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LEGAL NEWS & VIEWS

An Integrated Social Initiatives Publication

ADDRESSING MISSED OPPORTUNITIES: 35 YEARS FROM BHOPAL TO VIZAG GAS LEAK

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India registered 407 deaths and 17,296 Corona Virus cases in the last 24 hours says Indian express on 26 June 2020 at 10:47 a.m. A total number of infections crossed the 4.9 lakh mark to reach 4,90,401 including 15,301 fatalities, 1,89,463 active cases and 2,85,636 people who have been treated and discharged so far. On 26 June 2020 the number of recoveries was 96,173 more than the number of active cases. That is a silver lining in the horizon of the pandemic.

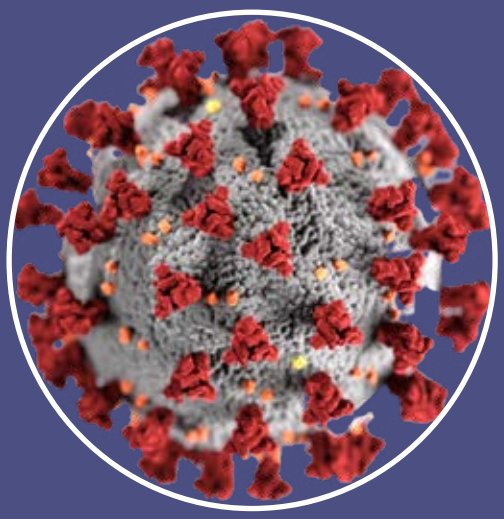
Due to Covid – 19, unprecedented changes have been taking place in every walk of life. In the academic circle, education boards such as CBSC, ICSE, ISC are cancelling their scheduled board exams and exploring Assessment Scheme to evaluate the performance of the students. Advocates are facing difficulty in meeting ends due to the present lockdown situation. Hence, the Bar Council of Gujarat resolved to permit needy advocates to take up alternative jobs or businesses until the end of this year.

The human living and working have changed forever. While COVID-19 unfolding a number of changes have already started digging their heels in. Certain impacts of the pandemic will transform human lives and work. In this issue, we are publishing 2 important articles. The first one is "Tackling the pendency of cases by arbitration: during and after Covid – 19 crisis" by Ms. Jasmine Kurian Giri. "Every turning point in the history brought out institutional reform" she says, "The world of arbitration is quickly adopting to Covid – 19 Crisis". She suggests domestic arbitration system should take a brilliant move forward and create international arbitration hub.

The second article is written in the context of recent gas leak tragedy. During the lockdown period on 7 May 2020 at around 2:30 a.m. 12 people died and over 350 were hospitalised and about 2,000 people were evacuated within a radius of 3 km from LG polymer plant located in RR Venkatapuram, Visakhapatnam. Looking at the unfolding of events, Dr Rabbiraj C. & Prof. Tania Sebastian, in their article "Addressing missed opportunities: 35 years from Bhopal to Vizag gas leak" show that much has not changed the way environmental hazards are managed.

The changes proposed by some state governments in labour laws during the Lockdown Period and call for suspension of labour laws to encourage industry for next 3 years that directly affects the health and working conditions of the workers adversely. Workers and environment should not be forced into a man-made disaster so that illegal operations of factories and are not overlooked and harried environmental clearances to boost the economy are not the norm. No doubt we need development with a human face and a robust economy with human rights.●

Tackling the pendency of cases by arbitration: during and after Covid 19 crisis



Jasmin Kurian Giri⁎

The whole world is left out in a state for gulping fresh air. The world is in a state of transition. We are in a state of chaos and in a palpable situation with uncertainty. So is the case of dispute resolution mechanism in our country. If we take a glimpse of the evolution of arbitration, every turning point in the history has brought out institutional reform and most of the time for the betterment of arbitration system. Interestingly, the world of arbitration is quickly adapting to Covid 19 crisis.

Following the lockdown, our judiciary is working hard to adapt to provide access to wide variety of litigations by providing video conferencing facilities across the countries. This is with a need to prioritise urgent matters that has to be disposed off in the coming days. The Indian judiciary is marching forward to cop up with this emerging situation. But there are a lot of obstacles and interruptions that the judiciary has to overcome due to the lack of proper coordination and poor technical updates at times. Indian judiciary is designed by the Constitution of India in such a fashion that it is rigid and less flexible. So that it cannot be watered down to meet each and every situation.

When compared to this challenge, arbitration which is an alternate dispute resolution mechanism is more flexible being a private tribunal. It can of course be more flexible than the ordinary court system with its speciality of party autonomy. We have to be innovative to cop up the prevailing global pandemic.

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If the situation continues, we will end up with parties, counsels and tribunals sitting at different locations.

In the above scenario, the tribunal should be able to coordinate arbitration in an efficient manner. In this view, the role that can be well played by institutions comes to light. Due to the better infrastructure facilities and innovative ideas, the arbitrations can be efficiently tailored by the institutions according to the needs of the parties.

It is a well known fact that arbitrations have been using technology more prominently than the traditional litigation system. In the current situations, the party should realize that even though there is a current seat exists in their existing arbitration clause, consider the change of seat. This can be efficiently dealt within jurisdiction that is helpful and video conferencing shall be carried out. For this, court support system is vital. The parties and the litigants should pedal to those seats where video conferencing system is brilliant and can carry out arbitration proceedings in an efficient manner. This is of pragmatic importance while considering those disputes that has to be resolved in the coming days.

The large number of pending matters in the courts tied up with the inconvenience caused with the pandemic has resulted in furtherance the burden on the judiciary. This can be sorted out in a smart intelligent manner by allotting few of the cases that has to be resolved in the coming days to arbitration with consent of parties, even though there is no existing arbitration clause in the contract. This too in a great extent shall help in reducing the large number of pending cases to be resolved in a speedy manner. This does not mean that the entire role of court in those disputes has been eliminated. It should be kept in mind that the supervisory role of the court and necessary limited intervention is always there over arbitration proceedings in order to ensure transparency over the proceedings.

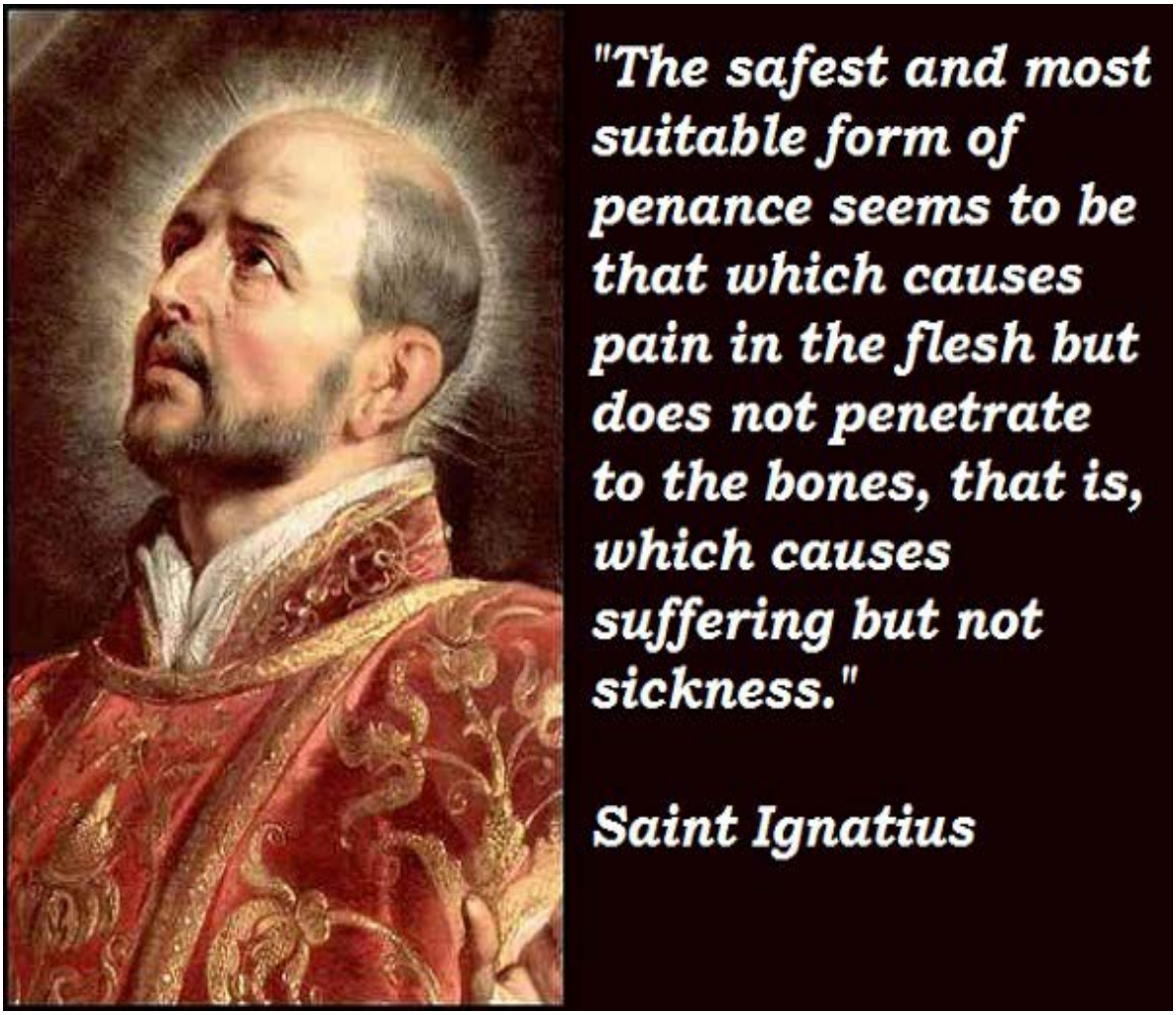
Therefore, the judiciary and the Government should take up the challenge and encourage the ADR mechanism, so that we shall harvest the fruit of justice in lesser time and minimize the burden on the court.

The 246th Law Commission Report and in fact the 2015 and 2019 Amendments has brought forth positive changes in the field of arbitration and this was a brilliant step forward to minimize the unnecessary intervention of court and the speedy resolution of disputes which is a main objective behind arbitration system.

Institution facilities can take care of this situation in a better manner by facilitating online hearing and thereby adapting to the user needs. It has to be remembered that cyber security issues are taken up very seriously by institutions. So that proceedings are not

processed or hacked. However, if we analyse the present data, the institutions had adapted very quickly to Covid 19 crisis with many institutions like LCIA, ICC, etc., has offered online filing facilities.

The virtual conduct of proceedings is not new to international arbitrations. Therefore, the domestic arbitration system should take a brilliant move forward to adapt it and thereby transcreating India into an international arbitration hub. Recently, unofficially announced by a Supreme Court Judge in a webinar that the position of India was 186 in 2016 and reached to 87th position in 2020 amongst the arbitration friendly nations. It shows our advancement and transforming India into an international arbitration hub. Therefore it is wise for us to make use of this prevailing condition to make it further grow and discourage parties to shift those foreign seats which provide better technical facilities and video conference facilities, which may adversely affect arbitration in India by allowing the floodgates open.●



ADDRESSING MISSED OPPORTUNITIES: 35 YEARS FROM BHOPAL TO VIZAG GAS LEAK

Dr. Rabbiraj C.*
Prof. Tania Sebastian**

INTRODUCTION--UNFOLDING OF EVENTS

The gas leak on May 7, 2020 at around 2.30 am from LG Polymer plant located in RR Venkatapuram, Vishakapatnam resulted in 12 deaths and over 350 hospitalized with evacuations carried out of around 2000 people from the villages within a radius of 1.5 to 3 kms. The LG Polymer plant is a chemical plant owned by South Korea based LG Chem[1] that stored

styrene, "a colourless, viscous liquid with a pungent odour and tendency to polymerize[2]," that needs to be stored in a controlled environment. A statement by LG stated that about 1,800 tonnes of styrene was stored in the tanks. The plant was closed as a result of COVID19 lockdown in 2020 from March to May first week leading up to the leak. The Plant employed more than 300 workers and post the relaxation of lockdown, workers were cleaning it up to start operations.

This Vizag gas leak, dubbed as an avoidable tragedy[3], is a cacophony

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of everything that can go wrong- from functioning without government clearances, avoiding local laws, botched up international investment, failure to cater to the community and most importantly, unwillingness to learn from previous disasters.

This article focuses on the infamous Bhopal gas leak of December 1984 and the Vizag gas leak and identifies how the interregnum period of 35 years has not changed the way environmental hazards are managed.

Taken over by LG Chem in 1997, the plant operations were conducted without environmental clearances mandated by law between 1997 and 2019. For expansion of the Plant's operations, LG filed an affidavit on May 2019 admitting that it was operating "beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance as mandated under the Environment Impact Assessment Notification, 2006," and that "as on this date our industry does not have a valid environmental clearance substantiating the produced quantity, issued by the competent authority, for continuing operations.[4]" A Styrene plant also attracts the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 that lays strict norms on handling and storing of certain chemicals with Styrene listed in Part II, List of Hazardous and Toxic Chemicals, under entry 583. This places additional responsibility on the State to regulate every activity of such chemicals plants.

There is also the aspect of international investment with bilateral consular relations being established between India and Republic of Korea in 1962 and upgraded to Ambassador-level in 1973[5]. As on march 2017 korean groups such as Samsung, Hyundai Motors and LG had made investments to the tune of over $4.43 billion in India[6]. This has to be read to means that while bilateral relationships need to be maintained, it cannot override environmental and health concerns of local residents.

There is nevertheless the realization for responsible care, an initiative post-Bhopal disaster adopted by the global chemical industry to prevent human rights abuses by chemical manufacturers. "Yet this industry initiative's principles contain no mention of human rights and fail to require that industry respects human rights in practice as required under the United Nations Guiding Principles on Business and Human Rights", the UN Special Rapporteur stated. This was endorsed by a five-member Working Group of the Human Right's Council on the issue of human rights and transnational corporations and other business enterprises, and UN independent rights expert on human rights and the environment[7].

COMMITTEE REPORTS- MISSED OPPORTUNITIES

A Joint Monitoring Committee constituted by the National Green Tribunal to investigate the gas leak at Vizag in O.A 73/2020 as per order dated 08.05.2020 submitted on May 28, 2020 has pointed out five factors for the leak. The report stated that "insufficient tertiary butyl catechol (TBC, used as inhibitor to avoid polymerization at lower temperature) concentration in styrene tank due to

unavailability of TBC in the plant," "no monitoring system for dissolved oxygen in the vapor space which might have fallen down below 6%," "tank has no provision of monitoring temperature at top layers of storage," "refrigeration system was not being operated for 24 hours," " gross human failure and negligence of person-in-charge of the plant and maintenance personal of the storage tanks[8]."

The report was made with limited site visits, and was criticized by 'Scientists for People,' as lacking scientific quality and integrity which will also affect future claims for compensation if the report is not fully comprehensive. A criticism by a former scientist of the Indian Institute of Chemical Technology is that a mere compilation of information cannot be equated to a full blow investigation[9]. It was also criticized that the major cause of lack of experience of LG Polymers (India and Korea) in monitoring and maintaining the tanks of styrene kept idle for several weeks needs more focus. Also, comparisons and analysis of international practices in designing, operating and maintaining styrene storage installations were not part of the report that could have provided more insights in worldwide practices. A criticism that came from various quarters was that workers were being blamed for the leak which would be an easy way out for LG Chem to ease out of liability even though under the principles of absolute liability devised by Supreme Court of India this might not be possible. An article in Business Today quotes an unnamed "senior official" claim that the "the valve controls for the gas were not handled properly and they burst causing the leak" and that unless challenged this might be projected as a worker error[10].

The Environment Protection Act, 1986 was enacted in India to "protect and improve the human environment, and to prevent hazards to human beings and other living creatures, plants and property."

LEARNING FROM PREVIOUS EXPERIENCES- MISSED OPPORTUNITIES

35 years back, a highly toxic gas leak (Methyl isocyanate) from a Union Carbide facility in Bhopal on the midnight of December 4, 1984 left more than 2500 people killed and thousands other injured. The long term effects remain even today with children born in the area having disabilities as a result of the gas leak. UN News also draws comparison between both the gas leaks. The Special Rapporteur on hazardous substances and wastes states that "the latest disaster has rightly drawn parallels to the toxic gas leak that killed thousands in Bhopal, India, in 1984[11]."

While the Bhopal Gas leak cannot be compared to the Vizag gas leak in terms of toxicity and the immediate and long terms effect on people, however similarities arise in terms of callousness of the State in enforcing safety regulations and

not complying with the local laws. Union Carbide failed to implement emergency prevention measures in its operation of the facility. Also, emergency response planning and resources were deemed inadequate and company official's failure to identify the leak. There have been frequent gas leaks in Andhra Pradesh, from 1997 (vapour cloud explosion at HPCL refinery with 60 dead) to 2012 (oxygen house explosion at a steel plant with 19 dead). Like in Bhopal, there was no warning from the factory. Like in Bhopal, there was no warning from the factory.

LAWS- MISSED OPPORTUNITIES

The Environment Protection Act, 1986 was enacted in India to "protect and improve the human environment, and to prevent hazards to human beings and other living creatures, plants and property." This was followed up by the enactment of the Public Liability Insurance Act, 1991 that was "for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance" and the National Environment Tribunal Act, 1995 to "provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment and for matters connected therewith or incidental thereto."

Despite all the environmental legislation, there is still a definite lacuna in the legal structure and in making MNC's accountable even in the presence of laws. The UN General Assembly adopted the "Guiding Principles on Business and Human Rights: Implementing the United Nations: Protect, Respect and Remedy Framework" in 2011 to promote the need by governments to have additional policies to protect human rights and communicate these to business organizations, with regular assessments on human rights to be made a mandate.

A good example of learning from past mistakes would be the gas leak that broke out in West Virginia in a Union Carbide plant nine months after the Bhopal Gas leak in India. 150 persons were hospitalized as a result of the leak.

The result of this gas leak was the passage of the Emergency Planning and Community Right-to-Know Act, 1986 (EPCRA) that brought about two important details required for regulating hazardous chemical plants. This included emergency planning, and know how to workers and communities around the plant with information on chemical hazards and generation of toxic waste by the factory. This meant that the right

to know to the public is made available and this is regarding important information on hazardous chemicals in their communities that would then enable the establishment of an emergency planning with required notification that would be used to protect the public in the event of a release of hazardous chemicals. This requires information gathering and dissemination thereby enabling access to ordinary citizens about critical information about hazardous and toxic chemicals that is released by businesses themselves. This also means that there is an unprecedented disclosure by industry and citizen access, concerning the presence and release of hazardous and toxic chemicals at industrial locations. This has turned out to be one of the most significant pieces of environmental legislation in decades, most particularly its right-to-know provisions about toxic chemicals. Other areas included alleviation of comprehensive emergency response planning and the scarcity of information on dangerous chemical releases around the nation.

CONCLUSION

With a history of gas leaks in India[12], and the resultant effects on people and environment responses have been slow, varied and inefficient in terms of compensation, medical treatment and prevention of future disasters. These are accentuated during COVID19 with lockdown measurers in place and most importantly, changes in labour law proposed by state governments of Uttar Pradesh, Madhya Pradesh and Gujarat. The changes call for suspension of labour laws to encourage industry for the next three years that directly affects the health and working conditions of the workers adversely. These have to be seen through the lens of fluctuations in the economy during COVID19 with responses that do not push workers and the environment into a man-made disaster, more so, so that illegal operation of factories with or without MNC's are not over looked and hurried environmental clearances to boost economy are not the norm.●

Endnotes :

1. Details about the company as mentioned in the company website (http://www.lgpi.co.in/AboutLGPI.html)provide for its history and is stated as follows: "The company was established in 1961 as Hindustan Polymers for manufacturing Polystyrene and its Co-polymers at Visakhapatnam, India. Merged with Mc Dowell & Co. Ltd. of UB Group in 1978. Taken over by LG Chem (South Korea), Hindustan Polymers was renamed as LG Polymers India Private Limited (LGPI) in July, 1997 through a 100 % takeover."
2. Chapter 5. Part 12 Styrene, available at: http://www.euro.who.int/__data/assets/pdf_file/0018/123066/AQG2ndEd_5_12Styrene.pdf?ua=1.
3. Sumit Bhattacharjee, Vizag Gas Leak: An avoidable Tragedy. May 18, 2020, The Hindu, https://www.thehindu.com/news/national/andhra-pradesh/avoidable-tragedy/article31609216.ece.
4. Affidavit available at:http://www.environmentclearance.nic.in/writereaddataFormB/TOR/ConceptualPlan/10_

May_2019_190709953 7X GSWYR2EDSReply.pdf.

5.India – Republic of Korea Bilateral Relations, avaiable at: https://www.mea.gov.in/Portal/ForeignRelation/Republic_of_Korea_October_2017.pdf.

6.*Ibid*.

7.Deadly gas leak in India, grim wake-up call for global chemical industry: UN rights expert, 14 May 2020, available at: https://news.un.org/en/story/2020/05/1064092.

8.Report of the Joint Monitoring Committee, https://greentribunal.gov.in/sites/default/files/news_updates/Report%20of%20the%20Joint%20Monitoring%20Committee%20in%20the%20O.%20A.%20No.%2073%20of%202020.pdf . See page 6 of the report.

9.Experts find fault with NGT panel's report on styrene gas tragedy, DECCAN CHRONICLE, June 1, 2020, https://www.deccanchronicle.com/nation/current-affairs/010620/experts-find-fault-with-ngt-panels-report-on-styrene-gas-tragedy.html

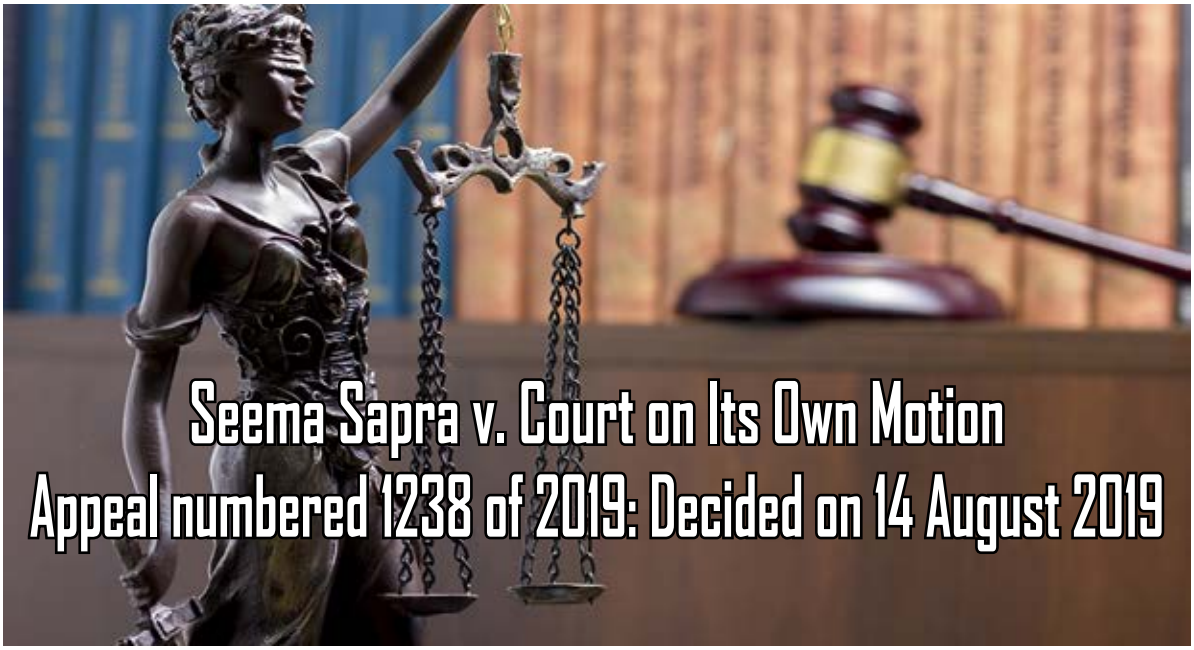
10.E. Kumar Sharma, Vizag gas leak: Gas valve malfunction triggered accident; 8 dead, 200 hospitalised Leak occurred at around 2:30 am on Thursday when villagers in the area were sleeping, May 7, 2020,https://www.businesstoday.in/current/corporate/vizag-gas-leak-gas-valve-malfunction-subsequent-valve-burst-triggered-leak/story/403132.html.

11.Deadly gas leak in India, grim wake-up call for global chemical industry: UN rights expert, 14 May 2020, available at: https://news.un.org/en/story/2020/05/1064092.

12.Other gas leaks were reported, including in Chhattisgarh and another in Tamil Nadu. For more, see, Vizag has leak kills 11, boiler blast rocks Tamil Nadu: Tragedies strike India amid coronavirus lockdown, May 7, 2020, available at: https://www.indiatoday.in/india/story/industrial-accidents-vishakhapatnam-gas-leak-chhattisgarh-toxic-gas-tamil-nadu-boiler-blast-1675525-2020-05-07.

Answers to Legal Quiz

1. A	4. C	7. C	10. C
2. A	5. B	8. B	11. B
3. D	6. C	9. C	12. D



Seema Sapra v. Court on Its Own Motion Appeal numbered 1238 of 2019: Decided on 14 August 2019

Judge can recuse from a case at his own volition, but not at the mere asking of litigant. The Court said, "Recusal, at the asking of the litigating party, cannot be countenanced unless it deserves due consideration and is justified."

Summed up by Ravi Sagar

This is a Criminal Appeal numbered 1238 of 2019 preferred under section 19 (1) of contempt of courts act, 1971 assailing judgement of the High Court of Delhi dated 17 December 2015. In the case the Appellant an advocate, Seema Sapra, wanted Justice Khanwilkar to recuse himself on the ground that the judge was close to two senior advocates she had accused of sexually harassing her. The Court held that a judge cannot recuse just because a litigant or an advocate wanted so. Such plea must be backed by sound logic.

Facts of the Case

In its order and judgement dated 17 December 2015, the High Court of Delhi held the appellant guilty of having committed contempt of court and imposed punishment of imprisonment for a period of one month and a fine of ₹ 2,000 to be deposited within a period of 3 months from the date of order,

failing to which to undergo a further term of imprisonment of one month with further direction restraining the appellant to argue as an advocate or in person except in her defence, before any bench of High Court of Delhi or any court or tribunal subordinate to the High Court of Delhi for a period of 2 years from the passing of the impugned judgement dated 17 December 2015.

During the course of hearing of this Criminal Appeal, the appellant in-person not only filed an application but also made verbal request that one of the member bench (Justice A.M. Khanwilkar) ought to recuse himself from hearing of the matter.

Appellant's Contentions:

The prayer for recusal of the judge was made under apparent apprehensions of the appellant that she may not get justice as the said judge was close to two of senior advocates whom she had accused of sexually harassing her. Further, the judge was well acquainted with the advocates who are incidentally the members of the Supreme Court Bar Association against whom personal allegations have been made by her in her accompanying writ petition.

Respondent's Submissions:

It was saga of 31 recusals by judges including 3 of the top court who heard the writ petition of the appellant recused themselves by the time of final order on 2 March 2015. The Appellant succeeded in getting judges to recuse by expressing lack of faith in them before the high court convicted her of contempt in 2015. In the instant criminal appeal already 3 judges of the Supreme Court have recused themselves for one or the other reason. The appellant had strong objections against the appointment of 2 senior advocates as amicus curiae for similar reasons and her lack faith in them.

Observations of the Supreme Court:

After perusal of the assertions made in her interim application the court said, "We have no hesitation in observing that the same are devoid of merit and without any substance". Drawing support from Supreme Court Advocate on Record Association & Anr v. Union of India, the court observed that the same is devoid of merit and without any substance. The Court observed that it must never be forgotten that an impartial judge is the quintessence for a fair trial and one should not hesitate to recuse if there are just and reasonable grounds. At the same time, one cannot be oblivious of the duty of a judge, which is to discharge his responsibility with absolute earnestness, sincerity and being true to the oath of his/her office.

Decision of the Supreme Court:

The Supreme Court dismissed the plea of the appellant praying for the recusal of the judge from the bench hearing her case. "Indubitably, it is always open for a judge to recuse at his own volition from a Case entrusted to him by the Chief Justice. But that may be a matter of his own choosing. Recusal at the asking of the litigating party, cannot be countenanced unless it deserves due consideration and is justified." The Apex Court held that a judge can recuse from a case at his own volition, but not at the mere asking of litigant.●

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E-mail: conference@isidelhi.org.in / residence@isidelhi.org.in

Legal Notice: All you need to know

A legal notice is a document containing formal communication from one legal person to another containing in it, the intention to initiate legal proceedings against the other party. This is to bring to the notice of the other party the issue or grievance so they may prepare for it.

This concept is an ancient one, wherein before the declaration of war a notice is sent from one party to another regarding the declaration. As times are more civilized now, the same is done in the form of a legal notice.

In a civil suit, the meaning of justice differs from that of any criminal litigation. Civil suit mostly involves either personal matters or matters concerning some pecuniary consideration or land-related issues. These matters are in personam, they are between two or more legal persons. Since these matters are about damages, it is only fair to let the other party know what is the damage they have caused and what you (the aggrieved party) intend to do about it.

Usage

To begin with, the fundamental purpose of a legal notice is to inform the other party of your (the aggrieved party) intention to pursue litigation against them. It is to establish a level playing field for both sides. As without legal notice, the defendant will be at a loss, as he/she will not have time to prepare. This will give the plaintiff an upper hand.

The other purpose can also be to avoid litigation by settling the matters outside the

court using Alternate Dispute Resolution techniques. Litigation is time-consuming and expensive, parties pursuing litigation are bound to get caught up in it for a number of years. By making the other party aware of your grievance and issues, it not only gives them the opportunity to prepare for litigation but the chance to opt for Alternate Dispute Resolution.

For example – Ms A finds a defect in the services of company X, she wants to claim damages of Rs. 1,00,000. She sends a legal notice to company X regarding her intention to pursue litigation against them. When company X consults with their lawyer regarding the same they learn that pursuing litigation will cost them more than the damages Ms A has claimed. They now have two alternatives –

1. Give into Ms As demand and pay her 1,00,00.
2. Use ADR to resolve the matter with Ms A.

When thinking logically and financially both these options are better than litigation for company X. As regards to Ms A, she will also have to hire a lawyer to pursue litigation. Which will cost her money, and which will not guarantee her the desired outcome.

As for both the parties going into litigation is not the best choice, by sending a legal notice across the opportunity of resolving the dispute before it reaches the court has arisen.

What are the contents of a legal notice?

Any document which contains information regarding the dispute and communicated to the other party cannot be termed as a legal notice. For any formal document to constitute a legal notice the following essential information is required –

- the name, description and residence of the Plaintiff are given so as to enable the authorities to identify the person serving the notice;
- the cause of action and the relief which the Plaintiff claims are set out with sufficient particularity;
- the notice in writing has been delivered to or left at the office of the appropriate authority mentioned in the section; and
- the suit is instituted after the expiration of two months next after notice has been served, and the plaint contains a statement that such a notice has been so delivered or left.

A summary of the problems that the plaintiff/aggrieved party is facing and issues raised therein, combined with the relief that is plaintiff/aggrieved party seeks must be mentioned clearly. A well-drafted notice can serve as a mediator between the parties to a dispute and result in avoiding litigation.

{ A legal notice is the first step to begin civil litigation. }

Checklist for issuing a legal notice

While drafting a legal notice, you (the aggrieved party) should beware that you write what you (the aggrieved party) intend to do.

You (the aggrieved party) cannot later change your (the aggrieved party) statement or claim.

Legal notice cannot be amended. Special care and attention have to be given to the words that you (the aggrieved party) are using to form the sentences. It is necessary to understand that a legal notice is not a trifling matter. It is an important step.

Legal notice as a document also holds great value when the case goes to trial. Take caution and give out too many details or your client will be in trouble. It is to be concise but consist of all the essentials.

Essentials

Step 1: The notice should be addressed to the other party.

Step 2: The name and address of the other party should be mentioned clearly.

Step 3: Mention of whose behalf the notice is sent.

Step 4: Briefly mention the facts of the case, most importantly mentioned all the dates clearly.

Step 5: Mention the cause of action and the date thereto.

Step 6: Mention any previous communication regarding the issue and the dates of the same.

Step 7: Allow the other party a period of 30 – 60 days to comply with your (the aggrieved party) demand or reply to your notice.

Step 8: The notice should be signed by the plaintiff/aggrieved party and their advocate.

Step 9: The notice is sent via registered post acknowledgement due and the receipt should be kept and a copy of the receipt should be made.

It is always advisable to have a lawyer draft a legal notice.

Reply to a legal notice.

Although the law does not make it compulsory to reply to a legal notice, it is advisable to do so. Not replying to a legal notice gives the aggrieved party an edge when the case goes to trial. The reply for a legal notice should be within the stipulated time mentioned in the legal
notice.

Checklist for replying to a legal notice.

While replying extra care needs to be paid to the language used in the legal notice. The intend of the legal notice should be understood clearly in order to draft a fitting reply.

Step 1: Read the entire notice in context with the contract/agreement existing between the parties.

Step 2: Check the period of limitation from the date of cause of action. In case the period of limitation has been crossed, the reply will be only one line. The suit is barred by limitation.

Step 3: Cross-check the facts of the legal notice. Look at the rights and liabilities of the aggrieved party and look at your (responding party) rights and liabilities of under the contract/ agreement. If the aggrieved party is

in violation of any of their liabilities or have infringed the rights of the responding party mention the same clause wise. Demand payment/ compensation for the same.

Step 4: In case you (responding party) find any faults or breach in any obligation by the aggrieved party, express your (responding party) counterclaim.

Step 5: Specifically answer to each and every point raised in the notice. As a lawyer, your duty will be to deny any such claims (after a discussion with your client).●

[Legalbites.in – April, 03 2020]

[Order 8 Rule 1 CPC]

Time Limit To File Written Statement : Mandatory Or Directory

The Ninety Day Limit is Directory:

A catena of judgements by the Hon'ble Supreme Court of India, interpreting Order 8 Rule 1 of the Code of Civil Procedure, 1908 ("CPC"), had settled the position that the requirement to file a Written Statement within 30 days (extendable to 90 days) of receipt of summons is directory and not a mandatory requirement.

As a result, litigators have long used the language used of the twin decisions of the Supreme Court of India *(Kailash v. Nankhu* (2005) 4 SCC 480 ("Kailash") and Salem Advocates Bar Association, T.N. v. Union of India (2005) 6 SCC 344 ("Salem Advocates")), i.e. that procedural law is the handmaid of justice and not its mistress. These decisions were particularly useful when

filing applications to condone a delay in filing Written Statements beyond the outer limit of 90 days set out in the CPC.

In those two decisions, the Supreme Court has held that the extendable period of 90 days within which to file a Written Statement does not carry any penal consequences. Further, it held that Order 8 Rule 1, CPC should not be interpreted to mean that in no event whatsoever can a Written Statement not be taken on record beyond the extendable time period of 90 days from receipt of summons. Accordingly, in both Kailash and Salem Advocates, it has been held that Order 8 Rule 1, CPC, being in the domain of procedural law, is directory and not mandatory.

Of course, in both Kailash and Salem Advocates, the Supreme Court was careful to add that a decision to condone delay beyond the 90 day period is not to be passed in a routine manner and that such discretion is to be exercised by the Court only in exceptionally hard cases. Subsequently in *Atcom Technologies Pvt. Ltd. v. Y.A. Chunawala* (2018) 6 SCC 639 ("Atcom") the Supreme Court again reiterated its findings in Kailash and Salem Advocates. Further, in Atcom, the Supreme Court reiterated its prior holding that when seeking condonation of delay beyond the 90 day period set out in Order 8 Rule 1, CPC the Defendant is required to furnish a proper and satisfactory explanation. It was further held in Atcom that merely because Order 8 Rule 1, CPC is directory does not mean that a Defendant can take as much time as desired or is absolved from giving convincing and cogent reasons for the delay beyond 90 days. A decision to condone delay beyond the 90 day extendable period is not to be granted in a mechanical fashion merely because of the earlier decisions that Order 8 Rule 1, CPC is directory and not mandatory.

A contradiction can be drawn here, between the decisions of the Supreme Court in Kailash, Salem Advocates and Atcom, and the decision in *Union of India v. Popular Construction Co.* (2001) 8 SCC 470 ("Popular Constructions"). In Popular Constructions, the effect of the use of the words "but not thereafter" in relation to the time limit for filing an appeal against an Arbitral Award was in question. The Supreme Court came to hold that use of the words "but not thereafter" in the proviso to Section 34(3) of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") amounted to an express exclusion within the meaning of Section 29(2) of the Limitation Act, 1963 ("Limitation Act") and would bar the application of Section 4 of the Limitation Act. As such, it was held that a Court could not entertain an application to set aside an award beyond the extendable period provided in the proviso to Section 34(3) of the Arbitration Act. It was held that any other interpretation would render the words "but not thereafter" in

the said provision otiose.

Effect of the Commercial Courts Act:

In 2015, the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ("Commercial Courts Act") was brought in to force. By way of Section 16, the Commercial Courts Act amended various portions of the CPC in a legislative attempt to bring about a more efficacious and speedy resolution to matters which fall in to the category of "Commercial Disputes" - as defined in Section 2(c) of the Commercial Courts Act. Pertinently, in terms of Section 21 of the Commercial Courts Act its provisions shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. This non-obstante clause is of particular importance when considering the amendments made to Order 8 Rules 1 & 10, CPC.

By way of the Commercial Courts Act, certain amendments were made and provisos were inserted as a result of which the period for filing of a Written Statement in Commercial Disputes, in terms of Order 8 Rule 1, CPC, was extended from 90 days to a maximum of 120 days from receipt of summons. However, in case a Written Statement is not filed within 120 days of receipt of summons, the Defendant shall forfeit the right to file its Written Statement and the Court is not permitted to allow such a Written Statement to be taken on record. Further, by way of another proviso (inserted by the Commercial Courts Act to Order 8 Rule 10, CPC) the Court is not permitted to make an order to extend the time for filing of a Written Statement even when pronouncing judgment or passing other orders under Order 8 Rule 10, CPC.

Soon after the coming in to force of the Commercial Courts Act the High Court of Delhi in *Oku Tech Pvt Ltd v. Sangeet Agarwal and Others* 2016 SCC OnLine Del 6601 ("Oku Tech") considered a case falling under the ambit of the Commercial Courts Act. In Oku Tech, a Single Judge of the High Court of Delhi held that in commercial disputes the legislative intention is to take away the discretion of the Court in extending time to file a Written Statement after the amendments to the CPC made by Section 16 of the Commercial Courts Act. Accordingly, the Court could not condone a delay or allow a Written Statement to be brought on record beyond the extendable 120 day period.

Thereafter, the Supreme Court of India, while examining the amendments to the CPC after the coming in to force of the Commercial Courts Act, held in *SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd. and Ors.* (2019) 12 SCC 210 ("SCG Contracts") that no extension of time can be granted for filing of the Written Statement beyond 120 days. In SCG Contracts, the Supreme Court of India concurred with the view taken by the High Court of Delhi in Oku Tech by holding that:

" ... the consequences of forfeiting a right to file the Written Statement; non-extension of any further time; and the fact that the Court shall not allow the Written Statement to be taken on record all points to the fact that the earlier law on Order VIII Rule 1 on the filing of Written Statement under Order VIIII Rule 1 has now been set at naught."

However, perhaps more important is, the observation in SCG Contracts that the inherent powers granted to a Court under Section 151, CPC cannot be used to circumvent the "clear, definite and mandatory provisions of Order V Read with Order VIII Rule 1 and 10".

More recently, the Supreme Court has held in *Desh Raj v. Balkishan* (Dead) Through Proposed Legal Representative Ms. Rohini (2020) 2 SCC 708 ("Desh Raj") that after the Commercial Courts Act has come in to force, two regimes now govern civil procedure. First, for Commercial Disputes (as defined in Section 2(c) of the Commercial Courts Act) the regime set out in terms of the amendments introduced to the CPC by Section 16 of the Commercial Courts Act will govern. Second, another regime continues to exist under the unamended CPC for all other disputes that do not fall within the ambit of Section 2(c) of the Commercial Courts Act.

In Desh Raj, the Supreme Court clarified that for Commercial Disputes the decision in Oku Tech followed in SCG Contracts would govern and the amended provisions of the CPC would make the extendable time period of 120 days to file a Written Statement mandatory with no discretion to the Court to condone delay beyond this 120 day period. However, the ratio in those decisions would not cover suits which do not fall under the ambit of the Commercial Courts Act.

Therefore, in non-commercial matters the decision in Atcom (following, as it does the decisions in Kailash and Salem Advocates) would continue to govern the field. Accordingly, for non-commercial disputes the extendable period of 90 days to file a Written Statement continues to be directory in nature. However, in suits governed by the unamended CPC a Defendant seeking condonation of delay beyond 90 days would still be required to furnish convincing and cogent reasons for the Court to exercise its discretion to condone such delay.

A Special Law Prevails over a General Law:

The decision in Desh Raj appears to have clarified that, in non-commercial disputes, the requirement to file a Written Statement within the 90 day extendable period in terms of Order 8 Rule 1, CPC is directory and not mandatory. Nonetheless, it is important to remember that the CPC, being a general law would not prevail where the procedure regarding time limits to file pleadings is governed by a special law, e.g. High Court Acts and Rules framed thereunder or the Letters Patent of a High Court. This is in keeping with the principle that the provisions of a special law will prevail over those of a general law. Further, it is important to keep in mind that rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act (See: *State of U.P. & Ors v. Babu Ram Upadhya AIR 1961* SC 751 at paragraph 23). Further, the Supreme Court of India has long held that when rules are validly framed, they should be treated as a part of the Act (See: *Chief Forest Conservator (Wildlife) & Ors. v. Nisar Khan* (2003) 4 SCC 595 at paragraph 19).

Pertinently, the Supreme Court, prior to the coming in to force of the Commercial Courts Act, has held in *Iridium India Telecom Ltd. v. Motorola Inc.* (2005) 2 SCC 145 ("Iridium") that the proviso to Order 8 Rule 1, CPC would not apply to suits before the Original Side of the Bombay High Court. It was further held that such suits would continue to be governed by the Bombay High Court Original Side Rules as they have been framed in accordance with Section 129, CPC (power of High Courts to make rules as to their original civil procedure) and the relevant Letters Patent for the High Court. For this reason, these rules would benefit from the saving provision contained in Section 4(1), CPC, i.e. that nothing in the CPC shall be deemed to limit or otherwise affect any: (i) special or local law now in force, or (ii) any special jurisdiction or power conferred, or (iii) any special form of procedure prescribed, by or under any other law for the time being in force.

Another example of such a special law (which would prevail over the provisions of Order 8 Rule 1, CPC and its various provisos) that applies to non-commercial disputes are the Delhi High Court (Original Side) Rules, 2018 ("Delhi HC Rules"). Chapter VII of the Delhi HC Rules deal with the time limits for filing of Written Statements and Replications. Interestingly, under Chapter VII, Rule 2 a Defendant is required to file a Written Statement within 30 days of the date of service of summons, or within the time provided by the Delhi HC Rules, CPC or the Commercial Courts Act – whichever is applicable. Chapter VII, Rule 3 then goes on to state that all Written Statements are to be filed together with an affidavit of admission/denial of documents and if not so done the Written Statement will not be taken on record. Interestingly, Chapter VII Rule 4 permits the Court (on an application demonstrating sufficient cause) to extend the time for filing of a Written Statement beyond 30 days for a period not exceeding 90 days, but not thereafter. So far this is in line with the existing provisions of the CPC. However, the same Rule then requires the Defendant to be burdened with costs (as deemed appropriate by the Court) for such extension of time. The rule also explicitly states that the Written Statement will not be taken on record during this extended time period unless costs have been paid and the admission/denial affidavit has been filed. Lastly, the Joint Registrar of the High Court has been given the power to pass orders closing the right to file Written Statement in case no Written Statement is filed at all within the extended 90 day period. Similar, but not identical limits for filing a Replication and mandatory requirements for closure of the right to file the Replication, is contained in Chapter VII Rule 5 of the Delhi HC Rules. As such, the various rules in Chapter VII of the Delhi HC Rules appear to travel beyond the merely directory nature of the CPC towards making filing of a Written Statement/Replication within the extendable time period mandatory in nature.

Buttressing this view is the inclusion of the words "but not thereafter" in Chapter VII Rule 4 of the Delhi HC Rules. This mirrors the wording of the proviso to Section 34(3) of the Arbitration Act. As noted above, this provision of the Arbitration Act and the specific words "but not thereafter" were

interpreted as mandatorily closing the right to file an appeal beyond the extendable time period provided in Section 34(3) of the Arbitration Act by the Hon'ble Supreme Court in Popular Constructions.

The High Court of Delhi has also recently had opportunity to interpret the various provisions of Chapter VII of the Delhi HC Rules. Some recent judgments have sought to interpret the stringent time limit requirements and the ability of the Court and the Joint Registrar to close the right to file a Written Statement or Replication if they are not filed within the extendable period or without an affidavit of Admission/Denial.

In relation to the requirement to file the affidavit of Admission/Denial along with a Written Statement a Single Judge of the High Court of Delhi in *Unilin Beheer B.V. v. Balaji Action Buildwell* : 250 (2019) DLT 478 ("Unilin") has held that a Written Statement not filed together with an affidavit of admission/denial shall not be taken on record. Another Single Judge of the High Court of Delhi then held in *Odeon Builders Pvt Ltd. v. NBCC (India) Limited* 2019 SCC OnLine Del 10795 ("Odeon Builders") that the use of the words "but not thereafter" in Chapter VII Rule 5 excluded the grant of further time to file a Replication and affidavit of admission/denial of documents after expiry of the extendable period of 45 days. It further held that this time period (30 days extendable by another 15 days) is mandatory with no power being granted for extension thereof.

Subsequently, another Single Judge of the High Court of Delhi relied on the decisions in Unilin and Odeon Builders to hold that timelines set in the Delhi HC Rules for filing of replication and affidavit of admission/ denial are mandatory. See: *Atlanta Limited v. National Highways and Infrastructure Development Corporation Limited* 2019 SCC OnLine Del 11276 ("Atlanta Limited").

All of these decisions are noteworthy because, despite being Commercial Disputes, they rely on the Delhi HC Rules in order to arrive at the conclusion that the time limits for filing of Written Statements/Replications are mandatory. Although all of these decisions were made before the clarification set out in Desh Raj, it appears that even in non-commercial suits before the Delhi HC (or perhaps any other Court with similarly stringent rules of procedure) the time period within which to file a Written Statement or Replication will be mandatory and not merely directory.

Conclusion:

From a review of the above it becomes apparent that the Supreme Court has clarified that for non-commercial suits governed by the unamended provisions of the CPC, the

provisions of Order 8 Rule 1, CPC are directory and not mandatory in nature. However, if a special law exists to govern the procedure for and exercise of original civil jurisdiction in a particular Court (most notably in High Courts exercising Ordinary Original Civil Jurisdiction) then, any mandatory time limits for filing of Written Statements contained therein would prevail over of the unamended provisions of Order 8 Rule 1, CPC.

The High Court of Delhi in its three recent judgments (Unilin, Odeon and Atlanta Limited) has already provided parties with the warning that the time limits for filing of Written Statements and Replications are to be respected. It therefore remains to be seen whether any challenge will be mounted to these three decisions in light of the clarification made by the Supreme Court in Desh Raj. Will the Supreme Court now be required to clarify that there are in fact three regimes governing civil procedure? One under the Commercial Courts Act, another in terms of the specific rules framed by individual courts and a third under the unamended CPC for courts where no specific time limits have been set out in its rules of procedure?

In the meantime, as a matter of abundant caution, litigators would be wise to ensure adherence to the the time limits set out in the rules of procedure in their respective courts, whether it be in terms of the Commercial Courts Act or the specific Rules framed for a High Court exercising Ordinary Original Civil Jurisdiction.●

[Live Law – April 26, 2020]

The reason most people never reach their goals is that they don't define them, or ever seriously consider them as believable or achievable. Winners can tell you where they are going, what they plan to do along the way, and who will be sharing the adventure with them."

– Denis Watiley

Law final-year exams to be held online: Bar Council of India

Times of India – June 11, 2020

Final-year students of the three-year and five-year LLB programmes will have to appear for online examinations, said the Bar Council of India (BCI). If that is not possible, universities may allow students to write a project report/ research paper for each of the subjects. Also, while juniors can be promoted on the basis of performance of previous year's marks and marks obtained in the internal examination of the current year, they too would have to take the end semester exams once colleges/universities reopen. The BCI stated that all centres of legal education are required to adhere to its exam guidelines issued recently.

Recently the Council of Architecture and the Maharashtra Association of Schools of Architecture had not accepted the state government's decision to not hold examinations for the class of 2020. The two apex bodies have stated that "in the interest of students and architectural practice" final exams be held, without which graduates will not be registered and allowed to practise in the country. Law colleges are now torn between the state and BCI instructions. "While our chief minister has said that all students, including those in final year, would be promoted, we have not yet received any notification from the state government. Students are worried... this BCI circular has shocked many," said a senior faculty of a law college.●

Conduct CLAT in local languages: Delhi HC directs BCI to consider a petition as representation

Bar and Bench - June 21, 2020

The Delhi High Court has directed the Bar Council of India (BCI) to consider as representation a petition seeking the conduction of Common Law Admission Test (CLAT), including the one which is yet to take place for 2020, in local languages. (Pratham Kaushik & Anr vs UOI & ors) Considering that the forms for CLAT 2020 are to be deposited by June 30, a Single Judge Bench of Justice Najmi Waziri said that it would be preferable that a decision is taken by the BCI prior to that.

The petition was preferred by a CLAT aspirant and an unregistered forum of parents and students who want CLAT Exam to be

conducted in Hindi language.

It is the Petitioners' concern that absence of provisions to write the exam in local languages, and not English, was hindering several eligible candidates from participating in the examination.

The Petitioners argued that CLAT's objective of providing "highest standards of legal education" and disseminating "learning and knowledge of law and legal processes" could not be accomplished without including local languages for writing the entrance examination, as well for imparting legal education.Stating that all students had the equal right to participate in a competitive exam and receive education from the national law universities, the Petitioners contended, "..giving primacy to English is not only unjust, unfair, improper but it is also in the teeth of Article 343 of the Constitution of India which says that Hindi is the National Language of India."

The Petitioner pointed out that the district courts functioned in the local vernacular and several medical & engineering entrances were also conducted in vernacular languages.

After considering the submissions made by the parties, the Court observed that since the BCI set the standards for admitting the students into law schools, it should take a call on the cause espoused by the Petitioners.

Pending Board Exams, NEET, JEE May Not Be Held In July Due To Coronavirus: Sources

NDTV – June 22, 2020

Amid a rise in coronavirus cases across India, pending board examinations and competitive tests for engineering and medical colleges are unlikely to be held in July, sources have said."Safety of students is paramount. The situation doesn't seem conducive to hold these examinations," sources in the Education Ministry said, adding that some exams may be cancelled and competitive exams like NEET (National Eligibility cum Entrance Test-Under Graduate) or the JEE (Joint Entrance Examination) are likely to be postponed.

The Supreme Court will hear the matter after it sought the centre's reply on a petition filed by some students' parents that sought quashing of the notification for conducting remaining Class 12 examinations. "An alternate grading system for board examinations is being worked out," sources said, adding that NEET and JEE are likely to be postponed as cancelling them is "not feasible". "The decision will be uniform for the entire country," officials added.

While some states have expressed reluctance in conducting the exams, according to officials in the Education Ministry, the government has also been urged by other states to conduct the examinations only in green zones, which are virus-free.The state

education departments and the Central Board of Secondary Education had submitted their suggestions last week.

In March, the CBSE, the CISCE (Council for the Indian School Certificate Examinations) and several education boards had to postpone board exams due to the pandemic. The CBSE, CISCE exams are scheduled to be held between July 1 and July 15, IIT JEE MAINS for July 18-23 and NEET has been scheduled for July 26.A nationwide lockdown was announced on March 25 to check the spread of the highly contagious illness. CBSE and CISCE later scheduled examination for postponed papers in July.

Reservation isn't a fundamental right: Supreme Court

The Economics Times – June 12, 2020

The Supreme Court recently said that reservation of seats to certain communities was not a Fundamental Right and refused to act on a petition filed by all political parties from Tamil Nadu who sought 50% OBC reservation in the all-India NEET seats surrendered by states.

"We appreciate the concern of all political parties for the welfare of Backward Classes. But reservation is not a Fundamental Right," Justice LN Rao said. The petitioners were asked to approach the Madras High Court. Justice Rao lauded the sentiment behind the move, which had parties of all shades from the state on the same page, as "unusual" for Tamil Nadu but refused to hear them.

"You should withdraw it and go to the high court. You are only interested in 50% reservation in Tamil Nadu." He added: "We appreciate all political parties upholding the state's interests." Arguing for parties led by the DMK, advocate P Wilson said that they were not asking the court to add to existing reservations. "We are asking the court to implement the existing reservations," he argued.

"Whose Fundamental Rights are being violated," Justice Rao asked. "Article 32 is available only for violation of Fundamental Rights," he said. Wilson insisted non-implementation of such reservations in the state amounted to violation of Fundamental Rights of its residents, but to no avail. He said that the OBC reservations had been introduced after a long political fight but was being denied to the affected sections in the state. "It affects a lot of OBCs." The petition argued the Union HRD ministry and the state government were not following the state policy on reservations in filling up seats surrendered by states in NEET, including admissions for undergraduate, graduate, postgraduate, dental and diploma courses in medicine in private and government colleges.●

SC to govt: 'Make arrangements to conduct Puri's Rath Yatra in restricted manner'

Indian Express - June 22, 2020

The Supreme Court Monday asked the Odisha government to make necessary arrangements to conduct Puri's Rath Yatra, scheduled to start from June 23, in a restricted manner in wake of the Covid-19 pandemic. The apex court also said it cannot "micro-manage" the rituals and left it to the wisdom of state, the Centre and temple management to deal with that issue.

"If it is confined to Puri alone in a limited way without public attendance as proposed by Gajapati Maharaj of Puri, Chairman of the Puri Jagannath Temple administration, state govt will endeavour to make necessary arrangements to conduct it accordingly," the SC bench said. The Odisha government told the apex court that it is ready to hold the procession with certain precautions.

In an affidavit filed before the court this morning, Odisha said its apprehension is primarily related to thousands of Rath Yatras taking place all over the state but it can only be limited to Puri alone without public attendance as proposed by Gajapati Maharaj of Puri, Chairman of the Puri Jagannath Temple administration. The government said it will make the necessary arrangements to conduct it "accordingly."

Appearing before a bench headed by Justice Arun Mishra, the Centre also supported the Odisha government. Solicitor General Tushar Mehta, appearing for the Centre, said the government has no objections with the yatra and suggested telecasting it on TV in order to avoid a large congregation of people. "It is a matter of faith for crores. If Lord Jagannath will not come out tomorrow, he cannot come out for 12 years as per traditions," Mehta said.

The court is hearing the plea filed by the chief servitor of the Jagannath Temple Pattajoshi Mohapatra who said the annual procession, attended by lakhs, is an "essential religious practice" protected by the Constitution, and that non-observance of the same "affects the very sanctity" of the shrine. In his plea on Saturday, Mohapatra claimed that the yatra had been held even during the Spanish Flu outbreak of 1919.

Acting on a plea by an Odisha-based NGO, the top court had on June 18 refused to grant permission to hold the festival, citing the covid-19 pandemic. "Lord Jagannath won't forgive us if we allow it," CJI Bobde had said. The Puri Rath Yatra is attended by lakhs of people from across the world and is scheduled from June 23.●

THE ESSENTIAL COMMODITIES (AMENDMENT)ORDINANCE, 2020 No. 8 OF 2020

Promulgated by the President in the Seventy-first Year of the Republic of India.

An Ordinance further to amend the Essential Commodities Act, 1955.

WHEREAS for the purposes of increasing the competitiveness in the agriculture sector and enhancing the income of the farmers, the regulatory system needs to be liberalised while protecting the interests of consumers;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123

of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. Short title and commencement.-

(1) This Ordinance may be called the Essential Short title and Commodities (Amendment) Ordinance, 2020. commencement.

(2) It shall come into force at once.

2. Amendment of section 3.-

In section 3 of the Essential Commodities Act, Amendment of 10 of 955. 1955, after sub-section (1), the following sub-section shall section 3. be inserted, namely:'

(1A) Notwithstanding anything contained in subs section (1), —

(a) the supply of such food stuffs, including cereals, pulses, potato, onions, edible oilseeds and oils, as the Central Government may, by notification in the Official Gazette, specify, may be regulated only under extraordinary circumstances which may include war, famine, extraordinary price rise and natural calamity of grave nature;

(b) any action on imposing stock limit shall be based on price rise and an order for regulating stock limit of any agricultural produce may be issued under this Act only if there is—

(i) hundred per cent. increase in the retail price of horticultural produce; or

(ii) fifty per cent, increase in the retail price of non-perishable agricultural foodstuffs, over the price prevailing immediately preceding twelve months, or average retail price of last five years, whichever is lower:

Provided that such order for regulating stock limit shall not apply to a processor or value chain participant of any agricultural produce, if the stock limit of such person does not exceed the overall ceiling of installed capacity of processing, or the demand for export in case of an exporter:

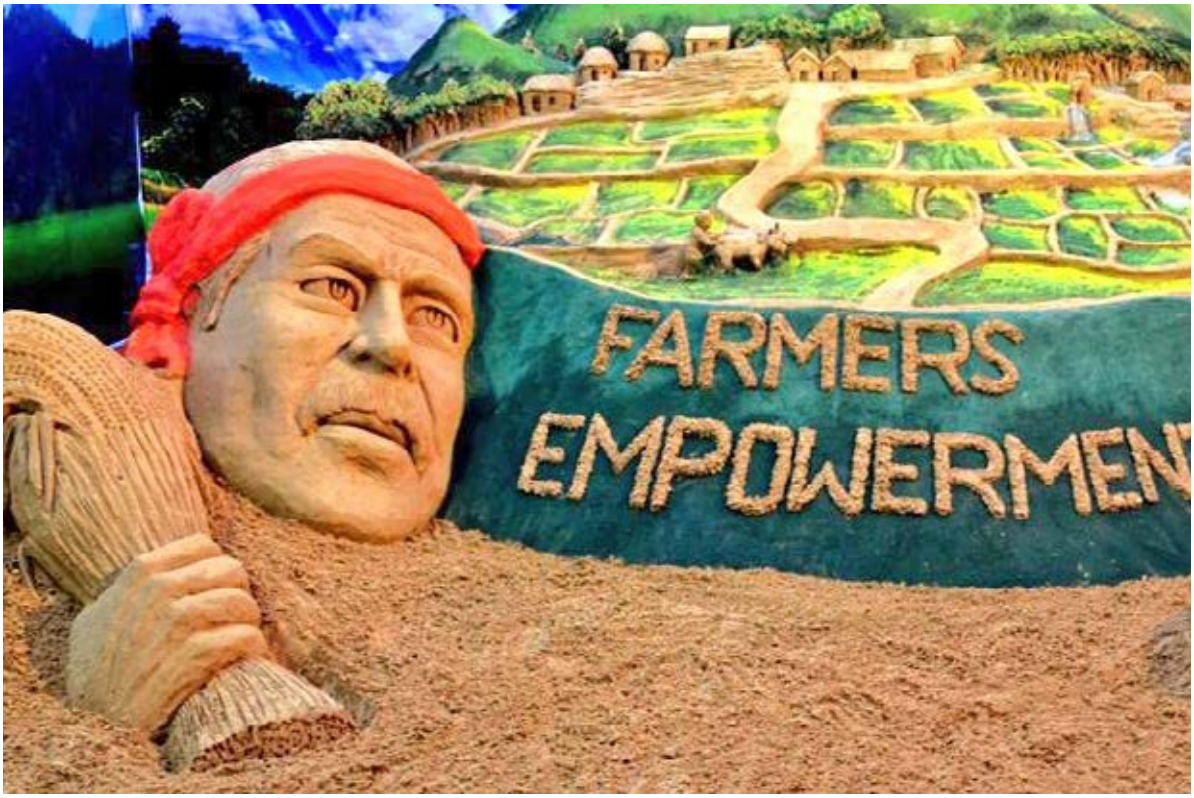
Provided further that nothing contained in this subs section shall apply to any order, relating to the Public Distribution System or the Targeted Public Distribution System, made by the Government under this Act or under any other law for the time being in force.

Explanation.— The expression "value chain participant", in relation to any agricultural product, means and includes a set of participants, from production of any agricultural produce in the field to final consumption, involving processing, packaging, storage, transport and distribution, where at each stage value is added to the product.'.●

RAM NATH KOVIND,
President.

THE FARMERS (EMPOWERMENT AND PROTECTION) AGREEMENT ON PRICE ASSURANCE AND FARM SERVICES ORDINANCE, 2020

No. 11 OF 2020



Promulgated by the President m the Seventy-first Year of the Republic of India.

An ordinance to provide for a national framework on farming agreements that protects and empowers farmers to engage with agri-business firms, processors, wholesalers, exporters or large retailers for farm services and sale of future farming produce at a mutually agreed remunerative price framework in a fair and transparent manner and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I
PRELIMINARY

1. Short title and commencement.-

(1) This Ordinance may be called the Farmers Short title and (Empowerment and Protection) Agreement on Price commencement. Assurance and Farm Services Ordinance, 2020.

(2) It shall come into force at once.

2. Definition.-

In this Ordinance, unless the context otherwise Definitions. requires,—

(a) "farming produce" includes

i) foodstuffs, including edible oilseeds and oils, all kinds of cereals like wheat, rice or other coarse grains, pulses, vegetables, fruits, nuts, spices, sugarcane and products of poultry, piggery, goatery, fishery and dairy, intended for human consumption in its natural or processed form;

(ii) cattle fodder, including oilcakes and other concentrates;

(iii) raw cotton, whether ginned or unginned;

(iv) cotton seeds and raw jute;

(b)"APMC yard" means the physical premises covering Agriculture Produce Market Committee Yard, by whatever name called, established for regulating markets and trade in farming produce under any State Act;

(c) "company" means a company as defined in clause 18 of 2013. (20) of section 2 of the Companies Act, 2013;

(d) "electronic trading and transaction platform" means a platform set up to facilitate direct and online buying and selling for conduct of trade and commerce of farming produce through a network of electronic devices and internet applications;

(e) "farm services" includes supply of seed, feed, fodder, agro-chemicals, machinery and technology, advice, - non-chemical agro-inputs and such other inputs for farming;

(f) "farmer" means a person engaged in production of farming produce by self or by hired labour or otherwise, and includes Farmer Producer Organisation;

(g) "Farmer Producer Organisation" means an association or group of farmers, by whatever name called,—

(i) registered under any law for the time being in force; or

(ii) promoted under a scheme or programme sponsored by the Central Government or State Government;

(h) "farming agreement" means a written agreement entered into between a farmer and a Sponsor, or a farmer, a Sponsor and any third party, prior to the production or rearing of any farming produce of a predetermined quality, in which the Sponsor agrees to purchase such farming produce from the farmer and to provide farm services.

Explanation.- For the purposes of this clause, the term "farming agreement" may include—

(i) 'trade and commerce agreement', where the ownership of commodity remains with the farmer during production and he gets the price of produce on its delivery as per the agreed terms with the Sponsor;

(ii) 'production agreement', where the Sponsor agrees to provide farm services, either fully or partially and to bear the risk of output, but agrees to make payment to the fanner for the services rendered by such farmer; and

(iii) such other agreements or a combination of agreements specified above.

(i) "firm" means a firm as defined in section 4 of the 9 of 1932. Indian Partnership Act, 1932;

(j) "force majeure" means any unforeseen external event, including flood, drought, bad weather, earthquake, epidemic outbreak of disease, insect-pests and such other events, which is unavoidable and beyond the control of parties entering into a farming agreement;

(k)"notification" means a notification published by the Central Government or the State Government, as the case may be, in the Official Gazette and the expression "notified" shall be construed accordingly;

(1) "person" includes—

(i) an individual;

(ii) a partnership firm;

(iii) a company;

(iv) a limited liability partnership;

(v) a co-operative society;

(vi) a society; or

(vii) any association or body of persons duly incorporated or recognised as a group under any ongoing programmes of the Central Government or the State Government;

(m)"prescribed" means prescribed by rules made under this Ordinance;

(n)"Registration Authority" means an authority notified as such by the State Government under section 12;

(o)"Sponsor" means a person who has, entered into a farming agreement with the farmer to purchase a farming produce.

(p) "State" includes Union territory.

CHAPTER II
FARMING AGREEMENT

3. Farming agreement and its period.-

(1) A farmer may enter into a written farming

Farming agreement in respect of any farming produce and such agreement and its agreement may provide for— perio -

(a) the terms and conditions for supply of such produce, including the time of supply, quality, grade, standards, price and such other matters; and

(b) the terms related to supply of farm services:

Provided that the responsibility for compliance of any legal requirement for providing such farm services shall be with the Sponsor or the farm service provider, as the case maybe.

(2) No farming agreement shall be entered into by a farmer under this section in derogation of any rights of a share cropper.

Explanation.— For the purposes of this sub-section, the term "share cropper" means a tiller or occupier of a farm land who formally or informally agrees to give fixed share of crop or to pay fixed amount to the land owner for growing or rearing of farming produce.

(3) The minimum period of the farming agreement shall be for one crop season or one production cycle of livestock, as the case may be, and the maximum period shall be five years:

Provided that where the production cycle of any farming produce is longer and may go beyond five years, in such case, the maximum period of farming agreement may be mutually decided by the fanner and the Sponsor and explicitly mentioned in the farming agreement.

(4) For the purposes of facilitating farmers to enter into written farming agreements, the Central Government may issue necessary guidelines alongwith model fanning agreements, in such manner, as it deems fit.

4. Quality grade and standards of farming produce.-

(1) The parties entering into a farming agreement Quality, grade may identify and require as a condition for the and standards of farming produce. periormance of such agreement compliance with mutually acceptable quality, grade and standards of a farming produce.

(2) For the purposes of sub-section (1), the parties may adopt the quality, grade and standards—

(a) which are compatible with agronomic practices, agro-climate and such other factors; or

(b) formulated by any agency of the State Government or of the Central Government, or any agency authorised by such Government for this purpose, and explicitly mention such quality, grade and standards in the farming agreement:

(3) The quality, grade and standards for pesticide residue, food safety standards, good farming practices and labour and social development standards may also be adopted in the farming agreement.

(4) The parties entering into a farming agreement may require as a condition that such mutually acceptable quality, grade and standards shall be monitored and certified during the process of cultivation

or rearing, or at the time of delivery, by third party qualified assayers to ensure impartiality and fairness.

5. Pricing of farming produce.-

The price to be paid for the purchase of a farming Pricing of produce may be determined and mentioned in the fanning farming produce. agreement itself, and in case, such price is subject to variation, then, such agreement shall explicitly provide for-

(a) a guaranteed price to be paid for such produce;

(b) a clear price reference for any additional amount over and above the guaranteed price, including bonus or premium, to ensure best value to the farmer and such price reference may be linked to the prevailing prices in specified APMC yard or electronic trading and transaction platform or any other suitable benchmark prices:

Provided that the method of determining such price or guaranteed price or additional amount shall be annexed to the farming agreement.

6. Sales or purchase of farming produce.-

(1) Where, under a farming agreement, the delivery Sale or purchase of any farming produce is to be- of fanning produce.

(a) taken by the Sponsor at the farm gate, be shall take such delivery within the agreed time;

(b) effected by the fanner, it shall be the responsibility of the Sponsor to ensure that all preparations for the timely acceptance of such delivery have been made.

(2) The Sponsor may, before accepting the delivery of any farming produce, inspect the quality or any other feature of such produce as specified in the farming agreement, otherwise, he shall be deemed to have inspected the produce and shall have no right to retract from acceptance of such produce at the time

The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020 was promulgated on June 5, 2020. It provides a framework for the protection and empowerment of farmers with reference to the sale and purchase of farm products. The provisions of the Ordinance will override all state APMC laws.

The minimum period of an agreement will be one crop season, or one production cycle of livestock. The maximum period will be five years. For production cycle beyond five years, the maximum period for the agreement will be mutually decided by the farmer and the sponsor.

of its delivery or thereafter.

(3) The Sponsor shall,—

(a) where the farming agreement relates to seed production, make payment of not less than two-third of agreed amount at the time of delivery and the remaining amount after due certification, but not later than thirty days of delivery;

(b) in other cases, make payment of agreed amount at the time of accepting the delivery of farming produce and issue a receipt slip with details of the sale proceeds.

(4) The State Government may prescribe the mode and manner in which payment shall be made to the farmer under sub-section (3).

7. Exemption with respect to farming produce.-

(1) Where a farming agreement has been entered Exemptions with into in respect of any farming produce under this respect to farming produce. Ordinance, such produce shall be exempt from the application of any State Act, by whatever name called, established for the purpose of regulation of sale and purchase of such farming produce.

(2) Notwithstanding anything contained in the 10 of 1955. Essential Commodities Act, 1955 or in any control order issued thereunder or in any other law for the time being in force, any obligation related to stock limit shall not be applicable to such quantities of farming produce as are purchased under a farming agreement entered into in accordance with the provisions of this Ordinance.

8.Sponsor prohibited from acquiring ownership rights or making permanent modification on farmer's land or premises.-

No farming agreement shall be entered into for the Sponsor purpose of—

(a) any transfer, including sale, lease and ownership rights mortgage of the land or premises of the farmer; or or making permanent

(b) raising any permanent structure or making modifications on any modification on the land or premises of the farmer's land or farmer, unless the Sponsor agrees to remove such premises. structure or to restore the land to its original condition, at his cost, on the conclusion of the agreement or expiry of the agreement period, as the case may be:

Provided that where such structure is not removed as agreed by the Sponsor, the ownership of such structure shall vest with the farmer after conclusion of the agreement or expiry of the agreement period, as the case maybe.

9.Linkage of farming agreement with insurance or credit.-

A Farming agreement may be linked with insurance Linkage of or credit instrument under any scheme of the Central frning agreement with Government or State Government or any financial service insurance or provider to ensure risk mitigation and flow of credit to credit. farmer or Sponsor or both.

10. Other parties to farming agreement.-

Save as otherwise provided in the Ordinance, an Other parties to aggregator or farm service provider may become a party to farming the farming agreement and in such case, the role and agreement. services of such aggregator or farm service provider shall be explicitly mentioned in such farming agreement.

Explanation.— For the purposes of this section,—

(i) "aggregator" means any person, including a Farmer Producer Organisation, who acts as an intermediary between a farmer or a group of farmers and a Sponsor and provides aggregation related services to both farmers and Sponsor;

(ii) "farm service provider" means any person who provides farm services.

11. Alteration or termination of farming agreement.-

At any time after entering into a farming Alteration or agreement, the parties to such agreement may, with mutual termination of consent, alter or terminate such agreement for any ant reasonable cause.

12. Establishment of Registration Authority.-

(1) A State Government may notify a Registration Establishment of Authority to provide for electronic registry for that State Registration that provides facilitative framework for registration of Authority. farming agreements.

(2) The constitution, composition, powers and functions of the Registration Authority and the procedure for registration shall be such as may be prescribed by the State Government.

CHAPTER III
DISPUTE SETTLEMENT

13. Conciliation board for dispute settlement.-

(1) Every farming agreement shall explicitly Conciliation provide for a conciliation process and formation of a bo&d for dispute conciliation board consisting of representatives of parties settlement. to the agreement:

Provided that representation of parties in such conciliation board shall be fair and balanced.

(2) A dispute arising from any farming agreement shall be first referred to the conciliation board formed as per the provisions of the farming agreement and every endeavour shall be made by such board to bring about settlement of such dispute.

(3) Where, in respect of any dispute, a settlement is arrived during the course of conciliation proceeding, a memorandum of settlement shall be drawn accordingly and signed by the parties to such dispute and such settlement shall be binding on the parties.

14. Mechanism for dispute resolution.-

(1) Where, the farming agreement does not Mechanism for provide for conciliation process as required under sub- dtspute resolution. section (1) of section 13, or the parties to the farmmg agreement fail

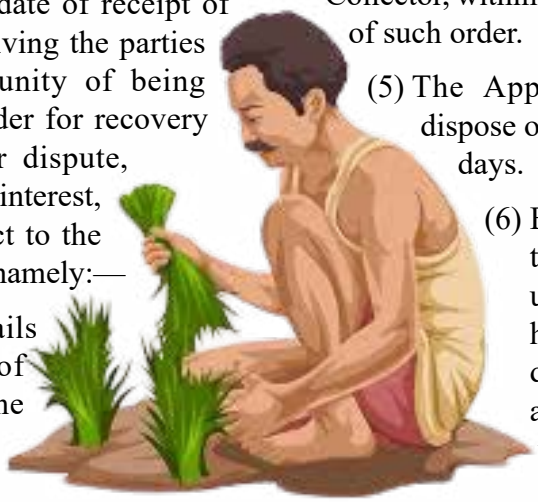
to settle their dispute under that section within a period of thirty days, then, any such party may approach the concerned Sub-Divisional Magistrate who shall be the Sub-divisional Authority for deciding the disputes under farming agreements.

(2) On receipt of a dispute under sub-section

(1), the Sub-Divisional Authority may, if—

(a) the farming agreement did not provide for conciliation process, constitute a conciliation board for bringing about settlement of such dispute; or

(b) the parties failed to settle their dispute through conciliation process, decide the dispute in a summary manner within thirty days from the date of receipt of such dispute, after giving the parties a reasonable opportunity of being heard and pass an order for recovery of the amount under dispute, with such penalty and interest, as it deems fit, subject to the following conditions, namely:—



(i) where the sponsor fails to make payment of the amount due to the farmer, such penalty may extend to one and half times the amount due;

(ii) where the order is against the farmer for recovery of the amount due to the Sponsor on account of any advance payment or cost of inputs, as per terms of farming agreement, such amount shall not exceed the actual cost incurred by the sponsor;

(iii) where the farming agreement in dispute is in contravention of the provisions of the Ordinance, or default by the farmer is due to force majeure, then, no order for recovery of amount shall be passed against the farmer.

(3) Every order passed by the Sub-Divisional Authority under this section shall have same force as a decree of a civil court and be enforceable in the same manner as that of a decree under the Code of Civil Procedure, 1908, 5 of 1908. unless an appeal is preferred under sub-section (4).

(4) Any party aggrieved by the order of the Sub- Divisional Authority may prefer an appeal to the Appellate Authority, which shall be presided over by the Collector or Additional Collector nominated by the Collector, within thirty days from the date of such order.

(5) The Appellate Authority shall dispose of the appeal within thirty days.

(6) Every order passed by the Appellant Authority under this section shall have same force as a decree of a civil court and be enforceable in the same manner as that 5 of 1908. of a decree under the Code of Civil Procedure, 1908.

(7) The amount payable under any order passed by the Sub-Divisional Authority or the Appellant Authority, as the case may be, may be recovered as arrears of Land revenue.

(8) The Sub-Divisional Authority or the Appellate Authority shall, while deciding

disputes under this section, have all the powers of a civil court for the purposes of taking evidence on oath, enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed by the Central Government.

(9) The manner and procedure for filing a petition or an application before the Sub-Divisional Authority and an appeal before the Appellate Authority shall be such as may be prescribed by the Central Government.

15.No action for recovery of dues against farmer's land.-

Notwithstanding anything contained in section 14, No action for no action for recovery of any amount due in pursuance of recovery of dues an order passed under that section, shall be initiated 1st farmer's against the agricultural land of the farmer.

CHAPTER IV
MISCELLANEOUS

16.Power of Central Government to give directions.-

The Central Government may, from time to time, Power of Central give such directions, as it may consider necessary, to the Government to give directions. State Governments for effective implementation of the provisions of this Act and the State Governments shall comply with such directions.

17.Authorities under Ordinance to be public servants.-

All authorities, including Registration Authority, Authorities under Sub-Divisional Authority and Appellate Authority, Ordinance to be public servants. constituted or prescribed under this Ordinance, shall be deemed to be public servants within the meaning of 45 of 1860. section 21 of the Indian Penal Code.

18. Protection of action taken in good faith.-

No suit, prosecution or other legal proceeding Protect on of shall lie against the Central Government, the State action taken in good faith. Government, the Registration Authority, the Sub- Divisional Authority, the Appellate Authority or any other person for anything which is in good faith done or intended to be done under the provisions of this Ordinance or any rule made there under.

19. Bar of jurisdiction of civil court.-

No civil Court shall have jurisdiction to entertain Bar of any suit or proceedings in respect of any dispute which a jurisdiction of civil court. Sub-Divisional Authority or the Appellate Authority is empowered by or under this Ordinance to decide and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Ordinance or any rules made there under.

20. Ordinance to have an overriding effect.-

The provisions of this Ordinance shall have effect Ordinance to notwithstanding anything inconsistent therewith contained have an overriding effect. in any state law for the time being in force or in any instrument having effect by virtue of any such law other than this Ordinance:

Provided that a farming agreement or such contract entered into under any State law for the time being in force, or any rules made thereunder, before the date of coming into force of this Ordinance, shall continue to be valid for the period of such agreement or contract.

21. Ordinance not to apply to stock exchanges and clearing corporation.-

Nothing contained in this Ordinance, shall be applicable to the stock exchanges and clearing corporations recognized under the Securities Contracts (Regulation) Act, 1956 and the transactions undertaken. therein.

22. Power of Central Government to make rules.-

(1)The Central Government may, by notification Power of Central in the Official Gazette, make rules for carrying out the Government to make rules. provisions of this Ordmance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, nameIy:—

(a) other purposes for which the Sub-Divisional Authority or the Appellate Authority shall have the powers of civil court under sub-section (8) of section 14;

(b) the manner and procedure for filing petition or application before the Sub-Divisional Authority, and an appeal before the Appellate Authority, under sub-section (9) of section 14;

(c) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules, by the Central Government.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

23. Power of State Government to make rule.-

(1) The State Government may, by notification in Power of State the Official Gazette, make rules for carrying out the Government to make rules. provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the mode and manner of payment to the farmer under sub-section (4) of section 6;

(b) the constitution, composition, powers and functions of the Registration

Authority, and the procedure for registration under sub-section (2) of section 12;

(c) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules, by the State Government.

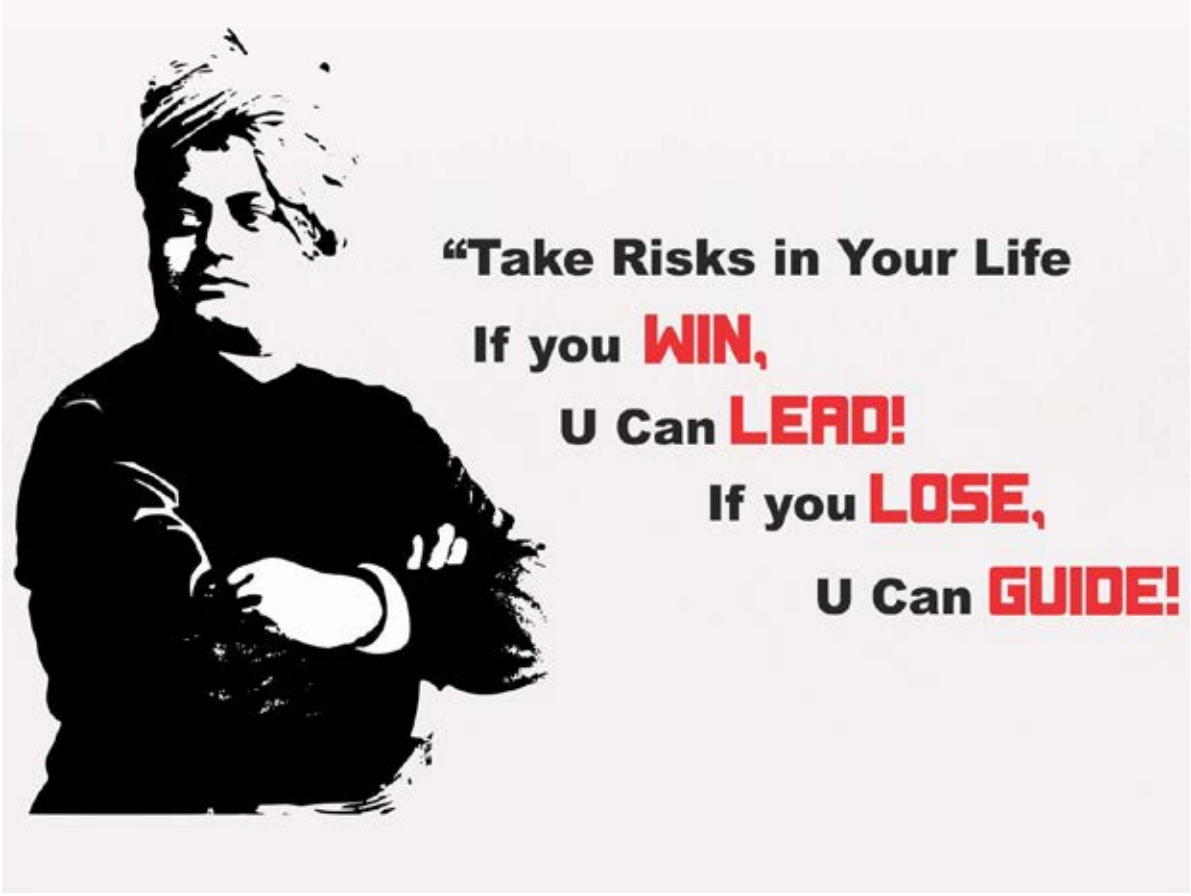
(3) Every rule made by the State Government under this Ordinance shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

24. Power to remove difficulties.-

(1) If any difficulty arises in giving effect to the Power to remove provisions of this Ordinance, the Central Government thICUIt1C& may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Ordinance, as may appear to it to be necessary for removing the difficulty.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.●

RAM NATH KOVIND,
President.



Fraternity in Preamble– A Response to Partition and Bapu's Assassination?

Dr. M. P. Raju

The fraternity clause of the Preamble was absent in the Objectives Resolution. The drafting Committee had brought it in while settling the draft Preamble out of the Objectives Resolution. It was appreciated and approved by the Constituent Assembly with a few changes. Was there any specific reason or occasion for introducing it into the Preamble? Can it be seen as a clever and secret slipping in by Dr Ambedkar one of his pet concepts into the Constitution using his special position in the drafting committee? Are the key concepts in this fraternity clause alien to the Resolution as such?

The fraternity clause in the preamble as finally passed by the Assembly stood as follows:

"to promote among them all fraternity assuring the dignity of the individual and the unity of the Nation".

Thus it is very specifically laid down in the Preamble that to promote fraternity is one of the three main objectives of the Constitution. The other two are to constitute India into a republic and to secure to its citizens justice, freedom and equality. The terms fraternity, dignity and unity of the nation found in the fraternity clause but absent in the resolution appear to have been introduced by the drafting committee as part of their drafting function. However certain circumstances and developments might have facilitated the wording and the form of the fraternity clause.

Resolution itself is Preamble but for fraternity clause

It had been very clear for the

Constituent Assembly from the beginning that the objectives resolution would be the guiding principles or values based on which the Constitution was to be drafted and framed. The assembly and the drafting committee were also of the view that the Preamble of the Constitution should be framed from this resolution. The draft of the preamble which was substantially the same as the final one had a footnote stating so specifically:

On 10th February 1948 the Drafting Committee decided to add to the draft Preamble a footnote which has also stated as follows:

"The Committee has followed the Objectives Resolution in drafting the Preamble…."

This draft of 10th February had the fraternity clause within it. It was in the following words:

"to promote among all its citizens Fraternity without distinction of caste, class or creed so as to assure the dignity of every individual and the unity of the Nation…"

Further changes were made to the fraternity clause by the committee which became the draft of 21st February 1948 which was forwarded to the Chairman of the Assembly. In this draft the fraternity clause stood thus:

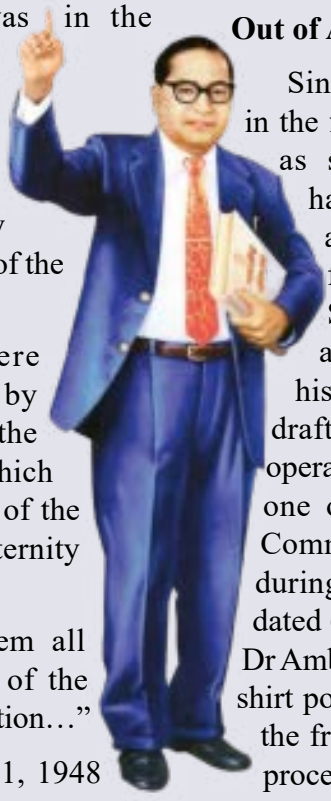
"to promote among them all Fraternity assuring the dignity of the individual and the unity of the Nation…"

In a letter of February 21, 1948 forwarding the Draft Constitution with the above draft Preamble the Chairman the Drafting Committee observed in respect to the Preamble:

"The Committee has added a clause about fraternity in the Preamble although it does not occur in the Objectives Resolution….. In other respects the Committee has tried to embody in the Preamble the spirit and, as far as possible, the language of the Objectives Resolution."

Thus it is seen that the drafting Committee which introduced the fraternity clause in the draft preamble were certain that the Preamble embodied the spirit and, as far as possible, the language of the Objectives Resolution. The only exception if at all was the fraternity clause.

Out of Ambedkar's Shirt-Pocket ?



Since the terms and concepts used in the fraternity clause were not present as such in the Resolution, there have been theories attempting to attribute the authorship of the fraternity clause to Dr Ambedkar. Some have gone to the extent of arguing that Ambedkar utilizing his position as the Chairman of the drafting Committee through a secret operation slipped in this clause during one of the meetings of the drafting Committee. They venture to say that during the meeting of the Committee dated 6th February 1948, the Chairman, Dr Ambedkar, might have taken out of his shirt pocket a draft of the Preamble with the fraternity clause and slipped it into proceedings of the Committee and thus

he made the fraternity clause as part of the draft preamble.

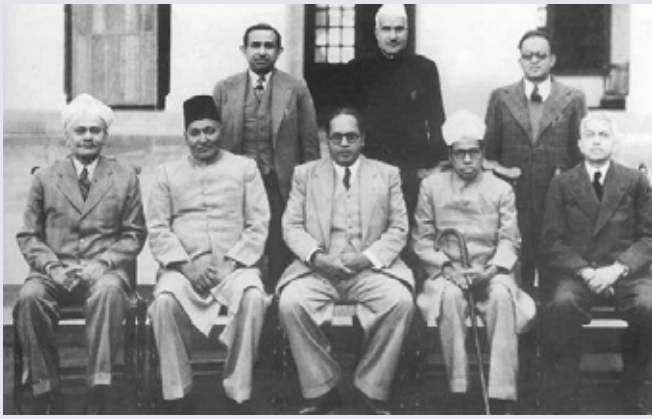
The Draft Constitution of India as prepared by the Constitutional Advisor on 7 October 1947 merely had a format of preamble and did not have a proper preamble. When the Drafting Committee considered this Draft first on 27 October 1947, the consideration of Preamble was held over to be considered at the end.

Thereafter, on 6 February 1948 the Drafting Committee with Dr BR Ambedkar, Sir Alladi Krishnaswami Ayyar, Maulana Saiyid Muhammad Saadullah and Shri N. Madhava Rao present formulated for the first time the draft of the Preamble. This formulation of the draft had the fraternity clause in it as follows:

"…to promote among, all its citizens ….. and Fraternity assuring the dignity of every individual without distinction of caste or creed; …."

Further to this the Drafting Committee made a number of changes in its meetings on 9th, 10th and 21st February 1948 before it forwarded the draft to the President of the Assembly on 21st February 1948 with Ambedkar's forwarding letter.

The crucial and central clause, known as the fraternity clause appears to be an addition to the objectives resolution There are a few authors who would like to claim that it was a unique contribution by Dr Ambedkar. Some of them argue that Ambedkar ingeniously slipped this clause in secretly and without any contribution or even active participation by other members of the committee. They try to point out that there



have been no transcripts of the meetings of the drafting committee when this clause was introduced into the draft preamble. However they argue that in one of the meetings of the drafting committee dated 6 February 1948 in which the draft preamble with this fraternity clause was introduced substituting it for the one in the first draft constitution by B.N. Rau. It was introduced in the meeting of the draftin committee It appeared as if it came out of the pocket of Dr Ambedkar. This conjecture does not seem to have any evidence even a circusmstantial one at that.

After the passing of the resolution but before the actual drafting of the Constitution did not start, Dr Ambedkar had prepared and circulated on 15/3/1947 a Memorandum titled States and Minorities: What are their rights, and How to secure them in the Constitution of Free India' which had a Preamble. Dr Ambedkar submitted on this Preamble to the Advisory Committee on Fundamental Rights, Minorities, etc., of the Constituent Assembly. According to Ambedkar this Preamble was giving shape and form to the Objectives Resolution.

From this sequence of events in the drafting committee meetings some people

seek to establish that Ambedkar had secretly slipped in his pet fraternity clause from his shirt pocket in to the Preamble. Given the total gamut of circumstances and the character of Dr Ambedkar, it is difficult to believe this story of a secret coup by the Chairman of the Committee as part of his private agenda.

'Need for fraternal concord ...never greater than now'

From the proceedings of the drafting committee it is evident that it is in the meeting of 6th February that the first draft of the preamble was formulated by the Committee. It is safe to conclude that the fraternity clause first found its way into the draft on 6th February 1948 during one of the meetings of the drafting Committee. This date is very relevant beause it was just one week after the Assassination of Mahatma Gandhi on 30 th Jauary 1948. After the passing of the Objectives Resolution on 22nd January 1947 and before the introduction of the fraternity clause into the draft Preamble another very relevant set events happened around the Partition of British India into Pakistan and India which was followed by migration, mayhem and communal killings. Hence the reason for introducing fraternity into Preamble though it was absent in the Objectives resolution in those clear terms. The letter of 21st February 1948 by Ambedkar on behalf of the Drafting Committee accompanying the draft of the Constitution shows that the immediate reason for introducing fraternity clause was these two set of events and their backgrounds of the communal discord and the absence of fraternal concord and good will in India.

In a letter of February 21, 1948 forwarding the Draft Constitution with the above draft Preamble the Chairman the Drafting Committee observed in respect to the Preamble:

"… The Committee has added a clause about fraternity in the Preamble although it does not occur in the Objectives Resolution. The Committee felt that the need for fraternal concord and goodwill in India was never greater than now and that this particular aim of the new Constitution should be emphasized by special mention in the Preamble…"

This need for fraternal concord and goodwill in India was never greater than now was established by the events just prior to 6th February 1948 the date of introducing this fraternity clause into the draft of the preamble.

This clause regarding fraternal concord and goodwill was absent from Ambedkar's draft of the Constitution and his draft preamble in it. It was absent even in his response to Objectives Resolution even though he lamented the absence of socialism in it. The terms fraternity, dignity and unity of the nation found in the fraternity clause but absent in the resolution appeared to have been introduced by the drafting committee as part of their drafting function. But the immediate ccircmstances were the communal disharmony culinaingin the partition and …….. and further the assassination of Mahatma by a communal terrorist inspired by the idea of a Hindu Nation.

Inspiration from the Preamble of Irish Constitution

Was there any inspiration from

any of the existing Constitutions of other countries in drafting the Preamble to the Indian constitution? There are some instances which may point to a kind of inspiration from the preamble to the Constitution of Ireland (December 29, 1937). The following part of the Irish preamble may be relevant:

" ….. We, the people of Eire,

…. Gratefully remembering their (our fathers') heroic and unremitting struggle to regain the rightful independence of our Nation, And seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations,
Do hereby adopt, enact, and give to ourselves this Constitution."

There was a Preamble to the draft of the Constitution prepared by Sir B.N. Rau, the Constitutional Advosor dated 30 May 1947. This Preamble merely was as follows:

"We, the People of India, seeking to promote the common good, do hereby through our chosen representatives Adopt, Enact and Give ourselves this Constitution". This format was adapted from the Preamble in the Constitution of Ireland.

After the draft of the Preamble dated 21st February 1948 was presented in the Assembly, several amendments were presented. The drafting committee at its meeting on March 23, 1948 also had decided that an amendment be made to the Preamble to the effect that for the word 'Republic' the word 'State' be substituted.

Shri B. N. Rau in a note circulated to the members of the CA commented on the proposed amendments. And in response to the amendment proposing to put 'unity of nation' prior to the words 'dignity of the individual' in the fraternity clause Shri Rao's note said:

"3.This is purely a drafting amendment. It seeks to put the words 'unity of the Nation' first and then the words 'dignity of the individual' in the line commencing with the word 'Fraternity' in the Preamble.

The reason for putting the dignity of the individual first was that unless the dignity of the individual is assured, the nation cannot be united. In the Preamble to the Irish Constitution the 'dignity of the individual' comes before 'the unity of our country'. We may, therefore, retain the existing order of the phrases."

Of course, there is nothing

wrong or humiliating for India to get inspired by other sistr nations in an appropriate manner. It is most apt in view of our famous motto of treating the whole world as our own family (vasudhaiva kutumbakam).

Fraternity Clause as the Resolution itself in a nutshell

To promote fraternity among all might have been an implied objective of the constitution but it was not explicitly mentioned in the resolution. The Objectives Resolution itself was adapted suitably to become the Preamble. This fact is generally accepted and is born out from the manifold records and contemporaneous evidences. The addition of the fraternity clause is only an explicit summarization of what had been stated in the resolution. The terms, fraternity, dignity, unity of the nation are additions to the objectives resolution when it got transformed into preamble. They were the additions by the drafting committee to the wording of the resolution.

Even if we consider that the term fraternity was introduced into the draft by Dr Ambedkar and not the constitutional advisor B.N.Rau, the minutes of the subsequent meetings of the drafting committee itself show that the clause including the term fraternity was thoroughly discussed and a number of changes were introduced, introducing and dropping a number of concepts and terms even in the fraternity clause itself.

Thus the whole spirit of the Objectives resolution was summarized into the Fraternity clause in the Preamble. This emphasis on promoting the value of fraternity among all Indians assuring the dignity of the individual and the unity of the Nation was necessitated by the events just prior to the drafting of the preamble by the Committee. It was most natural that the communal discord, including the caste hierarchies, and the losing of our Father of the Nation to the bullets of a communal terrorist assassin made us to insist on the value of fraternity with individual dignity. This had well appealed to the members of the Constituent Assembly which was evident not only from the approval and passing of it but also from the explicit appreciation expressed by some of the prominent members. There is no doubt that the value of fraternity assuring the dignity of the individual continues to be the core of Indian Dharma.●

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1. Right to Pollution free Environment comes under?
A. Article 21 Right to life.
B. Article 14 Right to Equality
C. Article 30 Right to establish and administer institutions.
D. Article 19 Right of movement

2. Andaman and Nicobar islands come under the jurisdiction of which of the following High Courts?
A. Calcutta High Court
B. Madras High Court
C. Port Blair High Court
D. Delhi High Court

3. Who of the following is credited with drafting the Indian Penal Code, 1860?
A. Sir James Stephen
B. Charles Wood
C. John Morley
D. Lord Macaulay

4. Who among the following was the first person to be directly appointed as the Judge of Supreme Court?
A. N Santosh Hegde
B. Ghulam E Vanhavati
C. Kuldeep Singh
D. V.R. Krishna Iyer

5. What is the maximum time limit for filing of a complaint before the consumer disputes redressal forum from the date when the cause of action arises?
A. one year
B. two years
C. three years
D. four years

6. Which of the following writs is said to be a guarantor of personal freedom?
A. Mandamus
B. Quo Warranto
C. Habaes Corpus
D. Certiorari

7. In which of the following cases did the Supreme Court direct the compulsory registration of all marriages in India?
A. Danial Latifi vs Union of India
B. Ashok Kumar vs Union of India
C. Seema vs Ashwini Kumar
D. Sharda vs Dharampal

8. With which of the following issues did D.K. Basu v. State of West Bengal deal with?
A. Safeguards against sexual exploitation
B. Safeguards for arrested persons
C. Safeguards for children
D. Safeguards for unorganized workers

9. The power to issue writs has been envisaged under the provisions of which of the following fundamental rights?
A. Right to Equality
B. Right to Freedom
C. Right to Constitutional Remedies
D. Right against Exploitation

10. Kuka Movement is associated with which of the following states?
A. Assam
B. Bengal
C. Punjab
D. Maharashtra

11. Under the Constitution of India, Freedom of religion does not give the power to?
A. Conversion with money
B. Regulate Law and order
C. Health
D. Morality

12. Parliament of India consist of
A. Upper House
B. Lower House
C. President
D. All the above.

Answers on Page - 10

LEGAL TERMS & MAXIMS

Abuttals : the parts of the boundaries of a piece of land which touch pieces of land alongside.

Appellant : the person who is appealing to a court against a decision of a lower court.

Accomplice : someone who helps another person to commit a crime.

Bailiwick : the area over which a bailiff has jurisdiction.

Bare trust : a trust which holds property on behalf of a person until they ask for it back.

Bequest : something given in a will, other than land or real property.

Care order : an order by a court instructing the local authority to care for a child.

Causation : one thing being done causing something else to happen.

Cause of action : the reason someone is entitled to sue someone else.

Decree : an order by a court.

Decree absolute : the final court order which ends a marriage.

Decree nisi :a provisional court order which orders that a marriage should be dissolved.

Euthanasia :killing someone to end their suffering.

Excess of jurisdiction : someone such as a judge acting without authority.

Exclusive licence : a licence under which only the licence holder has any rights

False pretence : misleading someone by deliberately making a false statement.

False representation : lying in a statement to persuade someone to enter a contract.

Family Division : the part of the High Court dealing with marriage breakdowns and probate.

Garnishee order : a court order to a third party who owes money to a judgement debtor to pay the money to the judgement creditor.

Guilty : a court's verdict that the person charged with a crime committed it.

Grievous bodily harm: intentionally causing serious physical harm to someone. This is more serious than actual bodily harm.

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