and ".info". Also, some countries have adopted UDRP rules in modified form for the resolution of disputes concerning country-code top-level domain (ccTLDs) such as ".ag," ".bz", ".cc", ".fj", ".fm", ".gd", ".gt", ".pa", ".pk", ".pn", etc. (WIPO, n.d.).

i. Significance of UDRP Rules

As compared to other forms of resolution mechanisms, the UDRP provides a speedier and more inexpensive mechanism for dispute resolution. UDRP provides for an extra-judicial tribunal, which has the authority to decide cyber-squatting cases, thereby it is a quintessential need to set up a mandatory/ administrative arbitration mechanism (Efroni, 2007). The UDRP decisions are pronounced within two months, while the court's decision takes a longer time. (Bernstein, 2000). Therefore, it has become a preferred method as compared to traditional litigation in domain name disputes since its inception. Even since its implementation, as compared to the ACPA case in the USA, over 7500 UDRPs were filed between 1999 to 2001 (Sharrock, 2001). Even, in 2021, over 5000 domain name

proceedings were filed with WIPO alone, showing a surge of 22% cases in 2020 (WIPO, n.d; Mewburn Ellis, 2022).

ii. Loopholes of UDRP Rules

Some of the loopholes in the UDRP Rules shake the confidence in the UDRP Proceedings as a suitable mechanism for dispute resolution.

a. **Questionable legitimacy: In the opinion of** Efroni (2007), the UDRP has questionable legitimacy as it acts as a *de facto* binding legal instrument, globally, which has been drafted by a private non-profit organization of the US.

b. **Completely online process:** Under Rule 3(b) "complaints and "annexes" are to be submitted mandatorily in electronic form. This provision, thus, neglects the fact of low digital literacy in developing countries like India and African countries.

c. **Lack of consistency:** The arbitrator exercises unlimited decision-making powers under the proceedings, such exercise is a source of inconsistency regarding issues of use of domain names. For example, the conflicting decisions of *General Machine Products Co. v. Prime Domains (National Arbitration Forum Domain Name Dispute Case FA0092531)* and *eResolution v. eResolution.com (WIPO Case No. D2000-0110)* and conflicting Wal-Mart decisions (*Wal-Mart Stores v. Walsucks (WIPO Case No. D2000-0477)* and *Wal-Mart Stores v. wallmartcanada-sucks (WIPO case No. D2000-1104)).* Therefore, it is uncertain whether in every case justice will be provided to the rightful party.

d. **Absence of legal aid program:** The UDRP Rules fail to include legal aid programs to enhance access to justice.

B. IN Dispute Resolution Policy (INDRP) Rules of Procedure:

On the lines of UDRP, India has adopted .INDRP, which is applicable to the ".in" ccTLDs since 2006. It is enforced by the National Internet Exchange of India (NIXI), which acts as .IN Registry since 2005 (.IN Registry, n.d.). Like UDRP, .INDRP also provides for arbitration mechanism for domain name disputes in India. The proceedings are governed by .INDRP Rules of Procedure (or INDRP Rules).

i. Significance of .INDRP Rules:

Similar to the UDRP Rules, the .INDRP Rules also seek to provide speedier and cost-effective remedies to the parties. It is known for a transparent mechanism and mandatory execution of awards of the Panel. During 15 years of its enforcement, the NIXI was able to settle over 1150 domain name disputes (Rana & Srivastav, 2020). The success stories of the Rules include the transfer of domain names such as 'www.pizzahut.in', 'www.gmail.co.in', 'www.nescafe.co.in', and 'www.starbucks.co.in' after referral under .INDRP was made, thereby ensuring the protection of the rights of legitimate trademark owners (S.S Rana & Co., 2011).

ii. Loopholes in .INDRP Rules:

Despite being an effective mechanism of domain name dispute resolution in India, the .INDRP Rules suffer from some drawbacks.

a. **Language problem:** Under the Rules, the language of the arbitration proceedings is English (Rule 14). This provision discriminates against people, who are not comfortable with English as the medium of communication.

b. **Absence of provisions ensuring minimum qualification, impartiality, and independence of arbitration:** The provision regarding impartiality and independence of arbitrator is absent in the Rules.

c. **No forum for appeal:** Similar to the UDRP Rules, the .INDRP Rules do not provide for an appellate tribunal. An appellate tribunal is needed to evade cumbersome courtroom litigation.

d. **Lack of recognition by Indian courts:** The Delhi High Court in *(Beiersdorf A.G. v. Ajay Sukhwani and Anr., (MANU/DE/1631/2008) and Citi Corp And Anr. v. Todi Investors And Anr. (2006 (4) ARBLR 119 Delhi)* has refused to consider the decisions of the arbitrator under .INDRP Rules (and UDRP) to be binding and to operate as *Res Judicata.*

III. ADDRESSING GAPS WITH CRITICAL ANALYSIS AND PROBABLE SUGGESTIONS

A. REGARDING UDRP

The bodies such as ICANN and WIPO must initiate awareness programs for providing wider access to UDRP proceeding to all the segment of masses. A wide awareness program through advertisement concerning the process of UDRP must be initiated by the ICANN and WIPO. The provision regarding minimum qualification, impartiality, and independence must be strengthened on the lines of ADR laws. Due to the lack of qualifications of panellists, the courts in some countries do not recognize the awards. It is evident from the decision of Delhi High Court in *Beiersdorf A.G. v. Ajay Sukhwani and Anr., (MANU/DE/1631/2008)* and *Citi Corp And Anr. v. Todi Investors And Anr. (2006 (4) ARBLR 119 Delhi).* The constitution of an appellate tribunal is need of an hour in order to prevent inconsistencies in decisions.

B. REGARDING INDRP

The NIXI must initiate an awareness program for providing wider access of .INDRP proceeding to all segments of the masses. It must be given wide publicity through advertisements. The scope of the remedy must be enlarged to provide monetary compensation to the complainant. There must be clarity regarding the fate of an administrative proceeding, in case, legal proceedings have been initiated or is pending during such administrative proceeding in respect of a domain-name dispute, which is also the subject of the complaint. The legislature must pass an enactment to recognize the proceedings of both UDRP and .INDRP and to provide the status of the arbitral award to the decision of the arbitrator.

IV. CONCLUSION

The issues concerning language, transparency in the process, biasness of panellists and arbitrators, lack of

recognition by courts, absence of an appellate body to review the decision, and forum shopping by the complainant are some of the areas, where the domain name dispute policies across the globe need massive reforms. Else, the ODR platform provided by DRPs will fail in its objective of providing effective access to justice to all.

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HYBRID HEARINGS IN JUDICIARY

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On November 3 2022[1], the Supreme Court said that it is seeking a uniform platform for live- streaming and initiated steps to institutionalize the directions issued in the 2018 Swapnil Tripathi case [2], which approved live-streaming of the Court hearings saying "Sunlight is the best disinfectant".

In September[3], the Apex Court took the historic step to commence the live-streaming of the hearings before the Constitution Benches. The live-streaming received huge public response with lakhs of people watching the videos. But it needs to be examined as to how we would integrate digital justice delivery into the broader legal ecosystem of India? How can courts retain public confidence in a post-pandemic world where digital pathways will have to be resorted to?

As Theodore Roosevelt had rightly quoted "*There can be no life without change, and to be afraid of what is different or unfamiliar is to be afraid of life*." Virtual adjudication is an unconventional eventuality that has been spurned upon the legal fraternity across oceans. Wherein, the legal fraternity was used to appearing in person before the courts or various tribunals, everyone has been thrust to a world of remote hearing, as a matter of urgency and desperation so that the judiciary is not overburdened due to a major time lapse.

It is often said: "justice delayed is justice denied". In order to tackle the preceding issue, the Indian judiciary came up with effective solutions to move forward with their work and manage the rise of cases as they come, as justice never sleeps. 'Court' is a place where justice is administered. Although, the definition of the Court varies across jurisdictions, they all seem to have two elements in common-that a Court is a government entity comprising one or more judges and that the Court deals with the administration of Justice thus making it clear that Court is more of a Service than a place.[4]

Adopting a hybrid mode has become the preferred way to conduct hearing as it embraces both the virtual and in-person hearing room environments, allowing for practitioners to participate either in-person physically or virtually via remote capabilities. It takes into account the imposed restrictions and capacity rules for the hearing's physical space in compliance with the social distancing measures. Virtual hearings enabled proceedings to continue through the pandemic but as we return to more in-person hearings, hybrid hearings preserve a blend of virtual and in-person components. Considering each state and jurisdiction have different rules and COVID- 19 related restrictions in place that can swiftly change at any time, the necessity to embrace hybrid hearing environments is more important than ever. They are flexible and adaptable to changing restrictions that may disrupt the running of a matter, which is why they have become a priority in the evolving legal landscape amid the pandemic.

Hybrid hearings allow for optimal participation for all attendees. A hybrid hearing environment involves a variety of complex technologies and integrations. Technology expertise is essential for conducting a successful hybrid hearing as there are unique elements for each type of legal [i]matter. For example, the hybrid environment of an arbitration is very different to that of a hybrid court trial. A hybrid trial will incorporate virtual hearing elements into the court room infrastructure, while a hybrid arbitration will typically have one or several in-person hearing rooms established, combined with the virtual components.

The common features of a hybrid hearing comprise the use of videoconferencing (VC) platforms, remote evidence presentation, a cyber-secure online court book, a remote stenographer providing live transcription integrated into the online court book, remote witness management and support, IT support, a VC Bridge Operator and sometimes public or private web streaming. These features are integrated into an in-person hearing room or court room with the virtual solutions customised to the legal requirements.[5]

Necessity is the mother of invention and India needs to provide impetus for the creation of platforms like Cisco Webex, Zoom, etc. with end-to-end encryption under its Make in India and Digital India initiatives.

The Supreme Court addressed the issue of delivery of justice in the form of an order dated April 6, 2020 during the COVID-19 lockdown. A Bench consisting of Bobde, C.J., D.Y. Chandrachud and L. Nageswara Rao, JJ.issued a direction *In Re*:*Guidelines for Court Functioning Through Video conferencing During COVID-19 Pandemic*[6] regarding measures to be taken by the courts to reduce the physical presence of all litigants within the court premises by adapting the social distancing guidelines. A seven-page order explaining the reasons for *"measures required to ensure the robust functioning of the judicial system through the use of videoconferencing technologies; and consistent with the peculiarities of the judicial system in every State and the dynamically developing public health situation, every High Court is authorised to determine the modalities which are suitable to the temporary transition to the use of video conferencing technologies."*

*Justice V Ramasubramanian***,** while sharing opinions on a contemporarily significant theme – *'Strengthening Doorstep*

Justice – Augmenting Access to Virtual Courts[7], went on to highlight that *Justice Muralidhar* was one of the first Judges in India to initiate the process of e-filing in his courtroom and to take steps towards an environment-friendly judiciary. He further remarked that the Indian Judiciary had conceptualised the e-courts project in 2005 but it was only after the pandemic that the legal edifice could realise the true potential of Virtual Courts. He also shared a video of a real-life incident from the United States, wherein the presiding Judge of a Virtual Courtroom took immediate action to ensure that the witness appearing on the screen was not under any form of mental pressure after sensing unusual behaviour from the end of the witness.

Mr. Neeraj Kishan Kaul, Senior Advocate, Supreme Court of India opined that the COVID-19 induced lockdown of Courts has given us a flavour of the potential that technology holds to address the key concern of access to the judicial system and thereby justice. He also remarked that Virtual Courts are not a new concept for the Indian Judiciary. He elaborated that the e- courts project was conceptualized on the basis of the National Policy and Action Plan for Implementation of Information and Communications Technology in the Indian Judiciary, way back in 2005.

Going deeper into the issue, he focussed on the benefits of modern artificial intelligence tools that, according to him will assist in improving the efficiency of our justice system through sophisticated and contextual automation of existing repetitive non-judicial tasks and functions to reduce pendency, expedite judicial adjudication and create more time for Judges to resolve complex cases. A hope was expressed that even when the physical functioning of Courts resumes, virtual courts would continue through the means of a hybrid functioning of Courts.

Insofar as the Delhi High Court is concerned, several court rooms have implemented hybrid hearing mechanism and there should be no reason why the same should be restricted to exceptional circumstances alone.

There are several lawyers, who, due to their age and co-morbidities, are unable to attend physical courts and the request to be made only in exceptional circumstances may place a risk upon such lawyers. Also, enormous apprehension is expressed by young women advocates, who have small children going to school. Further, this setup would also lead to lesser fuel consumption and fewer movement of vehicles in general[8].

Hybrid hearings would do away with the need for a Constitutional amendment, make the Supreme Court accessible to southern states, do away with the significant infrastructural costs required for potentially setting up regional benches of the Supreme Court, reduce the cost of litigation, open up opportunities for lawyers residing outside Delhi to practice before the Supreme Court, and lead to effectively implement the Supreme Court's mandate that proceedings of cases having constitutional and national importance be broadcast to the public[9].

A nationwide standardised mechanism needs to be devised in order to equip Trial Courts to record evidence through video conferencing. The recording of evidence through video conferencing has been held to be an acceptable mode of recording by the Supreme Court, as it satisfies the objectives enshrined in the CrPC[10], as it is recorded in the presence of the accused. ODR forum concept can accelerate adoption of virtual courts in India, particularly in petty claim matters such as traffic challans where AI-based software can decide cases. ODR forums will increase the chances in making virtual courts and online hearings more viable and efficient. It will help reduce the backlog of cases before various courts in India.

Virtual court hearings have been taken place in Indian courts much prior to the pandemic. Judicial precedents have emerged to maintain privacy and confidentiality of the parties.

A two-Judge Bench in *Krishna Veni Nagam v. Harish Nagam*[11], while dealing with transfer petition seeking transfer of a case instituted under Section 13 of the Hindu Marriage Act, 1955, when both parties were not located within the jurisdiction of the same court, referred the parties to participate in the matrimonial dispute cases through video conferencing. While allowing the abovementioned transfer petition, the difficulties faced by the litigants living beyond the local jurisdiction was acknowledged by the Supreme Court that *"it is appropriate to use videoconferencing technology where both the parties have equal difficulty due to lack of place convenient to both the parties. Proceedings may be conducted on videoconferencing, obviating the needs of the party to appear in person, wherever one or both the parties make a request for use of videoconferencing."*

Later on, *Veni Nigam case*[12] was overruled by the Supreme Court of India in *Santhini* v. *Vijaya Venketesh*[13], by a 2:1 majority. Dipak Mishra, C.J. and A.K. Khanwilkar, J. held that in transfer petition, video conferencing cannot be directed. However, D.Y. Chandrachud, J. in the dissenting opinion highlighted the pros of videoconferencing by citing two reasons

1. "*The Family Courts Act, 1984 was enacted at a point in time when modern technology, which enabled persons separated by spatial distances to communicate with each other face to face was not fully developed. There is no reason for court which sets precedent for the nation to exclude the application of technology to facilitate the judicial process.*
2. *Imposing an unwavering requirement of personal and physical presence (and exclusion of facilitative technological tools such as videoconferencing) will result in a denial of justice.*

In *Meters and Instruments v. Kanchan Mehta*[14] , it was pointed by the Apex Court that the use of modern technology needs to be considered not only for paperless

courts but also to reduce overcrowding of courts. There is need to categorise cases which can be concluded "online" without physical presence of the parties where seriously disputed questions are not required to be adjudicated like traffic challans and cases of Section 138 of the NI Act.

Albeit, such progressive judicial bent and enormous benefits, the complications in the Virtual setup arose because of digital illiteracy, the connectivity divide amongst the masses, and the lack of proper training for the various judicial officers. It needs to be highlighted that it is difficult for Courts to observe the demeanour of the witness and the production of the accused through video conferencing can lead to instances where the accused is prevented from speaking freely because of external influences. Although Virtual Courts have been in vogue during the pandemic, they cannot be a substitute for physical hearings. Thus, virtual hearing must supplement but not supplant physical hearings.

While adoption of Hybrid mode has been quite rapid, its further growth requires addressing some key issues. Adoption of standardised tools, deployment of required technology and training are some of the pressing challenges. However, a separate law to deal with the same will also need to be enacted and amending existing laws will become necessary. Also, it will be essential to cull out rules for filing electronic evidence for adoption by various courts in India and aligning it with e-filing project. There is also an urgent need for technology deployment at district court level and training its personnel so that both virtual/hybrid courts can function.

While some policymakers, find virtual court hearings convenient, others find it cumbersome, particularly those who are not so technologically savvy or where volumes of files are required in a case. On the other hand, it is easy for litigants to have their cases heard even if they are in far-flung areas but in district level, required technology and tools may not be adequate or not available. Some part of the public believes that open courts are irreplaceable since the fundamental principle in the administration of justice is that courts must be open to the public[15].

Judiciary and our courts have access to a lot of sensitive data, thereby a debate emerges on use of a private party to digitise such data and its safety. It becomes pertinent to adopt a standardised software platform for virtual courts across India. Further, the extant laws such as the Information Technology Act, 2000 and the Evidence Act, 1872[16] may need to be amended along with that the Practice Manuals of Supreme Court, High Courts and the District Courts.

There is no doubt that COVID-19 has exposed the vulnerability of traditional legal models. But new challenges in the virtual space are always upon us and law will continue to evolve with societal change. Although initial indicators of adoption of hybrid mode have not been encouraging, embracing these technologies is extending the reach and capabilities of practitioners, improving access to justice, and enhancing the efficiency of proceedings. The emergence of hybrid hearings is but one recent example of the effective and modern use of virtual hearing technologies in law. Hence, courts should embrace newer technologies that support court services while being mindful of possible tech-related issues that can impact on justice objectives, in light of Benjamin Cardozo, an American jurist, who once stated, *"New times demand new measures and new men in the field of law as elsewhere"*.

Endnotes

1. Mathews J Nedumpara vs Supreme Court | W.P.(C) No. 1259/2019
2. SCC639;Writ Petition (Civil) No. 1232 Of 2017
3. 2022
4. 103rd report on the functioning of Virtual Courts and Digitisation of Justice Delivery in Parliament by Parliamentary Standing Committee of the department of Personnel, Public Grievances and Law and Justice.
5. The emergence of hybrid hearings by Nicolas Wilson- Law in Order
6. 2022 SC 355
7. 1st Justice HR Khanna Memorial National Symposium on 14th August, 2021
8. Anil Kumar Hajelay & Ors. vs Honble High Court of Delhi on 26 February, 2021 W.P.(C) 2673/2021
9. A case of Permanent Hybrid Courts by Hamza Lakhdawala- The Leaflet
10. Code Of Criminal Procedure, 1973
11. 9 March, 2017 Transfer petition (CIVIL) NO. 1912 OF 2014
12. *Supra*
13. Decided on 9th October 2017; transfer petition (civil) no. 422 of 2017
14. Decided on 5 October, 2017; Criminal Appeal No. 1731 OF 2017
15. SCC Blog: Adoption of Virtual Courts in India by Dr Karnika Seth
16. Indian Evidence Act, 1872

X v. THE PRINCIPAL SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT, GOVT. OF NCT OF DELHI & ANR., CIVIL APPEAL NO 5802 OF 2022 (ARISING OUT OF SLP (C) NO 12612 OF 2022)- TIME TO UNDERSTAND THE ABORTION LAW OF INDIA IN LIGHT OF THE RECENT JUDGEMENT GIVEN BY HON. JUSTICE DR DHANANJAYA Y CHANDRACHUD

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Recently in ***X versus The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr., Civil Appeal No 5802 of 2022 (Arising out of SLP (C) No 12612 of 2022)***, a question which arises before the hon. Supreme court was whether an unmarried lady has abortion rights under The Medical Termination of Pregnancy Act, 1971. Though the court, in this case, has mentioned that unmarried ladies too had an abortion right under the MTP Amendment Act, 2021. The current MTP Act doesn't make any difference between married and unmarried women.

As we all are aware of the fact that abortion is governed by the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as MTP) which was recently amended in 2021. Initially, when MTP Act was enacted in 1971 only a married lady was allowed to go for an abortion, and that too when there is any failure of contraceptive used by her husband or by her. Law was silent about the right of the unmarried lady, widow, and divorcee lady at that time. It was later on in October 2021 the MTP Act was amended and now under section 3, Explanation 1 it is mentioned that "where any pregnancy occurs as a result of the failure of any device or method used by any woman or her partner to limit the number of children or prevent pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman". In the 2021 amendment, the term married has been replaced with women and the term husband has been replaced with a partner so that unmarried ladies can avail of this right. But the question which arises here is that when its already mentioned in the amended Act that the unmarried lady can avail this right of abortion when why Delhi High court failed to provide this right to the appellant? For this, we have to know about Rule 3B of the Medical Termination of Pregnancy (Amendment) Rules, 2021 which states about- "Women eligible for termination of pregnancy up to twenty-four weeks.— The following categories of women shall be considered eligible for termination of pregnancy under clause (b) of subsection (2) Section 3 of the Act, for a period of up to twenty-four weeks, namely:-

(a) survivors of sexual assault or rape or incest;

(b) minors;

(c) change of marital status during the ongoing pregnancy (widowhood and divorce);

(d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)];

(e) mentally ill women including mental retardation;

(f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and

(g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government." This rule does not consider the unmarried women's rights for abortion and it was because of this rule only the Delhi Court refused to grant abortion rights to the lady as in rule 3B abortion rights for unmarried women has not been mentioned. Though here in this case court failed to consider that MTP rules should be read with Section 3 of the MTP Act 2021. Also, it's the failure of the legislation that while amending the provisions of the rule they missed adding abortion rights for unmarried women who are in live-in- relationships under the same rule.

Now in the current case, the lady was in a live-in relationship and she was pregnant, it was when the partner informed her that he won't able to marry her, then she decided to abort this child as she was aware of the societal stigma associated with single mother before married. Thus, she filed a writ petition before the Delhi High Court. But the Delhi High court failed to provide her relief because rule 3B of the MTP Rule 2021, does not speak about the abortion right of unmarried ladies. Here the Court failed to consider that the parent i.e. The MTP Act 2021 speaks about the abortion right for unmarried ladies and the rule should be interpreted and framed according to the parent act. Another important point to be highlighted here is that the term "anguish" which is used in the Explanation 1 of Section 3 of the MTP act 2021 needs an interpretation. Indian law fails to interpret the term anguish. Even there is a need for elaborative discussion about when a pregnancy will be unwanted because unwanted pregnancy will cause anguish to a woman if abortion is not allowed her. There is a close relationship between anguish with an unwanted pregnancy. Women have to go through severe suffering and anguish when legal abortion services are inaccessible to them. Belgian law gives right to women for an abortion when they feel **distressed** due to their pregnancy. Now, what is distress here? The Belgian law does not define distress but "it seems that the term is interpreted in a very broad manner. Indeed, it appears that not feeling ready for a child is enough to qualify as "distress" under the law". Indian law also needs an elaborative definition of anguish here. As this present case has again arisen an issue where the Delhi High court failed to consider the anguish caused to an unmarried pregnant lady whose partner after staying with her in a live-in relationship refused to marry her after knowing about her pregnancy condition. The Honourable Supreme Court of India in the "***Justice K S Puttaswamy" case*** once said that the right to

privacy is considered to be absolute under the fundamental rights of the Constitution. Even UNPIN of 1994 recognized the rights to make sexual and reproductive decisions under personal autonomy which also "includes access to birth control, the right to legal and secure abortion, the right to choose reproduction free of bias, compulsion, and violence, the right to not be subject to harmful practices such as the coerced bearing of children. It's the lawful right of women to make reproductive choices, as a part of personal liberty under 'Article 21 of the Indian Constitution." Not only this in many international forums it has been discussed and considered that abortion right is one of the important parts of the reproductive right. Denial of abortion rights will mean denial of reproductive rights.

Justice AK Sikri, while speaking at one of the symposiums once said that "Reproductive Rights In Indian Courts: Celebrating Progress, Identifying Challenges And Discussing The Way Forward" organized by the Jindal Global University (JGU) said that "When we talk of reproductive rights in this country, then there is hardly any choice so far as the woman is concerned ...I can't help but wonder how we as humans have failed humanity. I am perplexed as to how in the 21st century, with all the technological advances, becoming frequent guests in outer space, and creating artificial intelligence, we are still not able to bring our women to enjoy the fruits of humanity. That is the harsh reality," This is the reality of the Abortion law in India even though we had the law but we can't avail this law.

From the discussion above it can be summed up that there is a need for interpretation of the term anguish in the MTP act as well as there is a need for an amendment in the MTP rule. Another important point to highlight here is that whenever there is a conflict of law between the parent act and its rules then the parent act should prevail over the rule. Abortion right for women is also important right that should not be denied as it will be a violation of their reproductive rights.

Endnotes

1. available at :http://www.nrhmhp.gov.in/sites/default/files/files/MTP%20(Amendment)%20Act%2C2021.pdf(visited on October 15, 2022)

2. Pyali Chatterjee, "Medical Termination Of Pregnancy Act: A Boon Or A Bane For A Woman In India- A Critical Analysis", 5(9)*IJSR* 236-240(2016)

3. *available at*: http://www.nrhmhp.gov.in/sites/default/files/files/MTP%20(Amendment)%20Act%2C2021.pdf(visited on October 15, 2022)

4. *available at*: https://egazette.nic.in/WriteReadData/2021/230390.pdf(visited on October 15, 2022)

5. Safe and Legal Abortion is a Woman's Human Right , *available at*: https://reproductiverights.org/wp-content/uploads/2018/08/Safe-and-Legal-Abortion-is-a-Womans-Human-Right.pdf (visited on October 15, 2022)

6. Abortion Legislation in Europe, *available at:* https://www.loc.gov/law/help/abortion-legislation/abortion-legislation.pdf (visited on October 15, 2022)

7. (2017) 10 SCC 1

8. (2017) 10 SCC 1

9. Reuters, *Her body, her right: Women have the right to decide on pregnancy, SC judge says*, INDIATODAY.IN, http://indiatoday.intoday.in/story/women-right-decide-pregnancy-sc-judge-ak-sikri/1/880596.html(last updated Feb. 13, 2017)

REMISSION AS A SHIELD IN THE CASE TITLED AS JASWANTBHAI CHATURBHAI NAI v. STATE OF GUJARAT (ALSO KNOWN AS BILKIS BANO CASE) CRIMINAL APPEAL NO. 1020 OF 2009

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Introduction:-

The two judicial systems such as Adversarial and Inquisitorial are prevalent at present. Under both one thing is common i.e. role of Judiciary in maintaining free and fair society. The Theory of Total Separation of Powers given by Baron de Montesquieu can't be applicable in any democratic society and there is always a tussle between the three organs of the society such as legislature, executive and judiciary. Every organ has controlling power over the other and who is better and whose powers are more than others, this issue can't be resolved but has to work altogether because they are inseparable part of every democratic country. The most important question is about giving relief to the accused by the legislature or executive even when crime is proved beyond doubt and case is closed by giving punishment according to the law in the criminal proceedings.

Now a days the word crime is casually used by the people without having any kind of interest or concern how it has affected our lives and even no fear in the eyes of offenders due to various powerful means. They knew that law and the legal machinery is just a puppet in their hands. The most heinous crime but common crime at present is Rape. Rape which is so much heinous crime and this crime is not a crime only against the woman rather a crime against the whole society. In one such case of Godhra, 11 accused were sentenced for life imprisonment for commission of offences of Murder and Rape and they were confined in Godhra Sub-jail, Gujarat. However, these convicts were released by the Gujarat Govt. on 15.08.2022 as their sentences was commuted by the Gujarat Govt. as per the Remission Policy of 1992 of State Govt.

Facts of the case: -

Before coming on the remission of the accused, it is required to be known that who are the accused and in which case, they were convicted. So let's see the facts of the case which are, the riots were spread in the State of Gujarat after Sabarmati train was burnt and many Hindu Karsevaks were killed in the train in Godhra on 27.02.2002. As such, under the fear the Muslim families including the Bilkis Bano, who was pregnant at that time, as well as her family left their houses at Village Randhikpur, District Dahod, Gujarat and for safer place. On 03.03.2002, when Bilkis Bano and others were near village Pannivel then the attack was made by about 25 persons and Bilkis Bano was gang raped and her minor child as well as her other family members and other persons were killed by those persons. Out of the said persons, the complainant Bilkis Bano identified the accused no.1 to 12.

Next day, she reported the matter to the police but her statement was not correctly recorded and thereafter, she was shifted to Godhra Relief Camp on 05.03.2002, where on 06.03.2002 she again reported the matter to the District Magistrate and on the directions of the District Magistrate, her statement was recorded by the Executive Magistrate and she was medically examined again at Godhra Civil Hospital on 07.03.2002.

On 06.11.2002, the police filed the closure report which was declined by the Hon'ble Illaqa Judicial Magistrate and ordered tocontinue the investigation. However, the police again filed the closure report in the Court in the month of February, 2013, which was accepted by the Court.

Thereafter, some social activists and National Human Rights Commission involved in the matter, a petition has been filed before the Hon'ble Supreme Court of India for setting aside the order of acceptance of closure report by the Illaqa Judicial Magistrate and order for transferring the investigation to the Central Bureau of Investigation (CBI). The Hon'ble Supreme Court of India on 16.12.2003 transferred the investigation to the Central Bureau of Investigation (CBI). On 19.04.2004, CBI after making the investigation, filed the charge sheet against 20 persons. Out of the same, 7 were police officials/ Investigating officers of the case as well as Doctors. The police of Gujarat was involved in the matter and there was a threat to the prosecutrix as such, the trial was shifted to Mumbai from Gujarat as per the order of Hon'ble Supreme Court of India before the Special Judge, CBI, Greater Mumbai.

The Special Judge, CBI, Greater Mumbai found guilty to the accused no.1, 2, 4 to 12 for murder & rape and sentenced them for the life imprisonment and punishment under other various sections of IPC vide judgment dated 21.01.2008. However, the court acquitted the accused no.13 to 20, who were police officials as well as doctors. As the accused no.3 died during the pendency of trial and proceeding against the accused no.3 has been abated.

The accused no.1, 2, 4 to 12 filed the appeal before the Hon'ble Bombay High Court against their conviction. CBI also filed the appeal against the lesser sentence to the accused and sought death penalty against the accused no.1, 2 and 4 and appeal against the acquittal of the accused no.13 to 20 from the sections 201, 217 and 218 IPC. However, the accused no.17 and the accused no.12 died, as such the proceedings against them have also been abated.

Defence counsel raised various issues before the Hon'ble High Court and the Hon'ble Bombay High Court considered each and every objection of the defence counsels i.e. Identification of the accused no.1 to 12 by the prosecutrix, The FIR, Section 157 of the Evidence Act VIS-À-VIS Statement

of the prosecutrix dated 06.03.2002, Tutored by the Social Activist to the prosecutrix, scene of offence, Corpus Delicti, Proviso to section 162 Cr. PC., No compliant by the prosecutrix though four chances were with her, Medical Evidence, Tainted & Faulty investigation, Involvement of the police and doctors in the case, Photographs & Exhumation and after appreciating all the evidence, the Hon'ble Bombay High Court upheld the conviction of the accused no.1, 2, 4 to 12 for life imprisonment and declined the relief of death penalty to the accused as sought by the CBI. However, the Hon'ble High Court allowed the appeal of CBI with regard to the acquittal of the accused and convicted the accused no.13 to 16 and 17 to 20, under sections 201 and 218 IPC vide judgment dated 04.05.2017.

The accused no.5 Radheshyam Bhagwandas Shah, after the completion of 15 years and 4 months in Jail, moved to the Hon'ble Supreme Court for remission of his sentence under the Gujarat Remission Policy of 1992. The Hon'ble Supreme Court of India ordered the Gujarat Government to consider the application of the accused. The Gujarat Govt. formulated the committee in this regard.

However, on 15.08.2022, the Gujarat Govt. gave remission to all the aforesaid 11 accused who were in jail as life imprisonment, under its Remission and Pre-mature Policy, 1992.

Issues For Critical Analysis: -

1. Whether legislature has a power of remission if punishment is according to law?

2. Whether power of remission can be used in heinous crime?

3. Whether the conduct of the accused has any role in the remission?

4. Whether victim has a right of audi alteram partem before the order of remission?

Critical Analysis:-

1. Whether legislature has a power of remission if punishment is according to law?

Powers of Remission: -

As such the State Govt. as well as Central Govt. has the power of remission. The Gujarat Govt. also has the power of remission. In the present case, the Gujarat Govt. on the recommendation of the Committee gave remission to the aforesaid all 11 prisoners who were in jail for life imprisonment, under its Remission and Pre-mature Policy, 1992 and they were made free from the Godhra Sub-Jail on 15.08.2022. However, the accused were convicted by the Special Judge, CBI, as such as per the provisions of section 435 Cr.PC., the state govt. alone cannot remit the sentence of the accused without consultation with the Central Govt.

2. Whether power of remission can be used in heinous crime?

What is Gujarat State Remission Policy:-

As per the Remission Policy of 1992, the Gujarat Govt. can remit the sentence of the prisoners. In the policy of 1992, there was no restriction to remit the sentence of the prisoners who were convicted for murder with rape or gang rape or the accused who was convicted for a crime investigated by CBI. However, this policy was declared unlawful by the Hon'ble Supreme Court of India in November, 2012 and thereafter, new policy was formulated by the Gujarat Government in the year 2014 with restriction that when remission could not be granted, including those in which the prisoners were convicted for a crime investigated by the CBI and where prisoners were convicted for murder with rape or gang rape. But the policy of 1992 was enforced when the crime was committed and during the convictions of the accused themselves, it is a mockery of justice! When we have to use remission power then there is no need to play with the sentiments of the society by amending the laws and showing how government is concerned about the rights and the protection of individuals in the society. No one feels safe in ones own country when laws are just only for the name sake without actual implementation and when actual implementation is in the hands of those who are not taking care of the rights of people for maintaining relations with those who have name and powers. However, the power of remission is not an absolute and it is always under the judicial review and the Hon'ble Supreme Court can review the order of remission. The same view has been held by the Hon'ble Supreme Court in plethora of judgments. Same view has also been taken in the following judgments: -

1. Ram Chander Vs State of Chhattisgarh & another4;
2. A.G. Perarivalan Vs State5;

3. Whether the conduct of the accused has any role in the remission?

The conduct and powers of the accused should be considered before giving the remission to the convict. In the present matter, the accused were so much influential that initially police did not take any action against them rather filed the closure report before the court and thereafter, due to the orders of the Hon'ble Supreme Court of India, the matter was investigated by the CBI and the matter came on its conclusion. The accused were so much influential that the matter was also transferred from Gujarat to Mumbai for trail. As such, all these incidents clearly show the powers of the accused in the administration as well as in politics. Releasing all the aforesaid prisoners by way of remission on the Independence Day gave a wrong message in the society. It is a human nature if everything goes according to one's wishes then there is no question of anger, anxiety or any kind of depression but if something has been done against the wishes then any step can be taken to fulfil those demands. If once I have done what I want to do then obviously my conduct will be normal there will be nothing wrong because according to self pleasure theory when one is reached to self satisfaction the desire to have wishes his fulfilled. Conduct after commission of crime without having actual realization is nothing but a big question mark not only on the conduct of

the accused but also on the government.

4. Whether victim has a right of audi alteram partem before the order of remission?

Rights under natural justice can not be denied in any circumstance whether order passed by executive, legislature or judiciary. The most important right is audi alteram partem i.e. opportunity of being heard has to given to other side. In Maneka Gandhi v Union of India6, the Hon'ble Supreme Court held that if pre-decisional hearing is not possible then post decisional hearing must be given for the fairness in the executive or legislative actions otherwise order can be challenged under judicial review before hon'ble SC. The accused are remit without giving opportunity to the victim of gang rape. Entire life of victim has been spoiled by the convicts and the executive exercised its discretionary power without any reasonable cause just to show the concerns about prisoners without taking into considerations of the pain of victim. The concept of Victimology came into existence after criminology and penology to understand the real pain and problems of victim but government made everything useless by just doing such acts without even listening to other side.

Conclusion:-

Rape is a heinous crime and no one should be spared who commits or helps in doing such type of heinous crime. They do not deserve any type of leniency from any corner of life.

In the Bilkis Bano matter, the prisoners took the benefit of law and by taking the advantage of the Remission Policy of 1992, the prisoners were eligible to get released them from the jail. However, the said policy was declared as unlawful by the Hon'ble Supreme Court of India.

The judiciary who performed its role very efficiently and competently in the case of Bilkis Bano and in furtherance of the same, Hon'ble Supreme Court of India in the month of August, 2022 accepted the writ to hear the matter of challenging the remission made by the Gujarat Govt. and seek reply from the Govt. on the said matter. This clearly reflects the check on the executive and on the legislature.

Endnotes

1. **432. Power to suspend or remit sentences.—**

1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon, the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with :

6) Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and -

7) Where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

8) Where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

9) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law which restricts the liberty of any person or imposes any liability upon him or his property.

10) In this section and in Section 433, the expression "appropriate Government" means -

a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;

b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed.

2. **433-A. Restriction on powers of remission or commutation in certain cases.—**Notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

3. **435. State Government to act after consultation with Central Government in certain cases.—**

1) The powers conferred by Sections 432 and 433 upon the State Government to remit or commute a sentence, in any case where the sentence is for an offence -

a) which was investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, or

b) which involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

c) discharge of his official duty, **shall not be exercised by the State Government except after consultation with the Central**

Government.

2) No order of suspension, remission or commutation of sentences passed by the State Government in relation to a person, who has been convicted of offences, some of which relate to matters to which the executive power of the Union extends, and who has been sentenced to separate terms of imprisonment which are to run concurrently, shall have effect unless an order for the suspension, remission or commutation, as the case may be, of such sentences has also been made by the Central Government in relation to the offences committed by such person with regard to matters to which the executive power of the Union extends.

4. Crl.WP 49 of 2022 D/d 22.04.2022

5. AIR 2022 SC 2608

6. AIR 1978 SC 597

ANURADHA BHASIN & ANR. v. UNION OF INDIA & ORS., 2020 SCC ONLINE SC 25 VIS-A-VIS STRIKING A BALANCE BETWEEN STATES' POWERS AND CITIZENS' RIGHTS: A CRITIQUE OF SUPREME COURT JUDGEMENT ON INTERNET SHUTDOWN IN J&K

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ABSTRACT

The advancement in the Internet technology has a greater significance in the enhancement of fundamental rights. The Internet has foreshown the path to a new order of interconnection and seamless existence. Internet and various other services associated with it have created an infrastructure which aids various economic sectors such as finance, education, agriculture, manufacturing etc. Nonetheless, Internet policing has become a reality today and India has been consistently topping the global charts for Internet shutdowns. This issue becomes more worrisome because this is the time wherein India is strengthening its generative technology in order to give a boost to the extensive Digital India campaigning. The Apex Court in the case of Anuradha Bhasin v. Union of India and Foundation for Media Professionals v. U.T. of Jammu & Kashmir declared that the State's imposition of indefinite Internet shutdowns are an abuse of power and are not permitted by the goals enshrined under the Indian Constitution. This article seeks to analyse these judgments from the lens of proportionality, necessity and resonability principles.

INTRODUCTION

Internet shutdowns have become a major worry in India. The civil society organization, Access Now which runs a project by the name of Shutdown Tracker Optimization Project (hereinafter **"STOP"**) ranks India at the top level among 34 countries that experienced network shutdowns for the year 2021.[1] The number of shutdowns that took place in India in 2021 are an astounding figure of 106 out of the worldwide documented 182 shutdowns. In 2020, India accounted for 109 out of the worldwide documented 155 shutdowns (i.e., 70%).[2] Reports of research organizations have stated that, "the results from our macroeconomic estimates reveal that 16315 hours of Internet shutdowns over the period of 2012 to 2017 cost the Indian economy nearly $3.04 billion".[3]

It is an important fact to highlight that the right to Internet access does not work as a sole right but enables within its working various other fundamental rights enshrined under Indian Constitution as well as human rights framework. These relate to the right to freedom of speech and expression, right to assemble and form groups, right to religion, right to livelihood, right to education, right to profession and right to information etc. These rights work as a sub set or elements of a bigger right i.e., the right to development.[4] Amongst various other universal rights, the universal right to freedom of expression is well defined under legally binding international laws, primary being Universal Declaration of Human Rights, 1948[5] (hereinafter **"UDHR"**) and International Covenant on Civil and Political Rights, 1966[6] (hereinafter **"ICCPR"**). India is a signatory to both UDHR and ICCPR, thereby making that bundle of rights enforceable in India by its citizens.

SYNOPSIS

A blanket internet shutdown was imposed in Jammu and Kashmir (J&K) on August 4, 2019.[7] The communication was cut off just before Article 370 of the Indian Constitution, which gave the former State a unique status, was repealed.[8] Landlines, mobile calling, SMS, mobile internet, and fixed line internet connections were all halted throughout the Kashmir area. Similar limits were put in place in Jammu and Ladakh, however landline services were still available.

While the Internet services were suspended, affected people had knocked the doors of the Apex Court to assess the legitimacy of the communication blackout enforced in Jammu & Kashmir in August, 2019. The Court's ruling upheld the necessity and proportionality aspects of human rights and acknowledged the fundamental freedoms of speech, expression, and the practise of any trade or profession through Internet access. The major claims in these petitions were to quash the directions issued by the government for suspending communication services due to which the petitioner's (journalist) right to practice her profession had been hugely affected.

On January 10, 2020, after a period of approximately 160 days of halted internet services, the Apex Court issued its ruling in the matter.[9] While the judgement was heralded as a success, a closer legal examination reveales a number of flaws. Primarily being that none of the effective reliefs had been granted by the judgement. The administration was instead told to evaluate its own directives in conformity with the proportionality criteria by the Court. The Court has additionally stated that the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 had several gaps and issued guidelines in this respect, however, no rectification has been made in this respect so far.[10]

IMPACT OF THE JUDGMENT

In response to the Supreme Court's directives, the Government of Jammu and Kashmir partially restored Internet service. In accordance with the Telecom Suspension Rules, it issued an order on January 14, 2020, allowing access to a few "whitelisted websites" at 2G mobile Internet speed but prohibiting VPNs and social media. The government gradually increased the list of whitelisted websites.

While the whole world was struck by COVID pandemic, the Foundation for Media Professionals, a party to *Anuradha Bhasin* case as an intervenor, submitted a new plea on March

31, 2020 to the Supreme Court of India.[11] The petition criticised the government's choice to restrict Jammu and Kashmir residents access to 4G mobile internet amid a pandemic and a state of emergency when dependable Internet connections were necessary to support telemedicine, remote work, online learning, virtual court hearings etc.

On May 11, 2020, the Court issued its decision. However, it refrained from provide any substantial remedy once more. Instead, the Court set up a Special Committee made up of top bureaucrats from the central and union territory governments to quickly assess whether the continuous blocking of Internet access in Jammu & Kashmir is required after reviewing the material given by the parties.

Thus, despite of two Supreme Court judgments, Internet shutdowns continued in the J&K and no immediate relief was granted to the citizens.

TEST OF PROPORTIONALITY AND NECESSITY

It is a mandatory principle of law that any imposition of restriction on the fundamental rights must be of the least intrusive nature. In *Anuradha Bhasin*, since the region under inspection was J&K, there exited a wider issue of geopolitical struggle that could not be ignored and the Court had rightly looked into the prospects of Internet as being a tool for terrorist activities.

When an Internet shutdown is imposed it has an overall impact on the citizens of that particular region which is not a temporary impact but a permanent impact as the fundamental rights of the citizens have been affected for that particular time period. Thus, it becomes necessary that while enforcing an Internet shutdown, the designated authority should adhere to the principle of proportionality so that a balance of interest between State and individual's rights can be achieved. In the case of *K. S. Puttaswamy* v. *Union of India*, the Apex Court had observed that "proportionality is an essential facet of the guarantee against arbitrary State action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law".[12] Further in the case of in the case of *Central Public Information Officer* v. *Subhash Chandra Aggarwal*,[13] meaning of proportionality was explained as, "it is also crucial for the standard of proportionality to be applied to ensure that neither right is restricted to a greater extent than necessary to fulfil the legitimate interest of the countervailing interest in question".

Additionally, necessity as an essential element is also of utmost importance. In his research, David Bilchitz[14] considers the necessity test and claims that necessity entails a reasoning mechanism. As a result, it guarantees that only such interventions can be justified as infringing on fundamental rights if they have a clear link to the goal they aim to achieve. Thus, it needs to be acknowledged that, while fundamental rights are not absolute, they do demand further protection. The necessity test kicks in at this point to ensure that no constitutional right becomes either absolute or completely weakened.

NATIONAL SECURITY CONUNDRUM

It is certain that national security has a completely different connotation in J&K, and there is an obvious connection between contemporary terrorism and Internet use because the former depends heavily on the latter. But in *Anuradha Bhasin*, when the State administration refused to provide the directives that led to the communication cut-off and mobility limitations, the national security exception was carved out at the very first instance. Eventually, the government gave up and released a few sample orders, but it gave a logistical excuse for not producing all of the orders.

The government justified the ban on freedom of speech by claiming that it was essential due to national security and law and order issues. However, one must not evade from the fact that in case government wants to restrict the freedom of speech and expression under article 19(1)(a), it must comply with the requirements laid down under article 19(2). When balancing national security with liberty, careful regard must be given to what is at stake.[15]

The Indian Constitution's structure treats rights as the norm and restrictions as the exception. The national security exception carved out in *Anuradha Bhasin* is very much in conflict with this grundnorm and hence totally inconsistent with our constitutional principles. This fundamental logic of rights as the norm is totally inverted when an entire population is forced to suffer because of the wrongdoing of a small number of people. The Constitution allows for the suspension of judicial review with regard to the enforcement of some basic rights when national security problems are too serious and immediate to be handled without taking such drastic steps, although this needs a formal declaration of emergency.[16] The Court's interpretation of what constitutes a "emergency" is particularly flawed when it contrasts the limitations on telecommunication services during a "public emergency" under the Suspension Rules with derogation of rights permitted under Article 4 of the ICCPR which has become an international norm.

CONCLUSION

Internet outages have become a global problem in today's digital world, with a growing number of outages happening in a multitude of countries. Governments around the world often use national security as a pretext for turning on the kill switch, but Internet shutdowns are often carried out for a variety of purposes in different countries. It has also been noted that providers of Internet services and websites also seek to alert their customers prior to blocking access to their networks for any sort of maintenance. The repercussions of closing down the Internet have far-reaching consequences. It causes economic losses, puts lives in danger during protests & natural disasters, obstructs career development and health care, and makes it difficult to exercise one's rights, including the right to free speech. There is a need to investigate the viability of Internet shutdowns and ensure

shutdowns and ensure that the State is on the right track to preserving national stability in the face of prevailing economic damage.[17]

The court did not need to order the government to build any new digital infrastructure in *Anuradha Bhasin* and *Foundation for Media Professionals*. Instead, it was only anticipated that the constitutionality of limitations placed on the usage of already-existing digital infrastructure during a public health emergency would be judicially reviewed. The Court didn't even defend the limited negative right to Internet access that the rulings did explicitly acknowledge by choosing not to invalidate government interference with access to already- available Internet services. The principle of progressive realisation may be appropriate in the context of positive rights because their enforcement necessitates that the government allocate its limited resources in particular ways, but it shouldn't apply in the context of a negative right against governmental interference that needs to be resolved in an immediate and binding manner.[18]

Although *Anuradha Bhasin* and *Foundation from Media Professionals* both have significant shortcomings, it could be too soon to completely dismiss their promise and potential. By explicitly rejecting some of the government's more extreme claims about the confidentiality of orders and the exclusion of judicial review, the Apex Court showed, if in a minor way, that it was committed to upholding the rule of law, which slightly eased the situation. However, the Court's inability to put principles into practise, which has led to the continued restriction of meaningful Internet access to the people of J&K for more than a year, will be the lasting legacy of this judgement.

Endnotes

1. The 2021 #Keepiton Report, "The Return of Digital Authoritarianism: Internet Shutdowns in 2021", available at: https://www.accessnow.org/cms/assets/uploads/2022/05/2021-KIO-Report-May-24-2022.pdf (last visited on Oct. 25, 2022).
2. The 2020 #Keepiton Report, "Shattered Dreamsand Lost Opportunities", available at: https://www.accessnow.org/cms/assets/uploads/2021/03/KeepItOn-report-on-the-2020-data_Mar-2021_3.pdf (last visited on Oct. 25, 2022).
3. Indian Council for Research on International Economic Relations, "The Anatomy of an Internet Blackout: Measuring the Economic Impact of Internet Shutdowns in India" (April, 2018). See also Siddhartha Mishra, "Internet Shutdown Between 2012-17 Cost Indian Economy $3.04 Bn, Shows Research" Outlook, Aug. 10, 2019. As per the recent Global Cost of Internet Shutdowns in 2020 Report, India is the most economically – impacted nation at a cost of $2.8 billion, available at: https://www.top10vpn.com/cost-of-internet-shutdowns/ (last visited on Oct. 15, 2022).
4. UN General Assembly, Declaration on the right to development, GA Res 41/128, GAOR, UN Doc A/Res/41/128 (Dec. 4, 1986).
5. UN General Assembly, Universal Declaration of Human Rights, GA Res 217 (III) A, GAOR, UN Doc A/Res/217(III) A (Dec. 10, 1948), art. 19 [hereinafter "UDHR"].
6. UN General Assembly, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, GA Res 2200 (XXI) A, GAOR, UN Doc A/Res/2200(XXI) A (Dec. 16, 1966), art. 19.
7. It is important to highlight that none of the orders under which suspension of Internet services were ordered are available on any of the governmental websites and were never published as per the regulatory mandate.
8. Ministry of Law and Justice, G.S.R 562(E), Declaration under article 370(3) of the Constitution, CO 273 (Aug. 6, 2019).
9. Anuradha Bhasin & Anr. v. Union of India & Ors., 2020 SCC Online SC 25.
10. Ibid, at para 99 and 100.
11. Foundation for Media Professionals & Ors. v. U.T. of Jammu & Kashmir & Anr., 2020 SCC Online SC 453.
12. (2017) 10 SCC 1, para 180 (CB comprising of 9 judges).
13. (2019) SCC OnLine SC 1459 (CB).
14. David Bilchitz, "Necessity and Proportionality: Towards A Balanced Approach?" 41 in L. Lazarus, C. McCrudden, et al. (eds.), Reasoning Rights (Hart Publishing, 2014).
15. Lucia Zedner, "Securing Liberty in the Face of Terror: Reflections from Criminal Justice" 32(4) Journal of Law and Society 511 (2005).
16. Constitution of India, art. 359.
17. The Asia Pacific Regional Internet Governance Forum (APrIGF), 2018, Held on (Port Vila, Vanuatu from August 13 to 16), available at: https://sflc.in/panel-discussion-aprigf-18-internet-restrictions-asia-pacific-region- and-how-mitigate (last visited on Sep. 12, 2020).
18. I.A. Hartmann, "A Right to Free Internet: On Internet Access and Social Rights", 13 Journal of High Technology Law 299, 388 (2013).

CASE ANALYSIS: AISHAT SHIFA v. THE STATE OF KARNATAKA AND OTHERS CIVIL APPEAL NO. 7095 OF 2022

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FACTUAL BACKGROUND

In early January, 2022, a dispute arose regarding school uniforms in Karnataka's Udupi district, when some Muslim students of a government run Pre-University College who wanted to wear hijab to classes were denied entry to the college on the ground that it was a violation of the college's uniform policy. Thereafter, various other schools and colleges across the state of Karnataka also got involved in the dispute, with groups of Hindu students staging counter-protests demanding to wear saffron scarves. On 5 February, the Karnataka government issued a Government Order directing that uniforms must be worn mandatorily where policies exist as to that Institute's uniform and there can be no exception for the wearing of the hijab. Many government run educational institutions denied entry to Muslim female students wearing hijab, terming it as a violation of the Government Order.

Aggrieved by the Government Order, petitions were filed in the Karnataka High Court on behalf of the students. An interim order was issued by the High Court on 19th February, 2022 which restrained students from wearing any kind of religious attire. The order was executed throughout schools and colleges across Karnataka, with students and teachers being asked to remove hijabs and burqas outside the school gates. The High Court pronounced its decision on 15th March 2022, and upheld the restrictions on wearing of hijab in educational institutions. The court ruled that the wearing of hijab is not an essential religious practice in Islam.

Thereafter, an appeal was filed in the Supreme Court against the High Court Order.

JUDGMENT OF THE SUPREME COURT

The judgment in that appeal was delivered by a bench of Justice Hemant Gupta and Justice Sudhanshu Dhalia.

Justice Hemant Gupta framed following questions while adjudicating this appeal (we have referred to all the questions except 1):

- Whether the State Government could delegate its decision to implement the wearing of uniform by the College Development Committee or the Board of Management and whether the Government Order insofar as it empowers a College Development Committee to decide on the restriction/prohibition 21 or otherwise on headscarves is ex facie violative of Section 143 of the Act?
- What is ambit and scope of the right to freedom of 'conscience' and 'religion' under Article 25?
- What is the ambit and scope of essential religious practices under Article 25 of the Constitution?
- Whether fundamental rights of freedom of expression under Article 19(1)(a) and right of privacy under Article 21 are mutually exclusive or are they complementary to each other; and whether the Government Order does not meet the injunction of reasonableness for the purposes of Article 21 and Article 14?
- Whether the Government Order impinges upon Constitutional promise of fraternity and dignity under the Preamble as well as fundamental duties enumerated under Article 51-A sub-clauses (e) and (f)?
- Whether, if the wearing of hijab is considered as an essential religious practice, the student can seek right to wear headscarf to a secular school as a matter of right?
- Whether a student-citizen in the constitutional scheme is expected to surrender her fundamental rights under Articles 19, 21 and 25 as a pre-condition for accessing education in a State institution?
- Whether in the constitutional scheme, the State is obligated to ensure 'reasonable accommodation' to its citizens?
- Whether the Government Order is contrary to the legitimate State interest of promoting literacy and education as mandated under Articles 21, 21A, 39(f), 41, 46 and 51A of the Constitution?
- Whether the Government Order neither achieves any equitable access to education, nor serves the ethic of secularism, nor is true to the objective of the Karnataka Education Act?

Justice Hemant Gupta answered all these questions against the Appellants.

With respect to Question 1, it was observed that the regulation of school uniform by the College Development Committee was not beyond its scope. Justice Gupta referred to the well settled principle that executive powers can be used to supplement the statutory rules.The Preamble of the Act was referred to which aimed at fostering harmonious development of the mental and physical faculties of students and further cultivating a scientific and secular outlook through education.

While dealing with Question 2, it was observed that the right to freedom of conscience and religion is subject to other provisions of Part III of the Constitution. TMA Pai Foundation case was referred to in this regard. Justice Gupta observed that the Government Order meant to ensure parity amongst students with respect to their school uniforms and that it aimed at promoting uniformity and encouraging a secular environment in educational institutions which is in line with the right to equality before law guaranteed under Article 14. It was opined that any restrictions imposed on freedom of religion and conscience have to be read conjointly along with

other provisions of Part III.

While answering the 3rd Question, Justice Nariman's observation in Shayara Bano's case was referred to where he observed that a practice does not acquire the sanction of a religion simply because it is permitted. The judgment of ***Tilkayat Shri Govindlalji Maharaj Etc. v. State of Rajasthan & Ors*** was referred wherein it was held that protection under Article 25 is not absolute and it is to be checked whether practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion. It was observed that Article 25(2)(a) gives primacy to laws made by competent legislatures for regulation of secular aspects and Art.25(2)(b) gives primacy to "social welfare" and "reform". Right has to give way to "social welfare" and "reform". It was further observed that essential religious practice of followers of Sikh faith cannot be made the basis of wearing of hijab by followers of Islamic faith. It was observed that interpretations by believers of Islamic faith about wearing hijab is the belief of an individual and that religious belief cannot be carried to a secular school maintained out of state funds. It was held that the State is within its jurisdiction to direct that such symbols of religious belief cannot be carried to school maintained through State funds.

With respect to Question 4, it was held that the right of freedom of expression under Article 19(1)(a) and right to privacy under Article 21 are complementary and not mutually exclusive, these rights are not absolute and they can be curtailed by following due procedure that is able to withstand the test of reasonableness. It was held that the Government Order does meet the injunction of reasonableness. It was observed that the State did not put a restriction on the right conferred under Article 19(1)(a) but rather regulated it in a manner that uniform is to be worn by students during the school and in the class. The decision of the College Development Committee regarding wearing of uniform does not violate the right guaranteed by Article 19(1)(a) but rather reinforces the right under Article 14 of the Constitution.

With respect to Question 5, it was observed that the Government Order does not impinge on the Constitutional promises of fraternity and dignity rather promotes a fraternal environment. Justice Hemant Gupta referred to a previous judgment of the court wherein the court had dealt with the issue of allowing a Muslim airmen of Indian Air Force to support a beard. It was observed that "The uniform is to assimilate the students without any distinction of rich or poor, irrespective of caste, creed or faith and for the harmonious development of the mental and physical faculties of the students and to cultivate a secular outlook."

While answering Question 6, Justice Gupta observed that students are required to follow the discipline of school in the matter of uniform and have no right to be in school in violation of that mandate. If a student chooses not to attend classes due to the uniform that has been prescribed it is their voluntary act and thus, it is not a denial of right by the State. A student cannot claim the right to wear a headscarf to a secular school as a matter of right.

With respect to Question 7, it was observed that the Government Order neither takes away any right of a student available under Art.21 nor contemplates any barter of fundamental rights. A student is not expected to put a condition that she will not come unless permitted to wear a headscarf. The decision not to adhere to uniform is that of the student and not the school.

With respect to Question 8, Justice Gupta observed that the contention of reasonable accommodation does not arise in the present case as the accommodation sought is contrary to Article 14 for the reason that it will result in different treatment of students following varied beliefs in a secular school. The argument that if Kendriya Vidyalayas allow headscarf then the same should be followed in States as well was in a manner found to be not tenable as one is a Central Institution and the other is State and the both have independent scope of work. State's decision cannot be termed as arbitrary on this ground alone.

With respect to Question 9, it was observed that the right to education is not restricted but regulated. The right is still very much available but the right of insisting on wearing something additional to their uniform as part of their religion is not there in a secular school. The students cannot assert that they would avail the right as per their own wish.

With respect to Question 10, it was observed that secularism is applicable to all citizens and permitting one religious community to wear their religious symbol would be antithesis to secularism and therefore, the Government Order cannot be said to be against the ethic of secularism or to the objective of the Act of 1983.

Justice Sudhanshu Dhulia did not agree with the decision of Justice Hemant Gupta and through his judgement set aside the Government Order dated 05/02/2022. Justice Dhulia based his judgement upon Article 19(1)(a) and Article 25 of the Indian Constitution. He observed that the doctrine of essential religious practice was not important while adjudicating this matter. ***Bijoe Emmanuel and Ors. v. State of Kerela and Ors.*** was referred to by Justice Dhulia and he said that the present case is in a manner very similar to the Bijoe Emmanuel Case. It was observed that the issue in the present case was not simply of religious practice or identity but also of freedom of expression. Justice Dhulia said that, "If the belief is sincere, and it harms no one else, there can be no justifiable reasons for banning hijab in a classroom." He disagreed with the High Court's observation that the right in question was a "derivative right". He observed that the High Court by invoking the doctrine of essential religious practice simply chose the wrong path. He observed that the primary question was of applicability of Art.19(1)(a) and Article 25 of the Indian Constitution. He observed that it was simply a matter of choice.

Justice Dhulia asked whether the restriction on hijab would

make the life of a female student better or would it worsen it. He asked that the State and School Administration must answer whether education of a girl is more important or enforcement of a dress code. He said that wearing a hijab might be the ticket to education for a girl from a conservative family. It was observed that, “By asking the girls to take off their hijab before they enter the school gates, is first an invasion on their privacy, then it is an attack on their dignity, and then ultimately it is a denial to them of secular education.”

Because of the divergent views expressed by the Bench, the matter was referred to the Hon'ble Chief Justice of India for constitution of an appropriate bench.

CONCLUSION AND SUGGESTIONS

Both the Hon'ble Judges have given a well reasoned judgment in the present case, however, the views expressed by Justice Dhulia seem to be more viable. Education of a girl should be more important than any dress code if it is probable that the dress code might result in an end to her education.

Another thing is that no community or religion can be asked to end overnight, a practice they have been following for centuries. When a practice has been followed in such a manner that it seems to be an essential religious practice, renouncing such a practice would require a very developed political and progressive mindset which in my belief is not properly there in every part of India. That is why this issue cannot be dealt with in an instant manner.

Endnotes

1. TMA Pai Foundation v. The State of Karnataka, (2002) 8 SCC 481
2. AIR 1963 SC 1638
3. 1986 3 SCC 615

ACADEMIC ACTIVITIES

I. Faculty Development Programmes (FDPs)/Value-added Course

From 18 August, 2022 till 29 August 2022, UIL, Panjab University Regional Centre, Ludhiana under the aegis of UGC- Human Resources Development Centre, Panjab University, Chandigarh, organized a Seven-Days Multi-Disciplinary Faculty Development Programmes and value-added course. With the participation of over 120 candidates, the illuminating event covered a range of diverse topics such as:

- "The Multi-Faceted Justice: Law and Beyond" under the stewardship of Prof. (Dr.) Ashish Virk and Dr. Nisha Jindal (FDP).
- "Communication Skills: Significance in an Ever-Changing Classroom" delivered by Prof. (Dr.) Harpreet Vohra (FDP).
- 'Managing Innovations and Intellectual Property Rights" under the guidance of Dr. Aditi Sharma and Dr. Vaishali Thakur, who were the course Directors and Dr. Rajni Bagga, who was the course coordinator (Value-added course).

II. Invited Lectures

- On 31 October, 2022, the District Legal Service Authority, Ludhiana in collaboration with UIL, PURC, Ludhiana organised a seminar on the theme of "Legal Aid", under the Pan India Awareness and Outreach program. The Resource Persons for the event were Advocate Harsimrat Kaur and Sh. Davinder Singh Garewal (Social Worker).

  The idea of the campaign was to provide awareness to the masses about the legal institutions and the services that is offered by them. The resource persons underscored the contribution of law students in spreading awareness among the public at large.
- On 31 October, 2022, UIL, PURC, Ludhiana, observed Rashtriya Ekta Diwas (National Unity Day) to commemorate the birth anniversary of Sardar Vallabhbhai Patel. To mark the occasion, a one-day seminar on 'National Integration Unity' was held which primarily dealt with the nuances of our political system in conjunction with the ideology of Integrity and Unity of India. The event turned out to be a winning success under the able guidance of Prof (Dr.) Aman Amrit Cheema, Director, PURC, Ludhiana. Prof (Dr.) Ashish Virk, Dr. Nisha Jindal and Dr. Samni Singla were the coordinators of the event.

  Prof. Emeritus (Dr.) Jagrup Singh Sekhon, Dept. of Political Science, Guru Nanak Dev University, Amritsar, graced the occasion as the chief guest. He spoke of 'Unity in Diversity', as being one of the most powerful thoughts and also a gift of India to all the major political systems in the world. He also gave insights into the changed scenario of global politics and its relevance to the topic. Concluding the event Prof (Dr.) Aman Amrit Cheema highlighted the need to maintain the integrity and security of national unity.

COLLEGIATE ACTIVITIES

I. NSS-Related Activities

- In order to commemorate National Unity Day, the NSS unit of PURC, Ludhiana under the directorship of Prof. (Dr.) Aman Amrit Cheema, organized the 'Run for Unity' on 31 October 2022 within the premises of Rakh Bagh. The event was convened by Dr Neelam Batra, Programme Officer, NSS, in which more than 150 participants including the common public participated with great enthusiasm. One of the volunteers delivered a speech on Sardar Vallabhbhai Patel which was well received.
- On 6 October, 2022 under the able leadership of Prof. (Dr.) Aman Amrit Cheema, Director, PURC Ludhiana and Dr. Neelam Batra, NSS Programme Officer, two students of UIL, Loveleen Kaur, (LLB, 3rd Semester) and Gaurav Sohal, (LLB, 5th semester) were given a golden opportunity to attend a 10 days National Integrated Camp held at ABVIMAS Water Sports Centre Pong Dam, Himachal Pradesh.

  The program started with an interactive session with Chief Instructor Mr. Deepak acting on behalf of Mr. Rakesh Walia, head, ABVIMAS Regional Sports Centre, Pong Dam, Himachal Pardesh. The students were given the instructions regarding various water allied sports as well as water safety measures. On the days to follow, with two sessions a day, students were busied with lot of activities like physical exercises, swimming, kayaking, sailing, rowing, eskimo-rolling, electric hydrofoiling and surfing. Other extra curriculum activities like singing, dancing and poetry competitions were also part of the experience. A Special lecture on Fundamental Rights and Constitutional remedies was delivered by the UIL, PURC students. Along with that many

informative and cultural events were also organised. On the final day of the camp a cultural night was planned by the volunteers to represent their diversified cultures by performing different activities like yoga, traditional dance forms like Bhangra, Giddha, Bharatnatyam, Kathak etc. In the valedictory ceremony, volunteers were also awarded with the badges for their rigorous participation.

II. Intra-Department Moot Court Competition

- UIL, PURC, Ludhiana organized an Intra Moot Court Competition, 2022 on 10, 12 and 14 October, 2022. The moot proposition was related to a matrimonial dispute. Zealously, 17 teams participated in the competition. It consisted of four rounds, namely Preliminary, Quarter-final, Semi-final and Final Round. Semi-final round of the competition was presided by Adv. Inderpreet Singh Sohal and Adv. Vibhav Khanna, both of whom are the alumni of the institute. Final round bench consisted of Prof. (Dr.) Arti Puri, Prof. (Dr.) Aman Amrit Cheema and Ms. Ravisha Sidhana, an alumnus of UIL, PURC, Ludhiana who recently cleared the Rajasthan Judiciary Exam. The competition was conducted by the Moot Court Coordinators Prof. (Dr.) Ashish Virk and Dr. Nisha Jindal. Details of the winners of the competition are in the following manner:
- Winner: Team of Deepshikha, Vivek Badoni and Anureet Kaur [B.A.LL.B. (Hons.) 9th Semester]
- 1st Runner Up: Team of Suraj Devgan, Amit Kumar and Manmeet Kaur [B.A.LL.B. (Hons.) 7th Semester]
- Best Researcher: Anureet Kaur [B.A.LL.B. (Hons.) 9th Semester]
- Best Speaker: Vivek Badoni [B.A.LL.B. (Hons.) 9th Semester)
- Best Memorial: Team of Simarpreet Kaur, Ajitabh Sharma and Srishti Punj [B.A.LL.B. (Hons.) 7th semester)

III. Quiz Competition

UIL, PURC, Ludhiana observed 'Vigilance Awareness Week' from 31 October till 6th November on the theme "Corruption Free India for A Developed Nation", in order to create awareness amongst all stakeholders regarding common issues of corruption, unethical practices and vigilance. On the first day, Prof. (Dr.) Aman Amrit Cheema, Director, commenced the program with the Integrity Pledge. On 4th November, a Quiz Competition was conducted by the event coordinators Mr.Taranjeet Singh and Ms. Dhriti Jain of University of Business School and Dr. Neelam Batra and Dr. Rajnish Saryal of UIL. The quiz was conducted to sensitize students about the virtues of honesty and transparency for leading a corruption free India.

The students who bagged the prizes are:

1. Bhumi Tandon- LL.B. V Semester
2. Sneha Kataria- BA.LL.B. I Semester
3. Garima Bhambri- BA.LL.B. I Semester

IV. Educational Visits

- Legal Aid Committee of UIL organized an Educational Visit to the *Alternate Dispute Resolution Centre*, the District and Sessions Court, Ludhiana on 16 September 2022. The visit familiarized the students with the know-how of the alternate dispute redressal as they were detailed about many ways in which the alternative dispute resolution is referred for the court proceedings for an amicable settlement. *Mr. Vinay Mohan Wadhawan*, Member, Permanent Lok Adalat delivered their field of vision and stressed on the fact that the Lok Adalat is based upon the principle of Natural Justice, Equity, Fair Play and Good Conscience. Through this session, students learned a new perspective about the Lok Adalat, Mediation, Conciliation, Negotiation and Judicial Settlement.
- Legal Aid Committee of UIL, PURC organized a visit to the Mediation Centre, in which the students of B.A.LL.B. 5th Semester under the supervision of Ms. Sumanpreet Kaur, Assistant Professor of Law participated.

  Mediator *R.D Chabbra and Rajneesh Gupta* (Advocates) guided students about the mediation process and its efficiency in easing the burden of the court. It helps in maintaining amicable relationships with less procedural complexity. The visit proved to be a good learning experience for the budding legal professionals.
- The students of UIL, PURC Ludhiana visited the Central Jail of Ludhiana and came across thousands of prisoners. Lending ears to their stories of Drug abuse the students witnessed horrific and disturbing events about their journey towards drug enslavement. This project initiated by Government of Punjab and Jail Minister S.Harjot Singh Bains helped the students to analyse the means and ways to make Punjab Prisoners free from the vicious web of Drugs.

V. Skill-Development Competitions

- In order to celebrate the month of November as the Punjabi month, a *Slogan Writing Competition* was organized on 16th November 2022 by UIL, PURC, Ludhiana as per the direction of the Punjab government. Hardik (B.A.LL.B. 5th semester), Simranpreet Singh (B.A.LL.B. 5th semester) and Sukhpreet Kaur Gill (LLB 1st Semester) secured first, second and third positions, respectively. This competition was conducted by Assistant Prof. Baldev Singh (Punjabi) and Assistant Prof. Shalini Verma (Hindi).

- UIL, PURC, Ludhiana held a *Declamation Contest on* 15th November 2022 to celebrate the occasion of "Janjatiya Gaurav Diwas", the able guidance of Prof. (Dr.) Aman Amrit Cheema, Director, PURC, Ludhiana. Dr. Vaishali Thakur & Dr. Meera Nagpal were the coordinators of this event. The event started with a brief backdrop of the day i.e. 15th November, the birth anniversary of Birsa Munda, which is celebrated as the Janjatiya Gaurav Diwas, by the Ministry of Education, dedicated to the memory of brave tribal freedom fighters. Students from both B.A.LL.B. & LL.B. participated enthusiastically in it. Dr. Aditi Sharma & Dr. Rajnish Saryal were the honourable judges for the event. During the time winners were being listed, Prof. (Dr.) Aman Amrit Cheema was requested to address the audience. She applauded all the participants and spoke on the Legal Drama "Jai Bhim", urging the students to observe and inculcate the traits of the character of Adv. Chandru. She also prompted the budding lawyers to be the voice of voiceless & let the stories of unsung heroes be echoed around the world. Forging ahead the winners were congratulated. First position was bagged by Kirti Bhardwaj (B.A.LL.B. 5th Sem.); Second by Jessica (B.A.LL.B. 3rd Sem.) & third position holder was Shagun Sharma (B.A.LL.B. 3rd Sem.)

VI. Alumni Meet

- University Institute of Laws, Panjab University Regional Centre, Ludhiana organised its first ever offline Alumni Meet on 11 November, 2022. Distinguished Alumni of the Institute S. Harjot Singh Bains (Minister of Education, Mines and Geology, Jails and Water Resources, Government of Punjab) and Adv. Dhruv Chawla (Advocate, Supreme Court of India) were honoured and felicitated by Prof.(Dr.) Aman A. Cheema (Director) and Prof.(Dr.) Arti Puri (Faculty Member). Many other alumni of the institute also attended the Alumni Meet. Students who recently brought laurels to the Institute were also felicitated. Harjot Singh Bains also announced a grant of Rs. 10 Lakhs for the Institute. The event was a success where alumni got a chance to reconnect with each other, students and faculty.

VII. Other Activities

- Screening of "Article 15" for the students of UIL, PURC, Ludhiana as part of the celebration of the *Shiksha Parv*, 2022.

  On, 9 September, 2022, under the coordinatorship of Prof. (Dr.) Ashish Virk and Dr. Nisha Jindal, the screening was organized which aimed at sensitising students about the prevailing caste practices and its implication on the Fundamental Right of Non-Discrimination.
- Discussion on *'Remission Policies in Indian Criminal Justice System'*

  UIL organized a discussion session on 8 September 2022 to commemorate Shikshak Parv, 2022. The event took place under the guidance of Prof. (Dr.) Aman Amrit Cheema - Director, PURC, Ludhiana. Prof. (Dr.) Ashish Virk and Dr. Nisha Jindal were the coordinators of this event. The event saw a critical discussion on the remission policies in Indian Criminal Justice System with a reference to the Bilkis Bano Case. Dr. Nisha explained to the students about the various aspects of the case. The programme was attended by students of B.A.LL.B. and LL.B. Concluding the event Prof. (Dr.) Aman Amrit Cheema expressed gratitude to the coordinators and shared her take on this issue.

ACHIEVEMENTS

I. UIL, PURC Wins National Moot Court Competition

A team from University Institute of Laws, PURC, Ludhiana won the first position and a cash prize of Rs.21,000 at the National Moot Court Competition organized by Noida International University, Noida from 15 September, 2022. 44 teams from across the country participated in the contest. The team consisted of students from B.A.LL.B. V year, having two speakers Manmeet kaur, Ishan Bhardwaj and one researcher Lovish Kumar. Manmeet Kaur also won the title of Best Mooter along with the cash prize of Rs.8000.

II. Youth Festival Achievements

UIL, PURC, Ludhiana participated in Panjab University Zonal Youth and Heritage Festival held at Mata Ganga Khalsa College, Manji Sahib, Kotta from 30th September, 2022 to 3 October, 2022 in which:

- Jalnidh Kaur- (B.A.LL.B. VII Semester) won the prize for the second-best individual singer under the category of Ladies Traditional and Ritualistic Songs of Punjab.
- Gurmehak Kaur Grewal- (LL.B. III Semester) got the third Prize in the Debate competition
- Simarpreet Kaur- B.A.LL.B. VII Semester got the first prize in the Elocution competition
- Group Song team Loveleen Kaur (LL.B. III semester), Siddharth Jaidia (B.A.LL.B. IX semester), Gurpreet Singh (B.A.LL.B. VII semester), Jasleen Kaur (B.A.LL.B. VII semester) Jalnidh Kaur, Shagun Sharma (B.A.LL.B. III semester) got the third prize. Another Individual second prize was bagged by Gurpreet Singh (B.A.LL.B. VII semester).
- Karan Taluja- (LL.B. III semester) attained the second prize in Photography held on 1 October, 2022.
- Sakshi- (B.A.LL.B. V semester) won the third prize in Histrionics.

III. NLU Delhi Empirical Research Project

Students were facilitated for the project titled "An empirical scrutiny of discrimination on remuneration paid to women workers in the construction industry in Organized and unorganized sectors in India" sponsored by the National Commission for Women, Government of India. The students

felicitated are Ajitabh Sharma (B.A.LL.B VII Semester), Kimreet Kaur (B.A.LL.B VII Semester), Akriti (LL.M III Semester), Anurag Doomra (B.A. LLB V Semester).

IV. Recognition in Swachhta Saarthi Samaroh

Kirti Bhardwaj, a student of B.A.LL.B III year, UIL, PURC, Ludhiana got recognised in Swachhta Saarthi Samaroh, 2022 at the national level on 1 October, 2022 in New Delhi by the Office of the Principal Scientific Advisor to the Government Of India under Mission Waste To Wealth for her project on Plastic and Electronic Waste Management. She was working on this project with the support of Chandigarh Pollution Control Committee, Municipal Corporation Chandigarh and Environment Department, Chandigarh.

V. UIL Student Bags Gold at National Level

Gaganpreet Singh Sandhu, a student of B.A.LL.B.(Hons.) IX Semester secured first position and bagged the Gold medal in North India Bench Press Power Lifting Championship (RAW) in the weight class of 82 kg for 95 kg of bench press. The competition was held from 17 - 18 September, 2022 in Jalandhar. The winner represented Punjab among different participations from all over North India.

VI. Inter-college Basketball Tournament

UIL, PURC, Women's basketball team participated and secured a Bronze in the Intercollege Basketball Tournament which was organized by Panjab University at Guru Nanak Dev Stadium, Ludhiana. The Team consisted of Ankita Goel (MBA III Semester), Kimreet Kaur (B.A.LL.B. VII Semester), Samriddhi (B.A.LL.B. V Semester), Mannat (MBA I Semester), Ankita Jamwal (LL.B. V Semester) & Anshima (LL.B. V Semester).

FACULTY INFORMATION

I. Prof. (Dr.) Arti Puri

Guest lectures:

Topic - 'Protection of Women from Sexual Harassment at Workplace' organized by PPA Phillaur on 18 November, 2022 .

II. Prof. (Dr.) Aman Amrit Cheema

Guest Lectures:

- ✓ Changing Notions of Constitutional Morality & Human Ethics: A Judicial Approach, A value Added Course on "Ethical, Cultural and Academic Context", organized by Panjab University Regional Centre, Sri Muktsar Sahib, 13-18th August 2022.
- ✓ "Spirituality and Advocacy", National Legal Seminar 2022 on "Young Lawyers Transcending Legal Barriers", organized by Bar Council of Panjab & Haryana in association with Panjab University, Chandigarh, 12th November 2022.
- ✓ 'Spirituality and Legal Profession' organised by Panjab University Regional Centre, Sri Muktsar Sahib, 25 January, 2023.

Publication:

- ✓ "Match manipulation in cricket: Is there a way to prevent it?" Panjab University Law Review, Panjab University, Chandigarh, Vol. 61, Part-1, ISSN 0971-5541, 2022, pp. 50-66
- ✓ "Sex, Body and Pleasure: A Critical Evaluation of Kant's Philosophy in relation to Homosexuality." pp. 164-174, *Essays on Kant's Philosophy, Dr. Nandini C.P.* ISBN 978-81-954254-2-6 The Registrar, D.S. National Law University, Visakhapatnam, Andhra Pradesh.
- ✓ "Gandhi as a Fashion Icon", India Legal, 13 October, 2022. ¨ "The Most Unkindest Cut of All", India Legal, 22nd September 2021.(Online Publication)
- ✓ "Neutering Ethics of Homosexuality: From the Narratives of History to the Prospects of Same-Sex Marriages in India." pp. 220-240, *Neoteric Vision of Culture, Ethics, and Heritage towards Human Dynamics, Ekta Gupta, Swati Kaushal (ed.),* ISBN 978-93-94701-45-8 Bloomsbury Publishing India, New Delhi.

Address at Plenary Session:

- ✓ "Krishna's Lila: The Philosophy of 'Just War' of Mahabharat from Bhagvat Gita" at 7th International Gita Seminar on Relevancy of Gita in Understanding of Law, organized by Kurukshetra University, Kurukshetra on 30 November 2022.

III. Prof. (Dr.) Ashish Virk

Guest lectures:

- ✓ One Week Faculty Development Program organised by Gita Institute on "Ethical Values: Cultural and Academic Context", on *Fast Fashion & Youth: The Ethical and Legal Issues of Sustainability*, on Inaugural Day from August 13, 2022- August 18, 2022 organized by Panjab University Regional Centre, Muktsar, Punjab.
- ✓ One Day National Seminar on "Gender Binary(ies):Praxis, Projections and Reflections" on 19th January 2023 at Gobindgarh Public college, Alour , Khanna.

Publications:

- ✓ "Gandhi as a Fashion Icon", India Legal, Vol. XV, Issue 50, 24th October 2022.
- ✓ "Environmental Mortification & Urbanization: Are Smart City Projects a Move Towards Environmental Safety & Sustainable Development Goals?" Panjab University Law Review, Panjab University Chandigarh, Vol.61, Part 1, ISSN No. 0971-5541, 2022, pp. 192-204
- ✓ "Neutering Ethics of Homosexuality: From the Narratives of History to the Prospects of Same-Sex Marriages in India." pp. 220-240, *Neoteric Vision of Culture, Ethics, and Heritage towards Human Dynamics, Ekta Gupta, Swati Kaushal (ed.),* ISBN 978-93-94701-45-8,Bloomsbury Publishing India, New Delhi.
- ✓ 'Sex, Body and Pleasure: A Critical Evaluation of Kant's Philosophy in relation to Homosexuality.' pp. 164-174,

Essays on Kant's Philosophy, Dr. Nandini C.P. ISBN 978-81-954254-2-6 The Registrar, D.S. National Law University, Visakhapatnam, Andhra Pradesh.

Address at Plenary Session:

- ✓ "The Power of Snub: Does Philosophy of Bhagwat Gita Have Contemporary Legal Authenticity for Karna's Notions of Self vs Society & State?" as the Resource Person for Plenary Session at 7th International Gita Seminar on Relevancy of Gita in Understanding of Law, organized by Kurukshetra University, November' 30, 2022.

IV. Dr. Aditi Sharma

Paper Presentation:

- ✓ "Health and Reproductive Rights of Women in India: A Discourse with Special Reference to CEDAW", in One Day National Seminar on Women Children and Laws: A Discourse organized by Department of Law, School of Legal Studies, Central University of Kashmir on 7 October, 2022
- ✓ "Virtual Dispute Resolution in India: Prospects and Challenges" in One Day National Seminar on Ease of Doing Business: A Passage for 'Aatmanirbhar Bharat' and Inclusive Growth organized by PG Department of Commerce and Management, PCM SD College for Women, Jalandhar on 29 October, 2022
- ✓ "Gender Justice: Legal Perspective" in 14th International Conference on 'Gender Justice: A Path to Sustainable Tomorrow' organized by Women's Studies Centre, Punjabi University, Patiala on 9 November, 2022

V. Dr. Neelam Batra

Guest lectures:

- ✓ "Intellectual Property Rights" at GNK College for Women, Ludhiana on 30 September, 2022
- ✓ "Nutrition in Modern Lifestyle" at UIL, PURC on 22 September, 2022
- ✓ "Old age a curse! Enable laws to Protect this Vulnerable Group" on 11 November, 2022
- ✓ "Intellectual Property Rights related Issues" at GNK College, Ludhiana on 24 November,2022
- ✓ "Protection of Women from Sexual Harassment" at PPA Phillaur on 23 November, 2022
- ✓ "Protection of Children from Sexual Offences" at PPA Phillaur on 05 December, 2022

Paper Presentation:

- ✓ "Laws relating to Fugitive Economic Offenders in India: Issues and Challenges", from 12-13 November, 2022

VI. Dr. Vaishali Thakur

Guest Lectures:

- ✓ "Vishaka Guidelines and other Important Judicial Pronouncement", on 10 November, 2022

Sponsored by DoPT, Government of India.

VII. Dr. Harpreet Kaur Vohra

Publication:

- ✓ "Ethics & Politics of Cultural Memory", Muse India ISSN: 0975-1815

VIII. Dr. Rajnish Saryal

Publication:

- ✓ "Climate Crisis with Diverse Realities: Strategies for Effective Action" published in PIMT Journal of Research.

IX. Dr. Meera Nagpal

Guest lectures:

- ✓ "Gandhi India Nation's Making" conducted by UIL, PURC, Ludhiana on 10 October, 2022

X. Dr. Pooja Sikka

Guest lectures:

- ✓ "Understanding Economic Environment of Business Using Data" held at UBS Chandigarh on 12 September, 2022

Publication:

- ✓ "Virtual Learning Insights and Perspectives", Published: Abingdon: Routede, [2023].

Paper Presentation:

- ✓ "Promoting Inclusive Growth, Policies and Challenges" organized by PG Department of Commerce and Management PCMSD College, Jalandhar.
- ✓ "Unequal Consumption Expenditure and Economic Growth in Punjab Insights from NSO Data" organised by DAV College, Bathinda

XI. Ms. Tamanna Kohli

Guest lectures:

- ✓ "Information Technology Laws" conducted by Legal Pathways on 29 January, 2023

Publication:

- ✓ "Emergence of New Learning Techniques during and post COVID-19 and its Impact on Migration" published in the Book 'Migration to Abroad: Issues and Challenges' submitted to G.H.G Institute of Law for Women, Sidhwan Khurd, Ludhiana.

Paper presentation:

- ✓ "Law relating to Fugitive Economic Offenders in India: Issues and Challenges".

XII. Dr. Nisha Jindal

Publications:

- ✓ "Media-a Strong Pillar of Democracy", Socio-Legal synthesis of Role of Media (Corvette Press Ghaziabad, UP), Pg:66-69 , 25 November 2022.

Paper Presentations:

- ✓ "Legislative Mandate on Education with Reference on International law", Department of Law, Panjab University, Chandigarh.

Non-Teaching Staff

- ➢ **Promotions**
  - Mr. Sanjeev Kumar- As Assistant Section Officer
  - Mr. Rohit Sood- As Assistant Section Officer

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