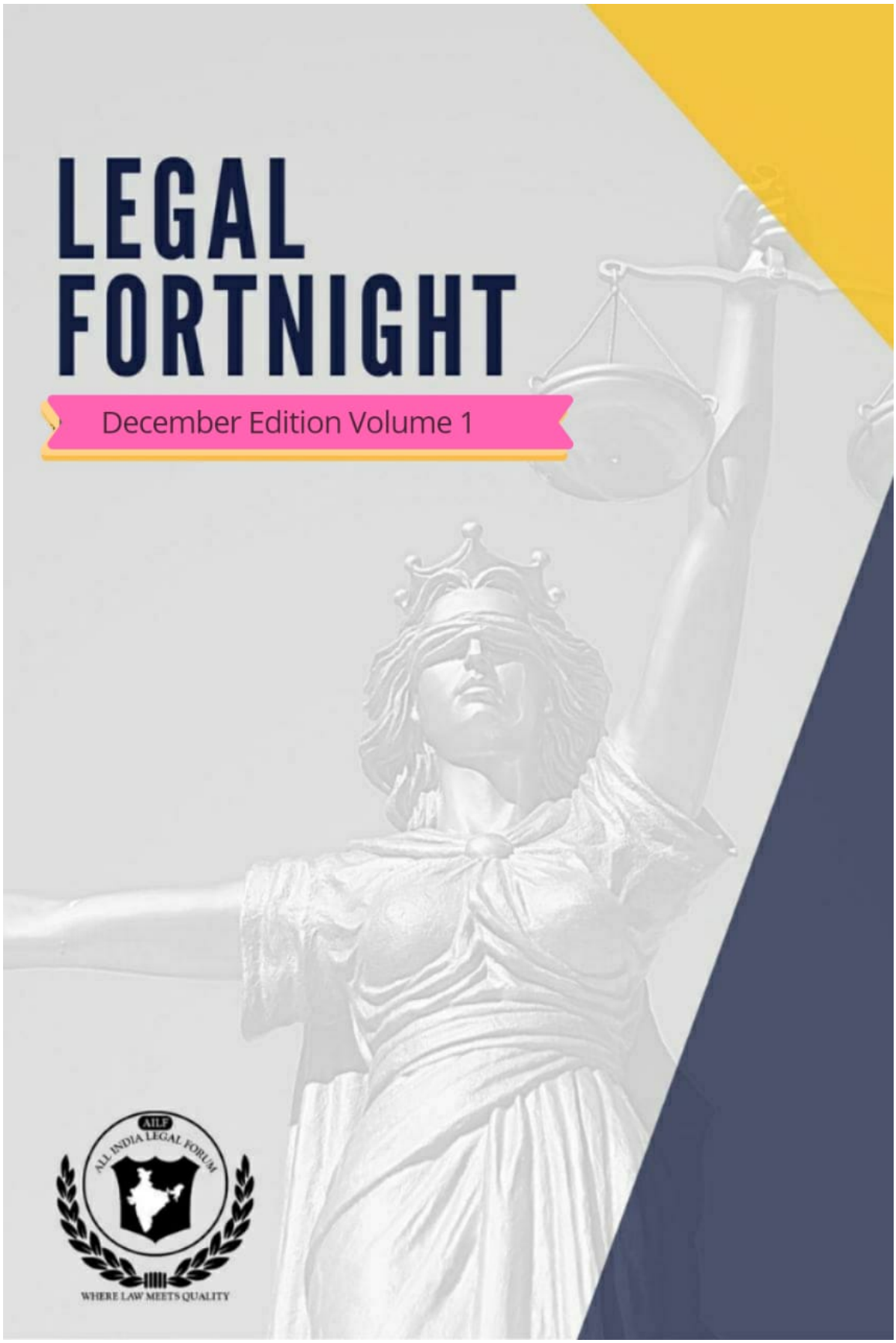
# LEGAL FORTNIGHT

December Edition Volume 1



ALL INDIA LEGAL FORUM

WHERE LAW MEETS QUALITY

# FOREWORD

More has been said about the writing of lawyers and judges than of any other group, except, of course, poets and novelists. The difference is that while the latter has usually been admired for their writing, the public has almost always damned lawyers and judges for theirs. If this state of affairs has changed in recent times, it is only in that many lawyers and judges have now joined the rest of the world is complaining about the quality of legal prose.

My best wishes to all these student contributors, for their future endeavors. My best wishes and assurance to the readers that this will add a lot to the knowledge after reading this perfect case compilation. It's not just for the legal fraternity but for anyone who has an interest in the field of law.

***By***

***Vrinda Khanna & Nandini Mangla***

# PREFACE

All India Legal Forum is replenished with information to give students a ready reference to the various areas of legal issues and news. All India Legal Forum is a team of more than 400 law students across the country to tackle basic problems which a legal researcher faces in day to day life, putting forward the basic things needed for researching and drafting.

The All India Legal forum strives at providing a valuable contribution to contemporary legal issues and development. The organization seeks to bring out a platform to provide resourceful insights on law-related topics for the ever-growing legal fraternity. All India Legal Forum doesn't just publish blogs but also guides the authors. Determination and dedication are considered as ultimate requisition to be a good researcher by the All India Legal Forum, it also thrives to instill the values.

The reason behind the smoothed running of All India Legal Forum is the official structure of the organization in which different rules are allotted by considering the strengths of the students and giving them roles accordingly through various Boards and Committees incorporated in the Organisation.

The Legal Fort Night subdues about the current legal issues and news happening around. It consists of the summaries of the Supreme Court and High Court Judgements of the 14 days. The Legal Fort Night Team keeps compiling the judgments of the Supreme Court and high court regularly. The Legal Fort Night not only compiles the judgments of the Supreme Court and High Court, but it also deals with the static law. We're glad to be a part of the All India Forum. Here's an introduction to my team:

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# INDEX

# SUPREME COURT JUDGMENTS

**6TH December**

## HIGH COURTS HAVING NO COMMERCIAL DIVISION COMPETENT TO CONSIDER CANCELLATION OF DESIGN UNDER SECTION 22(4) OF DESIGNS ACT: SUPREME COURT

A bench comprising Justices L Nageswara Rao, Hemant Gupta and Ajay Rastogi held that it is not necessary that a suit involving the issue of cancellation of design under Section 22(4) of the Designs Act should be heard by a High Court having a Commercial Division. It held that a High Court without original civil jurisdiction and a commercial division is competent to consider such case.

As per Section 22 of the Designs Act, a defendant in a suit for infringement of design is entitled to raise a defence that the registration of design is liable to be cancelled. Section 22(4) states that if such a defence is raised, the Court in which the suit is pending shall transfer it to the High

In the instant case, S D Containers instituted a case in the District Court, Indore, for infringement of design of its container lids against the Defendant .the defendant raised a counter-claim seeking cancellation of the design. In this backdrop, the District Court chose to exercise the power under Section 22(4). However, the District Court ordered the transfer of the suit to the Calcutta High Court on the reasoning that the Madhya Pradesh High Court has no commercial division(since it has no original civil jurisdiction). The Court noted that after the enactment of Commercial Courts Act, 2015, cases under the Designs Act over the specified pecuniary limit had to be dealt with by Commercial Courts. The design was registered by the Controller General of Patents & Trademarks, Kolkata.

The High Court held that since the Commercial Courts Act 2015 has an overriding effect, the suit has to be considered by a Commercial Court and not the High Court as envisaged by the Designs Act. The Court ordered the District Court at Indore (which has been notified as a Commercial Court) to decide to suit.

## SUPREME COURT PULLS UP TELANGANA GOVT FOR 'INSENSITIVITY' TOWARDS CASE OF BHEL OFFICER'S SUICIDE DUE TO WORKPLACE SEXUAL HARASSMENT

RAJKUMARI CHOUKSEY VS STATE OF TELANGANA

The Supreme Court on Friday came down heavily on the Telangana government and the Telangana state police for their insensitive approach towards a BHEL employee who committed suicide last year on account of workplace sexual harassment. The bench of Justice A. M. Khanwilkar was hearing a writ petition, through advocate Alakh Alok Srivastava, by the victim's mother seeking to urgently transfer the criminal investigation pertaining to the unfortunate death of her young and energetic daughter due to sexual harassment at her workplace at BHEL, Hyderabad from Telangana state police to the CBI or to any other independent central agency.

"Despite a lapse of more than eight months, the Telangana state police is not even filed the chargesheet. The main accused of the instant crime is a native of the state of Telangana, whereas the deceased was a Hindi speaking outsider, belonging to Bhopal, MP. Hence, there is strong apprehension to the mind of the petitioner that the Telangana police has a strong linguistic and regional bias in favour of the accused and against the deceased", the petitioner has pleaded.

The plea urges that from the suicide note, it is quite axiomatic that the deceased daughter of the petitioner categorically stated that the attempt to rape and repeated sexual harassment by the main accused and other co-accused persons, had prompted her to commit suicide. However, despite this the Telangana state police has not yet arrested the main accused or any other accused persons and has not conducted any custodial interrogation. Per contra, the Telangana police has given a clean chit to the accused persons in its latest report of June, 2020. It is further submitted that the National Commission for Women had rejected the said police report.

**Plea In SC Seeks Direction To Centre To Ensure Refund Of Exorbitant Amounts Charged By Pvt. Labs, Hospitals For RT-PCR Tests**

The Supreme Court on Saturday has been moved in a plea for direction to the Centre to ensure refund of "exorbitant" amounts charged by private labs and hospitals for conducting RT-PCR tests to detect COVID-19.

The interim application has been filed by lawyer and BJP leader Ajay Agrawal in his pending PIL in which he had sought fixing of uniform rate of Rs 400 across India, as done by Odisha, for the Reverse Transcription Polymerase Chain Reaction (RT-PCR) test. A bench of Chief Justice S A Bobde and Justices A S Bopanna and V Ramasubramanian.

Union Health Ministry on Agrawal's PIL and had sought its response within two weeks. The application filed yesterday avers that Govt. of Orissa, after working on all the statistics, And after examining all the aspects came to the conclusion that the actual cost incurred by the Private Labs and Hospitals is not more Rs. 200/- which vindicated the stand of the applicant also, and after allowing to take hundred percent profit on it, the maximum rates to be charged were fixed at Rs. 400. The Applicant prays for order for fixing a uniform maximum rate of Rs. 400/- for the RT-PCR test across India on the principle of parity and one one nation-one rate policy, and responsibility be fixed of the concerned officials or persons in all the States, NCT of Delhi and

UTs for remaining insensitive, deliberately or negligently, to the cause of 135 crores people of this Country. Further, an order is sought for the earliest refund of the additional amount charged to the extent of around Rs. 3000/- when this test was charged @Rs. 4500/- across India, while the total cost of the test including its kit comes to somewhere between Rs. 800/- and 1200/- and afterwards when it was charged by Meghalaya @Rs.3200/-

Andhra Pradesh 2800/-, Delhi @Rs.2400/- and so on, the entire amount charged over and above Rs. 400/- be refunded.

**07TH December**

## A WRIT PETITION HAS BEEN FILED IN THE SUPREME COURT QUESTIONING THE "SILENCE" ON PART OF THE CENTRAL BUREAU OF INVESTIGATION (CBI)

Regarding the status of its probe into the mysterious death of Bollywood actor Sushant Singh Rajput. The plea filed by Mumbai resident Puneet Kaur Dhanda and her husband. Advocate Vineet Dhanda has urged for issuance of directions to the CBI to complete investigation in two months and submit a report in the case

"This Hon'ble Court passed an order for CBI inquiry on 19th of August 2020 and despite lapsing of almost four months the Central Bureau of Investigation is yet to conclude its investigation and all the eager family members, fans, well-wishers of the late actor are yet to get a solace regarding the exact reason of the death of late actor Sushant Singh Rajput," the petition reads.

## THE SUPREME COURT ON MONDAY DISMISSED THE PLEA FILED BY ARNAB GOSWAMI OUTLIER MEDIA

Arnab Goswami who owns Republic TV and other channels, seeking a CBI inquiry against the Commissioner of Mumbai Police and the Maharashtra Police DGP, and the quashing of all FIRs registered against Republic Bharat Editor Arnab Goswami. The petitioner was also seeking protection for all the employees of the news channel from coercive action by Maharashtra Police.

Rejecting the plea, the Court has given the petitioners liberty to approach the appropriate High Court. Calling the petition ambitious, a division Bench of Justices D.Y. Chandrachud and Indira

Banerjee refused to quash all FIRs against Goswami. The Court was hearing a petition filed by ARG Outlier Media Private Limited, which owns Republic TV, seeking direction to the Union of India to grant protection to Republic employees, transfer of all cases to CBI, restraint on Maharashtra Police in arresting Republic employees.

## THE SUPREME COURT DISMISSED THE PLEA FILED MLA PC GEORGE

Challenging the decision of the Kerala State Election Commission, Thiruvananthapuram, to conduct elections to Local Bodies in Kerala, for the year 2020, in the midst of Covid-19 pandemic. The petition was filed as a special leave petition after the Kerala High Court dismissed George's plea.

The three-judge **Supreme Court** bench of Justices L. Nageswara Rao, Hemant Gupta and Ajay Rastogi asked the petitioner to pursue his remedy for the option of postal ballots to senior citizens before the High Court as the submission was not made earlier before the High Court.

**9TH December**

## SECTION 153A IPC - DELIBERATE & MALICIOUS INTENT NECESSARY; 'DISTURB PUBLIC TRANQUILITY' DOES NOT MEAN NORMAL LAW & ORDER ISSUES : SUPREME COURT .

The Supreme Court interpreted the ingredients of the offence under Section 153A of the Indian Penal Code in the case Amish Devgan v Union of India. Interpreting Section 153A(b) of the Indian Penal Codesynonymous with public order and safety and not normal law and order issues that do not endanger the public interest at large, the Supreme Court has held that the term 'public tranquility' must be read in a restricted sense

**166979 https://www.livelaw.in/top-stories/153a-ipc-intent-public-tranquility-supreme-"court-166979**

## BALANCE RIGHT TO PROTEST & RIGHT TO MOVEMENT'-PLEA IN SUPREME COURT SEEKS DIRECTION TO ALLOW FARMERS PROTEST AT JANTAR MANTER

A petition has been filed in the Supreme Court seeking a direction to allow the protesting farmers to enter in Delhi and allow them to protest at the designated place for protest i. e. Jantar Manter by following the guidelines for COVID. The plea filed on behalf of Advocate Reepak Kansal seeks indulgence of the Court to protect and safeguard the "human and fundamental rights of

protesting of farmers whom, the petitioner states, are not allowed being allowed to enter in Delhi for peaceful protest.

**https://www.livelaw.in/top-stories/farmers-protest-at-jantar-manter-supreme-court-right-to-protest-right-to-movement-166975**

**10TH December**

**CASE TITLE: TITTY ALIAS GEORGE KURIAN VS. THE DEPUTY RANGE FOREST OFFICER CRL.NO.593 OF 2018**

WILDLIFE ACT: SUPREME COURT UPHOLDS QUASHING OF CRIMINAL PROCEDDINGS AGAINST MAN FOR POSSESSING 'INDIAN FLAP SHELL TURTLE'.

**FACTS AND HELD:**

The Supreme Court upheld the a Kerala High Court quashing criminal proceedings under Wildlife Act against a man for hunting an possessing Indian Flap Shell Turtle. The High Court has quashed the proceedings on the ground that the Turtle seized was **not** that species of turtle which is included in **Part II of schedule I of the Wildlife (Protection) Act, 1972**. The Supreme Court allow the appeal filed by the state had set aside the High Court Judgment. The accused filed review petition which was allowed and the earlier order was recalled. The veterinary surgeon who noted examined the turtle seized from him had identified it as "Indian Flap shell" and the scientific name is "Lissemys Punctata" whereas item no.8, schedule I Part II is about 'Indian-soft shelled Turtle' (i.e. Lissemys Punctata Punctata)

**OBSERAVTION MADE BY THE SUPREME COURT:**

The court observed that section 9 of the Act prohibits hunting of any wild animal under schedule I, II, iII and IV except as provided under section 11 and 12, that sections 11 and 12 are the provisions where hunting is permitted by the permission of Chief Wild Life Warden, that in case a person hunts any of the wild animals which are included in 7 schedule I to IV, becomes an offences inviting the penalty under section 51 of the Act.

**HELD:**

On the face of the present case, it is clear that the **Turtle seized is not that which is included in Part II of schedule I** and the turtle seized having already been freed on the second day of its seizure, the High Court did not commit any error in quashing the criminal proceeding registered for wild life offences. **The Supreme Court bench uphold the High Court order**.

**CASE TITLE: Kaushal Verma vs. State of Chattisgrah Criminal Appeal No. 843 O 2020**

The Supreme Court directs all state standing counsel to consider **'Convenience Note'** submitted by **Adv Sumeer Sodhi** as **Standard Format to present cases on behalf of states**.

**SCBA CASE:** Supreme Court allows Ashok Arora to argue in person plea against his suspension as SCBA secretary.

Supreme Court allowed **other Courts to adjudicate issues relating to BCCI**, state cricket associations and clubs.

**12TH December**

## CHARGES UNDER SECTION 149 OF INDIAN PENAL CODE CAN BE ALTERED TO SECTION 34 INDIAN PENAL CODE IF COMMON INTENTION AMONG ACCUSED IS PROVED SAID SUPREME COURT

The Supreme Court has held that it is permissible to alter a charge under section 149 of Indian penal code (IPC) to a charge under section 34 Indian Penal Code (IPC) if the fact proves that the crime has been committed in furtherance of a common intention.

Section 149 IPC provides for vicarious liability of members of an unlawful assembly for the crime committed by any member of the assembly in furtherance of the common object and makes them liable for the same punishment. The Supreme Court was dealing with the situation where three out of the seven person accused of the offence under 307 IPC (attempt to murder) were acquitted therefore the number of convicts under the Assembly became less than the five so the application of section 149 was not possible in the case. The issue before the court was whether it was lawful to use the aid of section 34 IPC common intention to attribute criminal liability to the members of the group.

Referring to various precedents, The supreme court held that section 34 IPC can be used in such a situation if common intention has been proved. The judges observed that section 211 to 224 of CrPC which deal with framing of charges in criminal trials give significant flexibility to the courts to alter and rectify the charges.

The bench comprising Justices N V Ramana, Surya kant and Aniruddha Bose observed that the appellant did not suffer any adverse effect when the Punjab and Haryana high court held that three of them individually guilty of the offence of attempted murder without the aid of section 147 IPC. On the facts, The supreme court noted that the requirements of Section 34 of IPC are well established as the attack was apparently premeditated. The Conviction of the appellant under section 307 IPC was thus upheld.

Reference:https://www.livelaw.in/know-the-law/charge-under-section-149-ipc-altered-to-section-34-ipc-common-intention-proved-supreme-court-167134

## THE SUPREME COURT REMOVED THE BAN RESTRAINING OTHER COURTS FROM HEARING DISPUTES RELATED TO BCCI, STATE CRICKET ASSOCIATION.

The Supreme Court on Wednesday, vacated its nearly two year old blanket Ban restraining other courts from hearing disputes related to the Board of Control for cricket in India (BCCI) and State Cricket Association. The apex court, on March 14, 2019 had restrained all the other courts across the country from entertaining or proceeding with any matter pertaining to cash rich BCCI and straight Cricket Association till the court appointed mediator and senior advocate PS Narasimha submitted his report on his pending dispute.

A bench comprising justices L Nageswara Rao, Hemant Gupta and Ajay Rastogi on Wednesday took note of submission of various laws on behalf of State Cricket bodies and decided to vacate the order.

Due to the efforts made by  Amicus Curiae, the majority of the association have resolved their disputes. Mr Balaji Srinivasan learnt counsel appearing for the Karnataka Cricket Association argued that certain issues have not been resolved and requested this court to hear the application the applicants participated in the mediation process and has signed an agreement. We are not inclined to accept the contention of Shri Srinivasan and keep these interlocutory applications pending as the disputes relating to the Karnataka Cricket Association stood resolved through mediation, recorded by the bench.

As regards the applications filed by the Telangana Cricket Association seeking impleadment and clarification that it would be granted associate members shape with in BCCI, Mr Siddharth Luthra, senior counsel submitted that these interlocutory application can be disposed of with liberty to the Telangana Cricket Association to approach the BCCI and make a representation for grant of associate membership in BCCI.

To which the bench allowed the interlocutory applications to be disposed of with liberty.

Reference: https://www.livelaw.in/top-stories/supreme-court-bcci-state-cricket-association-restraining-hearing-disputes-167148

**14TH December**

**TATA V/S MISTRY HEARING STARTED**

In the dispute between Tata Group's holding firm, Tata Sons Limited, and Shapoorji Pallonji Groups' Cyrus Mistry, the Supreme Court began final hearings.

A National Company Law Appellate Tribunal order that required the reinstatement of Cyrus Mistry as the Chairman of Tata Sons Limited was challenged by both Tata Sons and Mistry on December 18, 2019.

**15TH December**

## SMT. VANITHA VS. THE DEPUTY COMMISSIONER, BENGALURU URBAN DISTRICT & ORS.

**[Civil Appeal No. 3822 of 2020 arising out of S.L.P. (C) No. 29760 of 2019]**

It was held that (1) Any relief available under sections 18, 19,20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

https://www.advocatekhoj.com/library/judgments/announcement.php?WID=13349

## SAMIR AGRAWAL VS. COMPETITION COMMISSION OF INDIA & ORS.

**[Civil Appeal No. 3100 of 2020]**

The Supreme Court said that, when the CCI performs inquisitorial, as opposed to adjudicatory functions, the doors of approaching the CCI and the appellate authority, i.e., the NCLAT, must be kept wide open in public interest, so as to subserve the high public purpose of the Act.

23. Coming now to the merits, we have already set out the concurrent findings of fact of the CCI and the NCLAT, wherein it has been found that Ola and Uber do not facilitate cartelization or anti-competitive practices between drivers, who are independent individuals, who act independently of each other, so as to attract the application of section 3 of the Act, as has been held by both the CCI and the NCLAT. We, therefore, see no reason to interfere with these findings. Resultantly, the appeal is disposed of in terms of this judgment.

https://www.advocatekhoj.com/library/judgments/announcement.php?WID=13348

**[CIVIL APPEAL NO. 4049 OF 2020 ARISING OUT OF S.L.P. (C) NO. 15293/2020 DIARY NO. 19638 OF 2020]**

The court observe that directions issued by the High Court in paragraph 14 of the judgment need to be modified to the extent as indicated above. It goes without saying that Homeopathic medical practitioners have to follow the advisory dated 06.03.2020 issued by AYUSH Ministry as well as guidelines for Homeopathic medical practitioners for COVID-19 issued by Government of India, Ministry of AYUSH, as noted above. The Civil Appeal is disposed of accordingly. The interlocutory applications filed seeking permission for impleadment is rejected.

**17TH DECEMBER**

## SC ISSUES NOTICE TO STATES ON CONTEMPT PETITION SEEKING QUALIFIED MEMBERS IN SPCB

The Supreme Court on Thursday issued notice to all the state governments on a contempt petition for alleged disobedience of its earlier direction seeking framing of appropriate rules for appointment of qualified members to respective State Pollution Control Board (SPCB).

A bench comprising justices Vineet Saran and S R Bhatt issued notices to Chief Secretaries of all states for alleged wilful disobedience in complying with its directive passed on September 22, 2017, in the case.

The court passed the order on a contempt petition filed by Amitabh Srivastava, an advocate, alleging that the “direction passed by the Supreme Court has not been complied with by the states".

In its 2017 judgment, the Supreme Court had recorded its anguish and pain with regard to the appointment of "unqualified members" to the State Pollution Control Boards.

It had directed the states "to frame appropriate guidelines or recruitment rules within six months, considering the institutional requirements of the SPCBs and the law laid down by statute, by this court and as per the reports of various committees and authorities and ensure that suitable professionals and experts are appointed to the SPCBs.

It had said that any damage to the environment could be permanent and irreversible or at least long-lasting.

The court, in its order passed on Thursday, also granted liberty to advocates Fuzail Ahmad Ayyubi and Ashima Mandla, the counsel for the petitioner, to serve notice upon standing counsels of all states through e-mail.

## SC ISSUES NOTICE TO CENTRE, EIGHT STATES ON PLEA OF TWITTER INDIA AGAINST MULTIPLE FIRS

The Supreme Court Thursday sought a response from the Centre and eight states including Karnataka and Assam on a plea of Twitter Communications India Pvt Ltd seeking quashing of multiple FIRs lodged against it for allegedly promoting a tweet on 'Khalistan'.

A bench headed by Chief Justice S A Bobde took note of the submissions of senior advocate Sajjan Poovayya, appearing for Twitter India, that there cannot be multiple FIRs for one incident and sought their quashing.

The firm has sought clubbing of the FIRs for conducting the trial in one lower court as done in the case of journalist Arnab Goswami.

Multiple FIRs have been lodged against the Indian arm of Twitter INC of the USA in eight states for allegedly promoting the tweet of one Gurpatwant Singh Pannum on 'Khhalistan' Pannum had tweeted a Twitter poll on whether India should recognize Khalistan'2020."

In the proceedings conducted via video-conferencing, the bench, also comprising justices A S Bopanna and V Ramasubramanian, issued notices on the plea to the Union Ministry of Home Affairs and Karnataka, Assam, Haryana, Andhra Pradesh, Arunachal Pradesh, Maharashtra , Odisha and the Police Commissioner of Delhi.

The bench also sought responses from the complainants who have lodged the criminal complaints against social media giant.

It has also issued the notice to one Vinit Goenka, a BJP functionary who had alleged that the firm had taken financial consideration to promote the alleged tweet.

Twitter India has contended that it has no control over the content on the Twitter website and that the same is monitored by the Twitter Inc based in the USA.

**NOT SATISFIED WITH WORK DONE BY COMMISSION FOR AIR QUALITY MANAGEMENT, SAYS SC**

The Supreme Court Thursday said it is "not satisfied" with the work done by the Commission for Air Quality Management (CAQM) in the National Capital Region and Adjoining Areas, which has been constituted by the Centre to tackle air pollution.

A bench headed by Chief Justice S A Bobde said that even people in Delhi are not satisfied with the work done by the Commission on the issue of pollution.

"We don't know what your commission is doing. People in Delhi are not satisfied with your work. We are also not satisfied," said the bench, also comprising Justices A S Bopanna and V Ramasubramanian.

Solicitor General Tushar Mehta, appearing for the Centre, said the Commission is working on "war footing" and several steps have been taken to deal with pollution.

Additional Solicitor General Aishwarya Bhati, also appearing for the Centre, apprised the bench that they have already filed a comprehensive affidavit as directed by the court earlier.

The apex court said it would hear in second week of January the petition filed by Aditya Dubey who has raised the issue of pollution caused due to stubble burning in neighbouring states of Delhi.

The top court had on Monday asked the Centre to apprise it about the steps taken so far by the Commission to tackle the problem of air pollution.

The Centre had informed the bench that the government was readying a comprehensive affidavit which would be filed in the apex court in the matter.

On November 6, the apex court had asked the Centre to ensure there is no smog in Delhi as it was informed that the Commission has started functioning from that day.

It had said that pollution problem has to be dealt with by the executive as it has the power, money and resources for this.

The Centre, which has appointed former Chief Secretary of Delhi M M Kutty as the chairperson of the Commission, had apprised the court that there were experts from the field besides members from NGOs in the newly created Commission.

On October 29, the top court was informed by the Centre that it has come out with an ordinance on curbing pollution and it has been promulgated already.

The apex court had on October 26 kept in abeyance its earlier order appointing one-man panel of retired apex court judge Justice Madan B Lokur to monitor the steps taken by neighbouring states to prevent stubble burning which is a major cause of pollution in the Delhi-national capital region (NCR).

The apex court had kept in abeyance its order appointing Justice (retd) Lokur panel while considering the Centre's stand that it was coming out with a comprehensive legislation to deal with air pollution, including the aspect of stubble burning.

During his tenure as an apex court judge, Justice Lokur who headed social-justice bench had dealt with pollution matters which included the aspect of stubble burning.

The top court is also hearing a separate plea on air pollution and had last year even taken a suo motu note of alarming rise in air pollution in Delhi-NCR where several directions have been passed with regard to stubble burning.

**18TH December**

# MAINTENANCE AND ALIMONY: NEW GUIDELINES WILL HELP WOMEN, CHILDREN

**The Court has framed guidelines for maintenance and it includes payment, criteria for determining the quantum and date from when it has to be awarded. It also covers overlapping jurisdiction on the issue.**

In November 2020, the **Supreme Court** framed guidelines pertaining to payment of maintenance in matrimonial matters and ensured uniformity in taking the decision. The Constitution guarantees protection to women and children and empowers the State to make special provisions for their betterment. Article 15 (3), reinforced by Article 39, envisages a positive role for the State in fostering a change towards the empowerment of women. This led to the enactment of various legislations from time to time.

Justice Krishna Iyer in an important judgment had held that maintenance laws are a measure of social justice and specially enacted to protect women and children and they fall within the constitutional sweep of Article 15(3) reinforced by Article 39.

The legislations which have been framed on the issue of maintenance are the Special Marriage Act, 1954, Section 125 of the CrPC, 1973, and the Protection of Women from Domestic Violence Act, 2005, which provide a statutory remedy to women, irrespective of the religious community they belong to and apart from the personal laws applicable to various religions.

The recent guidelines were issued by the Court in Indu vs Rajnesh and Anr., where proceedings for payment of interim maintenance under Section 125 CrPC were pending between the parties for over seven years. The husband had moved the **Supreme Court** challenging the High Court's

decision to uphold the trial court's order awarding interim maintenance to his wife and minor son.

**Direction on overlapping jurisdiction**: To avoid conflicting orders being passed in different proceedings, the Court directed that in a subsequent maintenance proceeding, the applicant will disclose the previous maintenance proceeding, and the orders passed therein. This will allow the Court to take into consideration the maintenance already awarded and grant an adjustment of the said amount.

**Guidelines regarding payment of interim maintenance**: At present, this issue is decided on the basis of pleadings, where some guesswork or rough estimation takes place about the amount to be awarded. It is often seen that both parties submit scanty material, do not disclose the correct details and suppress vital information. The Court, therefore, finds it necessary to lay down a procedure to streamline the proceedings, since a dependent wife, who has no other source of income, has to take recourse to borrowing from her parents or relatives during the interim period to sustain herself and her minor children till she begins receiving interim maintenance.

The family court, in compliance with the mandate of Section 9 of the Family Courts Act, 1984, must make an endeavour for settlement of the dispute. For this, Section 6 provides that the state government shall, in consultation with the High Court, make a provision for counsellors to assist a family court in the discharge of its functions.

The party claiming maintenance, either as a spouse or as a partner in a civil union, live-in relationship or common law marriage, should be required to file a concise application for interim maintenance with limited pleadings, along with an Affidavit of Disclosure of Assets and Liabilities before the concerned court. On the basis of the pleadings filed by both parties and the affidavits of disclosure, the Court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage.

https://www.indialegallive.com/cover-story-articles/il-feature-news/payment-alimony-help-women-children-matrimonial/

# HIGH COURT JUDGEMENTS

**5TH December**

## DELHI HIGH COURT

### Bar associations of Delhi to join protest against farm laws in solidarity with farmers

The Opposition, including many regional parties, on Sunday came out in support of the Bharat Bandh. Farmers have been protesting on Delhi's borders for the last 12 days demanding the repeal of the Centre's new farm laws. They were marching into the city but have been barricaded out by the police since they do not have permission for the march.

Opposition leaders including Congress president Sonia Gandhi, DMK chief MK Stalin, NCP chief Sharad Pawar, Samajwadi Party chief Akhilesh Yadav and CPI(M) general secretary Sitaram Yechury on Sunday issued a joint statement backing the Bandh and pressed the Centre to meet the legitimate demands of the protesters.

Farm union representatives urged people to come forward to make Tuesday's Bharat Bandh a success. Calling it an apolitical strike, the representatives have welcomed support from several parties. After the failing of five rounds of talks between the Centre and the farmer unions, the two sides are set to meet again on December 9, Wednesday, to resume negotiations.

### NCRB to Delhi High Court

The National Crime Records Bureau (NCRB) on Monday informed the Delhi High Court that an annual report of the data of transgender prisoners in jail will be made separately. The NCRB has classified transgenders as a separate third gender in its annual publication of prison statistics after a public suit was filed in the Delhi High Court. the NCRB informed the court that the government has decided to include details of transgender prisoners in the annual jail report and also created a separate category for it.

The PIL was filed by Karan Tripathi, a journalist and independent researcher, in the Delhi High Court. The petition said the government needs to take steps to include details of transgender prisoners in the annual jail report.

During the hearing, the petitioner's counsel had submitted that his client had made a presentation to the Central government in September 2020 about the same issue.

**9TH December**

## DELHI HIGH COURT

**Can't Provide Details Of Prime Minister's Entourage": IAF Moves Delhi High Court Against CIC Order Directing Disclosure Under RTI Act .**

A writ petition has been filed in the Delhi High Court against an order of the CIC (Central Information Commission), said to be affecting the sovereignty and integrity of India, inasmuch as it directs the Indian Air Force (IAF) to disclose details of the Prime Minister's entourage under the RTI Act (Right to Information Act, 2005). The petition has been filed by the CPIO, Directorate of Personal Services, Air Headquarters Indian Air Force against an order dated July 8, 2020, directing the CPIO to provide details of relevant Special Flight Returns-II to an RTI

applicant Respondent), within 15 days to Commodore Lokesh K. Batra

**https://www.livelaw.in/news-updates/delhi-high-court-indian-air-force-right-to-information-prime-minister-entourage-sovereignty-rti-cic-special-spg-166983**

**10TH December**

**The News Broadcasting Standards Authority (NBSA) has found the news channel Zee News, Zee 24 Taas, Zee Hindustani, Timesnow, India Today, TaajTak, India TV, News Nation and ABP News at fault for their vilifying and slanderous reports linking Hindi film actor Rakul Preet Singh to drugs**

**"Speaking the Truth is Not Defamatory"**: Priya Ramani submits before Delhi Court hearing defamation case by MJ Akbar – A court in Delhi continued hearing final arguments in former BJP leader MJ Akbar's defamation case against journalist Priya Ramani. The Court is re-hearing final arguments after the previous judge hearing the matter was transferred.

## KARNATAKA HIGH COURT

**Case Title: All India Council of Trade Unions Vs. Union of India Writ Petition No. 8928 Of 2020**

The Manual Scavenging Most Inhuman which violates Article 21 of the constitution. Karnataka High Court Issues directions to Implement Manual Scavengers Act, 2013.

The Karnataka assembly passes bill to Ban slaughter of all cattle except buffalo aged above 13 years. The bill named as **"KARNATAKA PREVENTION OF SLAUGHTER AND PRESERVATION OF CATTLE BILL, 2020".**

*KEY NOTES OF THE BILL:*

1. **Section 4** of the bill says, "Notwithstanding anything contained in any law, custom or usage to the contrary, no person shall slaughter or cause to be slaughtered, or offer or cause to be offered for slaughter or otherwise intentionally kill or offer or cause to be offered for killing any cattle".

2. The bill prohibits **transportation** of cattle within or outside of the state for the purpose of slaughter.

3. The state Karnataka widened the ambit of the **prohibition by covering buffaloes below the age of 13 years**.

4. The police officer above the rank of sub-inspector shall **inspect the premises** and **conduct a search** if he/she has the "reason to believe" that the offence has been committed.

5. The seized cattle has been handed over to the care of **state-run organisations**.

6. The offences are cognizable – punishment with **imprisonment of 3 to 5 years** and fine ranging from Rs. 50,000 to Rs. % lakhs.

## **CASE TITLE: SAFWAN vs. STAE OF KARNATAKA** Criminal petition No. 7241/2020 **"COW SMUGGLING CASE"**

Karnataka High Court grants Anticipatory Bail to three accused with certain conditions.

## ALLAHABAD HIGH COURT

**CASE TITLE: KAMRAN AMEEN KHAN vs. STATE OF U.P** Bail No – 4499 of 2020

Bomb threat to UP Chief Minister – Allahabad High Court grants bail to accused considering his unconditional apology.

Allahabad High Court held that it is **illegal** to stop and attach **gratuity** due by the bank to reimbursement against the liability of the employee.

## BOMBAY HIGH COURT

**CASE TITLE: HITESH HEMANT MALHOTRA vs. STATE OF MAHARASTRA** Criminal Bail Application No. 352 of 2020

The court was of the opinion that the paper with LSD drops, as a whole, is neither 'preparation', within the meaning of section 2(xx), nor a 'mixture' within the meaning of NDPS act. The court ruled that the weight of the paper, used to carry LSD drops cannot be counted while determining the quantity of the contraband material, whether it is small, intermediate or commercial (under the NDPS Act). Therefore the rigorous of section 37 of the NDPS Act, are not applicable to the facts of this case.

Maharashtra government approved draft bill of **'Shakti Act'** which envisages death penalty for heinous crimes against women and children.

**13TH DECEMBER**

## MADRAS HIGH COURT

## Central government is expected to respect languages of all the states & issue notifications in vernacular language: Madras High court

The Madras High Court recently remarked that it is expected of the Central Government to respect the languages of all the States and comply with the procedure. While noting that mere issuance of the notification in Hindi and English languages will not be sufficient unless it is issued in the vernacular languages. A writ petition was heard by the bench of Justice N. Kirubakaran and Justice B. Pugalendhi, which challenged the gazette notification (dated 22.09.2020) issued by the Union Ministry of Environment, Forest and Climate Change, Government of India reducing the size of the Kanyakumari Wild Life Sanctuary from 0-10 km to 0-3 km. The grievance of the Petitioner was that prior to the issuance of this gazette notification, a draft notification was issued by the Union Ministry on 21st February which invited objections, if any, within a period of 60 days, from the general public, however, no public hearing was conducted, in view of the COVID-19 pandemic situation and the Standard Operating Procedure (SOP) announced by the Government, by imposing the nation-wide lock-down.

It was also submitted that the draft notification was not made available to the local people in the vernacular language, as per Rule 3 of the Notification of the Ministry of Environment and Forests, dated 19.01.2009 and the Official Memorandum of the Government of India, Ministry of Environment and Forests, dated 19.04.2010.

**Court's observation**

The Court, in its order, observed that as per the relevant rule & the Official Memorandum, the notice of public hearing as well as the Draft Environmental Impact Assessment Report has to be advertised in one major National Daily and in one Regional Vernacular Daily in Official State

Language, enabling the local people to understand the importance of the notification and to respond.

The Court said, "Mere issuance of the notification in Hindi and English languages will not be sufficient to comply with the requirement of the aforesaid notification dated 19.01.2009 and the Official Memorandum dated 19.04.2010 unless it is issued in the vernacular languages.

"This Court expects the Central Government to issue all the notifications in the vernacular language of the States, which is the primary requirement, apart from Hindi and English languages. Otherwise, the very purpose of the notification will be lost. After all, languages are the medium of communication for people."

Source: https://www.livelaw.in/news-updates/notifications-in-vernacular-language-central-govt-languages-of-all-the-states-madras-high-court-167164

## Madras High Court sets aside District Judge order against a lawyer who used unparliamentarily words during the virtual hearing

The Madras High Court recently granted relief to a lawyer against whom a Principal District and Sessions Judge had passed an order after the lawyer was found guilty of using unparliamentary language during virtual court proceedings (***G Samwell Rajendran v. The Principal District and Sessions Judge, Thoothukudi***).

After considering the circumstances of the case, the explanation submitted by the lawyer, and his apology for the error, Justice **R Tharanai** of the High Court opined that some leniency should be shown in the case and allowed the revision plea moved by the advocate.

The incident took place during a bail hearing last June via WhatsApp call before the Principal District and Sessions Judge, Thoothukudi.

Advocate Samwell Rajendran was stated to have uttered unparliamentary words while the call was still connected for the hearing, which was witnessed by the Public Prosecutor, the stenographer, the protocol officer, and the system analyst.

The judge had issued a show-cause notice over his conduct. On finding the lawyer's reply unsatisfactory, the judge had proceeded to impose a fine of Rs 200 under Section 228 of the Indian Penal Code (intentional insult, causing interruption to any public servant during the course of judicial proceedings). He added that if the lawyer were to default on this payment of fine, he would be liable to undergo one-month simple imprisonment.

Though he paid the fine, the District Judge had also referred the matter to the Bar Council prompting Rajendran to move the High Court for relief.

He told the High Court that he was not given a personal hearing before the order against him was passed. He submitted that the Judge may have misunderstood his reply owing to a typographical error where he had typed "*it would not occur in due course*" instead of "*this would not happen in future*."

Source: https://www.barandbench.com/news/litigation/madras-high-court-district-judge-order-lawyer-cursed-virtual-hearing

## ORISSA HIGH COURT

## Duty of State to act against the misuse of social media, police must investigate complaints without delay: Orissa High Court

*The Court noted that there was an increasing number of offensive videos circulating on social media, particularly targeting young women.*

Within a month of its call for legislation to erase offensive videos and revenge material off the internet, the Orissa High Court has once again taken cognizance of the rise of objectionable content on social media particularly objectionable videos of young girls.

A Bench of Justices **SK Mishra** and **Savitri Ratho** noted that there was an increase in the number of offensive videos circulating on social media, targeting young women.

*"The menace of circulating objectionable videos in the social media has become a problem for the young people, especially young girls," the High Court said.*

Enjoining the State to ensure such content was not permitted, the Court also called for an expedited investigation of such cases when such complaints reached police stations.

The Bench made these remarks when hearing a Habeas Corpus petition filed in the Court by a girl's father. While the girl was eventually rescued, the Court took note of the allegation that the girl was being harassed by one of the respondents, who was circulating "objectionable videos" on the social media.

The girl averred that despite filing an FIR before the Inspector (IIC) at the Jagatpur Police Station in Cuttack, the FIR was not registered at the police station.

Against this backdrop, the Court directed the police to register FIRs in such cases *as early as possible* and institute an investigation into such allegations *without any delay.*

Dealing with the case on hand, the Court instructed the police to examine the FIR without further delay and register the same if a cognizable offense was demonstrated.

If necessary, the police could raid the homes of the persons named as accused, the Court added.

Directing the compliance of its orders, the Court proceeded to list the matter for hearing on December 15, 2020. Advocate **DDU Mishra** argued the petitioner's case and Additional Government Advocate **AK Nanda** appeared for the Odisha Government.

On November 25, a Single Bench of Justice **SK Panigrahi** had lamented the lack of an effective *right to be forgotten* legislation to protect the privacy of the persons who were made the subject of offensive content online. The Court was hearing a bail application moved by a man who recorded a sexual assault upon a woman and created a Facebook profile in her name to circulate the footage online.

Finding that the woman had been at the *receiving end of unabated mental torture,* the bail application was rejected.

As in the case at hand, the Court noted that women seemed to be at the receiving end of harmful content online and that *any accused will surreptitiously outrage the modesty of the woman and misuse the same in the cyberspace unhindered* if the right to be forgotten was not recognized.

Source: https://www.barandbench.com/news/litigation/duty-of-state-to-act-against-misuse-of-social-media-orissa-high-court

**14TH DECEMBER**

## ALLAHABAD HIGH COURT

### Amar Nath Chaubey Vs. Union of India and Ors.

**[Special Leave Petition (Crl.) No. 6951 of 2018]**

Shri Satyarth Anirudh Pankaj, I.P.S. has been appointed as Senior Officer of the State of Uttar Pradesh to further investigate the matter by a team of qualified officers to be chosen by him of his own choosing. The State shall ensure that such officers are available. The investigation must be completed within a period of two months from the date of issuance of a copy of the warrant, unless an extension is sought, and the full report must be sent to the Court.

The Director General of Police, Uttar Pradesh shall do the needful.

## BOMBAY HIGH COURT

*"What was the urgency to arrest him like this a day before, when the application was sub-judice? Asks the Additional Sessions Judge* ***DE Kothalikar on the arrest of Republic TV CEO Vikas Khanchandani***

When hearing the anticipatory bail plea forwarded by Republic CFO S Sundaram, the judge made the remarks apprehending his detention in the TRP Scam case by the Mumbai Police.

Just a few minutes before the Court rose for the day the plea came up for hearing. Advocate Niranjan Mundargi, who appeared for Sundaram, asked the Court to protect Sundaram before the hearing appeal on Tuesday was approved.

Verma was given anticipatory bail by the Court when it saw no ground for custodial interrogation in the event. It referred to another Sessions' Court order granting bail to the owner of Maha Movie.

## KARNATAKA HIGH COURT

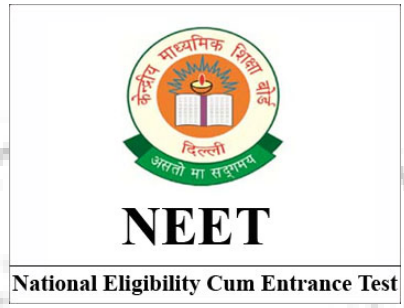
### Karnataka High Court Initiates Suo-motu Petition to Ensure Elections Are Held to Municipal Bodies


On Monday, the Karnataka High Court ordered the registry to initiate a Suo-motu writ petition to give directives to the State Government and the State Election Commission to conduct municipal elections in compliance with the requirement of Article 243U (3) of the Constitution. "It is the duty of the court to ensure that constitutional mandate is followed by the State Election Commission and the State Government", the Court observed.

Chief Justice Abhay Oka and Justice S Vishwajith Shetty's divisional bench ordered the Registrar General to order the State Government and the State Election Commission as parties to the Suo motu writ petition to be brought before this court on 17 December.

## DELHI HIGH COURT

## The High Court of Delhi permits 14 NEET applicants to physically review their OMR sheets




The Delhi High Court recently allowed 14 National Eligibility cum Entrance Test (NEET) applicants to physically review their OMR sheets at the National Testing Agency office in connection with a petition apprehending tampering with response sheets (NTA).

A single-judge Bench of Justice Jayant Nath, also allowed the aspirants to take pictures of the initial OMR sheets (Muskaan Sabharwal & Ors vs NTA & Ors).

In order to challenge the OMR answer sheets, the petitioners even questioned the procedure accepted by NTA.

The petitioners argued that the same was unfair, unjust and insane, because the procedure involves payment of Rs 1,000 per issue.

The matter will now be followed up on December 16.

Senior Advocate Gopal Sankaranarayanan with Advocates Tanvi Dubey, Dr. Charu Mathur, Malak Bhatand, Sanjeev Dubey appeared for the petitioners.

NTA was represented by Advocate Amit Bansal.

**15TH DECEMBER**

## DELHI HIGH COURT

## Action Ispat and Power Pvt. Ltd. vs. Shyam Metalics and Energy Ltd.

**[Civil Appeal No. 4041 of 2020 arising out of S.L.P. (Civil) No. 26415 of 2019]**

The court held that the concurrent finding of the Company Judge and the Division Bench is that despite the fact that the liquidator has taken possession and control of the registered office of the appellant company and its factory premises, records and books, no irreversible steps towards winding up of the appellant company have otherwise taken place. This being so, the Company Court has correctly exercised the discretion vested in it by the 5th proviso to section 434(1)(c). Resultantly, civil appeal arising out of SLP (Civil) No.26415 of 2019 stands dismissed.

https://www.advocatekhoj.com/library/judgments/announcement.php?WID=13347

**18TH DECEMBER**

## DELHI HIGH COURT

## Rape-Marriage Promise can't be called Inducement when Sexual Activity continues over indifinite period of time: Delhi High Court

"A promise of marriage cannot be held out as an inducement for engaging in sex over a protracted and indefinite period of time" , remarked the Delhi High Court on Tuesday (15December) while dismissing the appeal filed by a women against trial courts judgement after an inordinate delay 640 days.

The bench of Justice Vibhu Bakhru dismissed the appeal impugning a judgement dated 24.03.2018 of Trial Court, where by the accused was acquitted of the offences for which he was charged – offences punishable under Section 417/376 of the Indian Penal Code, 1860 (IPC).

**https://www.livelaw.in/news-updates/promise-marriage-inducement-sexual-activity-not-rape-376ipc-**delhi-**high-court-167377?infinitescroll=1**

## Delhi HC sets aside order imposing Rs 50,000 fine and disciplinary action on Woman Officer for Sexual Harassment complaint

The Delhi High Court has said sexual harassment is a serious issue that needs to be addressed at all work places urgently and sensitively while stating women are valuable human resources and their contribution in all spheres of life can never be belittled, whether at the home and hearth or away from it, in more impersonal office spaces.

The Court further noted in its order that women are entitled to a congenial and dignified environment to live their life fully and attain their full potentiality.

A bench of Justices Asha Menon and Rajiv Sahai Endlaw passed its order on an appeal filed by the Assistant Director of Finance at the ESI Hospital at Manesar challenging the decision of Internal Complaint Committee (ICC), giving clean chit to the Deputy Director posted at the same hospital in the sexual harassment at workplace complaint made by her in 2012. The single judge had dismissed her writ petition and imposed an exemplary cost of Rs 50,000 on her. The said order was challenged before the division bench.

The High Court noted that the learned judge erred in his finding to reach the conclusion that it was a false complaint. The admitted fact was that the accused/director in his affidavit submitted that he had not challenged the findings of the Complaint Committee. He did not whisper a word about any reason for the appellant to have falsely implicated him. Therefore, the Single Judge was not justified in labelling the complaint false and made with ulterior motives.

The Court while focusing on lack of knowledge and awareness about such issues stated that the Protection of Women from Domestic Violence Act, 2005 has provided a shield against an unhealthy and oppressive domestic environment. But for some reasons, though the Vishakha

Guidelines came in 1999, the Act took a long time to come, that is, in 2013. Every institution and organization must declare zero tolerance for Gender insensitivity."

It was also observed that it cannot be overlooked that the Internal Complaints Committee is intended as a platform to provide an environment of confidence to the complainant. It is not to doubt the veracity of the complaint or view the complainant with suspicion.

https://www.indialegallive.com/top-news-of-the-day/news/delhi-hc-manesar-esi-hospital-sexual-harrasment/

## ALLAHABAD HIGH COURT

## Allahabad High Court Issues Notice to U.P Govt on Pleas Challenging Love Jihad Ordinance; Posted For Hearing On Jan 7

The Allahabad High Court on Friday issued notices on a batch of PILs challenging **Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020** – promulgated by the UP Governor in November this year, to prohibit religious conversions in the name of 'love jihad'.

The bench of **Chief Justice Govind Mathur** and **Justice Piyush Agarwal** has asked the UP Government to file a counter affidavit by January 4 and has fixed the case for hearing on January 7,2020. Liberty is granted to the petitioners to the file rejoinder affidavit by January 6. The Bench however refused to grant any interim relief in the form of stay order.

The primary contention raised by the petitioners is that the ordinance impinges upon their fundamental right tot choice and the right to change in faith.

*Inter Alia*, the Ordinance is said to be violative of citizens' rights under Article 14 (Right To Equality), 15 (Prohibition of Discrimination on the grounds of Religion, etc.), 21 (Right to Life)

and 25 (Freedom of Conscience, etc.) of the Constitution and antithetical to the authoritative pronouncement of a Division Bench of the High Court in the Salamant Ansari Case.

The writ petitioners had also submitted that there was no emergent ground to exercise the ordinance making power under Article 213 of the Constitution and the state failed to show any unforeseen or urgent situation to justify the law. **https://www.livelaw.in/news-updates/allahabad-high-court-love-jihad-religious-conversion-ordinance-up-government-167387**

## Change of Name is a part of Right To Expression under Article 19 & Article 21 of Constitution of India: Allahabad High Court

**Case Title: Kabir Jaiswal v. Union of India & Ors**

The Allahabad High Court has recently held that change of name is an expression guaranteed under Article 19 (1) (a) of the Constitution of India.

A Single Bench of Justice Pankaj Bhatia observed, "The individual 'name' is a facet of right to expression, which is granted under Article 19(1) (a) read with Article 21 of the constitution of India. The freedom of expression as granted under Article 19(1) (a) includes within its sweep all forms of expressions and name in the present world is clearly a strong expression."

**https://www.livelaw.in/news-updates/change-name-cbse-allahabad-high-court-freedom-expression-article-19-and-21-constitution-167397**

## HC seeks State response on a Plea for Effective Implementation of the Witness Protection Scheme, 2018

The Allahabad High Court has directed State Government of Uttar Pradesh to file its response regarding the effective implementation of the witness Protection Scheme, 2018 within two weeks.

"*Let the above letters and documents of the State Government be brought on record by the State Government by filing a counter affidavit within two weeks, so that the petitioner may be able to reply and argue the matter further on merits*."

The above mentioned directions has passed by Division bench of the Court comprised of **Justice Pankaj Mithal and Justicie Saurabh Lavania** while dealing with the PIL filed by Rannsamar Foundation through its President Abha Singh for effective implementation of the witness Protection Scheme, 2018.

The President of Rannsamar Foundation, Abha Singh has approached the court and filed this petition under Article 226 of the Constitution of India in public interest for the benefit of the witnesses in criminal cases.

The petitioner has filed present petition for issuance of suitable direction to the State Government for effective implementation of the directions of the Supreme Court in the case of **Mahendra Chawla vs. Union of India**; 2018 SCC Online SC 2679; (2019) 4 SCC 615.

In short, the petitioner wants implementation of the Witness Protection Scheme, 2018, which has been referred in the above decision of the Supreme Court.

AGA, on behalf of the state has submitted that the State Government has issued necessary directions to all the District Authorities for immediate and effective implementation of the Witness Protection Scheme, 2018.

The court has listed the present matter on 20th December, 2020 for the next hearing.

https://www.latestlaws.com/latest-news/hc-seeks-state-response-on-a-plea-for-effective-implementation-of-the-witness-protection-scheme-2018-read-order/

## HC seeks State response on a Plea for Establishment of Special Courts addressing issue of Human Trafficking


The Allahabad High Court has asked the State Government of Uttar Pradesh to file its response with in prescribed time limit about the steps taken to establish special Courts for the issues related to human trafficking in State.

"*We deem it appropriate to have response from the State. Let this petition for writ be listed on 18th January, 2021. The respondent-State in the meanwhile may file a counter affidavit to the petition for writ.*"

The above direction has passed by the Division Bench of Allahabad High Court Comprising of **Chief Justice Govind Mathur and Justice Piyush Agrawal** while dealing with the Public Interest Litigation Filed by Guria Swayam Sevi Sansthan, a NGO working for the victims of human trafficking and prostitution in state.

This petitioner has approached the court for issuance of an appropriate writ, order or direction for respondents to insure establishment of more special courts in each and every districts of the State of Uttar Pradesh to adjudicate trials under Immoral Traffic (Prevention) Act, 1956.

The petitioner has submitted before the court that human trafficking in the State of Uttar Pradesh is on rise but due to lack of courts, no adequate steps have been taken to combat such trafficking.

The petitioner has also pointed out that during the period of Covid-19 restrictions, such trafficking is rampant A complete study made by the United Nations Office on Drugs and Crimes has also placed on record wherein Chapter- 6A relates human trafficking and its impact in different states of the country.

The submission made by the petitioner is supported by placing on record several official documents as well as the studies made by different non-governmental organizations. Considering the facts and circumstances of the case and documents placed before the court, the court has directed the states to file counter affidavit.

The court has listed the matter on 18th January for next hearing.

https://www.latestlaws.com/latest-news/hc-seeks-state-response-on-a-plea-for-establishment-of-special-courts-addressing-issue-of-human-trafficking-read-order/

# OTHER NEWS AND ARTICLES

## LEGALITY OF ENCOUNTER BY POLICE

### LEGACY OF ENCOUNTER KILLING

Encounter killings" or "retaliatory killings" or "extra-judicial executions" by the Police, this act of killing is often justified by policemen that this was counter attack to save themselves from the deadly attack by the victim. There is a misconception with respect to encounter killing that the defense is only for the police but this is not true. It is defense available to all including police. But this term is popular for the extrajudicial killings by the police and armed forces. Extra judicial killing can be used as self defense or as retaliation. Since the late 20th century the term "**Encounter killing"** is used to describe extrajudicial killings by the police or the armed forces, in the belief of self-defense, when suspected gangsters or terrorists is to be encountered. This term got its popularity in India since the late 20$^{th}$ century because of the high frequency of killings by police across many parts of India in the name of encounter. The city's underworld was attacked by Mumbai police in recognition of encounters in the 1900s and the mid-2000s, and this practice got spread to other large cities. Critics complain that wide acceptance of this practice has led to the fake encounter killings when the police needs to cover-up the killing of the suspect when they are in the custody or unarmed.

### FLAGRANT VIOLATION OF RIGHTS AND INDIAN CONSTITUTION

Encounter killings exhibits illegitimate force through which the person is executed illegally. This reveals a pathetic condition of criminal justice system in India and heinous violation of human rights. The recent infamous encounters of Vikas Dubey in Uttar Pradesh has put intense indignation over the functioning of police and questioned the legitimacy of the use of force.

Further, it created lack of faith in people's heart for current criminal justice system. According to SC guidelines, victim's family has the right to move to the court if they are not satisfied by the investigation. But their pleas are quelled by threatening them or by imposing false cases on them. The Office of the High Commissioner for Human Rights (OHCHR) has also observed that the police officers are wary informing the family of victim and conceal the postmortem reports, that are against the guidelines issued by the SC. It is often observed that police authorities give cover to their officers by not initiating proper investigation against them as Section-197 CrPC requires the sanction of the competent authority for the same but in this regard, the Supreme Court in Parkash Singh v. State of Punjab clearly stated that no prior sanction is required where the act has been carried out for personal benefits.

**ENCOUNTER KILLING AS A NON-CRIMINAL OFFENCE**

It is important to know that there is law in India that giver authority to police or any armed force to encounter the criminals. But the question arises from time to time that what circumstances do not constitute an encounter to be an offence. Some can be such: ~if the act is done in the course of self-defence as described under section-96 of Indian Penal Code, 1860. ~if death is caused under Section-100 IPC or exception-3 of Section-300 IPC. ~if the person is accused of an offence punishable with death or imprisonment for life i.e., under Section-46 Code of Criminal Procedure, 1973 which gives authority to the police to use force, up to the extent of causing death, as the case may be.

In these circumstances a police officer can rightfully kill or injure the person for the purpose of self-defence or for the maintenance of peace and security. Mala fide or dishonest motives also should not be any reason for the act. If the act or force is not justified as per the guidelines of NHRC 2010 and SC 2016, then the act of the police officers will account to be the culpable homicide under Section-299 IPC.

**ENCOUNTER KILLINGS INCREASING**

Despite of provisions in our criminal justice system, there still have been many killings without the sanction of any judicial proceeding. An RTI inquiry reveals that from 2000 to 2017, almost 1782 fake encounter cases have been registered by NHRC of India. NHRC and SC have issued

guidelines on encounter in 2010 and 2016 respectively. These are generally breached for various reasons such as to earn out of turn promotion, settle scores with the person, instant justice because of the long delayed justice process or in cases where there is lack of evidence because of which accused is not convicted. This is also encouraged and endorsed by authorities through instant gallantry rewards and out of turn promotions and glorified in movies as well. But this is taking away of life without guaranteeing him due process of law. It is often used in political assassination. It is basically police vigilantism that is used by ruling party as tool to further their own agendas and there is no doubt that the police-politician-criminal nexus that exists in India.

An admissible example here is of the case *Rohtash Kumar v. State of Haryana* in which the encounter came out to be fake. The state of Uttar Pradesh accounted for the highest number of fake encounter cases, almost 45.55% of the total cases registered and at least 122 alleged criminals were killed in more than 6,000 encounters between March 2017 to June 2020 in the State. Moreover, in 2017 the Uttar Pradesh government had announced a reward of up to Rs.1 lakh for the police team who carry out encounter of the suspected criminals. This is unabashed violation of guidelines which prohibits the promotion of policemen until the inquiry has wiped out all the allegations form them.

In the view of increasing encounter killings, Supreme Court has ruled against it and even dissuaded death sentences against those police men who ever involved in fake encounters. The term "state-sponsored terrorism" was given by Supreme Court in 2012 landmark case "*Om Prakash v. State of Jharkhand*". It held that the extrajudicial killings are not legal under our criminal justice administration system.

**CENSURE BY THE SUPREME COURT**

The Supreme Court has repeatedly condemned encounter killings of alleged criminals by police officers. In 2012, Supreme Court handed *R.S. Sodhi v. State of U.P* to the Central Bureau of Investigation to. In 2011, the Supreme Court in *Prakash Kadam v. Ram Prasad Vishwa Gupta* held that when an extrajudicial execution is proved against policemen in a trial, they must be given the death sentence. In 2012 again, the Supreme Court in *Om Prakash v. State of Jharkhand,* held that the encounter killings are not legal under our criminal justice system and associate it to state-sponsored terrorism. Police duty is to arrest the accused and not to kill and if

the accused try to flee away, the targeted part for shooting is the non-vital part of the body if the policemen are not injured. In *PUCL v. State of Maharashtra & Ors.* 2014, the Supreme Court recapitulated that killings in the encounters by police affect the credibility of *the rule of law* and the administration of the criminal justice system. Further SC laid down 16 guidelines which include preserving pieces of evidence, registering FIR without any delay, video graphing the post-mortem, independent investigation, conducting a magisterial enquiry, and ensuring an expeditious conclusion of a trial.

**NEED FOR THE GUIDELINES**

- The interest for the moment slaughtering of the blamed from all corners for the nation made the popular sentiment for the relinquishment of the standard of law (Article 14) that seems to have prompted this encounter. There is a far and wide recognition that standard of law isn't giving ladies the due equity, and that at any rate, laws should be changed to make a more grounded hindrance. Henceforth, there emerges a requirement for a period limited reasonable legitimate procedure.

- There is a procedure endorsed by the law for criminal examination which is implanted in the Constitution under Article 21 as the Right to Life and Personal Liberty. It is essential, non-derogable and is accessible to each individual. Indeed, even the State can't abuse that right. Subsequently, it is the obligation of the police, being the officials of State, to follow the Constitutional standards and maintain the Right to Life of each individual whether an honest one or a lawbreaker.
- Comparative encounter killings occurred in Andhra Pradesh in which three blamed for acid attack on the face of two ladies were experienced by the police in December 2008. Equals can be drawn between the two cases-the way wherein the blamed were taken to the wrongdoing spot for reproducing the wrongdoing scene and later cops shooting them down in a supposed crossfire. Thus, to hinder such redundancies, the rules got important.

**SUPREME COURT GUIDELINES**

In the ***PUCL vs State of Maharashtra case (2014),*** the SC was managing writ petitions scrutinizing the validity of 99 experience killings by the Mumbai Police in which 135 affirmed hoodlums were shot dead somewhere in the range of 1995 and 1997. After this SC laid down a 16 point guidelines as the **standard procedure** to be followed for ***thorough, effective, and independent*** investigation in the cases of death during police encounters:

- ***Receipt of any intelligence or tip-off :*** Whenever the police is in receipt of any intelligence or tip-off regarding criminal movements or activities pertaining to the commission of a grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form. Such recording need not reveal details of the suspect or the location to which the party is headed. If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.
- ***Registration of FIR:*** If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court under Section 157 of the Code without any delay.
- ***Independent investigation:*** Investigation into such death must be done by an independent CID team or a police team of another police station under the supervision of a senior officer. It has to fulfil eight minimum investigation requirements like, identify the victim, recover and preserve evidentiary material, identify scene witnesses, etc.
- ***magisterial probe:*** Mandatory magisterial inquiry into all cases of encounter deaths must be held and a report thereof must be sent to the Judicial Magistrate.
- ***inform NHRC:*** The NHRC or State Human Rights Commission (as the case may be) must be immediately informed of the encounter death.
- ***medical aid:*** It must be provided to the injured victim/criminal and a Magistrate or Medical Officer must record his statement along with the Certificate of Fitness.

- ***no delay:*** Ensure forwarding FIR, panchnamas, sketch, and police diary entries to the concerned Court without any delay.

- ***send report to Court:*** After full investigation into the incident, a report must be sent to the competent Court ensuring expeditious trial**.**

- ***inform kin:*** In the case of death of accused criminal, their next of kin must be informed at the earliest.

- ***submit report:*** Bi-annual statements of all encounter killings must be sent to the NHRC by the DGPs by a set date in set format.

- ***prompt action:*** Amounting to an offence under the IPC, disciplinary action must be initiated against the police officer foundguilty of wrongful encounter and for the time being that officer must be suspended.

- ***compensation:*** The compensation scheme as described under Section 357-A of the CrPC must be applied for granting compensation to the dependants of the victim.

- ***surrendering weapons:*** The concerned police officer(s) must surrender their weapons for forensic and ballistic analysis, subject to the rights mentioned under Article 20 of the Constitution.

- ***legal aid to Officer:*** An intimation about the incident must be sent to the accused police officer's family, offering services of lawyer/counsellor.

- ***promotion:*** No out-of-turn promotion or instant gallantry awards shall be bestowed on the officers involved in encounter killings soon after the occurrence of such events.

- ***grievance redressal:*** If the family of the victim finds that the above procedure has not been followed, then it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. The concerned Sessions Judge must look into the merits of the complaint and address the grievances raised therein.

- The Court directed that these requirements/norms must be strictly observed in all cases of death and grievous injury in police encounters by treating them as law declared under Article 141 of the Indian Constitution.

**NHRC GUIDELINES**

In 1993, the Commission had given general rules that each instance of custodial passing must be insinuated to it inside 24 hours. Further, the posthumous reports, investigation demands, and other related documentation was to be shipped off the basic liberties guard dog to find out its unwavering quality inside two months of the occurrence.

The technique of the Commission was set up after a grumbling from the Andhra Pradesh Civil Liberties Union charging a progression of phony experiences in the state to dispense with people distinguished as Maoists or individuals from the People's War Group.

On the off chance that a demise is prime facie discovered to be an instance of death that occurred unlawfully, the Commission would allow pay to the casualty's family and punish the wayward state and its authorities, it was chosen.

In 1997, at that point NHRC administrator M N Venkatachalaiah, in a letter routed to boss clergymen of all states, had underscored that a cop, whenever discovered answerable for a custodial passing, would have the very safeguards accessible in law that are accessible to the everyday person, and would have no exceptional insurance.

**CONCLUSION**

Basically, this implied that for each instance of custodial demise, the concerned officials would be being investigated, and their activities would not establish an offense in just two conditions: a) on the off chance that they have executed the person to secure themselves and, b) if utilization of power stretching out to death is important for making a capture.

It is high time to sensitize state machineries regarding the human rights especially rights of citizens, holding security forces accountable, criminalization of fake encounters with strictness, impartial investigations, special attention in the case minorities, weaker section, financially unstable, to stop celebrating such officers as heroes.

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## Asia-Pacific Vaccine Access Facility, APVAX


The Asian Development Bank recently launched Asia Pacific Vaccine Access Facility to provide equitable support to the developing countries as they procure and deliver vaccines. The bank has allocated 9 billion USD for the scheme.

**What is Asia-Pacific Vaccine Access Facility?**

It will support developing countries in Asia and will put in efforts to procure vaccines against deadly virus. If a country has to obtain finances under APVAX, then it should fulfil the following criteria

It must be procured through COVAX.

It should be prequalified by World Health Organization

It should be authorised by a stringent regulatory authority.

**Previous ADB financial assistance to COVID-19**

The Asian Development Bank earlier approved the 500 million USD vaccine import facility as a part of the trade and supply chain finance programme of the bank The bank allocated 1 billion USD to co-finance with the private sectors in importing COVID-19 vaccines

In April 2020, ADB approved 20 billion USD to support developing countries to address the impacts of COVID-19 pandemic and deliver quick assistance. The bank committed to 14.9 billion USD of loans to support the COVID-19 Pandemic Response Option. In November 2020, ADB announced 20.3 million USD of technical assistance to establish systems that will enable efficient and equitable distribution of vaccines.

**What is COVAX?**

COVAX is one of the three pillars of the ACT Accelerator launched by World Health Organization. The COVAX facility aims to make sure that all the people in the world will get equal access to COVID-19 vaccine. The initial aim of the facility is to ensure that two billion doses are available by the end of 2021. It is co-led by GAVI (Global Alliance for Vaccines and Immunisation) and Coalition for Epidemic Preparedness Innovations (CEPI).

**ACT Accelerator**

It is a framework of collaboration that aims to accelerate production, development and equitable access to COVID-19 vaccine. The ACT Accelerator was launched by WHO, France and European Commission. It is built on three main pillars namely Therapeutics, Vaccines(COVAX ) and Diagnostics.

**What is Micro-climatic Zone Shifting?**

The study on "Preparing India for climate events" was recently published by the Council on Energy, Environment and Water. This is the first time the extreme weather event hotspots in India have been mapped.

**Key findings**

The unpredictability, intensity and frequency of extreme events in India has increased. The extreme climate events witnessed by India between 1970 and 2005 were 250. On the other hand, India witnessed 310 extreme weather events between 2005 and 2020.

The study has found that frequency of flood events has increased by eight times in the last 50 years in the country.

According to the study over 40% of Indian districts are facing shift in pattern of extreme events. The study also says that around 75% of Indian districts that are home to 638 million people have now become hotspots of extreme climate events. The extreme climate events include floods,

cyclones, heat and cold waves. This change in climatic patterns within a small area or a district is called micro climatic zone shifting.

Maharashtra is the most affected state of the micro climatic zone shifting. More than 80% of the districts in Maharashtra are vulnerable to drought like situations.

**What are micro climatic zone shifting faced by Maharashtra?**

More than 80 percentage of Maharashtrian districts are prone to drought. The capital city Mumbai alone has witnessed more than threefold increase in extreme floods in the last fifty years. Several districts of the state has shifted to a dry summer climate.

**What is micro climatic zone shifting?**

The micro climatic zones are regions where the weather is different from the surrounding areas. The major reasons identified for the micro climatic zone shifting are disappearing wetlands, change in land use patterns, encroachment on natural ecosystems and urban heat Island. The urban heat Island occurs when a city or region experiences higher temperatures as compared to its nearby rural areas. These urban heat Island traps heat locally and is a major cause of micro climatic zone shifting.

**Way forward**

The study recommends that democratization of weather and climate related data is essential for building climate resilient countries. Embracing of risk assessment principles are equally important to safeguard the Indian agriculture, large-scale infrastructure projects and industries.

# India-Uzbekistan Sign Agreements

On December 11, 2020, India and Uzbekistan held virtual summit to discuss bilateral relations. The Indian Prime Minister Narendra Modi held talks with his Uzbekistan counter part during the summit. The summit mainly focused on extremism, terrorism and radicalism.

During the summit, the countries signed agreements to step up efforts of bilateral investment treaty. They also signed other agreements on renewable energy, Digital Technologies, Community development projects, cyber security, digital technologies.

**Background**

India and Uzbekistan have been engaging under various formats such as India-Central Asia Dialogue. During the summit, India confirmed its approval of 448 million USD line of Credit to be extended to four development projects of Uzbekistan in the field of sewerage treatment, road construction, Information Technology.

India welcomed Uzbek proposal to hold a trilateral dialogue among India, Iran and Uzbekistan to promote the connectivity through Chabahar port. India also requested Uzbekistan to join the North-South Transport Corridor. This will provide India an overall improvement of connectivity in the Eurasian space.

India thanked Uzbekistan for its support to Indian candidature for the United Nations Security Council. Also, India congratulated Uzbekistan for its successful election to the United Nations Human Rights Council (2021-23).

**India-Uzbekistan MoUs in Defence**

India and Uzbekistan signed three Memorandum of Understandings in the field of Defence in 2019 to enhance cooperation in military medicine and military education.

**Dustlik 2019**

It is the joint military exercise held between India and Uzbekistan. The first Dustlik military exercise was held in 2019.

**India-Uzbekistan Nuclear Deal**

In January 2019, India and Uzbekistan signed a nuclear deal for long term of supply of Uranium to India. Uzbekistan is the seventh largest exporter of Uranium in the world. After Kazakhstan, Uzbekistan is the second central Asian country to export Uranium to India.

**India-Uzbekistan**

India and Uzbekistan have set an annual trade target of 1 billion USD. India is also trying to increase its relations with the country where China has already made inroads with the country taking advantage of its geographical contiguity.

India has offered a line of credit of 40 million USD for procurement of goods and services by Uzbekistan from India.

## France Law against Islamism

The French Cabinet recently presented a draft law that targets “Radical Islamism”.

**Key Features of the Proposed Law**

The law aims to envisage range of measures that includes school education reforms to make sure Muslim children do not drop out of school.

It aims to provide strict controls on preachers and mosques.

The law will provide rules against hate campaigns online.

When the law comes into force, the French mosques will see increased surveillance on their activities, especially financing.

The French Government under the law will be empowered with greater powers to shut down places of worship. These places of worship are those that receive public subsidies. They will be shut down if they go against the republican principles such as gender equality.

The Community leaders being targeted by extremist PUTSCH will receive protection under the law. PUTSCH is a violent attempt to overthrow a government.

The law will severely suppress the home-schooling of children over three years. This is because through this, the parents enrol them in underground Islamic structures.

The law will punish doctors issuing virginity certificates.

The law will ban the officials from granting residency permits to polygamous applicants.

The law allows to interview couples separately prior to their weddings to find out if they are forced in to marriage.

**Reaction from the world**

The Turkish President Recep Erdogan has strongly criticised the law calling it “An open provocation”. Egypt top cleric has called the French President “Racist” for bringing up the law.

# What is Data Sonification?

The National Aeronautics and Space Administration (NASA) recently shared a sonification video of crab Nebula. The video shows Nebula being transformed into music based on its different colours. The blue shades were translated into bass and white shades into to wood winds.

Nebula is an interstellar cloud of hydrogen, dust, Helium and ionized gases.

**What is data Sonification?**

Data sonification is the use of sound to represent data. It is the auditory version of data visualisations. The project helps the users to hear several astronomical phenomena such as birth of a star, black hole, birth of a cloud or dust.

**How are the astronomical images translated into sounds?**

The space telescopes of NASA collect huge digital data before converting them into images. This digital data is a representation of light and radiation of different wavelength in space. They cannot be seen by human eye. The Chandra project of NASA translated these digital data into sound. The recent release of creation of Nebula was under Chandra project and the Sonification Project of NASA. The Chandra project has so far released sounds of Galactic centre, Pillars of Creation and Cassiopeia.

**Galactic centre**

The Galactic centre is the rotational centre of Milky Way galaxy. It consists of neutron stars, dwarf stars, clouds of dust and gas and a super massive black hole called Sagittarius A. The Galactic Centre weighs 4 million times as that of the sun.

**The Pillars of Creation**

It is a constellation and is also known as Messier 16.

**Cassiopeia**

It is a constellation that is located around 11,000 light years away from the Earth. It is the remnant of a once massive star. The massive star was destroyed by a supernova explosion around 325 years ago. The image of the constellation shows a ball of different coloured filaments. Each colour in the constellation represents a particular element such as Red for silicone, purple denotes iron, yellow for Sulphur, green for calcium. The digital data of the wavelength received from these filaments are converted into sound by the Sonification Project.

## Fitness Ka Dose Aadha Ghanta Roz Campaign

The Fitness Ka Dose Aadha Ghanta Roz Campaign was recently applauded by the World Health Organization. The campaign has been uploaded for its initiatives to promote physical activity. The campaign was launched as a part of the Fit India Movement. It was launched by the Union Minister of Youth affairs and Sports Kiren rijiju. The campaign lately gained support from celebrities in different fields including sports persons, doctors, Bollywood and fitness influencers. The campaign urges Indian citizens to follow 30 minutes of fitness every day.

Earlier the World Health Organisation had applauded the Arogya Setu application that was launched by the Government of India in its fight against covid-19.

### Need for Fitness Ka Dose Aadha Ghanta Roz Campaign

The lifestyle diseases are increasing in India. The lifestyle syndromes include obesity, depression, cardiovascular diseases, diabetes, etc. More than 57 % population in key cities such as Chennai, Delhi and Hyderabad are overweight.

According to the Indian Council of Medical Research, the death due to non communicable diseases in India has increased from 37 % in 1990 to 61.8% in 2016.

The concept of Fitness Ka Dose Aadha Ghanta Roz Campaign was introduced by Narendra Modi during the Fit India Dialogue.

### Fit India Dialogue

In September 2020, the Prime Minister Narendra Modi shared his thoughts at the Fit India Dialogue. It was a virtual event that was held to celebrate the first anniversary of Fit India

Movement. Several celebrities participated in the dialogue including Cricketer Virat Kohli. During the dialogue the Prime Minister launched fit India age-appropriate fitness protocols.

**Fit India Movement**

It was launched by Prime Minister Narendra Modi on the occasion of National Sports day in 2019. It is a multi-ministerial initiative. It aims to bring about behavioural change by introducing fitness practices in daily lives of Indians.

**National Sports day**

Every year the National Sports day is celebrated on 29th August to honour the hockey player Major Dhyan Chand Singh. On National Sports Day, the President of India honours the eminent athletes by presenting awards such as Khel Ratna, Dronacharya Award, Arjun awards, Dhyan Chand Award.

## Association of Buddhist Tour Operator (Abto) International Convention

On December 10, 2020, the Union Minister of state for tourism and culture Shri Prahlad Singh Patel inaugurated the Association of Buddhist our operators International Convention in New Delhi. The convention is to be held in partnership with Ministry of Tourism.

**Recent development in the tourism sector of India**

During the inauguration ceremony the Minister made the following announcements

The Swadesh Darshan scheme and PRASAD Yojana was launched to develop the tourism industry in the country.

Under the Swadesh Darshan scheme, more than 350 crores of Rupees have been sanctioned for the development of Buddhist sites

More than 900 crores of Rupees have been sanctioned under the PRASAD scheme.

Currently the Archaeological Survey of India is revising its list of monuments and in coming days the number of monuments under Archaeological Survey of India is to increase significantly.

The Ministry of Tourism is planning to register accommodation units under the National Integrated database of hospitality industry, a portal that operates under Ministry of Tourism. So far more than 32000 accommodation units have been registered under the postal.

**Prasad scheme**

It is Pilgrimage Rejuvenation and Spirituality Augmentation Drive. It was launched in 2015. The scheme mainly aims to integrate the development of pilgrimage destinations in a planned and sustainable manner. The scheme has identified 12 cities for the development of pilgrimage and heritage destinations. They are Kamakhya of Assam, Amaravati of Andhra Pradesh, Gaya of Bihar, Dwarka of Gujarat, Amritsar of Punjab, Puri of Odisha, Ajmer of Rajasthan, Kedarnath of

Uttrakhand, Velankanni of Tamilnadu, Kanchipuram of Tamilnadu, Varanasi of Uttar Pradesh and Mathura of Uttar Pradesh.

The main objectives of the scheme include enhancing tourism attractiveness, promote local art and culture, cuisines and handicraft. It also aims to develop world class infrastructure in religious destinations.

The developmental activities under the scheme include development of lighting and illumination with renewable energy sources, first aid centres, toilets, waiting rooms, developing eco-friendly modes of transport, drinking water, rain Shelters, internet connectivity, etc. It will also develop basic tourism facilities such as information.

# Koilwar Bridge

On December 10, 2020, the Union Minister of Road Transport and Highways Shri Nitin Gadkari inaugurated the Koilwar Bridge over the Sone river in Bihar. The bridge was constructed at an expense of 256 crores of rupees.

**Background**

The existing two-Lane Bridge over the river for both road and rail traffic is 138 years old. The Bridge has been replaced which includes three lanes of carriageway. The bridge will up subsequently reduce the traffic on NH-30 and on NH -922. It is all major link between Uttar Pradesh and Bihar.

**Koilwar Bridge**

Between 1862 and 1900 the bridge was the longest bridge in India. It was inaugurated by the then viceroy of India Lord Elgin. The bridge is also called the Abdul Bari Bridge.

**Abdul bari**

He was an Indian academic and social reformer. He wanted to bring India free from social inequality, free from slavery and communal disharmony. He played a major role in uniting the worker section in the states of Bengal, Bihar and Orissa during the freedom struggle in in 1921, 1922 and 1942. He was the president of Tata workers Union.

**Sone River**

It is also called the son river. The Sone river is one of the major tributaries of river Ganges. It originates near Amarkantak of Madhya Pradesh. Amarkantak is a pilgrim town and is a unique natural Heritage area and the meeting point of Vindhya and Satpura ranges. Amarkantak is also the starting point of Narmada and the Johila river.

**Other future Bridge projects**

A seven-kilometre four lane Koshi Bridge is to be completed by 2023. The estimated cost of the bridge construction is 478 crores of rupees.

The Vikramshila Bridge is to be completed by 2024 at an estimated cost of 1,110 crores of rupees.

Buxar Bridge is to be completed by 2021.

Sahibganj Bridge that connects Jharkhand and Bihar is to be constructed at a cost of 1,900 crores of rupees and is to be completed by 2024.

**Future International Road Projects**

Ram Janki Marg is to be constructed between Janakpuri of Nepal and Ayodhya of India which is 240 kilometres long. The cost of this project is estimated to be 2,700 crores of rupees.

# India Water Impact Summit

The first India Water Impact Summit began on December 10, 2020. This year the Summit is being held under the following theme

**Theme: Comprehensive analysis and Holistic management of rivers and water bodies with a focus on Arth Ganga.**

**About the summit**

The Summit is being organised by the National Mission for Clean Ganga and the Centre for Ganga River Basin Management and Studies. The Summit will disseminate and discuss the need for modalities of embracing Ganga. Also, it will act as a common platform for the investors and stakeholders in the water sector. The Summit will promote International cooperation between India and several other foreign countries for river management.

**What is Arth Ganga?**

The Namami Gange evolves around "Arth Ganga". In simple terms it implies a development model that focuses on economic activities related to the Ganges. Under this process, the farmers will be encouraged to engage in sustainable agricultural practices, building plant nurseries, include zero budget farming and plant fruit trees on the banks of river Ganga.

Along with the above activities Arth Ganga will also include creation of infrastructure for water sports, walking tracks, development of camp sites, cycling, etc. Ultimately it aims to tap hybrid tourism potential, that is both religious and adventure tourism.

**Namami Gange**

It is also called the National Mission for Clean Ganga. It was launched in 2014 to achieve abatement of pollution in conservation and rejuvenation of Ganga. It is being implemented by National Ganga Council which replaced the National Ganga River Basin authority in 2016. The

main pillars of the programme are biodiversity and afforestation, public awareness, sewage treatment infrastructure and industrial effluent monitoring and riverfront development and river surface cleaning.

So far around 313 projects have been sanctioned under the mission. They are of worth of 25,000 crores of rupees.

# International Mountain Day: December 11

Every year International Mountain Day is celebrated on December 11 by United Nations and several other international organisations. It is important to conserve mountains as they are home to 15% of world population. They also host more than half of world biodiversity hotspots. Also, conserving mountains is a key part of Goal 15 of the Sustainable Development Goals.

This year, the International Mountain Day is being celebrated under the theme

**Theme: Mountain Biodiversity**

**History**

The first International Mountain Day was celebrated in 2003. The increasing attention gained by the mountains and their conservatory measures forced the United Nations to declare 2002 as the UN International Year of Mountains.

In 1992, the Managing Fragile Ecosystems: Sustainable Mountain Development was adopted by the United Nations was adopted. This was a part of the action plan Agenda 21 of the Conference on Environment and Development.

**Sustainable Development Goals**

The target four of the Sustainable Development Goal 15 is dedicated to the conservation of mountains biodiversity. Also, the decade 2021 to 2030 was declared as the UN Decade on Ecosystem Restoration. This includes mountain ecosystem as well. The Governments have to prepare post 2020 Global Biodiversity Framework to be adopted at the fifteenth meeting of the Conference of the Parties (COP15) to the Convention on Biological Diversity. These measures help to conserve mountains.

**Importance of Mountains**

According to the United Nations, out of the 20 plant species that supply 80% of the world food, six are diversified in the mountains. They are potatoes, barley, tomatoes, barley, sorghum and apples. More than half of the humanity rely on mountain fresh water for every day life. More than 30% of the key biodiversity areas in the world are located in the mountains.

**Need**

Mountains are under high threat from climate change and overexploitation. Mountain glaciers are melting are faster rates. Therefore, it becomes essential to reduce the carbon foot print and conserve these mountains and their bio-diversities.

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## Prabjot Singh Bhullar back in L&L Partners as Partner

Bhullar, who was one of the first few lawyers to enter the former Luthra & Luthra Law Offices, is a graduate of Delhi University's Campus Law Centre.

Welcoming Bhullar back to the organization in an email, Founding Partner Rajiv Luthra said, "I take immense pleasure in welcoming back Mr. Prabjot Singh Bhullar to our family, as I take pride in informing you that Prabjot was among the first few lawyers to join the firm…and I am delighted to have him back on board ...I believe Prabjot's professional experience will add strength and value to the Firm's existing practice areas."

Former J Sagar Associates Technology, Media and Telecommunications (TMT) partner Asim Abbas was also welcomed back into the fold by the group.

# Digital Services Act and Digital Markets Act

The Digital Services Act and Digital Markets Act are two recent landmark legislations from the European Union. The draft legislation gives specific regulations to limit the powers of global internet companies like Google, Apple, Facebook and Amazon in the European market. Under the legislation, the larger firms are designated as 'digital gatekeepers' and would be subject to stricter regulations. Violation of competition rules could invite as much as 10% of the firm's annual turnover.

**Digital Services Act**

Digital Services Act aims to create uniform framework throughout the European Union in handling potentially harmful content online, protection of users' fundamental rights online, liability of online intermediaries for third party content and bridging the information asymmetries between online intermediaries and their users.

**Key features of Digital Services act**

- The act makes it mandatory for every host provider to put in a user-friendly notice that provides permission to notify about illegal content.
- The online platforms have to establish internal complaint handling systems. In order to resolve disputes with their users, the online platforms should engage with out-of-court dispute settlement bodies.
- New transparency obligations have been included. When a content is removed, an explanation should be provided to the person who uploaded the content.
- The act imposes fine for non-compliance up to 6% of the annual income.

**Advertisements**

For every advertisement and to every user the online platform should provide clear information. It includes the following

- The user should be clear that he or she is watching or seeing an advertisement.
- The advertisement should be very clear in conveying the fact that on whose behalf it is being displayed.
- It should provide meaningful information about main parameters so that the user is able to determine why he or she is targeted by this ad.

**Very Large Platforms**

- The Digital Services act defines the very large online platforms as those with more than 45 million users. This is roughly equal to 10% of European Union population.
- The very large platforms upon request, must allow access to the data required to monitor their compliance within the Data Service Act.
- The very large platforms should provide transparency on main parameters of decision making algorithms. These algorithms are usually used to offer content on their platforms, basically the ranking mechanism.

**Digital Markets Act**

- The Digital Markets Act addresses the digital market imbalances in the European Union.
- Digital market act is applicable only to provider of core platform services. This includes social networking services, search engines, operating systems and online intermediation services.
- Just like very large platform under Digital Services act, the digital market act brings upon the notion of gatekeeper. The European Union will designate a provider of core platform services as a gatekeeper if the provider fulfills the following conditions.

    - The provider should be active in multiple European Union countries. The provider should have an annual turnover of at least 6.5 billion Euros in the last three financial years.
    - The provider should have strong intermediation position. The provider company should be capable enough to link a large user base to a large number of businesses. In other words, the company should operate with more than 45 million monthly active users in European Union.
- The gatekeeper platforms should comply with defined set of obligations to avoid unfair practices. It includes obligations to ensure interoperability within its own platform, obligations to share data generated by their customers for business users.
- Under the Act, The European Union shall impose fine till 10% of the annual turn over of the firms.

# North Eastern Region Power System Improvement Project


The Cabinet Committee on Economic Affairs recently approved the revised cost estimate of the North Eastern Region Power System Improvement Project. The revised estimated cost is Rs 6,700 crores. About the Scheme The north eastern region power system improvement project (NERPSIP) is a central scheme under the Ministry of Power. It was started in 2014

**About the Scheme**

The north eastern region power system improvement project (NERPSIP) is a central scheme under the Ministry of Power. It was started in 2014. It is implemented by Powergrid, a central public sector undertaking under the power ministry. It is funded by the World Bank and Government of India on a 50:50 basis. The capacity building component is completely funded by the Indian government. The objective of the project is the economic development of the northeast by strengthening the intra-state transmission and distribution infrastructure.

**Pasighat Proclamation on Power**

The roots of the NERPSIP scheme lies with the Pasighat Proclamation on Power. It was released during the first Sectoral Summit of North Eastern Council at Pasighat in Arunachal Pradesh in 2007. According to the recommendations made at summit, a sub-group was constituted. The group mainly consisted of members from the Central Electricity Authority. The group recommended a comprehensive scheme to strengthen the transmission and distribution of power in the North Eastern States. Accordingly, NERPSIP was sanctioned for six states.

The six states covered under the scheme are Tripura, Assam, Meghalaya, Manipur, Nagaland and Mizoram.

Another separate scheme was sanctioned for Sikkim and Arunachal Pradesh under the summit. It was “Comprehensive Scheme for Strengthening of Transmission and Distribution in Arunachal Pradesh and Sikkim”.

**North Eastern Council**

The Council was established under the North Eastern Council Act, 1971. The council is responsible for the social and economic development of the North Eastern region of India. The members of the council are the Governors, chief ministers of the eight states. The eight states are Arunachal Pradesh, Assam, Manipur, Meghalaya, Nagaland, Mizoram, Sikkim.

# What are Western Disturbances?


The recent Western Disturbance is responsible for an increased amount of snowfall in J&K, Himachal Pradesh and Uttarakhand and the rapid dip in Delhi's temperature. In several other states, the Western Disturbances have tightened its grip creating foggy conditions.

**What are Western Disturbances?**

It travels from the western to the Eastern part of the world. Disturbance means an area with reduced (disturbed) air pressure.

Western Disturbances are extra- tropical storms that originates in the Mediterranean region. The winds travel at a speed of 43 km/hour. These Western Disturbances keep travelling until they are inhibited by the Himalayas.

The Western Disturbances are driven by the Westerlies (prevailing winds that blow from the west to east).

The Western Disturbance is an area of low pressure that is responsible for bringing in sudden rains, snowfall and fogs in north-western India.

On an average, four to five western disturbances occur every winter. The weather conditions created by one western disturbance, say foggy atmosphere or rainfall, prevails till the next western disturbance approaches.

**Significance of Western Disturbances**

These Western Disturbances bring moderate to heavy rains in the north western India. The rains are important for rabi crops that help to meet food security of the country. The amount of rainfall and their distribution varies with every western disturbance.

The Western Disturbances also bring excessive rainfall causing crop damage, floods and avalanches.

**Monsoon and Western Disturbances**

The number of western disturbances reaching India decreases after winter. In the months of April and May, that is, during summers they move across North India.

The South West Monsoon progresses from east to west in the Himalayas unlike Western Disturbances. When the South West Monsoon and Western Disturbances meet, which is highly rare, dense clouding and heavy precipitation occurs. The 2013 North India Floods that killed more than five thousand people is a result of such an interaction.

# What is Billimora-Waghai Line?

The Billimora Waghai Line is a 107-year-old narrow gauge railway line in Gujarat. In 2018, it was one among the 5 routes put forth by the Indian Railways for preservation as 'industrial heritage'. However, it is now being scrapped due to economic constraints

**Why is it in news?**

It is one of the 11 such lines to be scraped by the Western Railways due to viability issues. The Railway Board recently approved the proposal of the Western Railways to permanently close its narrow gauge sections and other uneconomic branch lines in its system.

**What are the other lines to be closed?**

Nadiad-Bhadran

Ankleshwar-Rajpipla

Boriyavi Junction-Vadtal Swami Narayan

Kosamba-Umarpada

Samlaya-Timba

Jhagadia-Netrang

Chhuchhapura-Tankhala

Chota Udepur-Jambusar

The narrow guage lines are Choranda-Moti Koral, Billimora-Waghai, Chandod-Malsar.

**About Billimora-Waghai train**

The line was started by the Gaekwad Dynasty which ruled the Princely State of Baroda in 1913. It was laid by the British and operated by Gaekwad Baroda State Railway owned by Sayajirao Gaekwad III. The GBSR was owned by the Princely State of Baroda. The state was ruled by Gaekwad dynasty. It was used by the Gaekwad rulers to transport precious sag wood from forests. After independence, GBSR merged with the Western Railways. A narrow-gauge train powered by steam engine was running in the route for more than twenty-four years. It was then put-on display in Mumbai Churchgate station as a Railway heritage.

**Why is Billimora-Waghai line being scrapped?**

The train service is now being used by the tribal people predominantly. They carry their vegetables to sell at Billimora. The train made only two trips a day. Also, the arrival and departure timings of the train was not certain. This is because the tickets were sold by the guard who cleared the train only after selling all the tickets. For these economic reasons, the route is being scrapped.

## Covid Vaccine Intelligence Network (Co-Win) and Cowin-20


The Government of India recently announced that people can self-register for COVID-19 vaccine through the new mobile application called Co-WIN.

**What is Co-WIN?**

COVID Vaccine Intelligence Network (Co-WIN) is the digital platform for Covid-19 Vaccination Delivery programme, developed by the Indian Government. As per the COVID-operational guidelines released by the Health Ministry, the COVID Vaccine Intelligence Network (Co-WIN) system will be used to track the enlisted beneficiaries and the COVID-19 vaccines on a real-time basis.

The Co-WIN application will have separate modules. They are administrator module, vaccination module, beneficiary acknowledgement module, registration module and report module. As people register with the app, it will upload bulk data from these modules. This will help in the process of forming database of health care workers and other vaccination plans.

**What is Co-WIN-20?**

'CoWin-20' is also a mobile application being developed, to record vaccine data, to form database of healthcare workers and for registration for Covid-19 vaccine. The CoWin-20 app will also send real-time data from the cold-storage facilities that store Covid-19 vaccines.

**What is eVIN?**

- eVIN is similar to that of Co-WIN. eVIN is Electronic Vaccine Intelligence Network (eVIN) system and was launched earlier. The Co-WIN is an extension of eVIN.
- eVIN was launched in 2015 to support vaccine logistics management at cold chain points. It provides real time information about vaccine stocks and flows.

- eVIN supports Universal Immunization Programme of Government of India. eVIN will help to digitise COVID-19 vaccine stocks. It will monitor the temperature of the cold chain through smartphone applications.
- The Government of India is to use eVIN along with the United Nations Development Programme to identify vaccine distribution networks and primary beneficiaries.

The vaccine introduction to the states and union territories are to be done by the National Expert Group on Vaccine Administration for COVID-19 called the NEGCAC.

# Western Sahara Conflict


The US President Donald Trump has recently backed the claim of Morocco to the Western Sahara. In return Morocco is opening diplomatic relations with Israel. Israel is the fourth country to make peaceful relations with Israel after UAE, Bahrain and Sudan. UAE signed Abraham Accord with Israel to normalise its relations with the country. The deal was brokered by United States.

**What is Western Sahara Conflict?**

The Western Sahara conflict is the conflict between the Polisario Front and the Kingdom of Morocco.

Polisario Front is a Sahrawi rebel national liberation movement that aims to end Moroccan presence in the Western Sahara. After the Colonial withdrawal of Spain in 1975-76, there were three territories Mauritania, Morocco and the Polisario Front. The Polisario front declared the Sahrawi Arab Democratic Republic (SADR) in 1976. SADR in the Western Sahara is recognised by the African Union, the International Court of Justice (ICJ), as well as the European Union. However, no referendum has been made between the front and Morocco regarding the Western Sahara region. The Trump administration has agreed to recognise Morocco's sovereignty over disputed Western Sahara territory, as a part of the Israel- Morocco deal.

**Moroccan Wall**

It is a 2,700 kilo metre long structure made of sand running through western Sahara. It separates Moroccan areas in the west and the Polisaro controlled areas. According to the United Nations Mission for the referendum in Western Sahara, the wall extends into internationally recognised Mauritian territory as well.

The construction of the wall was began by the Moroccan forces with the help of South Korean, Israeli and South African advisors.

**Background**

The conflict of Western Sahara has been dormant for three decades now after the signing of 1991 cease-fire agreement. The cease-fire agreement called for a referendum. However, the referendum never took place due to disagreements with Morocco. But the cease-fire prevailed.

# What is Project Loon?

Project Loon, a subsidiary of Google recently announced that its balloons have successfully stayed in the stratosphere for almost a year. The balloons are helium filled and cover a distance of 2.1 lakh kilo metres. Project Loon aims to provide internet connectivity to the remote parts of the world. Recently, Loon has created a new record for the longest stratospheric flight by staying in air for 312 days. Last year, the company announced that its balloons reached over one million hours of stratospheric flight.

**About Project Loon**

Project Loon aims to tap the Earth's stratosphere to provide internet connectivity to the remote parts of the world. The project involves helium-filled balloons that remain in the stratosphere and create aerial wireless networks. The project has collaborated with several countries and their technology partners to provide internet connectivity.

At present, the internet connectivity system consists of only two basic methods, to deliver a connection, namely Signal from Space and Signal from Ground. Lately, the Project Loon balloons are also used as weather monitors.

**Helium Balloons**

- The balloons are 15 metres wide and 12 metres tall. They are launched at an altitude of 20 km above the earth, that is above the zone where the airplanes fly. These balloons act as cell towers receiving and transmitting signals. The balloons are powered by solar panels.

- The path of the balloons is controlled by changing its altitude. They use the wind speed and direction to move up or down. The altitude is changed by pumping or releasing air. When one station moves off to a pre-determined position, the next balloon moves in.
- The users need special antenna to receive and transmit signals from and to the balloon.
- The inflatable part of the balloon is called “Balloon Envelope”.
- The panels in the balloon produce 100 watts of power when completely exposed to the sun.

# What is Green Ammonia?


The Government of India is recently inviting bids for Green Ammonia Projects to reduce the import dependence of the country. As per the Union power and new and renewable energy Ministry, the bids for Green Ammonia projects will be conducted by SECI (Solar Energy Corp. of India Ltd).

**Why Green Ammonia Projects?**

To produce fertilisers, India is importing a significant volume of ammonia every year. In 2019, the total imports of ammonia amounted to 478 billion USD. The main segments that consume ammonia are Urea and Ammonium phosphate. These segments account to 93.8% of ammonia consumption in the country. Since 2008, India has been a net importer of ammonia and it is expected to continue on similar trend until 2022. The Green Ammonia Projects are to be launched to change this scenario.

**What is Green Ammonia?**

Green ammonia refers to ammonia, which has been produced through a process that is 100% renewable and carbon-free. One way of making Green Ammonia is by using the hydrogen from water electrolysis and nitrogen separated from air. These two elements are then fed into the Haber process. In the process, nitrogen and hydrogen react together in high pressure and temperature to produce Ammonia.

Currently, ammonia making is not a green process. It is now made from methane. It is called Steam Methane Reforming (SMR) process. Around 90% of carbon dioxide is produced from SMR process.

**Why is Ammonia highly important?**

- 80% of Ammonia produced in the world is used in Agriculture as fertilizer. The ammonia in the fertilizers releases nitrogen, which is an essential nutrient for the growth of crops. Nitrogen is the key element in the nucleic acids, DNA and RNA and thus is important to all biological molecules.
- Excess nitrogen in the soil is called Eutrophication.
- Ammonia is the major part of nitrogen cycle.

# What Are Seneca Guns?

The phenomenon of loud noises most similar to that of a thunder or a cannon being shot is termed as Seneca Guns. It may induce tremors on land similar to earthquake. They are being heard in the parts of coastal North Carolina for more than 150 years.

**Why is it in News?**

The scientists have recently found a method to pinpoint where the explosions are coming from and what causes the sound. The findings were presented at the recently held American Geophysical Union.

**About Seneca Guns**

Till date, the reason for occurance is unknown. It derives its name from the Lake Seneca in New York that witnessed Civil War battle and gun sounds are very commonly heard. These sounds are often heard in the coastal areas and they are absent in the seas. These sounds have been heard prominently in the regions around North Carolina. They can very loud and have impacts like shaking and rattling of houses, damage to window panes etc. Researchers have stated that the sound could be originated from fast approaching outer space object's explosion once it enters earth's atmosphere or due to crash of ocean waves. But none of the theories have been scientifically proved.

**Where does Seneca Guns occur?**

They are also called Skyquakes. It has also been reported in the banks of river Ganges in Himachal Pradesh. The places where the Seneca Guns have been reported are Japan, Australia, Italy, Norway, Brazil, Mexico, Uruguay, Myanmar, and Java Islands of Indonesia.

**What are possible causes?**

Some scientists believe that it could be an exploding space rock. A space rock can catch fire and explode when travelling so fast through the earth's atmosphere.

The other possible causes are as follows

- Under water cave collapses that causes the air to raise rapidly to the earth's surface.
- Volcanic Eruptions
- In North Carolina, it is believed that the sound is generated from the continental shelf collapsing into the Atlantic Abyss.
- In some cases, the Seneca Guns have been associated with earthquakes.

## Project to Indigenize Li-Ion Battery Technology for Evs

The IIT Hyderabad incubated start up Pure EV has signed a Memorandum of Understanding with CSIR-Central Electro Chemical Research Institute (CECRI). Under the agreement, the start up and CSIR are to undertake joint research to develop Lithium-Ion Battery technology for electric vehicles. This will help to indigenize Lithium-ion technology. Currently, India is importing Lithium cells from China.

In order to address the market monopoly of China in producing Lithium-Ion Batteries, India has launched a project called CSIR Innovation Centre for Next Generation Energy Storage Solutions (ICeNGESS). The main objective of the scheme is to produce Lithium-Ion Batteries in the scale of 100 MW. The MoU signed with Pure EV is a part of this scheme.

**Recycling of LIBs in India**

The Faster Adoption and Manufacturing of Electric Vehicles Policy (FAME II) says that at least 30% of entire transport of India are to be electrified by 2030. The Government of India is also taking several measures to increase the use of electric vehicles in the country. Therefore, the LIBs are to increase in huge numbers. Bottomline, it is essential to increase the recycling of these LIBs. Currently only 5% of LIBs are being recycled.

China recycles around 67,000 tonnes of LIBs. This is 69% of the LIB stocks available for recycling worldwide.

On the other hand, the used LIBs from the Electric Vehicles retain about 60% to 70% of their original charge. This means that the retired batteries can be used in wind, solar and other applications.

**PLI Scheme for Lithium-Ion Cell Manufacturing**

Under the Production Linked Incentive Scheme, the Government of India has allocated Rs 18,000 crores of subsidies. This will spur the local Lithium-Ion Battery manufacturing companies to increase their manufacturing. This is a part of 3 trillion rupees worth incentives announced by Government of India in November 2020. Around ten sectors were selected under this and Lithium-Ion Battery manufacturing is one among these.

## Human Rights and Gender Justice

**ABSTRACT**

*Gender equality is at the very heart of human rights. In the context of human rights, women's rights assume greater proportion and are also a sensitive issue. The male dominated society often ignores the rights of the women and for which reason the women remain a vulnerable section of the society. The human rights of women and of the girl-child are an inalienable, part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.*

Gender justice is essential for the achievement of human rights for all. Yet discriminatory laws against women persist in every corner of the globe and new discriminatory laws are enacted. In all legal traditions many laws continue to institutionalize second class status for women and girls with regard to nationality and citizenship, health, education, marital rights, employment rights, parental rights, inheritance and property rights. These forms of discrimination against women are incompatible with women's empowerment. Women form the majority of the world's poorest people and the number of women living in rural poverty has increased by 50% since 1975. Women work two-thirds of the world's working hours and produce half of the world's food, yet they earn only 10% of the world's income and own less than 1% of the world's property. Violence against women throughout the world and in all cultures prevails on an unimaginable scale, and women's access to justice is often paired with discriminatory obstacles – in law as well as in practice. Multiple forms of discrimination based on gender and other factors such as race, ethnicity, caste, disability, persons affected by HIV/AIDS, sexual orientation or gender

identity further compounds the risk of economic hardship, exclusion and violence against women.

In some countries women, unlike men, cannot dress as they like, drive, work at night, inherit property or give evidence in Court. The vast majority of expressly discriminatory laws in force relate to family life, including limiting a woman's right to marry (or the right not to marry in cases of early forced marriages), divorce and remarry, thus allowing for sex discriminatory marital practices such as wife obedience and polygamy. Laws explicitly mandating "wife obedience" still govern marital relations in many States. International human rights law prohibits discrimination on the basis of sex and includes guarantees for men and women to enjoy their civil, cultural, economic, political and social rights equally. While the human rights machinery reaffirm the principles of non-discrimination and equality, Article 15 of the Convention on the Elimination of All Forms of Discrimination against Women explicitly provides that States who have ratified the Convention shall accord to women equality with men and article 2 commits States who have ratified the Convention "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women." Thirty years since the Convention's entry into force, the recognition and enjoyment of equal rights with men still remains elusive for large sections of women around the world. CEDAW has been ratified by 186 States yet has the record number of reservations to core articles such as articles 2 and 6 which impact upon young girls and women's personal and family life. Despite CEDAW requiring State who have ratified the Convention to eliminate discrimination against women "by all appropriate means and without delay", too many States still pervasively retain their discriminatory laws which indicates that the pace of reform is too slow for women. Consequently, at the 12th session of the Human Rights Council, a resolution titled "Elimination of discrimination against women" was adopted requesting the Office of the High Commissioner for Human Rights to prepare a thematic study on discrimination against women in law and practice on how the issue is addressed through the UN, in consultation with all relevant stakeholders, in particular, the Commission on the Status of Women. The thematic study will be addressed at the 15th session and a half day discussion will be held to consider taking further action at that session.

**Current Situation**

Women and girls represent half of the world's population and, therefore, also half of its potential. Gender equality, besides being a fundamental human right, is essential to achieve peaceful societies, with full human potential and sustainable development. Moreover, it has been shown that empowering women spurs productivity and economic growth. Unfortunately, there is still a long way to go to achieve full equality of rights and opportunities between men and women, warns UN Women. Therefore, it is of paramount importance to end the multiple forms of gender violence and secure equal access to quality education and health, economic resources and participation in political life for both women and girls and men and boys. It is also essential to achieve equal opportunities in access to employment and to positions of leadership and decision-making at all levels.

The UN system continues to give particular attention to the issue of violence against women. The 1993 General Assembly Declaration on the Elimination of Violence against Women contained "a clear and comprehensive definition of violence against women and a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms". It represented "a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women". Violence against women is a pandemic affecting all countries, even those that have made laudable progress in other areas. Worldwide, 35 per cent of women have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence.

In September 2017, the European Union and the United Nations joined forces to launch the Spotlight Initiative, a global, multi-year initiative that focuses on eliminating all forms of violence against women and girls. The International Day for the Elimination of Violence against Women is observed on 25 November.

**Possible Solutions**

Given the key role that language plays in shaping cultural and social attitudes, using gender-inclusive language is a powerful way to promote gender equality and eradicate gender bias. Being inclusive from a gender language perspective means speaking and writing in a way that does not discriminate against a particular sex, social gender or gender identity, and does not perpetuate gender stereotypes. Governments should be made aware of the increased risk of

violence against women during this pandemic and the need to keep in touch and support women subjected to violence, and to have information about where help for survivors is available. It is important to ensure that it is safe to connect with women when the abuser is present in the home. Partners for Prevention is a UNDP, UNFPA, UN Women and UNV regional joint programme for the prevention of violence against women and girls in Asia and the Pacific. The joint programme brings together the combined strengths of the four UN agencies, along with governments and civil society, to promote and implement more effective violence prevention programmes and policies. Partners for Prevention Phase 1 (2008-2013) focused on research, capacity development and networking, and communication for social change. The programme is now in its second Phase (2014 - 2017) which is focused on prevention interventions, capacity development and policy advocacy.

# Punishment for kidnapping


**Abstract**

Though, Indian laws prohibit abduction and kidnapping, since 2005, more than 100,000 kidnapping and abduction cases have come up in India. People have continued to take advantage of the tender age of minors to kidnap them and exploit and force them to perform horrendous acts. Such offences are an attack on the liberty and freedom of citizens and must be prevented.

**Introduction**

The Section 359 to 374 of Indian Penal Code, 1860 provides for punishments for these offences. In this article, we will discuss these provisions in detail, understand the essentials of kidnapping and abduction, discuss the difference between kidnapping and abduction and also discuss the provisions regarding forced slavery, labour and sale and purchase of minors for illegal purposes.

**Kidnapping**

Kidnapping means taking away a person against his/her will by force, threat or deceit. Usually, the purpose of kidnapping is to get a ransom, or for some political or other purposes etc. Kidnapping is classified into two categories in Section 359 of the Indian Penal Code and defined in Section 360 and 361 of the Indian Penal Code. Let's understand these sections better.

As per section 359 of the Indian Penal Code, Kidnapping is of two types:

1. Kidnapping from India,
2. Kidnapping from lawful guardianship.

These two types are explained in Section 360 and 361.

**Kidnapping from India**

Section 360 explains kidnapping from India. According to section 360, if any person takes a person beyond the limits of India against the consent of that person or against the consent of someone who is legally entitled to give consent on that person's behalf, then the offence of kidnapping from India is committed.

**Illustration: '**A' is a woman living in New Delhi. 'B takes 'A' to Bangladesh without her consent. 'B' committed the offence of kidnapping 'A' from India.

**Keeping of Lawful Guardian**

Section 361 kidnapping from lawful guardianship. According to this section, if a person takes away or entices a minor (i.e, a boy under the age of 16 years and a girl under the age of 18 years) or a person of unsound mind, away from his/her lawful guardian without the guardian's consent, then that person commits the offence of kidnapping from lawful guardianship.

Thus, the essentials of kidnapping from lawful guardianship are:

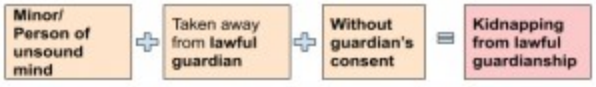


**Illustration: '**A' is a boy of 13 years of age, living under the lawful guardianship of his mother, 'Z'. 'B' 'convinces him to accompany him to his house against the consent of his mother. According to Section 361, 'B' has committed the offence of Kidnapping from lawful guardianship.

Here, the minor is 'A'; the lawful guardian is his mother, 'Z' and the person who is committing the offence is 'B' as he is taking A away from 'Z' against Z's consent.

This section also mentions an exception. It says that it does not result in the crime of kidnapping from lawful guardianship, if the person in good faith, i.e, honestly with reason, believes that:

1. He is entitled to the lawful custody of the child; or
2. He is the father of an illegitimate child.

Hence, If in the above **illustration**, 'B' believes that 'A' is his illegitimate son, then his act of convincing him to come to his house without his mother's consent would not result in kidnapping from lawful guardianship.

**Age of the Minor**

Section 361 of the Indian Penal Code clearly states that minor is:

- A male under the age of 16 years,
- A female under the age of 18 years.

However, it must be highlighted here that in Manipur, the age of 18 years of females in section 361 is replaced with 15 years. Hence if a female of 16 years is taken from her lawful guardians in Manipur, it would not result in kidnapping from lawful guardianship.

**Taking and Enticing**

Section 361 mentions whoever 'takes or entices' a minor away from his/her guardian against the guardian's will, is punishable with the offence of kidnapping from lawful guardianship.

- The court said that the word 'take' means cause to go or to escort or to get into possession. This means that in taking, the desire of the person being taken to be taken is missing.

(To understand this better let's look at an **illustration.** If 'A' is taken away against her own consent, it is taking)

- Enticing, on the other hand, is the act of the accused which induces the person kidnapped to go to the kidnapper, by his/her own wish. It is exciting hope or desire in a person to be taken away. Enticement is completely dependant upon the mental state of the person when the inducement happens. It is not confined to a single form of allurement and any act which is enough to allure a minor girl is enough to constitute allurement.
- The court further clarified that mental attitude is immaterial ( minor's willingness or unwillingness) is not relevant for taking. However, in enticement, the kidnapper convinces the minor, through allurement, to do something he/she would otherwise not do.
- It was also held that force or fraud is not necessary to constitute enticement or taking away.

**Sale or Purchase of Minors for Immoral Purposes**

Section 372 IPC provides that if a person sells or allows hiring of any person under the age of 18 years, with the intention or knowledge that such a person would be used for prostitution or illicit intercourse, then he/she will be punished with either simple or rigorous imprisonment for a period of up to 10 years and would also be punished with fine.

Illicit purposes, as mentioned in the section, means sexual intercourse between people who are not married or united by any union recognised in a personal law or custom.

**Illustration: '**A' is a brothel owner. 'B' sells 'C' to A for Rs. 1,00,000 so that she (C) can be used as a prostitute. Here, 'B' has committed an offence under Section 372 of IPC.

Similarly, section 373 IPC provides the punishment for a person who buys a minor for immoral purposes. It states that if a person buys or hires or in some other way obtains a person under the age of 18 years, with the intention of using or knowledge that such person would be used for purposes like prostitution or illicit intercourse, then he/she will be punished with either simple or rigorous imprisonment for a period of up to 10 years and would also be punished with fine.

Continuing with the above **illustration:** In that case, 'A', the brothel owner would be liable for the offence under Section 363 of IPC as he purchased 'C' for Rs. 1,00,000 with the intention of engaging her in prostitution.

**Forced Labour**

Section 374 IPC states the offence of unlawful compulsory labour. As per this section, if a person unlawfully forces some person to provide labour against his will, then he is punished with either simple or rigorous imprisonment for a period of up to one year, or with fine, or with both imprisonment and fine.

The punishment for this offence has been given in depth in this Section. These are as follow:

| Offences | Punishments |
|---|---|
| Trafficking | 3. Rigorous imprisonment for a term of at least 7 years and not more than ten years;<br>4. Fine |
| Trafficking of more than one person | 3. Rigorous imprisonment for at least 10 years which may extend to life;<br>4. Fine |
| Trafficking of a minor | • Rigorous imprisonment for at least 10 years which may extend to life; |

| | |
|---|---|
| | • Fine |
| Trafficking of more than one minor | • Rigorous imprisonment for at least 14 years which may extend to life;<br>• Fine |
| Trafficking of minor on more than one occasion | • Imprisonment for the rest of the offender's natural life;<br>• Fine |
| Trafficking where a police officer or a public servant is involved in trafficking | • Imprisonment for the rest of the police officer's or public servants' natural life;<br>• Fine |

**Conclusion**

Kidnapping and abduction are dangerous acts which harm the freedom of a person. Section 359 to 369 go a long way in securing the liberty of people. They give protection to children against kidnapping and abduction. Moreover, they reinforce the rights of guardians to have control over the children who are easily moved and convinced by the words of conspiring adults. The number of abduction and kidnapping cases is enormous and is only increasing. There is a dire need to prevent these horrendous crimes and stop the culture of kidnapping and abduction from spreading, especially when it is done for marriages, forced sexual intercourses and forced begar etc. These children require safe release, medical, psychological and legal assistance as such acts take away the good days of childhood away from them as they are subjected to mental and physical torture.

To overcome these offences, not only do the states need to work together but also a co-task among nations need to be cultivated. Moreover, it is needed to be understood that a criminal would go around the laws, and indulge in these acts. What is required to prevent these offences is hand in hand working of non-governmental organisations and government bodies, and more sensitisation.

# Preventive Action By The Police

**Abstract**

The Code of Criminal Procedure, 1973 confers important powers on police officers like the power to investigate, search and arrest. Also, their ancillary tasks extend to patrolling their jurisdiction in order to ensure safety. Preventive measures to be taken by police have been given under Section 149, 150 and 151 of the Cr. P. C. The primary object of criminal procedure is to provide machinery for the administration of substantive criminal law. Therefore, the Code enacted elaborate pre-emptive measures to provide for any preventive action to be taken by a police officer to prevent the commission of a cognizable offence.

These matters are contained in Sections 149 to 153 of the Code. For expedience, these provisions or the circumstances in which the power can be exercised in divided into three parts.

**Key Words:**Police, Cognizable offence, Arrest, Cr. P. C etc.

Preventive measures to be taken by police have been given under Section 149, 150 and 151 of the Cr. P. C.

**Police to prevent Cognizable Offences**

According to Section-149 of Cr. P. C, every police officer is empowered to interpose and make his best efforts in preventing a cognizable offence. A police officer is therefore granted a duty as well as an authority at the same time. Cognizable offences are serious in nature like murder, rape, dowry death, kidnapping, etc.

**Information of Design to commit Cognizable Offences**

According to Section 150 of Cr. P. C, every police officer on receiving information of a potential design to commit any cognizable offence, shall communicate such information to the officer whom he is subordinate to, and to any other such officer who has the authority to deal with the prevention of commission of such cognizable offence.

**Arrest to prevent the commission of Cognizable Offences**

According to Section 151(1), Cr. P. C, a police officer by knowing of or receiving a design that has a potential to commit any cognizable offence may arrest such person so designing, without a warrant or the orders from a Magistrate, provided it appears to the police officer that the commission of the offence can't be prevented by any other way.

Section 151(2), Cr. P. C, says that the person so arrested shall not be detained in custody for more than twenty-four hours from the time of his arrest unless his further detention is ordered by the Magistrate.

This section has been debated from time to time. In the case of Ahmed Noor Mohamad Bhatti v. State of Gujarat, the Supreme Court upheld the constitutional validity of Section 151 of Cr. P. C giving a police officer the power to arrest and detain a person without a warrant to prevent a cognizable offence ruling that the abuse of this power by the police officer cannot render this provision as arbitrary and unreasonable.

The Supreme Court also said that this preventive detention act was a necessary tool to prevent the commission of any cognizable offence or activities.

Prevention of injury to public property

According to Section 152 of Cr. P. C, a police officer may interpose on his own if in his view, there is an attempt

- to injure public property whether movable or immovable,
- to remove or injure any public landmark,
- to remove or injure any buoy or other mark used for navigation.

The term 'public' has been defined under Section 12 of the Indian Penal Code.

**Instances of Misuse of Preventive Action**

The concept of preventive arrest is intelligible for the people who understand the law because they can comprehend the repercussions of lack of such preventive action laws.

However, the laws are made for all the people of India which is a democratic country, and welfare is of utmost importance to the State. So, it is important for common people to believe in these prevention laws and not think of it as some tool to infringe fundamental rights.

**Case: Sathi Sundaresh v. The State P.S.I of Moodigere on 12 April 2007**

In this case, the petitioners were on strike on 6.3.2007 intending to pressurize the local MLA and Health Department to provide infrastructure facilities to the M.G.M Hospital at Moodigere. They also raised the demand for appointment of doctors with specializations to the said hospital.

The petitioners had gathered in front of the house of the local MLA during midnight of that day. The Sub-Inspector of Police in the exercise of his power under Section 151 of Cr. P. C arrested the petitioners. The said fact was informed to the concerned executive magistrate on 6.3.2007 itself by the police. The Taluka Executive Magistrate passed the order in exercise of his jurisdiction under Section 107 of Cr. P. C and directed the Sub-Inspector of police to send the petitioners to judicial custody from 6.3.2007 to 12.3.2007.

But no person arrested under Section 151(1) of Cr. P. C could be detained for more than 24 hours from the time he was arrested unless his further detention was required or authorized under any other provisions of Cr. P. C or any other law for the being in force. The petitioners were produced before the concerned executive magistrate within 24 hours of their arrest, but not before the judicial magistrate. The executive magistrate had not passed any order in writing under Section 111 of Cr. P. C or Section 163 of Cr. P. C. So, the detention could not have been continued under Section 113 or Section 116(3). Applicability of Section 167 of Cr. P. C was also ruled out before the executive magistrate.

So, the Executive Magistrate and the police obviously had no power, jurisdiction or authority to keep the petitioners under the custody of six days.

**Case: Medha Patkar v. State of M.P and Anr. on 25th September 2007**

In this case, certain landowners and other persons adversely affected the Sardar Sarovar Project gathered on the road for protesting. They shouted slogans which were about demanding land and other rehabilitation measures. The police had beaten up the protesters which included women and children also and arrested them under Section 151 of Cr. P. C despite the fact that they raised no apprehension of committing a cognizable offence or disturbing public order or tranquillity. The Supreme Court directed the State of Madhya Pradesh to pay a compensation of Rs. 10,000 to the petitioner of this case and each male and female protestors who were arrested by the police in the evening of 25.7.2007 and after that, detained in Badwani and Indore Jails because their fundamental rights under Articles 19 and 21 of the Indian Constitution had been violated.

**Conclusion**

Police are an important part of our society to ensure a smooth and healthy running of it. It is understandable that the state requires a smooth mechanism for preventing crimes. However, the ultimate intention of the state is to ensure the protection of the rights and interests of the individuals. So, the measures of preventive actions by the police should be exercised with great caution. Every mistake of falsely incriminating an innocent person opposes the rule of law and principles of natural justice. Hence, the police should not misuse these provisions and strict legal actions should be taken against those misusing it.

**Reference**

Preventive Action by the Police Under Code of Criminal Procedure - iPleaders

Preventive Measures under CrPC: A Tool to Stifle Peaceful Protests? – The Criminal Law Blog (wordpress.com)

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# Forms Of Charge

**Abstract**

The following article talks about the concept of charge as mentioned in the Code for Criminal Procedure,1973. It discusses the philosophy and the definition of charge along with its nature and purpose. Further, the legal provisions governing 'charge; are discussed in detail which are then followed by the various forms of charge. All the sections relating to forms of charge are discussed briefly along with some relevant case laws. The article ends with a mention of the difference between 'charge' and 'trial' in detail and the philosophy behind them.

**Key Words**

charge, code of criminal procedure, provisions, sections, forms of charge, guilty, case law, trial, defendant, risk

**Introduction:**

The offence against which the accused is accused shall be stated in the charge referred to in the 1973 Code of Criminal Procedure[1]. The purpose behind a charge is to let the accused party know, clearly and succinctly, the issue he is being charged with. It is necessary to move on to the accused what the jury has convicted him of or what the defence has against him quite clearly and with certainty.

The core philosophy of criminal law is based on the idea that the accused has the right to be aware of the exact meaning of the charge against him.

[1] The Code of Criminal Procedure Act, 1973|Legislative Department | Ministry of Law and Justice | GoI, http://legislative.gov.in/actsofparliamentfromtheyear/code-criminal-procedure-act-1973

We also see that it is necessary for him to be known to know the charge levied against the convict so that he may plan his case and so that justice is served for him. It is only at the very beginning that in the beginning itself the victim is told of his charge. It is to be borne in mind that the law allows the charges to be formulated and reduced to writing with great accuracy and consistency in the case of violent crimes. It is therefore important to read and explain the accusation to the charged party afterwards.

Under section 2(b) CrPC, 1973 'charge' includes any head of the charge once the charge contains additional heads than one. Hence it may be taken that once a charge contains over one head, the top of charges is likewise a charge.

**Nature and Purpose of Charge**

To be precise in its scope and descriptive in its specifics is an essential feature of the charge.

In V.C. Shukla vs. State[2], Justice Desai argued that the object of framing a charge is to provide the accused with simple, unambiguous and accurate note of the essence of the accusation that the accused is called upon to face in the process of a trial.'

**Legal provision of charge:**

'Charge' is mentioned beneath chapter XVII of the CrPC, 1973. Section 211 to Section 217 tells us regarding the sorts of charge whereas alternative sections like 227, 228, 239, 240, and 464 of the code additionally talk regarding the varied provisions associated with charge.

**Forms of Charge:**

The sorts of charges, as mentioned on top of, are mentioned from section 211 to 217 of the CrPC. they're as follows:

Section 211 and 212:

[2] V.C. Shukla vs. State through C.B.I. (07.12.1979 - SC): AIR1980SC962
1980CriLJ690 MANU/SC/0284/1979

The substance of the charge and the specifics of the time and location of the alleged offense are set out in Section 211 & Section 212, the person to which the offense was perpetrated or the thing in respect of which it occurred and any material that is necessary to charge the defendant.

What has to be kept in mind, however, is that in situations where accusations are of criminal breach of trust or fraudulent misappropriation of money or any other movable property, defining the gross sum or dates between which the felony was committed or the movable property in respect of which the violation was committed, without specifying the individual objects or the precise dates and thus known as a charge in meaning of section 219.There is a provision that the length of time between the first and the last of those dates does not exceed 1 year.

Section 213:

It should be remembered that the charge shall include the specifics of the same crime, though, which was perpetrated in places where sections 211 and 212 may not seem to be able to explain well the charge charged to the defendant.

Section 214:

Section 214 establishes a procedure for translating the terms included in the charge: it provides the words used in the representation of a crime would be deemed to have been used in each charge in the context attached to them individually under the statute by which such an offense is culpable.

Section 215:

Section 215,464 and 465 of the Code must browse along as of these trots out an equivalent question. Section 215 enacts that no error or omission within the charge is going to be considered material unless it's occasioned a failure of justice.

Section 216:

This section deals with blame modification. The article is to secure the applicant a true hearing and that the court must ascertain that no prejudice has been rendered to him by modification or

extension of fee. Though the facility is large and intense, it should be practiced judiciously. However, the court is powerless to change the charge to the defendant's prejudice. Similarly, that authority cannot be used where, since there is no allegation against him the defendant is acquitted with all the payments in the highest sum and thus the rules of Section 216 do not apply.

Section 217:

This section deals with the recalling or re-summoning and examining the defendant regarding such alteration or addition being created to the charge. Additionally, just in case, from now on witness must be known as then that's additionally permissible.

Section 227:

Under section 227, the discharge of an associated defendant is given. The decision has the facility to release the defendant, motor-assisted by economic arguments for doing so and by considering the proceedings and thus the papers presented and after hearing the defendant and thus the prosecution, are described here.

This clause was introduced to remove the risk of intimidation of the defendant in matters until there is no clear evidence against him. Because of the trial stage, there is no need for mental judgment of the truthfulness and results of evidence.

Section 240- Framing of charge:

When considering the police report and also the records submitted with it under Section 173 and when examining the suspect and hearing the parties, the jurist shall frame a case if the jurist determines that the defendant has committed an associated offence that he is qualified to commit and may be duly penalized by him. By reading it over to him, the complainant shall clarify the charge and he shall be asked whether or not he pleads guilty or claims to be tired.

**Other Sections:**

There are other sections which are concerned with a charge which are as follows:

Clause 218:

Section 218 deals with the general law that specifies that there must be a separate prosecution and a separate trial on each such charge for each distinct offence.

Clause 219:

Section 219 notes that three crimes of the same nature can be prosecuted together within a year. This means that they will be convicted together if the essence of the three charges is the same.

Section 220:

Section 220 states that if, in one series of acts so connected together as to form the same transaction, more offences than one is committed by the same person, he may be charged with, and tried at one trial for, every such offence. This is also called a trial for more than one offence.

**Case Laws Concerning Charges:**

Birichh Bhuian v. State of Bihar[3]: In this case, for the first time, Justice Subbarao specified the nature of the charge. "A charge is a precise formulation of a particular charge made against a person for an offense alleged to have been committed by him," he stated.

Mohan Singh v. State of Bihar[4]: In this instance, Justice AK Ganguly has very clearly and precisely described the intent of framing a charge. He referred to Section 214 of the CrPC and referred to "Words of charge taken in the sense of law under which the offense is punishable." Each charge term used to characterize an offence shall be assumed to have been used in the sense attached to it by the statute by which the offence is punishable, respectively.

VC Shukla v. State through CBI[5]: "In this case Justice Desai discusses the purpose of framing an accusation and states that the purpose of framing an allegation is to provide the accused with simple, unambiguous and correct notice of the essence of the claim that the accused is called upon to face in the process of a trial.

[3] Birichh Bhuian and Ors. Vs. State of Bihar (20.11.1962 - SC): MANU/SC/0158/1962 AIR1963SC1120
[4] Mohan Singh vs. State of Bihar (26.08.2011 - SC): MANU/SC/0984/2011
[5] V.C. Shukla vs. State through C.B.I. (07.12.1979 - SC): AIR1980SC962
1980CriLJ690 MANU/SC/0284/1979

Tulsi Ram & Ors. vs. State of Uttar Pradesh[6]: Section 215 of CrPC, which specifies that no mistake or omission of the charge can be deemed substance until it has caused a miscarriage in justice, affects this case.

In this case, at some earlier stage, a concern about the charge was never presented and the learned judges concluded that the charge was well recognized by the appellants in that case and never protested that they were puzzled or confused by the charge at the appropriate stage.

The appellants' plea of appeal was however, dismissed by the judge.

**Difference between Charge and Trial:**

In a charge, the prosecutor files a charge-sheet including all the charges while in a trial, the magistrate, after filing of charge-sheet, looks into the case and starts the proceedings.

The charge-sheet includes the FIR, police report, investigation, and names of the suspects and witnesses as the first step in a prosecution requiring litigation and verdict at the conclusion is the first step of the court after the charge-sheet has been submitted.

The police and lawyer perform the planning and submission of the charge sheet while the trial is held by the judiciary.

**Conclusion:**

Thus, under the Code of Criminal Procedure, 1973, each charge must specify the crime that the defendant is charged with. The motive behind a charge is to make the defendant arrest the individual, the complexity with which he is being prosecuted, specifically and compactly.

**Framing of charges**

**What is charge?**

[6] V.C. Shukla vs. State through C.B.I. (07.12.1979 – SC) IR1980SC962 1980CriLJ690
MANU/SC/0284/1979
1980(Supp)SCC92
(1980)SCC(Cri)695
[1980]2SCR380

Charge is mentioned under section 2 (b) of code of criminal procedure, 1973. Accusation made against person in respect of the offence alleged to have been committed by him.

"Charge" includes any head of charge when the charge contains moe heads than one.

**The purpose of framing of a charge**:-

Section 240 of the Code provides for framing of a charge if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him. Case:- Sheoraj Singh Ahlawat & Ors vs
State Of U.P (Supra). [7]

**Section 204 issue of process**

Chapter 16 deals with commencement of proceedings before magistrate. In section 204 magistrate has to issue process when there is sufficient ground for proceedings. Then comes section 207 which talks about the supply of copies of police reports and other document to the accused. Section 208 which talks about issuing process against the accused that the offence is triable exclusively by the court of sessions.

**'Sections 207 and 209 of the Code** :-

Section 209 is the next logical provision in the chronological order under which the Magistrate can commit the accused to the Court of Session when it appears to him that the offence is triable exclusively by the Court of Session. The construction of the provisions of Section 207 and scope of a committal proceeding in the context of the on of the committing Magistrate have been elaborately considered by this Court in Criminal Appln. No. 1051 of 1980 with Criminal Appln. No. 1062 of 1980 Dr. Dattatraya Samant v.State of Maharashtra and Arun Mahadeo Naik v. State of Maharashtra respectively
decided on August 27,1980 : reported in 1981 Cri LJ 1819 (Bom).

[7] Sri G. Gnana Suvarna Raju Spl. Judge for SPE and ACB Cases, cum-III Addl. District Judge, Visakhapatnam

**Section 173 of the Code :-**

Section 173 gives a clear idea as to what documents are to be furnished to the Magistrate along with the charge-sheet and the dominant part is that the police agency has to furnish only those documents on which the prosecution proposes to rely and it is further high-lighted that even in respect of the statement under Section 161the documents are to be furnished vis-a-vis those witnesses whom the prosecution intends to

rely. Under Section 207 of the Code the Magistrate has to furnish copies of such documents which are forwarded by the police agency to the Magistrate which are brought into existence under Section 154, 161 or 164 of the Code and which in a bunch form the subject-matter of the provisions of Section 173".[8]

**"nullus commodum capere potest de injuria sua propria ":-**

In Union of India & Ors. V. Major Gneral Madan Lal Yadav (Retd.), AIR 1996 SC 1340, a three-Judge Bench while dealing with the proceedings in General Court Martial under the provisions of the Army Act, 1950, applied legal maxim "nullus commodum capere potest de injuria sua propria" (no one can take advantage of his own wrong), and

referred to various dictionary meanings of the word 'trial' and came to the conclusion: "It would, therefore, be clear that trial means act of proving or judicial examination or determination of the issues including its own jurisdiction or authority in accordance with law or adjudging guilt or innocence of the accused including all steps necessary

thereto. The trial commences with the performance of the first act or steps necessary or essential to proceed with the trial .

**What should a charge contain**

It has been prescribed under section 211 of code of criminal procedure "the contents of charge":-

(1) Every charge under this Code shall state the offence with which the accused is charged.

[8] *Sri G. Gnana Suvarna Raju Spl. Judge for SPE and ACB Cases,cum-III Addl. District Judge, Visakhapatnam*

(2) If the law which creates the offence gives it any specificname, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall be written in the language of the Court.

**Conclusion**

In a criminal trial the charge is the foundation of the accusation & every care must be taken to see that it is not only properly framed but evidence is only tampered with respect to matters put in the charge & not the other matters[9].

In framing a charge during a criminal trial, instituted upon a police report, the court is required to confine its attention to documents referred to under Section 173[10].

The judge needs to be only convinced that there is a prime facie case, where there is no necessity to adduce reasons for framing charges. However, the magistrate is required to write an order showing reasons if he decides to discharge the accused[11].

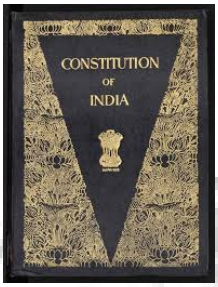
The sections dealing with charge do not mention who is to frame the charge. The provisions dealing with different types of trials however provide that it is always for the court to frame the charge. The court may alter/ add to any charge at any time before the judgment is pronounced.

[9] Ramakrishna Redkar v. State of Maharashtra, 1980 Cri LJ 254 (Bom)
[10] State of J&K v. Sudershan Chakkar, (1995) 4 SCC 181
[11] Omvati v. State (Delhi Admn.), (2001) 4 SCC 38

But if a person has been charged, the court cannot drop it[12]. He has either to be convicted or acquitted[13]. All this has an important bearing on the administration of justice.

[12] State of Maharashtra v. B.K. Subbarao, 1993 Cri LJ 368 (Del)
[13] Prakash Chander v. State (Delhi), 1995 Cri LJ 368 (Del)

# Sixty Sixth Amendment Act 1990




**Introduction**

Sixty Sixth Amendment Act was enacted to bring land reforms within the purview of 9th Schedule of the Constitution. It included 55 more land reforms acts of various states in the ninth schedule in 1990. Originally there were 13 acts under the Ninth Schedule but now there are 284 acts and regulation.

**Amendment**

Amendment is official change made in the legal document, law, contract and constitution which is often done when it is better to change the document then to write a new one. Amendment can be addition, removal or any kind of alteration made to a constitution, statue, legislative bill or resolution.

The constitution of India provides for amendment in order to adjust itself according to the changing conditions and needs. Article 368 in Part XX of the constitution deals with the power of the parliament to amend the constitution and its procedure. It states that parliament may amend the constitution by way of addition, variation or repeal any provision in accordance with the procedure laid down for the purpose.

However, parliament cannot amend those provision which form “the basic structure of the constitution”, as ruled in The Kesavananda Bharti Case (1973).

There are three ways in which constitution can be amended:

1. The first type of amendments includes that can be passed by "simple majority" in each house of the Parliament of India.
2. The second type of amendments includes that can be affected by the parliament by a prescribed "special majority" in each house; and
3. The third type of amendments includes those that require, in addition to such "special majority" in each house of the parliament, ratification by at least one half of the State Legislatures.

The third type amendments that are made to the constitution are amendments No. 3, 6, 7, 8, 13, 14, 15, 16, 22, 23, 24, 25, 28, 30, 31, 32, 35, 36, 38, 39, 42, 43, 44, 45, 46, 51, 54, 61, 62, 70, 73, 74, 75, 79, 84, 88, 95, 99, 101, 102, 103 and 104

**First Amendment Act (1951)**

**Reasons:**

- To remove certain practical difficulties created by the court's decision in several cases such as Kameshwar Singh Case, Romesh Thapar Case, etc.
- Issues involved in the cases included freedom of speech, acquisition of the Zamindari land, State monopoly of trade, etc

**Amendments:**

- The First Amendment Act amended Article 15, 85, 87, 174, 176, 341, 342, 372 and 376.
- First Amendment Act had set the precedent of amending the constitution to overcome judicial pronouncements to implement the programs and policies of the governments.
- Provided for the saving of laws providing for acquisition of estates, etc.
- It inserted the Article 31A and 31B.

- Added Ninth Schedule to protect the land reforms and other laws included in it from the judicial review.
- In response to the verdict on State of Madras v. Champakam Dorarirajan case 1951, it made provision for special treatment of socially and economically backward classes.
- Added three more grounds of restrictions on freedom of speech and expression: public order, friendly relations with foreign states and incitement to an offence. Also, it made the restrictions 'reasonable' and thus, justiciable in nature.
- Provided that state trading and nationalisation of any trade or business by the state is not to be invalid on the ground of violation of the right to trade or business.

**What were the implications of the First Amendment Act, 1951?**

Under the provisions of Article 31, laws placed in the Ninth Schedule cannot be challenged in a court of law on the ground that they violated the fundamental rights of citizens.Art.31-B is also retrospective in nature. So, even if a statute which has already been declared unconstitutional by a court of law is included with in the Schedule, it is deemed to be constitutionally valid from the date of its inception. In short, the judicial decision becomes void when the statute is included in the Schedule.

Article 31(A), has vested enormous power to the State with respect to the acquisition of estates or taking over of management of any property or corporation in public interest. It sought to exclude such acquisitions or from the scope of judicial review under Articles 14 and 19.

Even though the Supreme Court has held that judicial review, as a basic structure, cannot be taken away after the kesavananda Bharati case, 1973, Articles 31(A), 31(B) and 31(C) saved land reform legislations and gave priority to the implementation of the Directive Principles rather than to the individual liberty.

Ninth Schedule was widely missused Ninth Schedule contains more than 250 legislations receiving protection under Ninth Schedule from the judicial scrutiny. With the burgeoning laws which are placed under the Ninth Schedule, it has today become a constitutional dustbin and house for every controversial law passed by the government of the day. Such a situation was

not envisaged at the time, the First Amendment was enacted. For instance, former PM Indira Gandhi made amendments to the Representation of Peoples Acts of 1951 and 1974 and placed in the Ninth Schedule along with the Election Laws Amendment Act, 1975 to make her election valid.

## What is Ninth Schedule of the Constitution?

The Ninth Schedule of the constitution contains a list of central and state laws which cannot be challenged in courts. Currently there are 284 such laws which are shielded from judicial review.

The first case challenging the land law was Kameshwar Singh V. State of Bihar, in this case the Bihar Land Reforms Act 1950 was challenged on the ground that the classification of zamindars made for the purpose for giving compensation was discriminatory and denied equal protection of laws guaranteed to the citizen under Article 14 of the Constitution. The Patna High Court held this piece of legislation as violative of Article 14 as it classified the zamindars for the purpose of payments of compensation in a discriminatory manner.
As a result of these judicial pronouncements, the Government got apprehensive that the whole agrarian reform programmes would be endangered. To ensure that agrarian reform legislation did not run into heavy weather, the legislature amended the Constitution in the year 1951 which inserted Ninth Schedule.

**Objectives**

1. To implement various land reforms, after independence.
2. Abolition of Zamindari system in order to put an end to feudalistic society and to provide a pavement for socialism to take its place.
3. To immunize certain legislations which act as a blockade in bringing reforms and that have the potential to infringe fundamental rights.
4. To uphold the interests of weaker sections of the society by bringing them at par with the other sections of the society.
5. To meet the constitutional goal of establishing an egalitarian society and to reduce the concentration of land in few hands by dividing it into the farmers.

6. **Features of Article 31A and 31B**

It was created by the new article 31B, which along with 31A was brought in by the government to protect laws related to agrarian reforms and for abolishing the Zamindari system. While 31A protects certain 'classes' of laws, 31B protects specific laws or enactments.

Article 31B also has some retrospective operations: meaning if laws are in the Ninth Schedule after the are declared unconstitutional, they are considered to have been in the Schedule since their commencement, and thus valid. ***Jeejeebhoy v. Assistant Collector—*** the court stated that "Article 31B shows that it is a drastic and novel method of an amendment".

- **To protect property rights-** Article 31B was inserted in the constitution for legislation governing rights relating to the property. But, in the years following, it has resulted in the insertion of other laws also for purposes other than that related to society and economics

While most of the laws protected under the Ninth Schedule concern agricultural/land issues, the list includes other subjects, such as reservation. A Tamil Nadu law that provides 69 percent reservation in the state is part of the Ninth Schedule.

The rationale for Article 31-B and the Ninth Schedule was to protect legislation dealing with property rights and not any other type of legislation. But, in practice, Article 31-B has been used to invoke protection for many laws not concerned with property rights in anyway. Article 31-B is thus being used beyond the socioeconomic purpose for which it was enacted. Recently the Government is eyeing to put various controversial laws such as Delhi Sealing Law, the Kerala Self Financing College Law and various others of similar laws in Ninth Schedule. Till the time when Supreme Court decided Shankeri Prasad and Sajjan Singh case, the Hon'ble Court's view was in conformity and similar with that of the Legislature. The Supreme Court viewed that there was no threat from the enhanced power of the legislature and that the radical agrarian reform was necessary to curb down the menace of poverty and change the system unequal distribution of land holdings in the countryside. In addition the insertions of various laws with in the Ninth Schedule also supported the faith of the Court on the statecraft of the leaders like Jawahar Lal Nehru and Lal Bhadur Shastri. However, the co-ordination between the judiciary and the legislature doesn't last for long, with the coming of Indra Gandhi in the Government, the power

granted under Article 31-B was being widely misused by the legislature to achieve their political ends. This provoked judiciary to control the enhanced legislative power of the legislature.

In case of Golaknath V State of Punjab the Apex Court took stricter view and held that if an amendment abridged or took away a fundamental rights guaranteed by Part III of the Constitution, the amending act itself was void and ultravires, in other words, Parliament has no power to amend or take away the fundamental rights enshrined under Part III of the Constitution. Subsequently in Keshvanand Bharti V State of Kerala the Supreme Court held that all the provisions of the Constitution can be amended, but the provision affecting the fundamental rights / basic structure of the Constitution could not be amended; and if any Constitutional Amendment, which alters the basic structure of the Constitution could be struck down by the Court.

Again in case of Waman Rao V Union of India , the Supreme Court held that the amendment to the Constitution which was made before April 24 1973, and by which the Ninth Schedule to the Constitution was amended from time to time by addition of various Acts and Regulations are valid and constitutional. The Amendments of Ninth Schedule after April 24, 1973 are open to challenge on the ground that they are beyond the constituent power of the Parliament since they damage the basic structure of the Constitution. In other words the amendments made to Acts which are already placed in the Ninth Schedule are not automatically immunized from the legal challenged even after their inclusion in the Ninth Schedule, the protection of Article 31-B is only to those Acts which are included before April 24 1973.

In I.R.Coelho V State of Tamil Nadu , The Constitution bench of 5 judges referred the case to higher bench to decide two questions which were not taken up by the Apex Court in Waman Rao's case. These questions which the 5 Judge Constitutional Bench referred to higher bench to decide were as follows:

# Whether an Act or Regulation which, or a part of which, is or has been found by the Supreme Court to be violative of any of the Articles 14, 19 and 31 can be included in the Ninth Schedule;
# Whether it is only a Constitutional Amendment amending the Ninth Schedule that damages or destroys the basic structure of the Constitution that can be struck down

On January 11 2007 while delivering the judgment the 9 Judge Constitutional Bench of the Supreme Court held that All amendments to the Constitution made on or after 24th April 1973 by which the Ninth Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic or essential features of the Constitution as reflected in Article 21 read with Article 14, Article 19, and the principle underlying them. To put it differently even though an Act is put in the Ninth Schedule by a Constitutional Amendment, its provision would be open to attack on the ground that they destroy or damage the basic structure if the fundamental right or rights is/are taken away or abrogated pertains or pertain to the basic structure.

The Supreme Court further stated that If the validity of any Ninth Schedule law has already been upheld by this Court, it would not be open to challenge such law again on the principles declared by this judgment. However, if a law held to be violative of any rights in Part III of the Constitution is subsequently incorporated in the Ninth Schedule after 24th April 1973, such a violation / infraction shall be open to challenge on the ground that it destroys or damages the basic structure as indicated in Article 21 read with Article 14, Article 19, and the principles underlying there under.

Now after the landmark judgment of Supreme Court in which was I.R.Coelho V State of Tamil Nadu delivered on January 11 2007 it is now well settled principle that any law placed under Ninth Schedule after April 23 1973 are subject to scrutiny of Court's if they violated fundamental rights and thus put the check on the misuse of the provision of the Ninth Schedule by the legislative.

**The Constitution (Sixty -Sixth Amendment) Act, 1990**

Statement of Objects and Reasons appended to the Constitution (Sixty-sixth Amendment) Bill, 1990 which was enacted as THE CONSTITUTION (Sixty-sixth Amendment) Act, 1990

**Statement Of Objects and Reasons**

Article 31B of the Constitution confers on the enactments included in the Ninth Schedule to the Constitution immunity from legal challenge on the ground that they violate the fundamental rights enshrined in Part III of the Constitution.

2. In the past, whenever it was found that progressive legislation, conceived in the interest of the public was imperilled by litigation, recourse was taken to the Ninth Schedule. Several State enactments relating to land reforms and ceiling on agricultural land holdings have already been included in the Ninth Schedule. Since the Government is committed to give importance to land reforms, it is decided to include all land reform laws in the Ninth Schedule so that they are not challenged before the courts. The State Governments of Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Uttar Pradesh, West Bengal, Tamil Nadu and administration of the Union territory of Pondicherry have suggested the inclusion of some of their Acts relating to land reforms in the Ninth Schedule.

3. Since the amendment to Acts which are already placed in the Ninth Schedule are not automatically immunized from legal challenge, some amending Acts are also proposed to be included in the Ninth Schedule. The Acts which are proposed to be included in the Ninth Schedule have been examined. In order to ensure that implementation of these Acts is not adversely affected by litigation, it is proposed to included them in the Ninth Schedule.

4. The Bill seeks to achieve the above object.

The 2nd April, 1990.

THE CONSTITUTION (SIXTY-SIXTH AMENDMENT) ACT, 1990

[7th June, 1990.]

An Act further to amend the Constitution of India.

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# Warrant for Arrest


**Warrant**

The term warrant is not defined in the Code of Criminal Procedure. As per concise Oxford dictionary,"Warrant is an official authorization enabling the police or some other body to make an arrest, search premises etc". Thus it is an order or writ of the Court directing and empowering a particular person/authority to execute the directions in the warrant. Such direction may be of several kinds such as to arrest, to search, to receive an accused into custody, to direct to produce an accused/prisoner before the Court issuing the directions or before the superior court for trial.

**Legal Provisions relating to Warrant**

Chapter-VI of Code of Criminal Procedure deals with the process to compel appearance. The Warrant may be issued to a Police Officer or any other person to execute the same. As per Sec. 70 of Cr.P.C., every warrant of arrest issued by the court shall be signed by the Presiding Officer of such court and shall bear seal of the court and every such warrant shall remain in force until it is canceled by the court which issued or until it is executed. The Hon'ble Apex Court in case of State Vs. Dawood Ibrahim Kaskar, AIR1997 S.C.2494 has held that, even in the course of investigation and before taking the cognizance of the case, a warrant can be issued.

**Types of Warrant**

There are several types of warrant. Some of them are:

**Search Warrant** – A search warrant is a warrant to search a specific premise for evidence of a specific crime. The warrant is issued by the judge if he or she finds probable cause to believe such evidence exists based on information presented by police to the judge in the form of a signed and sworn affidavit. Search warrants are generally not relevant to most of what technologists do in the field of criminal justice.

In addition to warrants for arrest for committing some specified crime, other warrants can be issued for failure to appear in court (FTA) and failure to follow a court's orders. These warrants may be called by different names in different jurisdictions. Following is a list of some of these types of warrants:

**Alias Warrant** - An Alias Warrant is issued when the subject fails to appear in court for a scheduled court date before any plea has been entered or fails to respond to a citation in person or by mail. Failure to appear is an added charge.

**Bench Warrant** -A Bench Warrant is a variant of the arrest warrant. It is usually issued when a subject fails to appear for a required court appearance.

**Capias Warrant/Capias Pro Fine Warrant** – A Capias Warrant is issued when a subject has a guilty judgment either through court appearance, plea, or arraignment in jail, then fails to pay a fine or complete some specified conditions within the required time period. The only way to resolve a Capias Warrant is to pay the fine in full or be released "time served" by remaining in jail until enough jail credit has been earned.

**Civil Capias Warrant** - A civil capias warrant is a special type of apprehension order, issued in civil court cases where the defendant repeatedly fails to comply with the judge's orders. These are also called Body Attachments and Mittimuses, and are slightly different from Criminal Warrants. A civil capias warrant is not the same as a criminal arrest warrant. The purpose of the civil capias warrant, in a contempt case, however, is to get a person into court for the hearing.

**Fugitive Warrant** - Warrant sent from another state when the suspect is believed to be in local jurisdiction.

**Governor's Warrant** - These warrants come from the Governor's office so the suspect, who has committed a crime in another state, may be arrested and transported back to that state.

**Arrest Warrant -** An arrest warrant is issued by a judge or magistrate and must be supported by a signed and sworn affidavit showing probable cause that a specific crime has been committed, and that the person(s) named in the warrant committed said crime. An arrest warrant is a warrant issued by a public officer which authorizes the arrest and detention of an individual. In most

jurisdictions, an arrest warrant is required for misdemeanors that do not occur within view of a police officer. However, as long as police have the necessary probable cause, a warrant is usually not needed to arrest someone suspected of a felony.

**Arrest**

The word, 'arrest' has not been defined in an enactment dealing with the offences including Code of Criminal Procedure and Indian Penal Code. It is the word derived from the French word 'Arreter' which means to stop or stay. We can say that the arrest is physically restraining a person by the person authorized by Law or Court of Law. The Constitution of India guarantees every Citizen the right of liberty. As such liberty is a fundamental right of Human beings, it shall not be curtailed without following due Procedure established by theLaw.

**Statutory provisions governingArrest**

Sec.41 to 60 of Cr.P.C. deal with various provisions regarding the arrest. Sec.41 provides for the situation when police may arrest without warrant. This section gives wide power to police officers to make an arrest without an order from the Magistrate and without warrant only in circumstances limited by the provisions contained in the section, and it is necessary in exercising such large powers to be cautious and circumspect. What is a reasonable complaint or suspicion must depend on the circumstances of each particular case, but it must be at least founded or some definite fact tending to throw suspicion on the person arrested, and not a mere vague surmise or information.

**Classification of arrest**

Broadly speaking arrest may be classified into two categories
namely :-

1. Arrest made under warrant issued by Courtsand.
2. Arrest made without such warrants.

**Arrest Warrant**

An arrest warrant is a warrant granted by a judge in a court of law to a law enforcement official granting that law enforcement official the right and ability to arrest a person of interest regarding a crime. An arrest warrant is acquired in a court of law by presenting a judge with probable cause for arresting the suspect. If there is any pertinent evidence that can be presented to the judge

when requesting an arrest warrant that will speed up the process then it should be disclosed. That is why many officers or prosecutors make sure they have probable cause and at least two pieces of evidence to present to the judge before requesting an arrest warrant. Arrest warrants are most commonly required when a crime is committed out of view of a police officer. If a felony is committed in view of a police officer then an arrest can be made without a warrant.

Once the arrest warrant is granted by a judge in a court of law, the local law enforcement officials are legally allowed to arrest the person of interest named on the warrant wherever they find that person. This means that the person can be arrested at their place of work, at their residence, after they are pulled over on the road or anywhere else in public.

**Difference between Bench Warrant and Arrest Warrant**

An arrest warrant and a bench warrant are not one in the same. An arrest warrant is issued by a judge for an arrest of a person that has committed a crime. A bench warrant is issued by a judge for the arrest of a person because they failed to appear at a required court hearing. A bench warrant allows law enforcement officials the ability to arrest the suspect at their residence, their place of work, or anywhere else they are sighted.

**To whom Arrest Warrant can be issued**

There are a variety of different reasons as to why an arrest warrant has been issued:

- Suspect involved in a rape case
- Suspect involved in a murder case
- Suspect involved in a theft case
- Suspect involved in a breaking and entering case

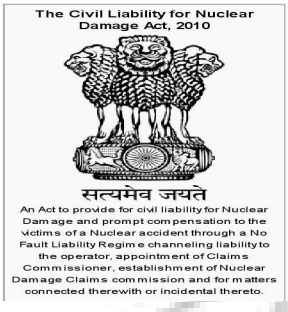
Suspect involved in an abduction case

- Suspect involved in a smuggling case
- Suspect involved in a grand theft auto case

**What happens after issuance of Arrest Warrant**

A person against whom a warrant has been given can be arrested anytime.

# Civil Nuclear Liability Act




**Abstract**

India's Civil Liability for Nuclear Damage Act, 2010 (the "**Act**") essentially created a mechanism for compensating victims from damage caused by a nuclear accident, allocating liability and specifying procedures for compensation.

It was the last piece of the jigsaw to operationalize the 2008 Indo-US Civilian Nuclear Agreement (the "**2008 Agreement**") since US operators required the Act to be in place in order to be insurable in the US.

However, many commentators have argued that the Act has hindered the operationalization of the 2008 Agreement because of open-ended rights of recourse against suppliers and unknown liabilities. As a result, suppliers are unable to insure against risks that are uncertain and therefore, are unable to enter into the Indian market.

Key words:- nuclear accident, allocating liability, compensation, risks

It is an Act to provide for civil liability for nuclear damage and prompt compensation to the victims of a nuclear incident through a no-fault liability regime channelling liability to the operator, appointment of Claims Commissioner, the establishment of Nuclear Damage Claims Commission

**Application of the Act**

**It applies to nuclear damage suffered–**

- In or over the maritime areas beyond the territorial waters of India

- In or over the exclusive economic zone of India
- Onboard or by a ship registered in India under section 22 of the Merchant Shipping Act, 1958 (44 of 1958)
- Onboard or by an aircraft registered in India under clause (d) of sub-section (2) of section 5 of the Aircraft Act, 1934
- On or by an artificial island, installation or structure under the jurisdiction of India.
- It applies to the nuclear installation owned or controlled by the Central Government either by itself or through any authority or corporation established by it or a Government company

**Liability for Nuclear Damage**

Atomic Energy Regulatory Board to notify nuclear incident.–The Atomic Energy Regulatory Board constituted under the Atomic Energy Act, 1962 shall, within a period of fifteen days from the date of occurrence of a nuclear incident, notify such nuclear incident- in that nuclear installation

**Liability of operator**

**The operator of the nuclear installation shall be liable for nuclear damage caused by a nuclear incident or involving nuclear material coming from, or originating in, that nuclear installation**

**Operator not liable in certain circumstances**

1. An operator shall not be liable for any nuclear damage where such damage is caused by a nuclear incident directly due to- (i) a grave natural disaster of an exceptional character; or (ii) an act of armed conflict, hostility, civil war, insurrection or terrorism.
2. An operator shall not be liable for any nuclear damage caused to– (i) the nuclear installation itself and any other nuclear installation including a nuclear installation under construction, on the site where such installation is located; and (ii) to any property on the same site which is used or to be used in connection with any such installation; or (iii) to

the means of transport upon which the nuclear material involved was carried at the time of nuclear incident

3. Where any nuclear damage is suffered by a person on account of his own negligence or from his own acts of commission or omission, the operator shall not be liable to such person

**Limits of liability**

1. The maximum amount of liability in respect of each nuclear incident shall be the rupee equivalent of three hundred million Special Drawing Rights or such higher amount as the Central Government may specify by notification
2. The liability of an operator for each nuclear incident shall be–
    - In respect of nuclear reactors having thermal power equal to or above ten MW, rupees one thousand five hundred crores
    - In respect of spent fuel reprocessing plants, rupees three hundred crores
    - In respect of the research reactors having thermal power below ten MW, fuel cycle facilities other than spent fuel reprocessing plants and transportation of nuclear materials, rupees one hundred crores

**Liability of Central Government**

The Central Government shall be liable for nuclear damage in respect of a nuclear incident

- Where the liability exceeds the amount of liability of an operator
- Occurring in a nuclear installation owned by it

**Operator to maintain insurance or financial securities.**

The operator shall, before he begins operation of his nuclear installation, take out an insurance policy or such other financial security or combination of both

**Compensation for Nuclear damage and its adjudication**

- Whoever suffers nuclear damage shall be entitled to claim compensation in accordance with the provisions of this Act.
- For the purposes of adjudicating upon claims for compensation in respect of nuclear damage, the Central Government shall, by notification, appoint one or more Claims Commissioners for such area, as may be specified in that notification.

**Nuclear Damage Claims Commission**

**Establishment of Nuclear Damage Claims Commission–**Where the Central Government, having regard to the injury or damage caused by a nuclear incident, is of the opinion that it is expedient in public interest that such claims for such damage be adjudicated by the Commission instead of a Claims Commissioner, it may, by notification, establish a Commission for the purpose of this Act. 20.

**Composition of Commission**

- The Commission shall consist of a Chairperson and such other Members, not exceeding six, as the Central Government may, by notification, appoint.
- A person shall not be qualified for appointment as the Chairperson of the Commission unless he has attained the age of fifty-five years and is or has been or qualified to be a Judge of a High Court

**Suppliers**

What about the liability of suppliers? Section 17 of the Act essentially provides that an operator, after paying compensation, shall have the right of recourse against a supplier where such a right exists under contract and if the nuclear incident occurred as a result of the act of a supplier (or his employee), including the supply of equipment or material with patent or latent defects, or the provision of services which are sub-standard.

On paper, it seems logical to infer that the NPCIL would insist on such a liability clause in any contract with any supplier in connection with the design, engineering, procurement and construction of a nuclear installation. Generally, liabilities are capped at the value of the contract, or a percentage of the contract value, but they often include indemnities whereby a contractor

holds harmless an employer against third party claims for death or damage to property arising from negligence. These indemnities are often uncapped.

Consider the scenario in the context of an Indian nuclear accident. The operator will be held accountable through the principle of strict liability under the Act (up to the maximum amount of USD 238 million). On paying out that liability, in the event that the accident was caused by a latent or patent defect, designed or constructed by the supplier (or the negligent performance of associated services), then it would flow that the supplier would be contractually obliged to indemnify the operator for his loss.

But could it be the case that a supplier could negotiate with the operator to exclude its liability under the supply or construction contract? Although it would be highly unusual for an operator to accept such a bad bargain, the Civil Liability for Nuclear Damage Rules, 2011 (the "Rules") would prevent this.

Rule 24 of the Rules states that a contract between an operator and a supplier referred to in Section 17 of the Act shall include a provision for the right of recourse against the supplier for not less than the extent of the operator's liability under the Act, or the value of the contract, which ever is less.

**Claims in tort**

The final bone of contention between suppliers, the government and civil society is the ability of a victim (or a group of victims) of a nuclear accident to make a claim against a supplier in tort.

Section 46 of the Act states that its provisions are in addition to, and not in derogation of any other law for the time being in force, and nothing contained in the Act shall exempt the operator from any proceedings, which might, apart from the Act, be instituted against the operator.

On the face of it, this seems to suggest that claims in tort against the operator may be permissible, notwithstanding that the intention of the Act is to channel all claims for nuclear damage against the operator. As discussed above, it begs the question as to whether a claim in tort for economic loss by a victim against the operator would be admissible outside of the scope of the Act?

But the concern for suppliers is that the Act does not go far enough to insulate them from claims in tort before the Indian courts. The response by the proponents of the nuclear deal is that Section 46 of the Act relates to claims against the operator and therefore necessarily excludes the ability of an action in tort against a supplier.

It's difficult to predict how a court would construe this provision. On the one hand, the Act clearly allocates liability for nuclear damage to the operator, yet, on the other hand, gives the operator the right of recourse against a supplier in certain circumstances. The Act does not expressly preclude an action against a supplier in tort, in circumstances of negligence causing death, personal injury or damage to property.

The view taken by India's Ministry of External Affairs seems to be that the Act prevents claims in tort against a supplier before an Indian court. Amendments moved during the passage of the bill through parliament, included the proposed addition of a supplier to this provision, which was rejected. Although it's a well-settled principle of law that every statute is to be interpreted in accordance with the intention of the legislature, the constitutionality of Section 46 has not been tested.[7]

But could victims of a nuclear incident in India move foreign courts in relation to claims for damages against a foreign supplier? Again, the view taken by India's Ministry of External Affairs seems to suggest that they can't, though it remains to be seen how a court in a foreign jurisdiction would treat a claim by victims for damages resulting from the negligence of a foreign supplier. Would a foreign court throw out such a claim on the basis that the Act is the sole remedy for victims and declare that it does not have the jurisdiction to accept such a claim?

In this context, it should be noted that Article XIII of the CSCND states that jurisdiction over actions concerning nuclear damage arising from a nuclear incident shall lie only with the courts of the contracting party within which the nuclear incident occurs. Therefore, it is likely that a foreign court will rule that an action in tort by an Indian victim in the courts of the jurisdiction of the supplier will probably be inadmissible on the basis of Article XIII of the CSCND.

**Conclusions**

India's insatiable demand for growth means that it has to look at alternative ways of producing vast quantities of energy that its economy will require during the course of this century.

However, the consequences of a nuclear accident cannot be simply swept under the carpet. As the recent Fukushima nuclear disaster in Japan has made clear, the costs are potentially enormous. Indeed, India is no stranger to industrial disasters on a large scale. The legacy of the Bhopal disaster in 1984, resulting in more than 15,000 deaths and complex legal battles for compensation that followed are still fresh in memory.

Ultimately, ensuring a framework to promote nuclear energy production on the one hand and broader public policy goals on the other is a very difficult balance to get right. It remains to be seen whether the Act and the Rules set out a balanced framework, encouraging suppliers to dip their toes into the Indian nuclear energy market, yet protecting the legitimate interests and concerns of the public in the event of a nuclear accident

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# Police Officer Limited Rights

**Abstract:**

A popular and widespread opinion is that it does not make any sense to analyze shortcomings in statutory law because India is a common law country and the Indian police do not obey the law anyway. At the same time, it is objected that granting the police a set of clearly stated but also delimited statutory powers would automatically lead to even more powers for the police. Obviously, it has to be conceded that any revision and modernization of statutory powers, e.g. in Police Acts and the Code of Criminal Procedure, implies the risk of an expansion of police powers detrimental to fundamental rights. While stressing rule of law values might lead to prioritizing fundamental rights, police powers rather point in the opposite direction. However, since much of the existing Indian law stipulating police powers is still based on a pre-constitutional model of police, it does not seem to be premature to discuss a fundamental rights based concept of police powers in India. Besides, the inevitable need to modernize the Indian police and to enhance accountability mutually requires scrutinizing the current law of the land, which grants the police vast and not at all clearly delimited powers to encroach upon fundamental and human rights.

**Key Words:**

Fundamental right, police acts, code of criminal procedure, stressing rule, India.

**Introduction:**

The Indian police were established by the **Police Act of 1861**, which invested the organization with responsibilities of "crime prevention, investigation, maintenance of law and order." The police functions are governed by the **Constitution of India, the Indian Evidence Act of 1972, the Criminal Procedure Code of 1973 (hereinafter 'CrPC'), the Indian Penal Code of 1860**, and various state regulations. In principle, the framers of Indian law have displayed extreme distrust in the police and have attempted to restrict their powers. For example, Section 25 of the India Evidence Act prohibits confession made before any police official from admission in court. Similarly, Section 165 of the CrPC requires that search and seizure be carried out in front of two

independent witnesses. Yet like all legislations that leave room for interpretation, Indian law has conferred vast discretionary powers to the police. The CrPC, which lays down procedures for police action, is a good example of such varying interpretations. Its language is so structured that it has delegated considerable scope for discretion to the police in matters of arrest, search, seizure, and other functions that form part of the investigation of an offence. In **R.P. Kapur v. State of Punjab**[14] that it is not strengthening the prosecution case that a police officer must do but rather their objective in an investigation should be based on unravelling the truth. These corrupt practices are the result of a very natural but unhealthy human emotion of greed. Officers might be chasing extorted money, service rewards, good looking arrest statistics or personal vendetta which has created a reputation that even the honest individuals of the Force must bear on their shoulders which results in a decreasing level of trust from the public.

The police, is thus seen to, exercise considerable discretion at various stages of the criminal process. It is they who decide whether to investigate a complaint and, if so, how the investigation is conducted, whether to arrest a suspect, whether that suspect is to be charged and, if so, for what offences. It is only once their investigation is complete and a Police Report is submitted that the Courts may take cognizance of the offence. Provisions under Chapters V, VII and XII of the CrPC are self - contained and require cautious approach in exercise of discretionary powers in the field of investigation by the investigating agency. It has been held to depend to some extent on the scope and analytical interpretation of the relevant provisions.

It is for this reason that the researcher will focus on the conduct of investigations involving a suspect, for it is that area where the police, at least in the Indian context, continue to exercise considerable discretion. In the course of the paper, the researcher will argue that the CrPC provides a wide but not unfettered discretionary power to the police. The limitations on such discretionary powers are inherent in the scheme of the CrPC itself but cannot be imposed by the judicial authorities. Further, the Code of Criminal Procedure (Amendment) Bill, 2008 which is yet to be notified will have the effect of giving even wider discretionary powers to the police.

**Legal Functions of Police:**

The legal functions of the police are to deal with the detection and investigation of crime, arrest of offenders, collection of evidence etc. Their function involves patrolling by the police and

[14] 1960 AIR 862.

preventive action against potential wrong doers. The foremost task assigned to the police, in order to prevent crime, is to make arrest of the lawbreakers and suspected criminals and take them into custody.

These powers of the police are laid down in the **Chapter XI from Sec. 149 to 153 of Code of Criminal Procedure, 1973**. Police officials are also given **powers u/s 41, 42 and 151 of CrPC, 1973**, to **make arrest without a warrant** taking into consideration the circumstances. Legal functions of the police include **conditional release of accused on bond, etc. u/s 438 of CrPC, 1973**, **interrogation of offenders and suspects, search and seizure**. The search and seizure may be conducted by the police with or without a warrant but it should not be unreasonable.

The police officials are bound to maintain inquest register and the **law relating to inquest register u/s 174 of CrPC, 1973**. In case a person dies under unnatural or suspicious circumstances, the police are to record information in the Inquest Register. Police also plays an important role in the prosecution by assisting the prosecutor. In fact, the success in prosecution largely depends on the promptness and ability with which the investigation is conducted by the police.

**Exercise of Discretion by the Police during the Investigation Process:**

'Investigation' is defined in Section 2(h) of the CrPC to include all the proceedings under it for the collection of evidence conducted by a Police Officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. Chapter XII deals with investigation of a cognizable offence. Section 156 states under Clause (1) that "Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII".

Section 154 of the Code requires a police officer in charge of police station to reduce in writing every information relating to the communication of cognizable offence. This sets the process of investigation in motion as soon as a First Information Report (hereinafter 'FIR') is registered by the officer in charge of the Police Station. Therefore, at the very stage of registration of FIR to initiate the process of investigation, the police officer has the discretion to refuse the registration of FIR in petty cases without recording any reasons for such refusal.

Further, once the offence is registered, it is for the police to decide whether to effect arrest or not and at that stage, the court has no role to play. In that sense, the power to arrest comes within the

police power to investigate a case. There are no provisions in the CrPC which would put fetters on the power of the Investigating Officer to arrest an accused if it is necessary.

**Power to Arrest exercised by the police is Discretionary**

The general powers of arrest are provided to the police in Section 41 to 56 under Chapter V of the CrPC. These Sections describe the conditions under which a police officer may arrest any citizen without seeking a warrant from the magistrate. Thus, Section 41 of the CrPC states that "any police officer may arrest without a warrant such person who has been concerned in any cognizable offence or against whom reasonable suspicion exists of his being so concerned (fourthly) in whose possession anything is found which may reasonably be suspected to be stolen property." As the language and construction of the clause suggests, the law has left the determination of the grounds for making arrest entirely to the discretion of the police officer if the case falls as per the situations enumerated under the provision. Even in subsequent interpretations by the courts, what constitutes "reasonable suspicion" has not been spelt out and is said "to depend upon circumstances of the particular case". Further, Clause (4) extends this discretion and stipulates that no formal complaint by a citizen is necessary in order for a police officer to arrest a person under this clause. This wide discretionary power must not be used in simple bailable offences unless reasonable suspicion or credible information of the commission of a serious or such an offence is about to be committed when arrest should no doubt be made. The power has been interpreted to be exercised in such cases where the obtaining of a warrant from a Magistrate would involve unnecessary delay which might defeat the purpose of arrest or which would cause unnecessary delay in effecting the arrest. Since arrest is in the nature of encroachment on the liberty of the subject and effects the reputation and status of the citizen, the power can be exercised only when there is sufficient reason for the arrest, such as the likelihood of the accused person going absconding, or the risk of his committing some further offence, etc. Concluding, the power entrusted to the police officer is discretionary leaving it to the option of the police officer whether or not to arrest the person who has been alleged to have committed a cognizable offence. As has been stated before, this power is subject to limitations specified under Chapter XII of the CrPC itself, leaving no scope for interference by the courts.

**Amendment to Section 41 by virtue of CrPC Amendment Bill, 2008**

The Code of Criminal Procedure (Amendment) Bill, 2008 seeks to amend Section 41 of the CrPC to give Police a discretionary power to not arrest a person involved in an offence

punishable upto maximum sentence of seven years. Therefore, the amendment seeks to provide that any Police Officer may without an Order from a Magistrate and without a warrant, arrest any person who commits, in the presence of a police officer, a cognizable offence and against whom reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven year or which may extend to seven years, if the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence and is satisfied that such arrest is necessary and to this effect shall record, while making such arrest, his reasons in writing. The Bill further empowers police officer to act against such person whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence.

As can be legitimately concluded from the above, the police now needs to have a reason to believe and be satisfied that an offence has been committed by the alleged person and it is only then that they may choose to arrest the person, thus widening the scope of the discretion given to them far more.

**Power to conduct Search by the police is Discretionary**

The provisions of search under Chapter VII of the CrPC are even more discretionary in their nature. Section 165 of the CrPC states that "whenever an investigating officer has reasonable grounds for believing that anything may be found at a place and that such thing cannot in his opinion be obtained without undue delay, he may after recording the reasons cause search to be made even by a subordinate officer, duly authorized by him." Again, the law merely uses the words reasonable grounds for providing authority to the police officer, who moreover can conduct the search if in his opinion there is no time to seek a search warrant. Further, the power to search has been extended to other jurisdictions through the agency of another police officer of that area by virtue of Section 166 of the CrPC. Consequently, the Indian police rarely attempt to obtain search warrants, for they can always search a place ongoing investigation of a case.

**Power of the Police to conduct Investigation vis-a-vis power of the Judiciary while conducting trial:**

The legislative scheme behind the CrPC has been held to decipher distinction of jurisdiction and field covered by the police on the one hand and the powers of the court while conducting inquiry or trial. Exercise of authority or jurisdiction by these two distinct components involved in the administration of criminal justice as provided under Chapter XII and Chapter XIII to XV is indicative. This legislative object of distribution of power without transgression on the limitation of the other has received judicial approval. With the development of law under criminal jurisprudence there is clear judicial dichotomy of investigative and judicial power. They operate in different fields without conflict and scope for overlapping, unless the provisions of the Code or judicial dictum have provided to the contrary.

It is therefore, a settled position of law that it is a statutory right of an investigating agency to investigate the circumstances of an alleged cognizable offence as it deems fit. The Hon'ble Supreme Court in **State of Bihar v. J.A.C. Saldanha**[15] observed as follows: "There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved by the executive through the police department, the superintendence over which vests in the State Government. It is the bounden duty of the executive to investigate, if an offence is alleged, and bring the offender to book. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits its report to the Court requesting the Court to take cognizance of the offence under Section 190 of the code of Criminal Procedure, its duty comes to an end. On a cognizance of the offence being taken by the Court, the police function of investigation comes to an end subject to the provision contained in Section 173(8), then commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime." In view of the above clear delineation of powers vested with the investigating agency and the unfettered powers given to it by the CrPC to investigate all cases where they suspect that a cognizable offence has been committed in consonance with the provisions of the CrPC, it is submitted that it is the sole discretion of the investigating agency to decide what methods of investigation to adopt in a particular case, while exercising its powers

[15] 1980 AIR 326

under the CrPC. While the High Court has ample jurisdiction to order the investigating agency, under Section 156(3) of the CrPC to make a further investigation, or order for prompt investigation, etc. it is submitted that the court cannot under its powers under Article 226 of the Constitution of India direct an investigating agency to investigate in a particular manner or adopt a certain method for interrogating the accused.

Therefore, a judicial order of a Magistrate Court or High Court, insofar as it directs the investigating agency to conduct the investigation in a particular manner, is erroneous in so far as it is without the authority of law.

**Human Rights Violations:**

Police deals with number of people, accused and innocent both and use of force by police to a certain extent is necessary to perform their duties but in this process the human rights and Fundamental Rights of the citizens should not be violated. Universal Declaration of Human Rights has given several important human rights to the people such as Article 3 states, "Everyone has the right to life, liberty and personal security." Further, Article 5 says that, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Also, many Fundamental Rights like Article 19 and 21 give freedom and right to life to everyone. Police is criticized for treating the prison inmates or people under custody very often. Human rights are violated in many forms such as illegal detention or arrest, use of force which sometimes lead to death, false implications, etc.

Following are some guidelines laid down under the Constitution and various cases for the rights of prison inmates and people in custody:

- Right to remain silent- Right to remain silent is a right of the persons in custody. Article 20(3) of the Constitution of India also protects persons to witness against them in the court.
- Right to fair investigation- This right can be interpreted from the Articles 20 and 21 of the Constitution. In **Babubhai v. State of Gujarat & Ors**[16]., it was laid down that right to fair investigation forms the part of Articles 20 and 21.
- Handcuffing- Handcuffing is not a necessity in case of arrest. In **Prem Shankar v. Delhi Administration**[17]**,** it was held that handcuffing is unreasonable and inhumane and it is acceptable only in some exceptional circumstances.

[16] CRIMINAL APPEAL 1599 OF 2010

- Arrest- In cases of arrest, Article 22 provides that the person who is to be arrested has a right to know the reasons of his/ her arrest.

**Government of India Code of conduct for police:**

Code of conduct for police in the country which was adopted at the Conference of the Inspectors General of Police in 1960, is as follows:

1. The police must bear faithful allegiance to the Constitution of India and respect and uphold the rights of the citizens as guaranteed by it.

2. The police should not question the propriety of necessity of any law duly enacted. They should enforce the law firmly and impartially without fear or favour, malice or vindictiveness.

3. The police should recognize and respect the limitations of their powers and functions. They should not usurp or even seem to usurp the functions of the judiciary and sit in judgement on cases to avenge individuals and punish the guilty.

4. In securing the observance of law or in maintaining order, the police should as far as practicable, use the methods of persuasion, advice and warning. When the application of force becomes inevitable, only the irreducible minimum of force required in the circumstances should be used.

5. The prime duty of the police is to prevent crime and disorder and the police must recognize that the test of their efficiency is the absence of both and not the visible evidence of police action in dealing with them.

6. The police must recognize that they are members of the public, with the only difference that in the interest of the society and on its behalf they are employed to give full time attention to duties which are normally incumbent on every citizen to perform.

7. The police should realize that the efficient performance of their duties will be dependent on the extent of ready cooperation that they receive from the public. This, in turn, will depend on their ability to secure public approval of their conduct and actions and to earn and retain public respect and confidence.

8. The police should always keep the welfare of the people in mind and be sympathetic and considerate towards them. They should always be ready to offer individual service and

[17] 1980 AIR 1535

friendship and render necessary assistance to all without regard to their wealth and/or social standing.

9. The police should always place duty before self, should maintain calm in the face of danger, scorn or ridicule and should be ready to sacrifice their lives in protecting those of others.

10. The police should always be courteous and well mannered; they should be dependable and impartial; they should possess dignity and courage; and should cultivate character and the trust of the people.

11. Integrity of the highest order is the fundamental basis of the prestige of the police. Recognizing this, the police must keep their private lives scrupulously clean, develop self-restraint and be truthful and honest in thought and deed, in both personal and official life, so that the public may regard them as exemplary citizens.

12. The police should recognize that their full to the potential to the State. It is best ensured only by maintaining a high standard of discipline, faithful performance of duties in accordance with law and implicit obedience to the lawful directions of commanding ranks and absolute loyalty to the force and by keeping themselves in the state of constant training and preparedness.

13. As members of a secular, democratic state the police should strive continually to rise above personal prejudices and promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women and disadvantaged segments of the society.

**Constitutional Failures of Crpc:**

The deaths of **George Floyd in the US**, and **Jayaraj and Bennix in India** have resulted in significant outcry against the power wielded by the police. The right to legal counsel is an extremely important right that manifests itself from the time one is accused and arrested. **A lawyer with an accused during interrogation helps prevent police brutality such as torturous interrogation methods, prevents the accused from making self-incriminating statements during interrogation,** informs the accused of their other rights when they are arrested, helps with the posting of bail, the forming of arguments for the defense at trial, and at a more immediate level-provides an element of support, clarity, and guidance during such daunting times. The interplay between the Constitution and criminal procedure, amplifies the tensions

between the competing goals of protecting individual liberty and promoting the public good. Merely because a person is accused of crime and arrested, doesn't mean the police can use any means necessary on the arrested person. The manifestation of this interplay lies in **Articles 20, 21, and 22 of the Constitution**. **Article 22 (1) of the Constitution provides for the constitutional right of an accused to consult with an advocate**. In order to make the Criminal Procedure Code (CrPC) consonant with the constitutional frame work in Article 22 (1), **Section 41D was inserted into the Act in 2010**. It was also an important insertion in light of **D.K. Basu v State of West Bengal**[18], providing for arrested persons to meet with their advocate during interrogation. However, despite the insertion of this section, the article argues that the scope of the right as envisaged in the CrPC, is actually limited in nature and falls short in its attempt to harmonize the Act with the Constitution. The article attempts to analyze the Constitutional right as well as the statutory right, particularly focusing on the wording of the two, and looks at the shortfalls of the Code's provision in Section 41D.Additionally, it looks towards global ideas of criminal justice in an attempt to transmute the existing provision to allow for the comprehensive extension of rights to the accused.

**Constitutional Framework and Implementation in the CrPC:**

The text of Article 22 (1) reads as follows, "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice". Upon a bare reading of this text we see that the Constitution provides a safeguard for abuse of authority by giving one the right to consult and be represented by a lawyer, which is one of the Fundamental Rights. The analogous manifestation of the same lies in Section 41D of the CrPC which reads, "When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate, though not throughout the interrogation." Upon comparison, some similarities become evident: the right is to be granted upon arrest and that the lawyer will be present with the accused to help navigate the process of interrogation. At the same time however, there are stark differences that arise from the wording of the two provisions. There are two differences that arise from the two rights. The first is that the statutory right in the Code puts in a limitation to one's right to a lawyer, while the Constitutional right does not do so. The second arises from the

[18] CrL No. 592 of 1987

differences in the choice of words between 'consult' as the Constitutional text has, and the word 'meet' that the statute has. The nature of the two issues is such that they should ideally go hand in hand, and that an analysis of one would not be complete without the other. The Constitution does not place a limit on the time during which an advocate may be present with an arrested person during interrogation. It would seem that this was done with the understanding that a person in police custody is vulnerable and a self-incriminating confession could be drawn out.

This was the basis of the judgement in the case of **Nandini Satpathy vs. PL Dani**[19] which held that it is essential to the spirit of Art. 22(1) that an accused be allowed to consult a lawyer during interrogation. Laying down this principle, the Court made two critical observations. Firstly, it acknowledged that a fair trial is a crucial facet to the rule of law, and the ends of justice can only be secured when the accused is allowed a consultation with a lawyer. Secondly, the Court took cognizance of the fact that in the absence of a lawyer, an interrogating officer has the ability to use coercive measures to draw out a self-incriminating confession.

A similar view was adopted in the case of **Selvi vs. State of Karnataka**[20], where the Court observed that the use of intrusive interrogation methods such as narco analysis diluted the right to have legal counsel during interrogation. The influence of such methods could lead to incriminating statements being made or incriminating evidence being subsequently discovered which cannot be prevented even with legal consultation of the accused. These judgements take the view of affirming personal liberty and ensuring one of the facets of a fair trial. With that view in mind however, the limitation that Section 41D places, seems to dilute the progressive efforts of the constitutional right. The fact that a legal counsel cannot meet with the client throughout the duration of the interrogation, raises many pressing questions that makes one wonder how this provision works in tandem with the constitutional right. The first question to ask would be at what point in time is the right to a lawyer granted once the interrogation has begun? Given that the lawyer cannot be with the accused for the duration of the interrogation, it seems entirely plausible that the interrogating officers may use excessive force and interrogatory techniques against the accused. Subsequently the role of the lawyer becomes redundant. Another important consideration would be to investigate the scope of the lawyer's presence. How long does it entitle the accused to retain his lawyer? It could very well mean that the accused's lawyer only

[19] 1978 AIR 1025.
[20] CrL No. 10 of 2006

remains with him for a matter of a few minutes and is subsequently dismissed, post which the police may begin to abuse the accused. In light of this issue of temporary presence of legal counsel, courts have adopted problematic positions that go towards limiting the right to legal counsel.

In the case of **Senior Intelligence Officer, Director of Revenue Intelligence v Jugal Kishore Samra**[21]**,** it was held that an accused isn't entitled to have a lawyer present during the interrogation but can "watch proceedings from a distance or from beyond a glass partition but not within hearing distance." This decision goes towards making the presence of the lawyer a feature of tokenism, for the role of the lawyer is to ensure a check on the powers of the police during the course of interrogation and to ensure the accused is not coerced into incriminating himself. However, if barriers are put between the arrestee and his lawyer, the lawyer cannot hear what transpires in the interrogation room, his presence becomes meaningless. Coercive measures are not solely physical in nature, the use of psychologically abusive interrogatory techniques are well documented, such as sleep deprivation, isolation, induction of stress, threats to their family etc. These methods leave no physical traces, and when viewed from behind a barrier and without auditory aid, the lawyer is unaware of what truly transpires on the other side of the barrier with the accused. Another problematic view that the court has adopted, is that the failure to have a lawyer with the arrestee during the pre-trial stages, would only vitiate the trial if it is shown that 'material prejudice' has been caused to the accused.

This was the Court's holding in **Mohd. Ajmal Amir Kasab vs. State of Maharashtra**[22]. The standard of material prejudice against an accused is an extremely high bar to meet. Without a lawyer's presence during the interrogation, an arrestee would not be able to prove whether his right against self-incrimination was taken away from him, and whether he was abused in custody, particularly given the psychological interrogatory techniques highlighted above. The second contentious issue with regard to the difference between the two rights is the language used. Article 20(3) allows the accused to 'consult' a legal practitioner when arrested. On the other hand, one is only allowed to 'meet' with one's lawyer as per Section 41D of the Code, and that meeting could also be a short one. The implication of the word 'Consult' is a more formalised, meaningful interaction between the accused and the legal practitioner. However, the

[21] Crl.R.C.No.300 of 2007
[22] CrL. No 1899 – 1900 0f 2011

word ‘meet’ can have multiple implications, ranging from a formal interaction all the way to a momentary interaction defeating the purpose. When read in conjunction with the durational limitation, it is now implied that ‘meet’ is reduced to a cursory interaction with the lawyer. In doing so, it fails to meet the intended standard of a safeguard, as envisaged in the Constitutional right. One cannot holistically analyses shortcomings of the section without considering the implementation of it. In many cases, it has been submitted that the right to have a lawyer present is not even granted to the accused, and the courts have observed these to be violations of Section 41D.

It is important, and simultaneously disappointing to note, that these decisions, along with the framing of the Code’s provision, have resulted in the systemic chipping away of personal liberty by essentially making the presence of the lawyer meaningless. This tilts the balance towards the ‘public order’ perspective weakening the idea of personal liberty, as envisaged in the Constitution. Thus, we can see the failure in the harmonization of the CrPC with the Constitutional scheme of Article 22(1).

**Attempting to solve the shortcomings of the CrPC**

In order to bridge the gaps in the CrPC, it would seem prudent to look at global standards of criminal procedure and policing in order to seek inspiration for reform in the law. This reform would go towards ensuring the liberty of the accused is maintained and not trampled, while harmonizing the text of the Code with the Constitutional mandate. A brief scrutiny of the United Nations’ ‘Basic Principles on The Role of Lawyers,’ would be helpful for the purposes of the Article. The purpose of these principles is to facilitate fair judicial process, and to establish regulatory frameworks to ensure quality of accessing legal services. Principle (8) provides for the provision of legal aid ‘without delay, interception or censorship’. Amending Section 41D to remove the durational limit and a terminology change from ‘meet’ to ‘consult’ would bring it in line with the above principle. It would also go towards fulfilling the vision of Article 22(1). Another source of inspiration could be the United Nations’ Office on Drugs and Crimes (UNODC) **‘Model Law on Legal Aid in Criminal Justice Systems’**. Article 30 (3) of the Model Law prevents any law enforcement officer from “doing or saying anything to dissuade the accused from accessing his right to legal aid”. This principle could be adapted into the framework of the Indian criminal justice system to prevent cases where the officers deny the

accused legal aid. Making it a statutory duty to allow the accused access to a lawyer and penalizing police officers for denying this, would go towards ensuring fulfilment of the right.

**Conclusion**:

Police is an important instrument who is responsible for maintaining peace and order in the country. A country is able to live peacefully, without insecurities if the police performs its functions and duties efficiently and effectively. Police Act 1861 and Model Police Act, 2006 specifies the administration, role, duties and powers of Police Department. Further, The Code of Criminal Procedure, 1973 empowers police officers to conduct investigation, make arrest including preventive arrest, requires attendance of witnesses, etc. It is imperative that legislative reforms considering the above solutions are enacted at the earliest, for the failure to do so will only continue to lead to problematic outcomes in our already fragmented justice system.

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