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World Day For International Justice

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Today, as the world faces challenges in navigating the Covid-19 pandemic, the fight for justice also continues. This pandemic has caused massive disruptions to the justice system along with the social and economic turmoil.

"International Justice" which basically aims to ensure accountability for some of the most serious crimes such as genocide, crimes against humanity, war crimes, tortures, extrajudicial executions, enforced disappearances and now even ecocide, have come a long way in promoting and maintaining global justice. Despite a challenging global landscape, it strides toward accountability for atrocity crimes that victims of war crimes undeterred in their pursuit of justice. It is a body of international law, which is central to promoting economic and social development, as well as advancing international peace and security.

There have been tremendous instances where the International bodies have played an active role in advancing justice worldwide such as the International Court of Justice (ICJ) intervening and ordering Myanmar not to commit atrocities against the Rohingya or the former leader of the "Janjaweed" militia in Sudan, known as Ali Kosheib, surrendering to the International Criminal Court with the cooperation of several member countries and United Nations peacekeeping forces. He is the first suspect in custody on charges of government-backed crimes in Darfur, or the recent Mladić verdict of Bosnia and Herzegovina which is considered to be a historic one to an international justice, where Ratko Mladić, the commander of the Bosnian Serb Army was send to life imprisonment for genocide, crimes against humanity and war crimes. It concludes a decades-long search for justice for the tens of thousands of victims of the armed conflict in Bosnia and Herzegovina. Likewise, many resolved but still a long way to go.

As the world aims to overcome the blatant attempt of atrocities, it is important that we promote the International Criminal Justice System and support the working of the International Criminal Court. The constantly evolving nature of the catastrophe suggests a need for rapid action by every citizen of this global world. Now even more than ever the justice system needs to be strengthened as we face a potentially deadly threat requiring cooperation and sacrifice.

The other developments in the Indian Justice and Administrative system are the prominent judicial pronouncements in the light of social justice whereby the Rajasthan High Court held that personal life and liberty under Art. 21 have to be protected irrespective of the fact that relationship between two major individuals may be termed as immoral and unsocial, also the Gujarat High Court has held that a juvenile is entitled to anticipatory bail and can file an application directly for the same in courts and the recent decision taken by the Delhi Government to compensate the children who have lost both parents and guardian to coronavirus disease (Covid-19), under 'PM-CARES for Children' scheme. Such children will get a monthly stipend once they turn 18 and a fund of Rs.10 lakh when they turn 23 from PM-CARES which is an applaudable initiative taken up by the Government to uplift and restore the lives of the children amidst this pandemic.

In the column, "Making of the Constitution" Dr. M. P. Raju, Supreme Court Advocate, have meticulously penned down the concept of democracy in the Constitution of India, how the democratic characteristics ignite the very nature of the Constitution and how democracy strengthen and impact the social, political and economic aspect of the Country.

Hope this issue of Legal News and Views will enrich and enlighten the readers.❐

World Day for International Justice

On July 17th of every year, the world celebrates "World Day for International Justice" also known as World Justice Day or International Criminal Justice Day, commemorating the historic adoption of the Rome Statute in 1998, the founding treaty of the International Criminal Court (ICC). The International Criminal Court has since then continuously worked to promote cooperation, complementarity and universality, as critical components for effective functioning of the Rome Statute legal system.

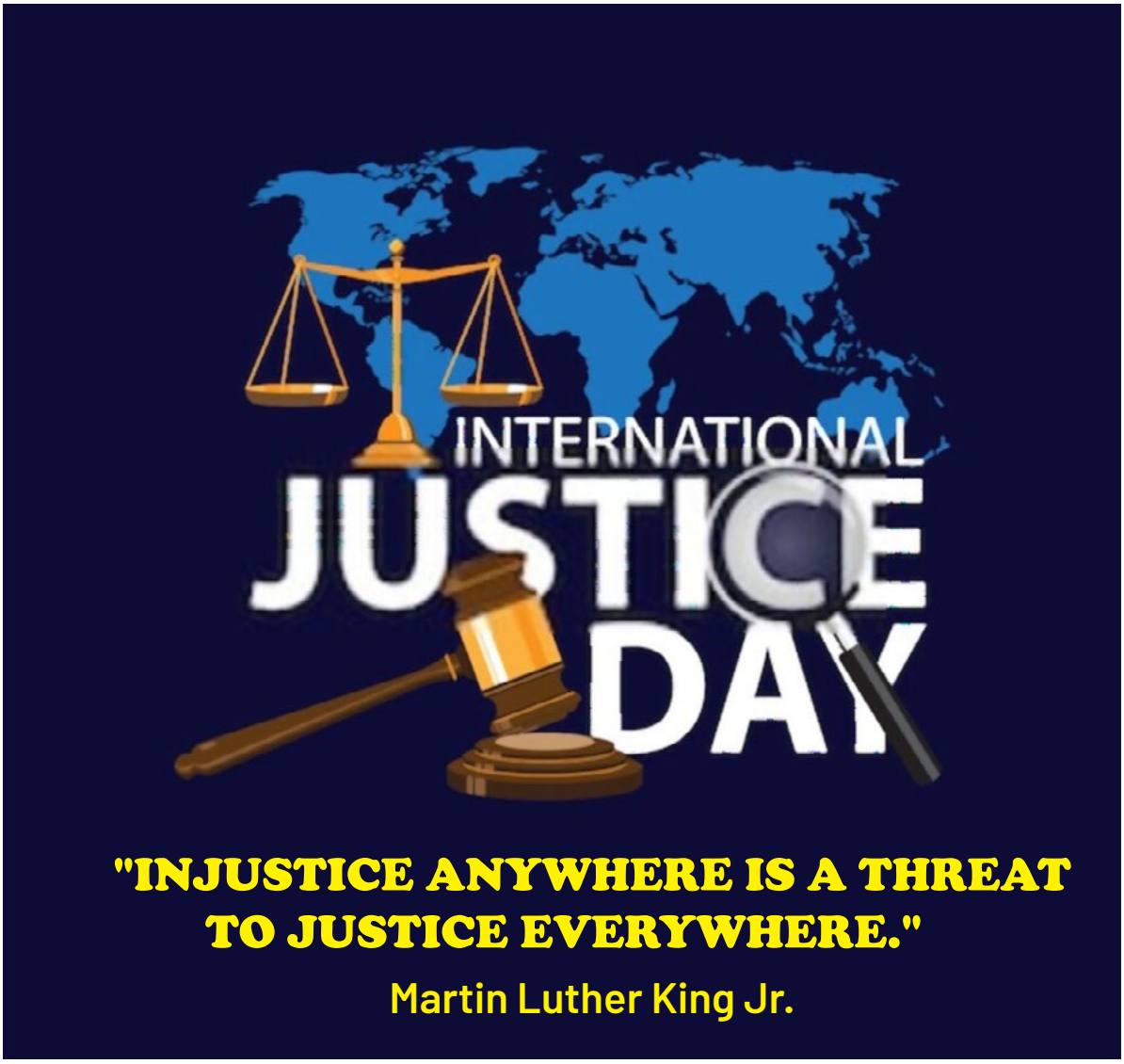
The review conference of the Rome Statute was held in Kampala, Uganda on June 1st, 2010. During the conference, assembly of the state parties decided to celebrate the International Criminal Justice Day on July 17th of every year. Since then the world celebrates this day in solidarity with victims of war crimes.

The day is observed to recognize the emerging system of international criminal system. It marks the importance of continuing the fight against impunity and bringing justice for the victims of war crimes, crimes against humanity, crime of aggression, genocide and now ecocide. It is a moment to reflect on the importance of obtaining justice for victims of serious international crimes. The day reminds the people across the world and all the States that are committed to justice around the world to ensure continued support for the international justice system.

Justice consists not in being neutral between right and wrong, but in finding out the

right and upholding it. Every human is a global citizen and forms a chain of society. When one suffers, the other gets affected directly or indirectly. As such it is pertinent to maintain a cordial relationship so as to preserve peace and security in the world.

Every human being aspires to live in peace and secure environment. And to achieve such standard of living, we must revive our conscience and raise our voices against crime and criminals. For our society to be better we need to keep our streets safe, our criminal justice system fairer, our homeland more secure and our world more peaceful and sustainable but most importantly, as a global citizen we need to look out for each other. Hence, the World Day of International Justice aims to unite the global citizen to support justice as well as promote victims' rights so as to help prevent serious crimes and those that put the peace, security and well-being of the world at risk.❐



SUMETI VIJ VS. M/S PARAMOUNT TECH FAB INDUSTRIES

Criminal Appeal No (S). 292 OF 2021
(Arising out of SLP (Crl.) No (s). 8498 of 2019)
Criminal Appeal No (S). 293 OF 2021
(Arising out of SLP(Crl.) No (s). 8564 of 2019)

Decided on: March 9th, 2021

The Hon'ble Supreme Court in a two Judge bench has granted the leave upon the circumstances that the statement of accused recorded under Section 313 of the Code of Criminal Procedure is not a substantive evidence to rebut presumption under Section 139 of the Negotiable Instrument Act, 1881.

Summarized by
Adv. Bokali Kasho

The present case is a Criminal Appeal no(s). 292 of 2021 and criminal appeal no(s). 293 of 2021 filed by the appellant, aggrieved by the judgment dated 30th April, 2019 passed by the High Court of Himachal Pradesh holding the appellant guilty of offence under Section 138 of the Negotiable Instruments Act, 1881 after reversal of the finding of acquittal returned by the learned trial Judge by its judgment dated 28th September, 2012.

Facts of the case:

The appellant accused made an order of a nonwoven fabric from the complainant/ respondent. On the basis of order placed by the appellant, nonwoven fabric was sold to the appellant on 1st October, 2010 and 16th October, 2010 amounting to Rs.5,07,062/- and Rs.5,10,000/- which was delivered through public carrier truck bearing Nos. HR38G5607 and HP710693 to the appellant accused, as such a cheque bearing No.323930 dated 15th October, 2010 and No.323935 dated 1st November, 2010 were issued by the appellant in the name of the complainant from her account of the Punjab National Bank, Karnal in order to meet the legal existing and enforceable liabilities. The cheques were

returned from Punjab National Bank, Karnal with a note of "insufficient funds" in the account of the appellant. Two legal notices dated 29th October, 2010 and 19th November, 2010 were sent by the complainant to the appellant. The notices were duly served but the appellant neither responded to the notices nor made any payment within the statutory period hence, two separate complaints were filed by the complainant/respondent under Section 138 of the Act against the appellant/ accused. Complainant/respondent recorded the preliminary evidence before the learned trial Judge and the trial judge observed that the complainant failed to establish that the materials were delivered to the appellant for which the checks were issued. In the absence of burden being discharged by complainant the onus to disprove the presumption cannot be shifted to appellant. Accordingly the trial court acquitted the appellant.

Subsequently the complainant approached the High Court which affirmed that the primary burden was discharged by the complainant that the checks were issued by the appellant for the materials supplied. Further the Court observed that no evidence was recorded to disprove the presumption in defence. Thus setting aside the findings of the acquittal recorded by the trial Judge, the High Court held the appellant guilty of offence under Section 138 of the Negotiable Instrument Act, 1881 and awarded appropriate punishment. Aggrieved by the decision, the present appeal was filed before the Supreme Court of India.

Appellant's contentions:

- The appellant contented that there was nothing to prove that the material goods were send to the appellant and so the burden lies upon the respondent to prove that the goods were send to her for which the checks were issued.
- That there is absence of the primafacie burden being discharged by the complainant and mere issuance of the cheques would not be sufficient to justify that the cheques were issued in discharge of any debt or other liability.
- That unless it was found to be perverse or unsustainable, or a case of nonconsideration of any relevant material, the High Court was not justified in reversing and setting aside the finding of acquittal recorded by the trial court merely on the ground that the view expressed by the High Court is more plausible with what being expressed by the trial court in its judgment dated 28th September, 2012.
- That the finding recorded by the High Court in the impugned judgment is contrary to the settled principles of law. In consequence thereof, the finding of guilt which has been recorded by the High Court in the impugned judgment is unsustainable in law, and has to be set aside.

Complainant/respondent's contentions:

- The complainant/respondent contented that there was sufficient material available on record to justify that cheques were issued with reference to the invoices after delivery of goods.
- That the statutory notice was issued to the appellant, who failed to respond. Complaint was filed by placing all documentary evidence in support of the complaint.
- That, three witnesses were examined to establish and discharge burden of proof. Thus it was for the appellant to come forward and prove the contrary as envisaged under section 139 of the Negotiable Instruments Act, 1881.

Observations of the Supreme Court:

The Hon'ble Supreme Court after a due deliberation observed that the appellant has only recorded her statement under Section

313 of the Code, and has not adduced any evidence to rebut the presumption that the cheques were issued for consideration. Once the facts came on record remained unrebutted and supported with the evidence on record with no substantive evidence of defence of the appellant to explain the incriminating circumstances appearing in the complaint against her, no error has been committed by the High Court in the impugned judgment, and the appellant has been rightly convicted for the offence punishable under Section 138 of the Act and needs no interference of this Court.

It stated that the object of section 138 is to enhance the acceptability of checks in the settlement of liabilities. And the drawer of the cheque will be held liable to prosecution on dishonour of cheque with safeguards provided to prevent harassment of honest drawers. The burden of proof was on the accused in view of presumption under Section 139 of the Act and the standard of proof was of "preponderance of probabilities". The Negotiable Instruments Act including a cheque carrying a presumption of consideration in terms of Sections 118(a) and 139 of the Act which is related to the purpose referred to and reads as under:-

"118 Presumptions as to negotiable instruments.— *Until the contrary is proved, the following presumptions shall be made:—*

(a) ***of consideration*** *—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;*

139. Presumption in favour of holder.— *It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."*

It further observed that there is a mandate of presumption of consideration in terms of the provisions of the Act and the onus shifts to the accused on proof of issuance of cheque to rebut the presumption that the cheque was issued not for discharge of any debt or liability in terms of Section 138 of the Act.

The scope of Section 139 of the Act is that when an accused has to rebut the presumption, the standard of proof for doing so is that of "preponderance or probabilities"

which has been examined by a three Judge Bench of Hon'ble Supreme Court in *Rangappa vs. Sri Mohan (2010) 11 SCC 441*.

Further it is well settled that the proceedings under Section 138 of the Act are quasi-criminal in nature, and the principles which apply to acquittal in other criminal cases are not applicable in the cases instituted under the Act. Likewise, under Section 139 of the Act, a presumption is raised that the holder of a cheque received the cheque for the discharge, in whole or in part, of any debt or other liability. To rebut this presumption, facts must be adduced by the accused which on a preponderance of probability (not beyond reasonable doubt as in the case of criminal offences), must then be proved.

Hence, when the complainant exhibited all the documents in support of his complaints and recorded the statement of three witnesses in support thereof, the appellant has recorded her statement under Section 313 of the Code, but failed to record evidence to disprove or rebut the presumption in support of her defence available under Section 139 of the Act. The statement of the accused recorded under Section 313 of the Code is not a substantive evidence of defence, but only an opportunity to the accused to explain the incriminating circumstances appearing in the prosecution case of the accused. Therefore, there is no evidence to rebut the presumption that the cheques were issued for consideration.

Decisions of the Supreme Court:

The Hon'ble Supreme Court held that:

"24. In the given circumstances, the High Court, in our view, has not committed any error in recording the finding of guilt of the appellant and convicting her for an offence being committed under Section 138 of the Act under its impugned judgment, which in our considered view, needs no further interference. Consequently, the appeals are without any substance, and are accordingly dismissed."

"25. The bail bonds stand cancelled and the appellant shall either pay the fine, or serve the sentence in compliance with the judgment dated 30th April, 2019 passed by the High Court of Himachal Pradesh."❐

"Justice is doing for others what we would want done for ourselves."

- Gary Haugen

Will Habeas Corpus Petition Lie Against Remand Order? Supreme Court Answers

The Supreme Court observed that a Habeas Corpus petition challenging a remand order can be entertained only if the remand is absolutely illegal or the remand is afflicted with the vice of lack of jurisdiction, of if it is passed in an absolutely mechanical manner.

Barring such situations, a Habeas Corpus petition will not lie, the bench comprising Justices UU Lalit and KM Joseph observed. The court said that there is no absolute taboo against an order of remand being challenged in a habeas corpus petition.

These observations were made while considering the appeal filed by Gautam Navlakha seeking default bail in the Bhima Koregaon case. The appeal was against the order passed by the Delhi High Court in the Habeas Corpus petition filed before it.

The court noted that in Manubhai Ratilal Patel vs. State of Gujarat, it was held that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. It also referred to another judgment in Serious Fraud Investigation Office and Ors. vs. Rahul Modi, in which it was observed that the act of directing remand of an accused is thus held to be a judicial function and the challenge to the order of remand is not to be entertained in a habeas corpus petition."

Taking note of these precedents, the bench held:

63. Thus, we would hold as follows: If the remand is absolutely illegal or the remand is afflicted with the vice of lack of jurisdiction, a Habeas Corpus petition would indeed lie. Equally, if an order of remand is passed in an absolutely mechanical manner, the person affected can seek the remedy of Habeas Corpus. Barring such situations, a Habeas Corpus petition will not lie.

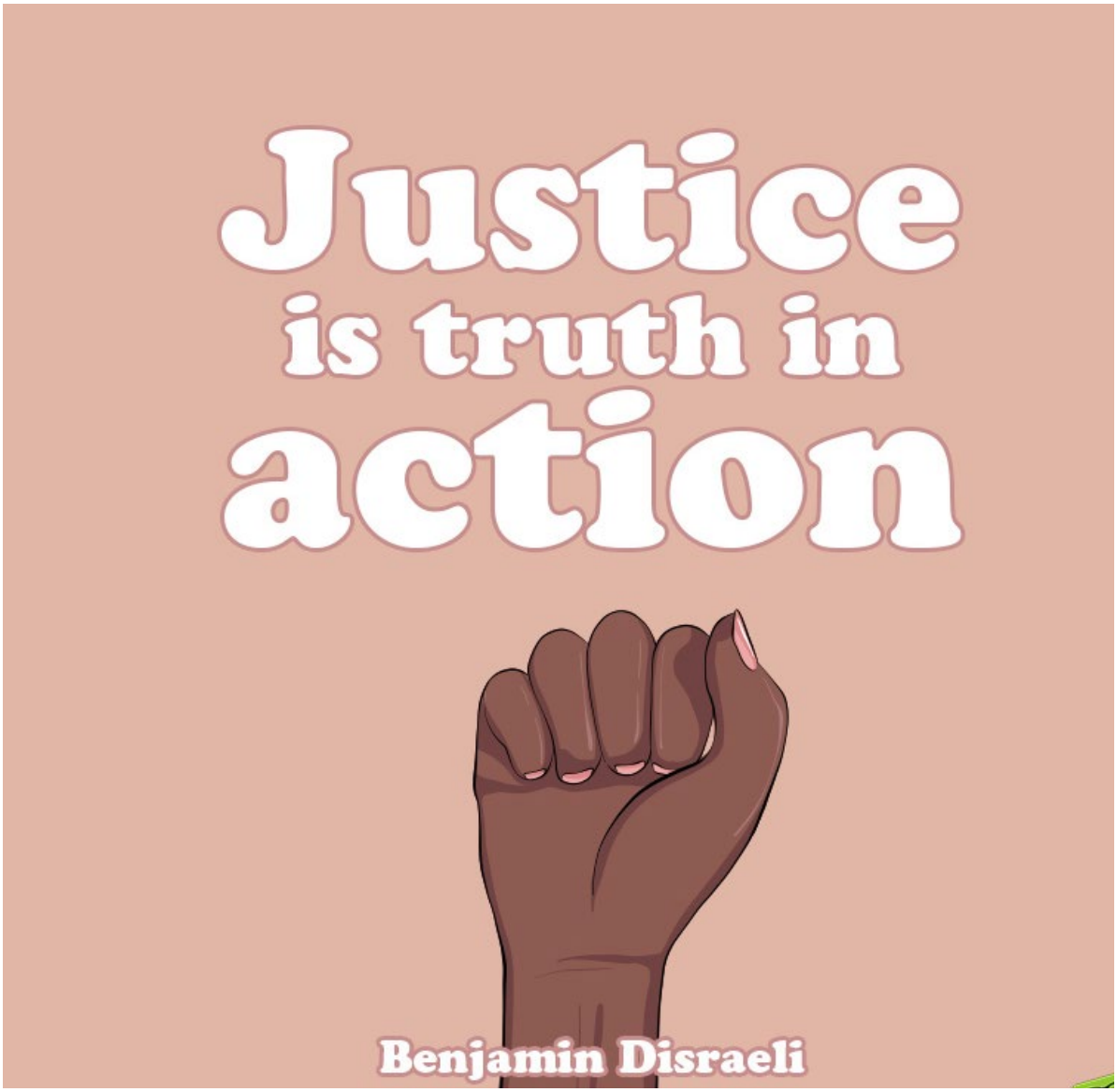
The court also proceeded to examine the question whether, in cases where a High Court is entertaining a Habeas Corpus petition against remand order, what would be the position if it were to modify the order of remand passed by the magistrate.

Take a case where police custody is ordered by the Magistrate. By an interim order of the

High court let us take it the High Court provides for judicial custody. It is done after the accused undergoes police custody for 5 days. Finally, the writ petition is however dismissed.... In such a case where there is no stay of investigation and in fact even the police custody was obtained and thereafter the High Court after looking into the records also find that the petitioner should only be continued in the modified form of remand, the custody, which is undergone under an order of the court being also 'during the investigation' which the investigation is also not stayed, ought to be counted.

105. Now though the Cr.P.C. will not apply to a writ petition, what is required to include custody under Section 167 is that the detention brought about by the court ordering it during the investigation into an offence. It is a matter which will turn on the facts.❐

Source: LiveLaw (13th May 2021)



'Security Deposit limited to 2 months for Residence; Enhanced Rent after Tenancy period': Key Features of Draft Model Tenancy Act

The Union Cabinet, on Wednesday, approved the Model Tenancy Act.

Now, this Model Act will be circulated to all States / Union Territories for adaptation by way of enacting fresh legislation or amending existing rental laws suitably. According to the Government, Model Tenancy Act aims at creating a vibrant, sustainable and inclusive rental housing market in the country.

"It will enable creation of adequate rental housing stock for all the income groups thereby addressing the issue of homelessness. Model Tenancy Act will enable institutionalisation of rental housing by gradually shifting it towards the formal market. The Model Tenancy Act will facilitate unlocking of vacant houses for rental housing purposes. It is expected to give a fillip to private participation in rental housing as a business model for addressing the huge housing shortage." The press release issued by the Government reads.

The stated objectives of the Model Act are:

1. To establish Rent Authority to regulate renting of premises.
2. To protect the interests of landlords and tenants.
3. To provide speedy adjudication mechanism for resolution of disputes.

The key takeaways are:

1. Enhanced rent to be paid by tenant if he refuses to vacate after tenancy period expires.
2. Security deposit limited to two months' rent in case of residential tenancy.
3. Information about tenancy agreement to be given to Rent Authority, which will be conclusive proof of the facts.
4. Rent Courts/Tribunal to dispose cases/ appeals within a period of sixty days.

Landlord and Tenant Definitions

"Landlord" means a person who receives or is entitled to receive, the rent of any premises, on his own account, if the premises were let to a tenant. It includes (i) his successor-in-interest; and (ii) a trustee or guardian or receiver receiving rent for any premises or

is entitled to so receive, on account of or on behalf of or for the benefit of, any other person such as minor or person of unsound mind who cannot enter into a contract.

"Tenant", means a person by whom or on whose account or on behalf of whom, the rent of any premises is payable to the landlord under a tenancy agreement. This includes any person occupying the premises as a sub-tenant and also, any person continuing in possession after the termination of his tenancy.

No person shall let or take on rent any premises except by an agreement in writing

No person shall, after the commencement of this Act, let or take on rent any premises except by an agreement in writing, which shall be informed to the Rent Authority by the landlord and tenant jointly, in the form specified in the First Schedule within a period of two months from the date of tenancy agreement.

This shall be informed to the Rent Authority by the landlord and tenant jointly within a period of two months from the date of tenancy agreement (Form given in schedule 1 of the Act). This information provided shall be conclusive proof of the facts relating to tenancy and matters connected therewith. In the absence of any statement of information, the landlord and the tenant shall not be entitled to any relief under the provisions of this Act.

Enhanced Rent to be paid by Tenant if he fails to vacate the premises at the end of tenancy

Every tenancy entered into after the commencement of this Act shall be valid for a period as agreed upon between the landlord and the tenant and as specified in the tenancy agreement.

The tenant may request the landlord for renewal or extension of the tenancy, within the period agreed to in the tenancy agreement, and if agreeable to the landlord, may enter into a new tenancy agreement with the landlord on mutually agreed terms and conditions.

Where a tenancy for a fixed term ends and has not been renewed or the tenant fails to vacate the premises at the end of such tenancy, then such tenant shall be liable to pay an enhanced rent to the landlord as provided in section 23. Section 23 provides that, such tenant shall be liable to pay the landlord (a) twice the monthly rent for the first two months; and (b) four times the monthly rent thereafter till the tenant continues to occupy the said premises.

Limits on Security Deposits

The security deposit to be paid by the tenant in advance shall (a) not exceed two months rent, in case of residential premises; and (b) not exceed six months rent, in case of non-residential premises.

Grounds for eviction

A landlord can file an application for eviction of tenant before Rent Court invoking the following grounds:

(a) **Non Payment of Rent:** The tenant does not agree to pay the rent payable under section 8;

(b) **Non Payment of Rent Arrears**: The tenant has not paid the arrears of rent and

other charges payable in full as specified in sub-section (1) of section 13 for two consecutive months, including interest for delayed payment as may be specified in the tenancy agreement within a period of one month from the date of service of notice of demand for payment of such arrears of rent and other charges payable to the landlord in the manner provided in sub-section (4) of section 106 of the Transfer of Property Act, 1882;

(c) **Parted with possession**: The tenant has, after the commencement of this Act, parted with the possession of whole or any part of the premises without obtaining the written consent of the landlord;

(d) **Misuse of Premises**: The tenant has continued to misuse the premises even after receipt of notice from the landlord to desist from such misuse.

(e) **Repair, Reconstruction etc**: Where it is necessary for the landlord to carry out any repair or construction or rebuilding or addition or alteration or demolition in respect of the premises or any part thereof, which is not possible to be carried out without the premises being vacated.

(f) **Consequence of change of land use by the competent authority**: Also, the premises or any part thereof is required by the landlord for carrying out any repairs, construction, rebuilding, additions, alterations or demolition, for change of its use as a consequence of change of land use by the competent authority.

(g) **Tenant Not Vacating After Giving Written Notice To Vacate**: The tenant has given written notice to vacate the premises let out on rent and in consequence of that notice the landlord has contracted to sell the said premises or has taken any other step, as a result of which his interests would seriously suffer if he is not put in possession of that premises.

(h) **Structural alterations**: The tenant has carried out any structural change or erected

any permanent structure in the premises let out on rent without the written consent of the landlord.

Functions of Rent Authorities

The Rent Authority has to, within three months from the date of its appointment, put in place a digital platform in the local vernacular language or the language of the State/Union territory for enabling submissions of document by landlord and tenant

The Rent Authority, thereafter has to (a) provide a unique identification number to the parties; and (b) upload details of the tenancy agreement on its website in local vernacular language or the language of the State/Union territory, within seven working days.

In case of any dispute between landlord and tenant regarding revision of rent, the Rent Authority may, on an application made by the landlord or tenant, determine the revised rent and other charges payable by the tenant and also fix the date from which such revised rent becomes payable.

Where the tenant is unable to decide to whom the rent is payable during the period of tenancy agreement, the tenant may, in such case, deposit the rent with the Rent Authority in such manner as may be prescribed.

No landlord or property manager shall, either by himself or through any other person, withhold any essential supply or service in the premises occupied by the tenant. In case of contravention of these provisions, the the Rent Authority after examining the matter, may pass an interim order directing the restoration of supply of essential services immediately on service of such order upon the landlord or property manager.

Any person aggrieved by the order of the Rent Authority can prefer an appeal to the Rent Court having territorial jurisdiction.

Rent Courts and Tribunals

Other provisions deal with constitution of Rent Authorities, Rent Courts and Tribunals and procedure that should be followed by them. The Rent Court or, as the case may be, the Rent Tribunal, according to the Model Law provisions, shall endeavor to dispose the case as expeditiously as possible, not exceeding a period of sixty days from the date of receipt of the application or appeal.

Exemptions

The Act does not apply to the following:

(a) premises owned or promoted by the Central Government or State Government or Union territory Administration or local authority or a Government undertaking or enterprise or a statutory body or Cantonment Board;

(b) premises owned by a company, University or organisation given on rent to its employees as part of service contract;

(c) premises owned by religious or charitable institutions as may be specified, by notification by the State Government/Union territory Administration;

(d) premises owned by auqaf registered under the Waqf Act, 1995 or by any trust registered under the public trust law of the State/ Union territory for the time being in force;

(e) other building or category of buildings specifically exempted in public interest by notification by the State Government/Union territory Administration.

However, if the owner and tenant of the premises referred above agree that the tenancy agreement entered into between such landlord and tenant be regulated under the provisions of this Act, such landlord may inform the Rent Authority of the agreement to do so.❐

LiveLaw: June 4th, 2021

ADOPTION OF CHILDREN IN INDIA

PART-I: IN-COUNTRY ADOPTIONS

Q. What is the meaning of in-country adoptions?

A. It means adoption within the country.

Q. In our country which law governs in-country adoptions?

A. There are mainly three laws in India:

a) Hindu Adoption and Maintenance Act, 1956

b) Guardians and Wards Act, 1890

c) Juvenile Justice (Care and Protection of Children) Act, 2000

Hindu Adoption and Maintenance Act, 1956

Q. Who can adopt under this Act?

A. a) A Hindu married male.

b) A Hindu unmarried male

c) A Hindu unmarried female

d) A Hindu Divorcee woman

d) A Hindu Widow.

Q. What is the capacity of a male Hindu to take child in adoption?

A. Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption.

Q. What is the provision of adoption for a married Hindu male?

A. If he has a wife living he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to he a Hindu or has been declared by the competent court to be of unsound mind.

Q. What is the capacity of a Hindu female to take in adoption?

A. Any Hindu female who is of sound mind and is not a minor and who is not married has the capacity to take a son or daughter in adoption.

Q. What is the provision of adoption for married Hindu female?

A. If a female is married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Q. Who can give the child in adoption?

A. Following persons are capable of giving child in adoption:-
   a) Natural parents
   b) If parents are not alive then guardian

Q. Is mother capable of giving the child in adoption?

A. Yes. If the father is dead or has completely and finally renounced the world or has ceased to be a Hindu.

Q. Can adoptive parents give the child in adoption?

A. No.

Q. Who can be adopted?

A. No person is capable of being taken in adoption unless the following conditions are fulfilled:-
   a) He or she is Hindu,
   b) He or she has not already been adopted,
   c) He or she has not been married,
   d) He or she has not completed the age of fifteen years unless there is custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

Q. What are the other conditions for valid adoptions?

A. In every adoption, the following conditions may be complied with:-
   a) If the adoption is of a Son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, grandson or great grandson living at the time of adoption.
   b) If the adoption of daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or grand daughter living at the time of adoption.
   c) If the male is adopting a female child then the difference of age between him and that child must be of at least 21 years.
   d) If the female is adopting a male child then the difference of age between her and the child must be of at least 21 years.
   e) The same child may not be adopted simultaneously by two or more persons.

Q. What is the effect of adoption?

A. The adoption has the following effects:-
   a) The adopted child boy or girl, for all purposes is deemed to be the child of its adoptive parent or parents.
   b) All the ties of the child in the natural family will stand terminated from the date of adoption except the ties of blood for the purpose of marriage.
   c) All the ties of the child will come into existence in the adoptive family from the date of adoption.

Q. Can the adoption once made is liable to be cancelled by any person?

A. In this regard the law lays down the following propositions:-
   a) No adoptive parent can cancel the adoption once made validly howsoever unsuitable, or unruly the child may turn out after the adoption.
   b) No natural parents can cancel the adoption even if when a tragedy overtakes the natural family so much so that it is deprived of any son the natural parent cannot claim back the child.
   c) No other person has the power or right to cancel a valid adoption.

Q. Can an adopted child renounce his status in the adopted family?

A. No.

Guardians and Wards Act, 1890

Q. What is the scope and applicability of this enactment?

A. This act came into existence with a view to granting protection to the person and property of the minors... This act is uniformly applicable to all minors of any caste, creed or religion. All matters relating to guardianship such as rights, obligations

and responsibilities of the certificated guardian, the removal and replacement of the guardian and remedies of the ward is regulated by the provisions of this Act.

This Act only deals with the guardians of the property or person of the minor. All other guardians such as guardian of marriage, or guardians in litigation fall outside the purview of the Act.

Q. Define the term Guardian and Ward used in the enactment?

A. "Guardian" means a person having the care of the person of a minor or of his property, or both his person and property. "Ward" means a minor for whose person or property, or both, there is a guardian.

Q. How the guardians are appointed and declared by the court?

A. Whenever the court, on the application of a person, comes to the conclusion that it would be for the welfare of the child to appoint a guardian of the person or property or both of the minor, it can appoint a guardian.

Q. How do the courts decide about the welfare of the child while appointing a guardian?

A. In considering what will be the welfare of the child the court may take into account the age, sex, and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes if any, of the deceased parents and any existing or previous relations of the proposed guardian with the minor or his property.

Q. How far are the wishes of the child important while deciding the guardianship?

A. Section 17(5) of the guardians and wards Act, 1890 says the court shall not appoint or declare any person to be a guardian against his will.

Q. Who can apply for the guardianship of minor child?

A. Any person who is interested in the welfare of the minor may apply provided he has cause of action. An application can be made at any time. Section 8 of the Act contemplates 3 sets of persons who may apply for the appointment of guardian to the person and property of a minor. They are:-

a) any person who claims to be the guardian of the minor, or
b) any person who desires to become guardian of the minor,
c) any person who is relative or friend of the minor who is not himself desirous of becoming a guardian, or
d) Collector.

Q. Can society or organization apply for the guardianship of the minor child?

A. A charitable society or association cannot apply for the appointment of a guardian as the word person used in section 4 (2) of the Act does not include association or society.

Q. What is the nature of relationship between guardian and ward?

A. The relationship between the ward and guardian is fiduciary relationship. The law lays down that the guardian would not make any profit out of his office except as provided by the instrument or order under which he has been appointed a guardian. Further no property would be sold or purchased between them. This relationship extends to all relationships between the two.

Q. Can a minor act as the guardian under this Act?

A. As a general rule of law a minor is not competent to act as guardian of another minor. But two exceptions to this rule are recognized under this Act.

a) a minor can act as guardian of a minor children and minor wife,
b) when the karta of a Hindu joint family is a minor he can act as guardian not merely of his minor children and wife, but also

the minor children and minor wife of other members of the joint family.

Q. Is a guardian entitled for any remuneration in lieu of discharging his duties?

A. Ordinarily a guardian is not entitled to any remuneration. Whether the guardian should get remuneration is purely on the discretion of the court. An order of the court not allowing allowance is not appealable. Revision also does not lie against the order. The court may allow some remuneration to guardian for his care and pain in the execution of his duties.

Q. When the collector is appointed as a guardian he is subjected to which control?

A. When collector is appointed as guardian, he is not subject to the control of the court appointing him, but to the control of the government or such authority as the state government may notify in this behalf.

Q. What are the duties of the guardian appointed under this Act?

A. The court will take care of the minor's custody, religion, education and other maintenance.

Q. What is the procedure if the guardian dies, discharged or removed under the law?

A If such a situation arises, the court of its own motion or on application under the provision of law, if the ward is still a minor appoint or declare another guardian of his person or property or both as the case may be.

Q. How is the authority of the guardian gets terminated under the law?

A. Under the law, the guardianship terminates in certain contingencies which the powers of the guardian ceases. The power of the guardian ceases under the following circumstances:-

a) By death, removal or discharge of the guardian.
b) By the assumption of guardianship by the court of wards.
c) By the ward becoming an adult.
d) By the marriage of the female ward to a person who is not unfit in terms of section 19.
e) By the cessation of unfitness of the father on account of which a certificated guardian was appointed.

The powers of the guardian of property cease in the following three cases:

1) By the death, removal or discharge of the guardian.
2) By the assumption of superintendentship of property by the court of wards.
3) By the ward becoming major.

Q. What is the procedure as regard to discharging the guardian from his duty?

A. If the guardian desires to resign from his office he may apply to the court to be discharged. If the court finds sufficient reason it shall discharge him. In the case of collector guardian also the application has to be made to the guardian court which appointed him though in his case he can not be discharged without the approval of the state government.

Note: *Appeal lies against the order refusing to discharge a guardian. But no appeal lies against the order discharging the guardian.*

Q. How the guardian can be removed?

A. The court has power to remove the guardian at its own instance or on an application of any interested person if it finds that the guardian is an improper person to be continued and his removal is in the interest of the child.

Q. On what grounds the guardian can be removed?

A. Section 39 of the Act lists the following grounds on the existence of any one of them the guardian can be removed.

1) Abuse of the trust
2) Failure to perform duties of his trust.

3) Incapacity to perform duties of his trust.
4) Ill-treatment or neglect of the ward
5) Disregard of statutory provisions or orders of the court
6) Conviction for an offence implying defect of character
7) Adverse interest
8) Residing outside the jurisdiction of the court.
9) Cessation of guardianship
10) Insolvency.

Q. What are the obligations on guardian of property appointed or declared by the court?

A. Under section 34 of the Guardian and Wards Act court may cast upon the guardian any or all of following obligations:-

a) The guardian may be required to give a bond with or without sureties in a prescribed manner to the guardian judge with a view to ensuring that he will carry out his obligations of rendering accounts of the property to the ward.
b) The guardian may be required to give inventory of the properties of the minor, i.e. to deliver to the court as up to date statement of properties immovable and moveable , and moneys belonging to the ward as well as a statement of debts due to or from the ward.
c) The guardian may be required to exhibit the account in the court in such form as the court may prescribe and from time to time as the court may direct.
d) The guardian may be required to pay to the court the balance due from him on those accounts or so much thereof as the court may direct.
e) The guardian may be required to apply such income of the ward's property as directed by the court for the maintenance, education and advancement of the ward and his dependents as well as for the celebrations of certain ceremonies to which they are parties.

Limitations of Guardian of Property

1) Where a person is appointed or declared by the court to be guardian of property of a ward he shall not without the previous permission of the court,-
   a) mortgage, charge or transfer by sale, gift, exchange or otherwise, any part of the immovable property of his ward, or
   b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.
   2) Where a person is appointed by will or other instrument then section 28 of the GAWA lays down that his power of alienation are subject to restriction laid down in the will. The court also has the power to remove any of the restrictions imposed in the will by an order in writing to that effect provided the testamentary guardian has been declared to be guardian by court under the provision of the Act.

Juvenile Justice (Care & Protection of Children) Act, 2000

Under the juvenile justice Act adoption is considered an important method of rehabilitation and social integration.

Q. Which part of this act deal with the topic of adoption?

A. Chapter IV (Section 41).

Q. For what purpose can adoption be resorted to?

A. Adoption can be resorted to for rehabilitation of children who are orphaned, abandoned, neglected and abused through institutional and non institutional methods.

Q. Is the Juvenile Justice Board constituted under Juvenile Justice Act 2000 is

empowered to give children in adoption and carry out investigations as are required for giving children in adoption?

A. The board is empowered to give children in adoption in accordance with the guidelines issued by the state government from time to time in this regard.

Q. Which institutions shall be recognized as adoption agencies?

A. The children's home or the state government run institutions for orphans shall be recognized as adoption agencies both for scrutiny and placement of such children for adoption.

Q. Which child can not be offered for adoption?

A. No child shall be offered for adoption –

a) until two members of the committee declare the child legally free for placement in the case of abandoned children,

b) till the two months period for reconsideration by the parent is over in the case of surrendered children, and

c) without his consent in the case of a child who can understand and express his consent.

Q. To whom can child be given for adoption by the board?

A. The board may allow a child to be given in adoption

a) to a single parent and

b) to parents to adopt a child of same sex irrespective of the number of living biological sons and daughters.

Q. What can be done by a competent authority if it finds that the child or juvenile brought before it belongs to a place outside its jurisdiction and that someone is fit and ready to take care of the child or juvenile at his ordinary place or residence?

A. The authority may send the child back to his relative or friend willing to take care of him though the place of residence is outside the jurisdiction of the competent authority.

Q. What is the power of the competent authority exercising jurisdiction over the place to which the child or juvenile was sent in respect of any matter arising subsequently?

A. The authority there shall have the same powers in relation to the child or juvenile as if the original order had been passed by itself.

Q. What are the documents required for in-country adoption?

A. Following are the documents:-

1) Income certificate.

2) Medical attestation for the both husband and wife along with a doctor's report explaining the reason for infertility.

3) Reference from two unrelated reliable persons.

4) Grant of power of attorney to the institution that you have approached to enable it to appear in court on your behalf.

5) Letter of consent from the wife promising to bring up the child in her home.

6) Three passport size photographs of both the parents.❐

to be continued...

Source: *Indian Social Institute, Legal Education Series No. 73.*

"There are no unwanted children, just unfound families."

TEST YOUR KNOWLEDGE

1. Who is the first Indian to become the Chairperson of UN Human Rights Council's Advisory Committee?
   A. Shyam Saran
   B. Ajai Malhotra
   C. Shivshankar Menon
   D. Dipak Misra
2. Who was the first education minister of Free India?
   A. Maulana Abul Kalam Azad
   B. Sarvapelli Radhakrishnan
   C. Sardar Vallabhbhai Patel
   D. Rajendra Prasad
3. India is a permanent member of ILO governing body since
   A. 1921 B. 1922
   C. 1923 D. 1925
4. Who is the Legal Advisor to the Government of a State in India?
   A. The Solicitor General
   B. The State Chief Legal Officer
   C. The High Court
   D. The Advocate General
5. How many countries share the border with India?
   A. 9 B. 6
   C.14 D. 2
6. Which of the following is not a legal document?
   A. Lease B. Specification
   C. Will D. Deed
7. The Judge of the International Court of Justice are elected by
   A. The General Assembly
   B. The Security Council
   C. Both the General Assembly and the Security Council independently of one another
   D. The Secretary General
8. When did India become a republic?
   A. 1935 B. 1947
   C. 1950 D. 1961
9. Which state or union territory has French as an official language?
   A. Goa B. Lakshadweep
   C. Pondicherry D. Diu and Daman
10. How many types of Prerogative writs are there in the Indian Constitution?
    A. Three B. Four
    C. Five D. Six
11. First Indian Woman Ambassador at United Nations was
    A. Arati Saha
    B. Vijayalakshmi Pandit
    C. Pavithra Ramanarayanan
    D. Amrutha Krishnan
12. To pass a Money Bill in the Parliament which of the following is not necessary?
    A. Approval of the Rajya Sabha
    B. Approval of the Finance Minister
    C. Approval of the Lok Sabha
    D. None of the above
13. The Supreme Commander of Indian Armed Force is
    A. Prime Minister of India
    B. Union Home Minister
    C. President of India
    D. Governors of States

Answers on page 48

Children who lost parents to Covid-19 to get monthly stipend under PM-CARES

Hindustan Times: May 29th, 2021

PM Modi chaired an important meeting to discuss and deliberate on steps which can be taken to support children who have lost their parents due to Covid-19. He announced that all children who have lost both parents or guardian to coronavirus disease (Covid-19) will be supported under 'PM-CARES for Children' scheme. Such children will get a monthly stipend once they turn 18 and a fund of Rs.10 lakh when they turn 23 from PM-CARES, said the Prime Minister's Office (PMO), according to a release from the Press Information Bureau (PIB).

The child will be given admission to the nearest Kendriya Vidyalaya or in a private school as a day scholar. If the child is admitted in a private school, the fees as per the RTE norms will be given from the PM CARES. The scheme will also pay for expenditure on uniforms, textbooks and notebooks.

The child between the ages of 11-18 years will be given admission in any central government residential school such as Sainik School, Navodaya Vidyalaya etc. In case the child is to be continued under the care of guardian/ grandparents/ extended family, then he or she will be given admission in the nearest Kendriya Vidyalaya or in a private school as a day scholar. If the child is admitted in a private school, the fees as per the RTE norms will be given from the PM CARES. The scheme will also pay for expenditure on uniforms, textbooks and notebooks.

The child will be assisted in obtaining an education loan for professional courses/higher education in India as per the existing education loan norms. The interest on this loan will be paid by the PM CARES.

As an alternative, scholarship equivalent to the tuition fees/course fees for undergraduate/vocational courses as per government norms will be provided to such children under Central or state government schemes. For children who are not eligible under the existing scholarship schemes, PM CARES will provide an equivalent scholarship.

With regard to health insurance, all children will be enrolled as a beneficiary under Ayushman Bharat Scheme (PM-JAY) with a health insurance cover of Rs.5 lakh. The premium amount for these children till the age of 18 years will be paid by PM CARES.

While announcing these measures the Prime Minister emphasized children represent the future of the country and the country will do everything possible to support and protect them so that they grow up as strong citizens and have a bright future.❐

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Homoeopathic physicians can prescribe medicines for prevention of COVID-19, treatment of symptoms: Kerala High Court

Bar and Bench: June 2nd, 2021

The Kerala High Court qualified homoeopathic physicians to prescribe

medicines for prevention and management of symptoms of COVID-19. Taking into account various guidelines issued by the Government of India, and previous Division Bench judgments of the High Court and the apex court, the Single Bench of Justice N Nagresh ruled that:

(1) Qualified Homoeopathic Physicians can prescribe and dispense preventive and prophylactic homoeopathic medicines, for preventing Covid-19.

(2) Homoeopathic Physicians can resort to homoeopathy for symptom management of Covid-19 like illnesses.

(3) They may provide Add on interventions to the conventional cases of Covid-19 and prescribe drugs complying with Standard Management Guidelines in the hospital setting only with the approval of authorities and willingness of the patient/guardian.

(4) Advertisement by Homoeopathic Physicians is prohibited in view of Regulation 6 of the Homoeopathic Practitioners (Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982 read with Sections 33 and 24 of the Homoeopathic Central Council Act, 1973.❐

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20% Students Without Digital Access: Karnataka HC Says State Has Obligation Under Article 21A To Ensure Children Attend Online Classes

LiveLaw: June 8th, 2021

The State Government informed the Karnataka High Court that an estimated 20 percent of students studying in Government and government aided schools in the state have no access to any gadgets or television or any virtual mode for taking instructions from teachers.

A division bench expressed concern over this submission and said, *"This percentage of students who are not attending classes virtually is of great concern. In fact if these students happen to be girl students and not attending classes virtually, in absence of schools remaining shut, there is possibility of such girl students being married off particularly in rural areas. Their safety is also concerned in as much as the threat of trafficking of children including minor boys is significantly high."*

It added, *"In absence of said percentage of children having any kind of link to teaching being imparted virtually during this ongoing pandemic on account of non-availability of technology, there is threat of children being engaged in child labour or begging or rather such activity which is totally against interest of such children."*

The court then expressed that children are vulnerable on account of not being able to access the classroom virtually due to non-availability of technology. It said *"How such children would spend time while all others who have access to technology will be attending virtual classes is a matter of concern of this court."*

Thus the court reminded the state government that, *"If object of Article 21A is to be emphasized education is to be imparted to children upto age of 14 years as it is their Fundamental Right and the obligation is on the state to provide accessing of education by means of technology in absence of schools being opened due to pandemic. If such steps*

are not taken for these children by state, they would be a failure on part of the state in ensuring Fundamental Rights of such children under article 21-A of the Constitution and also the right of the child to be educated."❐

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Heart Ailment Not A 'Disability' Covered Under Rights of Persons with Disabilities Act: Supreme Court

[Case: Nawal Kishore Sharma vs. Union of India; Citation: LL 2021 SC 74]

LiveLaw.in: 11th March, 2021

A bench comprising of Justices Sanjay Kishan Kaul, Dinesh Maheshwari and Hrishikesh Roy held that a heart ailment (Dilated Cardiomyopathy condition) is not covered within the definition of disability in the Rights of Persons with Disabilities Act.

The observation was made while dismissing an appeal against Patna High Court judgment which upheld the order of a Shipping Corporation of India that rejected a seaman's Claim for disability compensation. In his appeal challenging this judgment, one of the contentions raised before the Apex Court was that his heart ailment should be understood as a disability under the Disability Act and consequential benefits be accorded to him.❐

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Live In Relation- "Not For The Court To Judge Couple's Decision To Reside Together Without Sanctity Of Marriage": Punjab & Haryana High Court

LiveLaw: June 7th, 2021

In a significant observation, the Punjab & Haryana High Court has observed that in a case wherein a couple has taken a decision to reside together without the sanctity of marriage then, it is not for the courts to judge them on their decision

The Bench was hearing the plea of the petitioners (Girl aged 17 years and Boy aged 20 years) seeking protection of their life and liberty at the hands of the private respondents, who are none other than the immediate family members of the Girl.

The parents of the Girl wanted her to marry a person of their choice as they had come to know about her love affair with the Boy (petitioner No. 2). Thus, Girl left her paternal home and started living with the Boy and they have decided to live together till such time as they could solemnize a marriage, i.e. on attaining the marriageable age. It was stated before the Court that they have already approached the Senior Superintendent of Police, Bathinda seeking protection at the hands of the private respondents, but there had been no response.

The couple seeking protection is not married and is in a live-in relationship and the Coordinate Benches have recently dismissed similar matters, where protection was sought by persons who are in a live-in relationship. The Court noted that the petitioners have approached the Court under Article 226 of the Constitution of India seeking protection of their life and liberty with a further prayer that they be restrained from interfering in the peaceful live-in relationship of the petitioners.

The Court highlighted that they have not approached the court either seeking permission to marry or for approval of their relationship. It further remarked, *"The concept of a live in relationship may not be acceptable to all, but it cannot be said that such a relationship is an illegal one or that living together without the sanctity of marriage constitutes an offence."*

Noting that the petitioners have not committed any offence, the Court said that it finds no reason as to why their prayer for grant of protection cannot be acceded to. Therefore, the Court said, *"With due respect to the judgments rendered by the Coordinate Benches, who have denied protection to couples who are in live in relationship, this court is unable to adopt the same view."*❐

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Sexual offence against woman- Any form of compromise/marriage with accused shouldn't form part of bail condition: Allahabad High Court

LiveLaw: 30th May, 2021

A Single Bench of Justice Saurabh Shyam Shamshery held that while granting bail in sexual offences against a woman, bail conditions which is/are against the mandate of "fair justice" to the victim shouldn't be imposed such as to make any form of compromise or marriage with the accused.

It also ruled that the Court, while granting bail in such cases, shall take into consideration the directions passed by Supreme Court in Aparna Bhat and others v. State of Madhya Pradesh and another, viz.:

"Imposing (Bail) conditions that implicitly tend to condone or diminish the harm caused by the accused and have the effect of potentially exposing the survivor to secondary trauma, such as mandating mediation processes in non-compoundable offences, mandating as part of bail conditions, community service (in a manner of speaking with the so-called reformative approach towards the perpetrator of sexual offence) or requiring tendering of apology once or repeatedly, or in any manner getting or being in touch with the survivor, is especially forbidden."❐

Personal Life, Liberty has to be Protected Irrespective of the Fact that Relation between two Major Individuals may be termed as Immoral: Rajasthan HC reiterates

LiveLaw: June 7th, 2021

The Rajasthan High Court has reiterated that personal life and liberty under Art. 21 have to be protected irrespective of the fact that relationship between two major individuals may be termed as immoral and unsocial.

The Court observed that under Sec. 29 of the Rajasthan Police Act, 2007 every police officer in the State is duty bound to protect the life and liberty of the citizens.

"...personal life and liberty has to be protected, except according to procedure established by law as mandated under Article 21 of the Constitution of India, irrespective of the fact that the relation between two major individuals may be termed as immoral and unsocial." The bench observed.

The observation came in the plea filed by a couple, Ajay Kumar Berwa and Samreen, living in a live-in relationship seeking police protection in view of the threats being faced by them.

Recently, Punjab & Haryana High Court observed that a live-in relationship may not be acceptable to all, but it cannot be said that such a relationship is an illegal one or that living together without the sanctity of marriage constitutes an offence.

In another ruling, the Punjab & Haryana High Court observed that an individual has the right to formalize the relationship with the partner through marriage or to adopt the non-formal approach of a live-in relationship.❐

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Locked Down by the Pandemic, Culturally Important Nomadic Communities Struggle to Survive

The Wire: June 10th, 2021

"We make this musical instrument, play it and repair it with our own hands. In our childhoods, we never received any education through textbooks, we only learnt to play these instruments to make a living out of them for ourselves and our families," said Mohammed Sher Khan*, holding a dholak in his hand.

The dholak, a two-headed Indian instrument, is all that Sher Khan has known his entire life. The 27-year-old is a nomad and heir to the centuries-old tradition of being a dholakwala of Barabanki, Uttar Pradesh. Despite having perfected the craft of making dholaks, the dholakwalas, ever since the pandemic, have been unable to play or even sell their instruments in any town they visit due to a lack of demand and the restricted gatherings of people in markets.

Many of them are nomads originally belonging to the states of Uttar Pradesh, Chhattisgarh, Bihar and Jharkhand, engaged in a peripatetic lifestyle, going village to village, city to city, selling their craft and playing instruments across states like Tamil Nadu, Maharashtra and Karnataka. As propagators of music who navigate a vagabond-like existence across India, each nomadic community inherits a craft that is an integral part of both their identity and their livelihood.

Unfortunately, any discussion on their lives and vocations escapes the prism of mainstream conversation, even though nomadic communities have perennially played a crucial role in shaping the kaleidoscopic view of India's rich cultural landscape. Often engaged in fine craftsmanship and the performing arts, they are unrecognised and under-appreciated artists.

Exposure to the ancestral occupation from a young age has ensured that the heritage of nomadic communities like damuris and dholakwalas is carried forward by the next generation. As children are taught about their community's craft and art, they are skilled by the time they reach their teens and take forward the work of their (fore) fathers.

The impact of the pandemic on these denotified communities that belong to an unknown, informal landscape is grossly unrecognised and warrants immediate administrative attention. The closure of live performances has adversely harmed the thespian bahurupis, the tightrope-walking

damuris and the soothsaying nandiwale. Most are settled on the outskirts of cities (like Pune), helpless and indefinitely unemployed from being unable to practice their vocation.

Preserving the heritage of India's nomadic communities is not just an issue of cultural importance anymore. In a desperate scenario where most are fighting to make ends meet, it becomes necessary to recognise and safeguard their right to life and the freedom of mobility that enables them to practice their craft.

Without any governmental aid or financial support, these tribes find it difficult to survive and are apprehensive about their future.

The least one can do in the collective ordering of our state and civil society is to include them as part of our socio-cultural fabric, providing them with all the help, basic amenities and rights available to our citizenry.❐

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Can wife of second marriage solemnized during first obtain pensionary benefits of dead husband? Madras High Court refers issue to larger bench

Bar and Bench: June 9th, 2021

The Madras High Court recently referred to a larger Bench a petition filed by the second wife of a deceased man seeking disbursement of her husband's pensionary benefits to her. The petitioner is the second wife of the deceased husband. Since the second marriage was solemnized during the subsistence of the first, a complex question with respect to its validity was presented before the Single Judge Bench. The second marriage took place while the first wife, who was the petitioner's sister, was still alive. The first wife later passed away.

In 2015, the petitioner's husband made an application to make his first wife the nominee to his pension account. However, he passed away before the process was completed. After her husband's demise, an application made by the petitioner to the Chief Internal Audit Officer for withdrawal of the pension amount from his account was rejected. Consequently, the current petition was filed before the High Court.

It was observed by the Court that the Rules applicable to the employees of the Tamil Nadu Electricity Board require the existence of a valid marriage in order to extend pensioner benefits.

Justice Vaidyanathan noted that the Hindu Marriage Act, 1955 does not permit second marriage while the first wife is still alive. However, he observed that as per the Domestic Violence Act, 2005,

"Even without marriage, when the factum of live-in-relationship between a man and woman is established, it is held to be legally valid, and over a period of time, the woman attains the status of a wife. But, after the demise of the husband, if two wives are alive, the second one will not attain the legal status of 'wife' unless Personal Law permits."

After reflecting upon the stream of jurisprudence established by various High Courts and the Supreme Court, the Single Judge Bench noted that since the Domestic Violence Act is a special enactment, it shall take precedence over the general law, ie the Tamil Nadu Pension Rules, 1978.❐

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'Criminal Contempt A Reasonable Restriction On Free Speech': Centre defends Section, 2(c)(i) of Contempt of Courts Act Before Karnataka High Court

LiveLaw: May 17th, 2021

The offence of "criminal contempt for scandalizing the authority of the court" under Section 2(c)(i) of the Contempt of Courts Act does not restrict freedom of speech, the Central government has said in its statement of objections filed before the Karnataka High Court. The said statement is filed in response to a writ petition filed by journalists Krishna Prasad and N. Ram, former Union Minister Arun Shourie and Advocate Prashant Bhushan, challenging the constitutional validity of the offence of criminal contempt on the ground of scandalizing the authority of court.

The affidavit also states that the reasonable restrictions imposed under Article 19(2) cannot be cast in stone or fitted into rigid moulds. They are flexible and turn on the facts and circumstances of each case. The words scandalise or tends to scandalise, lowers or tends to lower the authority of any court cannot be examined in isolation.

Section 2(c)(i) defines criminal contempt as publication or doing of any act that "scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court". The petitioners have challenged the provision on the ground that it violates Article 19 and 14 of the Constitution, as "incurably vague and manifestly arbitrary".❐

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With vaccine rollouts, the world has a new status symbol - the vaccine certificate. A look at the pandemic's wannabe platinum cards

The Economic Times: May 5th, 2021

It is the latest status symbol. Flash it at the people and you can get access to concerts, sports arenas or long-forbidden restaurant tables. Someday, it may even help you cross a border without having to quarantine.

The new platinum card of the COVID age is the vaccine certificate. It is a document that has existed for more than two centuries, but it has rarely promised to hold so much power over culture and commerce. Many versions of these certificates now come with a digital twist.

"It's been a long time since we've had a pandemic that has impacted every facet of society so thoroughly, and then a vaccine," said Carmel Shachar, the executive director of the Petrie-Flom Center for Health Law Policy, Biotechnology and Bioethics at Harvard Law School. "There is no precedent since 1918, and we definitely didn't have smartphones in 1918."

Ramesh Raskar, a professor at MIT Media Lab at the Massachusetts Institute of Technology, has been leading an effort to develop a solution that includes both a paper certificate that anyone can easily carry as well as a free digital pass that works even without cell service.

We are going to emerge from the pandemic with a new "currency for health," he said.

Figuring out how these passes should be

used and what they should look like is dividing lawmakers, business leaders, ethicists, designers and health officials.

A COVID-19 vaccination card does not always convey the significance of the document. Nor are the cards typically designed to counter fraud. Most of the hundreds of millions of people worldwide who got at least one shot of a COVID-19 vaccine in the past few months received a flimsy piece of paper. Unlike the easily recognizable "yellow card" that international travellers have long used to document other kinds of immunizations, the designs for COVID-19 vaccination certificates vary from state to state and country to country. In São Paulo, Brazil, the cards have a green border. In Shanghai, they are stamped in red. In parts of Mexico and Lebanon, they are the size of passports, with the handwriting of the person who filled it out.

In India, the certificate is a fully typed printed page. Next to the pronouncement that reads "Together, India will defeat COVID-19" is a photo of the country's Prime Minister, Narendra Modi, a rare flourish.

In some parts of the world, vaccine proof has gotten people a range of goods such as free popcorn and ice cream, and even discounted beers. But for the most part, they have just allowed people to post selfies or to reassure their acquaintance. Some governments are looking for more formal systems that work on phones and counter fraud.❐

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Juvenile can file anticipatory bail plea: Gujarat HC

LatestLaws: June 13th, 2021

In an important order, the Gujarat High Court has held that a juvenile is entitled to anticipatory bail and can file an application directly for the same in courts.

The Court granted anticipatory bail to a 17-year-old who was fearing arrest in a case of rioting and gambling by Sanand police. The judge said that the anticipatory bail application for protection of liberty of a juvenile is maintainable. The court observed, *"The personal liberty of an individual is at the highest pedestal and the personal liberty of a juvenile cannot be considered to be anything lower. Right of an individual to a legal recourse is also fundamental for an individual and has to be so if not with more vigour for a juvenile."*

After a few persons were arrested and then bailed out in connection with an FIR filed by Sanand police, the 17-year-old through his elder brother filed an anticipatory bail plea in the Mirzapur rural court. The lower court dismissed the bail plea by terming it not maintainable and cited an order passed by the Madhya Pradesh High Court.

The trial court had also said that a juvenile can seek such protection from the Juvenile Justice Board and upon denial, he can file an appeal in the court of law against the order of rejection, but the anticipatory bail is not maintainable.

When the HC was moved for anticipatory bail through advocate Rashmin Jani, HC granted pre-arrest bail to the juvenile and observed that the lower court discussed nothing in its order as to in what manner Section 6(2) of the Juvenile Justice Act is attracted. The law uses word 'apprehension' which is at par with and synonymous to 'arrest', which is used in Section 438 of CrPC, which provides for anticipatory bail. After discussing provisions of the Juvenile Justice Act, the court said, *"The Act which is separately provided for the children is to act in the benefit of the children and cannot be understood to curtail the rights which are otherwise ordinarily available to the individuals."*❐

New Delhi, the 4th April, 2021/Chaitra 14, 1943 (Saka)

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

An Ordinance further to amend the Cinematograph Act, 1952, the Customs Act, 1962, the Airports Authority of India Act, 1994, the Trade Marks Act, 1999 and the Protection of Plant Varieties and Farmers' Rights Act, 2001 and certain other Acts.

WHEREAS The Tribunal Reforms (Rationalisation and Conditions of Service) Bill, 2021 has been introduced in the House of the People on the 13th day of February, 2021;
AND WHEREAS the aforesaid Bill could not be taken up for consideration and passing in the house of the People;
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:—

CHAPTER I
PRELIMINARY

1. (1) This Ordinance may be called the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021.
(2) It shall come into force at once.

2. In this Ordinance, unless the context otherwise requires,–
(a) "notified date" means the date of commencement of this Ordinance;
(b) "Schedule" means the Schedule appended to this Ordinance;

CHAPTER II
AMENDMENTS TO THE CINEMATOGRAPH ACT, 1952

3. In the Cinematograph Act, 1952, —
(a) in section 2, clause (h) shall be omitted;

(b) in section 5C,–
(i) for the word "Tribunal", at both the places where it occurs, the words "High Court" shall be substituted;
(ii) sub-section (2) shall be omitted;
(c) sections 5D and 5DD shall be omitted;
(d) in section 6, the words "or, as the case may be, decided by the Tribunal (but not including any proceeding in respect of any matter which is pending before the Tribunal)" shall be omitted;
(e) in sections 7A and 7C, for the word "Tribunal", wherever it occurs, the words "High Court" shall be substituted;
(f) in sections 7D, 7E and 7F, the words "the Tribunal,", wherever they occur, shall be omitted;
(g) in section 8, in sub-section (2), clauses (h), (i),
(j), and (k) shall be omitted.

CHAPTER III
AMENDMENTS TO THE COPYRIGHT ACT, 1957

3. In the Copyright Act, 1957,—
(a) in section 2,––
(i) clause (aa) shall be omitted;
(ii) clause (fa) shall be re-lettered as clause (faa) and before the clause (faa) as so re-lettered, the following clause shall be inserted, namely:––
'(fa) "Commercial Court", for the purposes of any State, means a Commercial Court constituted under section 3, or the Commercial Division of a High Court constituted under section 4, of the Commercial Courts Act, 2015;';
(iii) for clause (u), the following clause shall be substituted, namely:––
'(u) "prescribed" means,—
(A) in relation to proceedings before a High Court, prescribed by rules made by the High Court; and
(B) in other cases, prescribed by rules made under this Act;';
(b) in section 6,––
(i) for the words "Appellate Board", wherever they occur, the words "Commercial Court" shall be substituted;
(ii) the words "constituted under section 11 whose decision thereon shall be final" shall be omitted;
(c) in Chapter II, in the Chapter heading, the words "AND APPELLATE BOARD" shall be omitted;
(d) sections 11 and 12 shall be omitted;
(e) in sections 19A, 23, 31, 31A, 31B, 31C, 31D, 32,
32A and 33A, for the words "Appellate Board", wherever they occur, the words "Commercial Court" shall be substituted;
(f) in section 50, for the words "Appellate Board", wherever they occur, the words "High Court" shall be substituted;
(g) in section 53A,––
(i) for the words "Appellate Board", wherever they occur, the words "Commercial Court" shall be substituted;
(ii) in sub-section (2), the words "and the decision of the Appellate Board in this behalf shall be final" shall be omitted;
(h) in section 54, for the words "Appellate Board", the words "Commercial Court" shall be substituted;
(i) for section 72, the following section shall be substituted, namely:––
"72. (1) Any person aggrieved by any final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the High Court.
(2) Every such appeal shall be heard by a single Judge of the High Court:
Provided that any such Judge may, if he so thinks fit, refer the appeal at any stage of the proceeding to a Bench of the High Court.
(3) Where an appeal is heard by a single Judge, a further appeal shall lie to a Bench of the High Court within three

months from the date of decision or order of the single Judge.

(4) In calculating the period of three months provided for an appeal under this section, the time taken in granting a certified copy of the order or record of the decision appealed against shall be excluded.";

(j) in sections 74 and 75, the words "and the Appellate Board", wherever they occur, shall be omitted;

(k) in section 77, the words "and every member of the Appellate Board" shall be omitted;

(l) in section 78, in sub-section (2),––

(i) clauses (cA) and (ccB) shall be omitted;

(ii) in clause (f), the words "and the Appellate Board" shall be omitted.

CHAPTER IV
AMENDMENTS TO THE CUSTOMS ACT, 1962

5. In the Customs Act, 1962,–

(a) in section 28E, clauses (ba), (f) and (g) shall be omitted;

(b) in section 28EA, the proviso shall be omitted;

(c) in section 28F, sub-section (1) shall be omitted;

(d) in section 28KA,––

(i) in sub-section (1), for the word "Appellate Authority", at both the places where they occur, the words "High Court" shall be substituted;

(ii) sub-section (2) shall be omitted;

(e) in section 28L, the words "or Appellate Authority", wherever they occur, shall be omitted;

(f) in section 28M,––

(i) in the marginal heading, the words "and Appellate Authority" shall be omitted;

(ii) sub-section (2) shall be omitted.

CHAPTER V
AMENDMENTS TO THE PATENTS ACT, 1970

6. In the Patents Act, 1970,—

(a) in section 2, in sub-section (1),––

(i) clause (a) shall be omitted;

(ii) in clause (u), sub-clause (B) shall be omitted;

(b) in section 52, the words "Appellate Board or", wherever they occur, shall be omitted;

(c) in section 58,––

(i) the words "the Appellate Board or", wherever they occur, shall be omitted;

(ii) the words "as the case may be" shall be omitted;

(d) in section 59, the words "the Appellate Board or" shall be omitted;

(e) in section 64, in sub-section (1), the words "by the Appellate Board" shall be omitted;

(f) in section 71, for the words "Appellate Board" and "Board", wherever they occur, the words "High Court" shall be substituted;

(g) in section 76, the words "or Appellate Board" shall be omitted;

(h) in section 113,––

(i) in sub-section (1),––

(A) the words "the Appellate Board or", wherever they occur, shall be omitted;

(B) the words "as the case may be" shall be omitted;

(ii) in sub-section (3), the words "or the Appellate Board" shall be omitted;

(i) in Chapter XIX, for the Chapter heading, the Chapter heading "APPEALS" shall be substituted;

(j) sections 116 and 117 shall be omitted;

(k) in section 117A, for the words "Appellate Board", wherever they occur, the words "High Court" shall be substituted;

(l) sections 117B, 117C and 117D shall be omitted;

(m) in section 117E, for the words "Appellate Board", wherever they occur, the words "High Court" shall be substituted;

(n) sections 117F, 117G and 117H shall be omitted;

(o) in section 151,––

(A) in sub-section (1), the words "or the Appellate Board", at both the places where they occur, shall be omitted;

(B) in sub-section (3), for the words "the Appellate Board or the courts, as the case may be", the words "the courts" shall be substituted;

(p) in section 159, in sub-section (2), clauses (xiia), (xiib) and (xiic) shall be omitted.

CHAPTER VI
AMENDMENTS TO THE AIRPORT AUTHORITY OF INDIA ACT, 1994

7. In the Airports Authority of India Act, 1994,— Amendment of Act 55 of 1994.

(a) in section 28A, clause (e) shall be omitted;

(b) in section 28E, for the word "Tribunal", at both the places where it occurs, the words "Central Government" shall be substituted;

(c) sections 28I, 28J and 28JA shall be omitted;

(d) in section 28K,---

(i) in sub-section (1),--

(A) for the words "Tribunal in such form as may be prescribed", the words "High Court" shall be substituted;

(B) in the proviso, for the word "Tribunal", the words "High Court" shall be substituted;

(ii) sub-sections (2), (3), (4) and (5) shall be omitted;

(e) section 28L shall be omitted;

(f) in section 28M, the words "or the Tribunal" shall be omitted;

(g) in section 28N, in sub-section (2), for the word "Tribunal", the words "High Court" shall be substituted;

(h) in section 33, the words "or the Chairperson of the Tribunal" shall be omitted;

(i) in section 41, in sub-section (2), clauses (gvi), (gvii), (gviii) and (gix) shall be omitted.

CHAPTER VII
AMENDMENTS TO THE TRADE MARKS ACT, 1999

8. In the Trade Marks Act, 1999,—

(a) in section 2, in sub-section (1), --

(i) clauses (a), (d), (f), (k), (n), (ze) and (zf) shall be omitted;

(ii) for clause (s), the following clause shall be substituted, namely:--

'(s) "prescribed" means,—

(i) in relation to proceedings before a High Court, prescribed by rules made by the High Court; and

(ii) in other cases, prescribed by rules made under this Act;';

(b) in section 10, for the word "tribunal", the words "Registrar or the High Court, as the case may be," shall be substituted;

(c) in section 26, for the word "tribunal", the words "Registrar or the High Court, as the case may be," shall be substituted;

(d) in section 46, in sub-section (3), for the word "tribunal", the words "Registrar or the High Court, as the case may be," shall be substituted;

(e) in section47, --

(i) for the words "Appellate Board", at both the places where it occurs, the words "High Court" shall be substituted;

(ii) for the word "tribunal", wherever it occurs, the words "Registrar or the High Court, as the case may be," shall be substituted;

(f) in section 55, in sub-section (1), for the word "tribunal", the words "Registrar or the High Court, as the case may be," shall be substituted;

(g) in section 57, --

(i) for the words "Appellate Board", wherever it occurs, the words "High Court" shall be substituted;

(ii) for the word "tribunal", wherever it occurs, the words "Registrar or the

High Court, as the case may be," shall be substituted;

(h) in section 71, in sub-section (3), for the word "tribunal", the words "Registrar or the High Court, as the case may be," shall be substituted;

(i) in Chapter XI, for the Chapter heading, the Chapter heading "APPEALS" shall be substituted;

(j) sections 83, 84, 85, 86, 87, 88, 89, 89A and 90 shall be omitted;

(k) in section 91,for the words "Appellate Board", wherever they occur, the words "High Court" shall be substituted;

(l) sections 92 and 93 shall be omitted;

(m) for section 94, the following section shall be substituted, namely:--

"94. On ceasing to hold the office, the erstwhile Chairperson, Vice-Chairperson or other Members, shall not appear before the Registrar.";

(l) sections 95 and 96 shall be omitted;

(m) in section 97, for the words "Appellate Board", wherever they occur, the words "High Court" shall be substituted;

(n) in section 98, for the words "Appellate Board" and "Board", wherever they occur, the words High Court" shall be substituted;

(o) sections 99 and 100 shall be omitted;

(p) in section 113, --

(i) for the words "Appellate Board", at both the places where they occur, the words "High Court" shall be substituted;

(ii) for the word "tribunal", the words "Registrar or the High Court, as the case may be," shall be substituted;

(q) in section 123, the words "and every Member of the Appellate Board" shall be omitted;

(r) in sections 124 and 125, for the words "Appellate Board", wherever they occur, the words "High Court" shall be substituted;

(s) in section 130, the words "the Appellate Board or" shall be omitted;

(t) in section 141, for the words "Appellate Board", at both the places where they occur, the words "High Court" shall be substituted;

(u) in section 144, for the word "tribunal", the words "Registrar or the High Court, as the case may be," shall be substituted;

(v) in section 157, in sub-section (2),--

(i) clauses (xxxi) and (xxxii) shall be omitted;

(ii) in clause (xxxiii), for the words "Appellate Board", the words "High Court" shall be substituted.

CHAPTER VIII
AMENDMENTS TO THE GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999

9. In the Geographical Indications of Goods (Registration and Protection) Act, 1999,—

(a) in section 2, in sub-section (1), clauses (a) and (p) shall be omitted;

(b) in section 19, for the word "tribunal", the words "Registrar or the High Court, as the case may be," shall be substituted;

(c) in section 23, for the words "and before the Appellate Board before which", the words "before whom" shall be substituted;

(d) in section 27, --

(i) for the words "Appellate Board", wherever they occur, the words "High Court" shall be substituted;

(ii) for the word "tribunal", wherever it occurs, the words "Registrar or the High Court, as the case may be," shall be substituted;

(e) in Chapter VII, for the Chapter heading, the Chapter heading "APPEALS" shall be substituted;

(f) in section 31,--

(i) for the words "Appellate Board",

wherever they occur, the words "High Court" shall be substituted;

(ii) sub-section (3) shall be omitted;

(g) sections 32 and 33 shall be omitted;

(h) in sections 34 and 35, for the words "Appellate Board", wherever they occur, the words "High Court" shall be substituted;

(i) section 36 shall be omitted;

(j) in sections 48,––

(i) for the words "Appellate Board", at both the places where it occurs, the words "High Court" shall be substituted;

(ii) for the word "tribunal", the words "Registrar or the High Court, as the case may be," shall be substituted;

(k) in sections 57 and 58, for the words "Appellate Board", wherever they occur, the words "High Court" shall be substituted;

(l) in section 63, the words "the Appellate Board or" shall be omitted;

(m) in section 72, for the words "Appellate Board", wherever they occur, the words "High Court" shall be substituted;

(n) in section 75, for the word "tribunal", the words "Registrar or the High Court, as the case may be," shall be substituted;

(o) in section 87, in sub-section (2), clause (n) shall be omitted.

CHAPTER IX
AMENDMENTS TO THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

10. In the Protection of Plant Varieties and Farmers' Rights Act, 2001,–

(a) in section 2, ––

(i) clauses (d), (n) and (o) shall be omitted;

(ii) for clause (q), the following clause shall be substituted, namely:––

'(q) "prescribed" means,—

(A) in relation to proceedings before a High Court, prescribed by rules made by the High Court; and

(B) in other cases, prescribed by rules made under this Act;':

(iii) clauses (y) and (z) shall be omitted;

(b) in section 44, the words "or the Tribunal" shall be omitted;

(c) in Chapter VIII, for the Chapter heading, the Chapter heading "APPEALS" shall be substituted;

(d) sections 54 and 55 shall be omitted;

(e) in section 56,––

(i) for the word "Tribunal", wherever they occur, the words "High Court" shall be substituted;

(ii) sub-section (3) shall be omitted;

(f) in section 57,–

(i) for the word "Tribunal", wherever it occurs, the words "High Court" shall be substituted;

(ii) sub-section (5) shall be omitted;

(g) sections 58 and 59 shall be omitted;

(h) in section 89, the words "or the Tribunal" shall be omitted.

CHAPTER X
AMENDMENTS TO THE CONTROL OF NATIONAL HIGHWAYS (LAND AND TRAFFIC) ACT, 2002

11. In the Control of National Highways (Land and Traffic) Act, 2002,—

(a) in section 2,–

(i) clause (a) shall be omitted;

(ii) after clause (d), the following clause shall be inserted, namely:––

'(da) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction;';

(iii) clause (l) shall be omitted;

(b) in Chapter II, in the Chapter heading, the words "AND TRIBUNALS, ETC." shall be omitted;

(c) section 5 shall be omitted;

(d) for section 14, the following section shall

be substituted, namely:-

"14. An appeal from any order passed, or any action taken, excluding issuance or serving of notices, under sections 26, 27, 28, 36, 37 and 38 by the Highway Administration or an officer authorised on its behalf, as the case may be, shall lie to the Court.";

(e) sections 15 and 16 shall be omitted;

(f) in section 17, for the word "Tribunal", at both the places where it occurs, the word "Court" shall be substituted;

(g) section 18 shall be omitted;

(h) in section 19, for the word "Tribunal", at both the places where it occurs, the word "Court" shall be substituted;

(i) section 40 shall be omitted;

(j) in section 41,--

(i) the words "or every order passed or decision made on appeal under this Act by the Tribunal" shall be omitted;

(ii) the words "or Tribunal" shall be omitted;

(k) in section 50, in sub-section (2), clause (f) shall be omitted.

CHAPTER XI
AMENDMENTS TO THE FINANCE ACT, 2017

12. In the Finance Act, 2017 (hereinafter referred to as the Finance Act),--

(i) for section 184, the following section shall be substituted, namely:—

"184. (1) The Central Government may, by notification, make rules to provide for the qualifications, appointment, salaries and allowances, resignation, removal and the other conditions of service of the Chairperson and Members of the Tribunal as specified in the Eighth Schedule:

Provided that a person who has not completed the age of fifty years shall not be eligible for appointment as a Chairperson or Member:

Provided further that the allowances and benefits so payable shall be to the extent as are admissible to a Central Government officer holding the post carrying the same pay:

Provided also that where the Chairperson or Member takes a house on rent, he may be reimbursed a house rent subject to such limits and conditions as may be provided by rules.

(2) The Chairperson and Members of a Tribunal shall be appointed by the Central Government on the recommendation of a Search-cum-Selection Committee (hereinafter referred to as the Committee) constituted under sub-section (3), in such manner as the Central Government may, by rules, provide.

(3) The Search-cum-Selection Committee shall consist of—

(a) the Chief Justice of India or a Judge of Supreme Court nominated by him-- Chairperson of the Committee;

(b) two Secretaries nominated by the Government of India -- Members;

(c) one Member, who--

(i) in case of appointment of a Chairperson of a Tribunal, shall be the outgoing Chairperson of the Tribunal; or

(ii) in case of appointment of a Member of a Tribunal, shall be the sitting Chairperson of the Tribunal; or

(iii) in case of the Chairperson of the Tribunal seeking re-appointment, shall be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court nominated by the Chief Justice of India:

Provided that, in the following cases, such Member shall always be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court nominated by the Chief Justice of India, namely:--

(i) Industrial Tribunal constituted by the Central Government under the Industrial Disputes Act, 1947;

(ii) Tribunals and Appellate Tribunals

constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

(iii) Tribunals where the Chairperson or the outgoing Chairperson, as the case may be, of the Tribunal is not a retired Judge of the Supreme Court or a retired Chief Justice or Judge of a High Court; and

(iv) such other Tribunals as may be notified by the Central Government in consultation with the Chairperson of the Search-cum-Selection Committee of that Tribunal; and (d) the Secretary to the Government of India in the Ministry or Department under which the Tribunal is constituted or established –– Member- Secretary.

(4) The Chairperson of the Committee shall have the casting vote.

(5) The Member-Secretary of the Committee shall not have any vote.

(6) The Committee shall determine its procedure for making its recommendations.

(7) Notwithstanding anything contained in any judgment, order or decree of any court or in any law for the time being in force, the Committee shall recommend a panel of two names for appointment to the post of Chairperson or Member, as the case may be, and the Central Government shall take a decision on the recommendations of the Committee preferably within three months from the date on which the Committee makes its recommendations to the Government.

(8) No appointment shall be invalid merely by reason of any vacancy or absence in the Committee.

(9) The Chairperson and Member of a Tribunal shall be eligible for re-appointment in accordance with the provisions of this section:

Provided that in making such re-appointment, preference shall be given to the service rendered by such person.

(10) The Central Government shall, on the recommendation of the Committee, remove from office, in such manner as may be provided by rules, any Member, who—

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence which involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that where a Member is proposed to be removed on any ground specified in clauses (b) to (e), he shall be informed of the charges against him and given an opportunity of being heard in respect of those charges.

Explanation.–– For the purposes of this section, the expressions ––

(i) "Tribunal" means a Tribunal, Appellate Tribunal or Authority as specified in column (2) of the eighth Schedule;

(ii) "Chairperson" includes Chairperson, Chairman, President and Presiding Officer of a Tribunal;

(iii) "Member" includes Vice-Chairman, Vice-Chairperson, Vice-President, Account Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member and Technical Member, as the case may be, of a Tribunal.";

(ii) in section 184 as so substituted, after sub-section

(10) and before the Explanation, the following subsection shall be inserted and shall be deemed to have been inserted with effect from the 26th May, 2017, namely:––

(11) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, --

(i) the Chairperson of a Tribunal shall hold office for a term of four years or till he attains the age of seventy years, whichever is earlier;

(ii) the Member of a Tribunal shall hold office for a term of four years or till he attains the age of sixtyseven years, whichever is earlier:

Provided that where a Chairperson or Member is appointed between the 26th day of May, 2017 and the notified date and the term of his office or the age of retirement specified in the order of appointment issued by the Central Government is greater than that which is specified in this section, then, notwithstanding anything contained in this section, the term of office or age of retirement or both, as the case may be, of the Chairperson or Member shall be as specified in his order of appointment subject to a maximum term of office of five years.".

13. Section 186 of the Finance Act shall be renumbered as sub-section (1) thereof, and after subsection (1) as so renumbered, the following sub-section shall be inserted, namely:--

"(2) Subject to the provisions of sections 184 and 185, neither the salary and allowances nor the other terms and conditions of service of Chairperson, Vice- Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other Authority may be varied to his disadvantage after his appointment.".

14. In the Finance Act, in the Eighth Schedule, --

(i) items 10, 12, 14, and 15 shall be omitted;

(ii) for item 16, the following item shall be substituted, namely:--

(1)	(2)	(3)
16	National Consumer Disputes Redressal Commission	The Consumer Protection Act, 2019 (35 of 2019)

15. (1) Notwithstanding anything contained in any law for the time being in force, any person appointed as the Chairperson or Chairman or President or Presiding Officer or Vice-Chairperson or vice-Chairman or Vice-President or Member of the Tribunal, Appellate Tribunal, or, as the case may be, other Authorities specified in the Schedule and holding office as such immediately before the notified date, shall, on and from the notified date, cease to hold such office, and he shall be entitled to claim compensation not exceeding three months' pay and allowances for the premature termination of term of his office or of any contract of service.

(2) The officers and other employees of the Tribunals, Appellate Tribunals and other Authorities specified in the Schedule appointed on deputation, before the notified date, shall, on and from the notified date, stand reverted to their parent cadre, Ministry or Department.

(3) Any appeal, application or proceeding pending before the Tribunal, Appellate Tribunal or other Authorities specified in the Schedule, other than those pending before the Authority for Advance Rulings under the Income-tax Act, 1961, before the notified date, shall stand transferred to the Court before which it would have been filed had this Ordinance been in force on the date of filing of such appeal or application or initiation of the

proceeding, and the Court may proceed to deal with such cases from the stage at which it stood before such transfer, or from any earlier stage, or de novo, as the Court may deem fit.

(4) The balance of all monies received by, or advanced to, the Tribunal, Appellate Tribunal or other Authorities specified in the Schedule and not spent by it before the notified date, shall, on and from the notified date, stand transferred to the Central Government.

(5) All property of whatever kind owned by, or vested in, the Tribunal, Appellate Tribunal or other Authorities specified in the Schedule before the notified date, shall stand transferred to, on and from the notified date, and shall vest in the Central Government.

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

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

THE SCHEDULE
(See section 15)

1. Appellate Tribunal under Cinematograph Act, 1952 (37 of 1952).
2. Authority for Advance Rulings under Income-tax Act, 1961 (43 of 1961).
3. Airport Appellate Tribunal under Airports Authority of India Act, 1994 (Act 55 of 1994).
4. Intellectual Property Appellate Board under Trade Marks Act, 1999 (47 of 1999).
5. Plant Varieties Protection Appellate Tribunal under Protection of Plant Varieties and Farmers' Rights Act, 2001 (53 of 1901).

RAM NATH KOVIND,
President.

———

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.

"True Peace is not merely the absence of war, it is the presence of Justice."

- Jane Addams

Writing Democracy into the Constitution

Dr M. P. Raju

The Constituent Assembly ultimately decided to constitute India into a democracy. The content of the concept had been very much there throughout the constitution-making process though the term as such was absent in the Objectives Resolution. During the debates in the Assembly, various dimensions of democracy were discussed and stressed by different members.

Democratic traditions

In Indian and in Sumerian city-states we find glimpses of democratic systems from very ancient times. The conceptual histories of democracy span more than 2500 years. However, the mainstream historiography generally traces the prehistory of popular rule back to its initial circumstances in Greek city states, thus bypassing the pre-classical proto-democracies. The concept of *democratia*, a composite of *demos* (people) and *kratos* (power) or *kratein* (rule) denoting the rule of the people was developed in political philosophy practiced in Greek. [Gunter Frankenberg, 2012, 'Democracy' in Michel Rosenfeld ed., 2012, The Oxford Handbook of Comparative Constitutional Law, OUP, Oxford, p. 250.]

The ancient democratic traditions of the Indian sub-continent were referred to by several members in the Constituent Assembly. Many of the people's movements, both religious and secular, had the organizational structures incorporating democratic principles and methods. Buddhist Assemblies and the popular guilds of Bhakti movements are examples of these. Some of the tribal assemblies also exhibited these traditions. Several associations and organizations which sprang up during the freedom struggle had democratic principles and procedures incorporated into them.

Pre-Assembly Draft-Constitutions and Democracy

Much prior to the Constituent Assembly there have been attempts to prepare drafts of a constitution for India with democratic characteristics. The Home Rule Scheme 1889 is considered to be one of the first attempts at introducing an elective Indian element in the Legislative Councils. The 1889 session

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of the Indian National Congress at Bombay had passed the resolutions approving this scheme which was introduced in the House of Commons on February 12, 1890 as the Indian Councils Amendment Bill, though the bill could not be taken up and became infructuous.

The Constitution of India Bill 1895, also referred to as Swaraj Bill, reportedly influenced by Bal Gangadhar Tilak is considered to be the first non-official attempt at drafting a democratic constitution for India. (B. Shiva Rao ed., The Framing of India's Constitution – Select Documents, Vol. 1, 1967, p.5) It provided that the Empire of India "shall be a National association of all Indian citizens." (Para 4) and "Every citizen has a right to take part in the affairs of his country. The means by which such right shall be recognised shall be prescribed by the Parliament of India" (Para 13). In para 29 it was given, "Every citizen has a right to give one vote for electing a member to the Parliament of India and one to the Local Legislative Council." Again, in para 35, "All Legislative powers shall be delegated by the Nation to an Assembly of its representatives which shall be called the Parliament of India."

All other drafts and proposals like Nehru Report (Motilal Nehru, 1928), Karachi Resolution (1931) and Sapru Committee Report (Sir Tej Bahadur Sapru, 1st December 1945) had democracy as their central ideal.

The Gandhian Constitution for Free India (Shriman Narayan Agarwal, 1946) in its introductory part itself called for the end of imperialism so that democracy could be introduced. It was categorically stated that "democracy and imperialism are essentially incompatible." It argued for a decentralized democracy. "The idea of 'decentralized democracy,' must be emphasized, it is not at all Utopian; it is essentially practical and feasible." It was specifically stated, "The type of decentralized democracy that India had carefully evolved and maintained for centuries in the form of Village Republics was not a relic and survival of tribal communism; it was a product of mature thought and serious experimentation..." The ideal of Ram Rajya, "politically translated, is perfect democracy in which, inequalities based on possession and non-possession, colour, race or creed or sex vanish." It concluded by stating, "I have no manner of doubt that under the Gandhian Constitution our villages will rise to their full stature and become once again the bright models of genuine and lasting democracy."


Narayan Agrawal

Universal Declaration of Democracy (UDHR) and Democracy

While in India we were formulating a democratic constitution, the United Nations had come up with the Universal Declaration of Human Rights incorporating one of the main components of a modern democracy. Article 21 has provided the following as one of the basic human rights:

Article 21:

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this 'will' shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Objectives Resolution and the concept of

Political Justice

The word 'democratic' did not appear in the Objectives Resolution. However, the objective of a democratic republic was spelt out by undertaking to guarantee and secure to all people of India social, economic and political justice. The principle of democracy in the form of popular sovereignty was declared stating that all power and authority are derived from the people.

Pandit Nehru during his speech introducing the Resolution on 13 December 1946 observed as follows:

"Now, some friends have raised the question: "Why have you not put in the word 'democratic' here. Well, I told them that it is conceivable, of course, that a republic may not be democratic but the whole of our past is witness to this fact that we stand for democratic institutions. Obviously we are aiming at democracy and nothing less than a democracy. What form of democracy, what shape it might take is another matter? We stand for democracy. It will be for this House to determine what shape to give to that democracy, the fullest democracy, I hope. The House will notice that in this Resolution, although we have not used the word 'democratic' because we thought it is obvious that the word 'republic' contains that word and we did not want to use unnecessary words and redundant words, but we have done something much more than using the word. We have given the content of democracy in this Resolution and not only the content of democracy but the content, if I may say so, of economic democracy in this Resolution..." [CAD, vol. 1, (13 December 1946) p. 62]

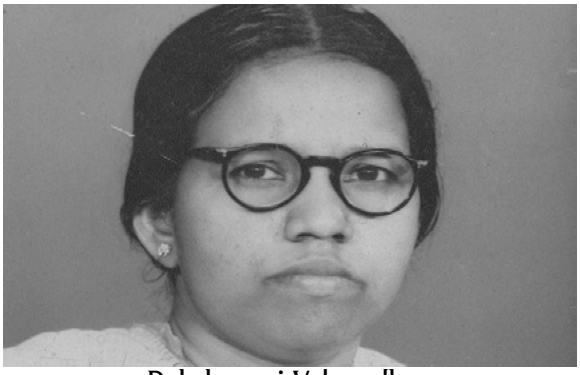
However there were members who would have liked to have the term itself in the Resolution. M. R. Masani on 17 December 1946 expressed his desire that "democracy needs to be extended from the Political to the economic and social spheres and that, if socialism does not mean that, then it means nothing at all". [CAD, Vol 1, (17 December 1946), p. 92] Masani further explained the necessity of democracy or the content of Democracy to be included in the Resolution. He said, "I do not think the word 'Republic' there is adequate." He therefore wanted that apart from saying that we shall be a Republic, it is necessary that we should make it clear. He further said, "Our national life has many different trends in it but, almost unanimously, we all stand for the freedom of the individual and for a democratic State." [CAD, vol. 1, 17 December 1946, p. 93]

Mr. Jaipal Singh (Bihar: General) highlighted the democratic traditions of the tribal people: "... The history of the Indus Valley civilization, a child of which I am, shows quite clearly that it is the new comers—most of you here are intruders as far as I am concerned—it is the new comers who have driven away my people from the Indus Valley to the jungle fastnesses. This Resolution is not going to teach Adibasis democracy. You cannot teach democracy to the tribal people; you have to learn democratic ways from them. They are the most democratic people on earth..." [CAD, vol.1, (19 December 1946), p. 143]. He further said, "... Sir, I say you cannot teach my people democracy. May I repeat that it is the advent of Indo-Aryan hordes that has been destroying the vestiges of democracy. Pandit Jawahar Lal Nehru in his latest book puts the case very nicely and I think I may quote it. In

Jaipal Singh

his 'Discovery of India' he says, talking of the Indus Valley Civilisation, and later centuries - 'There were many tribal republics, some of them covering large areas.' ...Sir, there will again be many tribal republics, republics which will be in the vanguard of the battle for Indian freedom....." [ibid, p. 145]

Shrimati Dakshayani Velayudan (Madras: General) also spoke about our democratic



Dakshayani-Velayudhan

traditions: ".... In our ancient polity, there were conflicts between absolutism and republicanism. The slender flame of republicanism was snuffed out by the power political States. The Lichavi Republic was the finest expression of the democratic genius of our ancients. There, every citizen was called a Raja. In the Indian Republic of tomorrow, the power will come from the people..." [CAD, vol.1, 19 December 1946, p. 151). She further said, "...I visualise that the underdogs will be the rulers of the Indian Republic." [Ibid, p. 152]. On behalf of the Harijans she said, "...What we want is the removal, immediate removal, of our social disabilities. Only an Independent Socialist Indian Republic can give freedom and equality of status to the Harijans. Our freedom can be obtained only from Indians and not from the British Government." [Ibid, p. 152]. She concluded by hoping, "...I therefore hope that in the future independent India the Harijans will have an honorable place as every other citizen of this land." [Ibid, p. 153]

Drafting Committee introducing 'democratic'

Though the term 'democratic' was absent in the Objectives Resolution, it was introduced by the drafting Committee in the Draft Constitution of 21 February 1948. Thus, it came to be inserted qualifying and prior to the word Republic in the Preamble of the Draft Constitution presented to the Assembly.

Only a Top-dressing on the Indian Soil?

While introducing the draft Constitution on 4th November 1948 in the Constituent Assembly and stressing the necessity to inculcate constitutional morality in the people of India, Dr Ambedkar had famously said, "Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic." [CAD, Vol. 7, (4th November 1948), p. 38]

This view of Babasaheb was contested by some in the Assembly itself. On 8th November 1948 Shri Alladi Krishnaswami Ayyar after referring to the observations of Babasaheb, had said,

Alladi Krishnaswami

"... I must also express my emphatic dissent from his observation that Democracy in India is only a top-dressing on Indian soil. The democratic principle was recognised in the various indigenous institutions of the country going back to the earliest period in her history. Democracy in its modern form is comparatively recent even in European history, as its main developments are only subsequent to the

French Revolution and to the American War of Independence. The essential elements of democracy as understood and practised at the present day are even of much later date and have gained currency and universal support during the last war and after its termination." [CAD | Volume no.7 | 8th November 1948, p. 334]

On 9th November 1948 Shri Vishwambhar Dayal Tripathi was also inclined to refute Babasaheb Ambedkar's observation regarding democracy being a top-dressing on Indian soil and said:


Vishwamber Dayal Tripathi

"...The one thing - and to me it appears very objectionable - which I wish to reply to is Dr. Ambedkar's remark that the Indian soil is not suited to democracy. I do not know how my friend has read the history of India. I am myself a student of history and also of politics and I can say with definiteness that democracy flourished in India much before Greece or any other country in the world. The entire western world has taken democratic ideas from Greece and it is generally regarded that Greece was the country where democracy first of all flourished. But I say and I can prove it to the hilt that democracy flourished in India much earlier than in Greece..." ...

"There is no doubt that later on the course of political development was arrested for sometime on account of invasions from outside. Yet we find that the same democracy continued to function in our villages under the name of village republics. This, the Mover himself has admitted in his address. It is very unfortunate that he should have made such remarks as are not borne out by the facts of history." [CAD, Volume no.7, (9th November 1948), pp. 369-370]

However, on 17th May 1949 Jawaharlal Nehru spoke of our democratic traditions in a more realistic manner warning against the false pride of considering India as a world-teacher in the matter of democracy. He said,

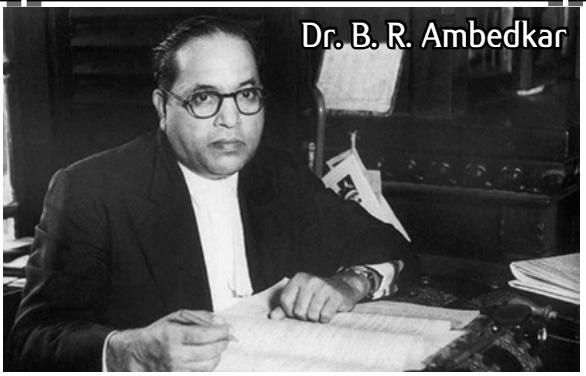
"We are all, I am afraid, in the habit of considering ourselves or our friends as angel and others the reverse of angels. We are all apt to think that we stand for the forces of progress and democracy and others do not. I must confess that in spite of my own pride in India and her people, I have grown more humble about talking in terms of our being in the vanguard of progress or democracy. [CAD, Volume no. 8, (17th May 1949), p. 66]

In fact, in his final speech on 25th November 1949 Babasaheb Ambedkar himself had acknowledged about the Indian roots of democratic government and reiterated that those traditions had been lost and there is yet a danger of again losing it.

How to prevent losing our Democracy again?

On 25th November 1949 during his last speech in the Assembly Dr B.R. Ambedkar discussed in detail the contours of our democracy:

"It is not that India did not know what is Democracy. There was a time when India was studded with republics, and even where there were monarchies, they were either elected or limited. They were never absolute. It is not that India did not know Parliaments or Parliamentary Procedure. A study of the Buddhist Bhikshu Sanghas discloses that not only there were Parliaments-for the Sanghas were nothing but Parliaments – but the Sanghas knew and observed all the rules of Parliamentary Procedure known to modern times... They had rules regarding seating arrangements, rules



regarding Motions, Resolutions, Quorum, Whip, Counting of Votes, Voting by Ballot, Censure Motion, Regularization, Res Judicata, etc. Although these rules of Parliamentary Procedure were applied by the Buddha to the meetings of the Sanghas, he must have borrowed them from the rules of the Political Assemblies functioning in the country in his time.

"This democratic system India lost. Will she lose it a second time? I do not know. But it is quite possible in a country like India – where democracy from its long disuse must be regarded as something quite new – there is danger of democracy giving place to dictatorship. It is quite possible for this new born democracy to retain its form but give place to dictatorship in fact. If there is a landslide, the danger of the second possibility becoming actuality is much greater." [CAD, Volume no.11, (25th November 1949), p. 978]

Then Dr Ambedkar discussed about the things we must be doing in order to maintain democracy not merely in form, but also in fact. According to him, the first thing we must do is to hold fast to constitutional methods of achieving our social and economic objectives. About the second thing we must be doing, he told us quoting Mill, was not 'to lay their liberties at the feet of even a great man, or to trust him with powers which enable him to subvert their institutions'. He went on saying,

"There is nothing wrong in being grateful to great men who have rendered life-long services to the country. But there are limits to gratefulness... This caution is far more necessary in the case of India than in the case of any other country. For in India, Bhakti or what may be called the path of devotion or hero-worship, plays a part in its politics unequalled in magnitude by the part it plays in the politics of any other country in the world. Bhakti in religion may be a road to the salvation of the soul. But in politics, Bhakti or hero-worship is a sure road to degradation and to eventual dictatorship."

He further narrated about the third thing we should be doing,

"The third thing we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of its social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life..."

Dr Ambedkar went on clarifying the contradictions of democracy in the Indian context and he said,

"In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up. [CAD, Volume no.11, (25th November 1949), p. 979]

Democracy – Political, Social and Economic

On 9th November 1948 Shri M. Ananthasayanam Ayyangar warned of the dangers of not having all the three forms of democracy together: political, social and economic. He appealed for writing the economic democracy also into the constitution,


MA Ayyangar

"There are two ideologies fighting for power, fighting for the supremacy of the world. On one side, there is the political democracy of the West; but there is the economic dictatorship of America. We do not want economic dictatorship at all; but we do want democracy. In Russia, there is no political democracy; but there is economic democracy... Is there anything here in this Constitution to say that we stand for economic democracy along with political democracy? There is a vague reference in the Objectives Resolution that there shall be social justice and economic justice. Economic justice may mean anything or may not mean anything. I would urge, here and now, that steps should be taken to make it impossible for any future Government to give away the means of production to private agencies... We should not follow the economic dictatorship of the West or the political dictatorship of Russia. In between, we must have both political democracy as well as economic democracy. ...." [CAD, Volume no.7, (9th November 1948), p. 353]

On 9th November 1948 itself Shri Vishwambhar Dayal Tripathi also stressed the need for incorporating economic democracy also into the constitution in addition to political democracy:

"...Anyhow, whether the word 'socialist' is used or not we must try to see that, when we incorporate political democracy, we also incorporate economic democracy in the Constitution." [CAD, Volume no.7, (9th November 1948), p. 370]

On 23rd November 1948 Shri H. V. Kamath explained the importance of stressing not merely the political democracy but social and economic democracy and even spiritual democracy:

"This concept of economic and social democracy has formed the basis, the content of most Congress resolutions that have been passed since 1936; especially, Sir, I would refer to the resolution passed at the Meerut session of the Congress, which gives a definite meaning to this concept of economic and social democracy. Dr. Ambedkar said that to his mind, political democracy means one man, one vote; economic democracy means one man, one value. I, Sir, would say that social democracy, to my mind, means: all men, one class; all men one caste; and I hope, Sir, that we are moving towards the creation of a casteless and classless society which Mahatma Gandhi envisaged for the social order in India.

Here, Sir, political democracy we have now secured. Through experience, not merely here, not merely in Europe, not merely in


H. V. Kamath

America, but all over the world, we have realised today that political democracy is not enough; unless you translate this political freedom, this political democracy into the life of the common man in economic and social terms this political democracy will not work and political democracy will be dead." [CAD, Volume no.7, (23rd November 1948), p. 533]

Explaining further Shri Kamath advocated for the sublime ideal of spiritual democracy,

"I would only make one more observation. To India through the ages has been given the mission of preaching the noble and sublime ideal, the concept of spiritual democracy, of which political, social and economic democracy are mere off-shoots. If true spiritual democracy takes root in our society, there is no doubt that we shall show to humanity a new way of life, and if all other countries in the world have tried to establish economic and social democracy by violence, by disorder, by strife, we can make a beginning here and go forward and try to achieve this new order..." [CAD, Volume no.7, (23rd November 1948), p. 534]

On 22nd November 1949 Shri Jadubans Sahay speaking on the final constitution stressed the need to understand that real democracy consists of economic democracy:

"All this we can do out of this Constitution if we proceed honestly, if we proceed with the knowledge that democracy does not mean anything if it does not mean economic democracy. Democracy of the few, of the few

educated persons who live in the houses of Delhi and who come from the various Provinces, is no democracy at all... Let us say that this is the greatest experiment in the history of India because this type of democracy did not exist before however much you quote the Shastras and the Puranas..." [CAD, Volume no.11, 22nd November 1949, p. 802]

Government of, for and by the people

During the speeches after finalizing and passing the Constitution, Prof K.T. Shaw had expressed the view that the constitution fell short of being fully democratic with regard to its dimension of providing a government of, for and by the people. He said,

"It may be that the Constitution is, in intent and form, democratic. But the ideal of Democracy in the shape of the Government of the people, by the people and for the people, is far from being realised if one scrutinises carefully the various Articles of this Constitution." [CAD, Volume no.11, (17th November 1949), p. 619]

Hence he concluded, "I hold, therefore, that this Constitution is not, in the fullness of the sense, a real, working, effective democracy that the people of India had been led to expect they have achieved." [CAD, Volume no.11, (17th November 1949), p. 620]

Dr B.R. Ambedkar was well aware of the danger of inducing the people to prefer Government for the people to Government by the people: While concluding his last speech in the Assembly on 25th November 1949 he said,

"...There is great danger of things going wrong. Times are fast changing. People including our own are being moved by new ideologies. They are getting tired of Government by the people. They are prepared to have Governments for the people and are indifferent whether it is Government of the people and by the people. If we wish to preserve the Constitution in which we have sought to

enshrine the principle of Government of the people, for the people and by the people, let us resolve not to be tardy in the recognition of the evils that lie across our path and which induce people to prefer Government for the people to Government by the people, nor to be weak in our initiative to remove them. That is the only way to serve the country. I know of no better." [CAD, Volume no.11, (25th November 1949), p. 980-981]

Minority Rights as the Core of Democracy

The members of the Constituent Assembly were well aware that a government of the majority is not real democracy. It has to be a government by each individual consisting of the people in whom the sovereignty resides. Hence in a Parliamentary democracy minority rights are extremely essential. On 23rd November 1948, B. Pocker Sahib Bahadur (Madras: Muslim) speaking on the need to allow various communities to keep their personal laws argued, "It is a misnomer to call it a democracy if the majority rides rough-shod over the rights of the minorities. It is not democracy at all; it is tyranny..." [CAD, Volume no.7, (23rd November 1948), p. 545]

On 25th May 1949 Mr. Z. H. Lari spoke on the centrality of justice to minorities in a democracy,

"...To me it appears that justice to minorities is the bedrock of democracy. The reason is this. The twin principles of democracy are, one, that the majority must in the ultimate analysis govern, and second, it is the right of every individual to have some voice in sending his representative to a representative institution, and thereby have some share in selecting a government to which he owes and renders obedience. Those who have read the writings of Mill must have been impressed by his advocacy of fundamental principle of democracy, that every political opinion must be represented in an assembly in proportion to its strength in the country, and naturally so..." [CAD, Volume no.8, (25th May 1949), p. 283]

Then Mr Lari quoted an observation of Lord Acton,

'The one pervading evil of democracy is the tyranny of the majority, that succeeds by force or fraud in carrying elections. To break off that point, is to avert the danger. The common system of representation perpetuates the danger. Equal electorates give no representation to minorities. Thirty-five years ago it was pointed out that the remedy is proportionate representation. It is profoundly democratic, for it increases the influences of thousands who would otherwise have no voice in the governments and it brings men more near an equality by so contriving that no vote shall be wasted, and that any voter shall contribute to bring into Parliament a member of his own opinion." [CAD, Volume no.8, (25th May 1949), p. 283-284]

Thus, in order to preserve the democratic character, the Assembly incorporated special rights and protection to various groups who are minorities on different counts. Some special rights are available to quantitative minorities and others are available to qualitative minorities. These are necessary in a parliamentary democracy where representatives would be elected on the basis of the majority of votes and the Legislature, executive and judiciary ordinarily would reflect the will and mind of the majority.

Democracy as Fraternity Assuring Individual Dignity

The drafting Committee under the Chairmanship of Babasaheb Ambedkar made two major additions into the Preamble which were absent in the Objectives Resolution. First was the addition of 'democratic' qualifying and prior to the term 'Republic'. Second was the addition of the fraternity clause itself where the key phrase is 'to promote fraternity assuring the dignity of the individual'. Conceptually democracy can be explained by the values of fraternity and individual dignity. Genuine fraternity will be the one assuring the dignity of the individual and such fraternity is only another name for democracy.

In Annihilation of Caste, (1936) Dr Ambedkar has equated democracy with fraternity and has said that fraternity "is only another name for democracy". [B. R. Ambedkar, 2014, Annihilation of Caste: The Annotated Critical Edition, Navayana, New Delhi, p. 260]. This concept had been explained in detail by Babasaheb in his final speech in the Assembly on 25th November 1949. Again, on 20th May 1956 in an address on 'What are the prospects of democracy in India?' on Voice of America, Dr B.R. Ambedkar had explained his view on democracy: "Democracy is quite different from a Republic as well as from Parliamentary Government. The roots of democracy lie not in the form of government, Parliamentary or otherwise. A democracy is more than a form of Government. It is primarily a form of associated living. The roots of Democracy are to be searched in the social relationship, in the terms of the associated life between the people who form a society." (B.R. Ambedkar, 2004, in K.M. Panikkar, 2004, Caste and Democracy, Critical Quest, New Delhi. P. 28). The apparently complex concept of democracy is nothing but the natural synthesis of the two most basic and simple values: fraternity and dignity of the individual. On these two pillars is the Constitution of India built.❐

"TO BE FREE IS NOT MERELY TO CAST OFF ONE'S CHAINS, BUT TO LIVE IN A WAY THAT RESPECT AND ENHANCES THE FREEDOM OF OTHERS."

-Nelson Mandela

ANSWERS TO LEGAL QUIZ

01.B	02.A	03.B	04.D	05.B	06.B	07.C
08.C	09.C	10.C	11.B	12.B	13.C	

LEGAL TERMS & MAXIMS

Adjourn : Put the trial over to a new date.

Battery : Any non-consensual physical contact or touching by the defendant to the plaintiff's physical person.

Cause of Action : The reason/grounds on which the legal action is being submitted/brought.

Construe : To interpret.

Consuetudo pro lege servatur : Where no laws apply to a given situation, the customs of the place and time will have the force of law.

Corroborate : Confirm or support with additional evidence.

Criminal Nonsupport : Failure to pay child support in violation of court order.

Deferred Probation : The judge doesn't make a finding of guilt; he assigns probation. If probation is completed with incident, the charges are usually dropped.

Deposition : A statement provided to an officer of the law or lawyer, which is usually used to determine credibility and reliability of a witness.

Direct Intent : Done with conscious purpose.

Duress : An unlawful threat or coercion used by one person to induce another to perform some act against his or her will.

Easement : An interest in land that permits certain uses without interruption or interference by the person who has legal title to the land.

Ex parte : Proceeding brought by one person in the absence of another.

Furiosi nulla voluntas est : Mentally impaired or mentally incapable persons cannot validly sign a will, contract or form the frame of mind necessary to commit a crime.

Perjury : Lying under oath in court.

Res Ipsa Loquitur : The thing speaks for itself.

Subpoena : Legal order compelling you to appear in court.

Writ : A judicial order.

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