



BHU LAW SCHOOL Newsletter

Vol. I, No. 2, July-September 2012

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EDITORIAL



When this Newsletter is going to press, the nation mourns the horrific death of a young student, after she was brutally gang-raped and assaulted in a moving bus in south Delhi recently. This tragic and eye-opening incident calls for reflection – reflection about laws which have so far failed to check the frequent incidents of sexual assault on women not just in the national capital but also in other parts of the country and reflection about the society in which we live in. An outraged and shocked nation demands stringent punishments for rapists including death penalty in rarest of rare cases at least. But administration of capital punishment is not without problems. Delays in sentencing and executions, growing number of death row convicts and inconsistencies in the Supreme Court's own jurisprudence on death penalty call for an informed debate over the necessity of retaining death penalty in the statute books. Furthermore, death penalty shifts the focus away from the real issue to the controversies surrounding the penalty itself.

Social outrage leads to reform; and in the wake of Delhi gang-rape case, one can hope that some far reaching criminal law reforms await us. But not just the criminal law reform-substantive and procedural but also police and judicial reforms are the need of the hour. These reforms are long overdue and should be put high on agenda.

Yet we should not live in the illusion that stringent laws can alone bring about the change we are looking for. There are other ways and which are perhaps more important. Public monitoring, media exposure, sensitizing the people towards the rights of women and children are very important not only in curbing the sexual violence only but also empowering the women and other vulnerable sections of the society.

It gives us immense pleasure that despite many pressures, we have been able to complete this issue in time. I express my deep sense of gratitude to those whose have extended their help towards publication of this issue. In particular, I owe a special debt of gratitude to my former students namely, Mr. Nitesh Kalara, Miss Pallavi Srivastava and Mr. Rupesh Kumar for significantly contributing to our efforts toward publication of this Newsletter. Last but not least, I am thankful to Mr. Faizan Nasir, and Mr. Abhijit Kumar, students of Law School for providing research support to the editorial team.

B. C. Nirmal



Hon'ble Mr. Justice Altamas Kabir: New Chief Justice of India

Justice Altamas Kabir assumed the charge of the Chief Justice of India on 29th September 2012. On the same day, Justice S.H.Kapadia demitted the office of the Chief Justice. Born on July 19, 1948 in Kolkata, Justice Altamas kabir obtained his LL.B. degree from University of Calcutta. He was made a permanent judge of the Calcutta High Court on 6 August, 1990. Justice Kabir became the acting Chief justice of the Calcutta high Court in January 2005 and was elevated as the Chief Justice of Jharkhand High Court on 1 March 2005. He joined the Supreme Court on 9 September 2005. He has also served as the Executive Chairman of the National Legal Services Authority. Law School, BHU offers good wishes and heartiest congratulations to Justice Altamas Kabir, CJI.

ACTIVITIES AT THE LAW SCHOOL

1. Induction Programme for LL.B. I Semester Students

A one week long Induction Programme was conducted for the newly admitted LL.B. Students from 26th July to 1st August 2012. Four lecture sessions were organized each day on a variety of subjects including Law, Library Information, Computer Skills, and Soft Skill Development. During the programme twenty interactive lecture sessions and two demonstration sessions by the representatives of *Westlaw* and *Manupatra* were conducted. Various areas including Legal Education, Legal Profession, Law in a Democratic Society, Law and Management, Sociology of Law, and Stress Management were covered to equip the students with the knowledge and skill required to pursue the course in Law effectively. Prof. RK Mishra, Prof. MP Singh, Prof. DP Verma, Prof. RK Jha, Prof. Harikesh Singh, Prof. RP Singh, Prof. MS Pandey were among those who delivered lectures in the programme. The programme was appreciated by experts and students alike. Dr RK Singh and the student advisor, Mr Raju Majhi conducted this programme under the guidance and supervision of Prof. BC Nirmal, Head and Dean, Faculty of Law.

2. Special Lecture by Hon'ble Vice-Chancellor



Dr. Lalji Singh, the Hon'ble Vice-Chancellor of BHU delivered a special lecture on "Science in Witness Box" at the

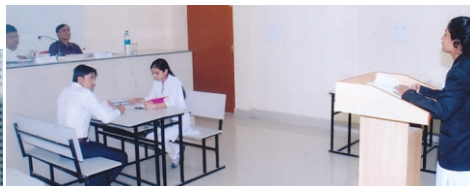
Faculty of Law on 23rd July, 2012. He deliberated on how scientific evidence, especially DNA fingerprinting could be relevant and useful in crime investigation, medical diagnosis, seed- stock identification, sex selection in animals, maintaining defence records and wild life conservation. Dean and Head Professor B.C. Nirmal initiating the discussion focused on the evidentiary value of DNA profiling. He also highlighted need of the legislation on creating a DNA data base.

3. Lecture by Professor Nariyuki Osano of Osaka Otani University, Japan



Professor Nariyuki Osano of Osaka Otani University, Japan interacted with the faculty members and the research scholars of Law School and delivered a lecture on "Comparison between Indian and Japanese Judicial Systems" on 7th August 2012. He shared his experiences of working in India for his research work on Panchayati Raj System in Andhra Pradesh. He spoke on the aspects of judicial activism, political question doctrine, pendency of cases in courts and the special case of Panchayat system to compare the working of judicial systems of India and Japan. Professor D.P. Verma proposed a formal vote of thanks.

4. Intra- Faculty Moot Court Competition 2012-13



Law School BHU organized an Intra-Faculty Moot Court Competition on September 8-9, 2012. Nearly 200 students participated in the competition. Dr. S.K. Gupta, Dr. M.K. Padhy, Dr. G.P. Sahoo and Dr. V.K. Pathak acted as judges. Best thirty students were finally selected

to represent the Law School, BHU in future national and international Moot Court competitions.

5. Inauguration of Newly Built Chanakya Hostel of Law



The newly constructed Chanakya Hostel was inaugurated by Dr. Lalji Singh, Hon'ble Vice-Chancellor on 23rd July, 2012 at 10:55 A.M. The Hostel comprises 100 two- seated rooms for the students of LL.B. and LL.M. Including the Chanakya Hostel now the Faculty of Law has three boys hostels.

6. Inter-disciplinary Dialogue Series to Mark the 150th Birth Anniversary of Mahamana

a) Dialogue on "Implementation of the Right to Education Act"

A Dialogue on the topic "Implementation of the Right to Education Act: Problems and Challenges" was organized on August 11, 2012. Head and Dean, Prof. B.C. Nirmal gave the welcome address and introduced the theme of Dialogue. Dr. V.S. Mishra, coordinator of the programme, presented the substance and theme of the RTE Act. The distinguished panelists included Prof. G.P. Verma, Prof. Ali Mehdi, other senior faculty members of Law School, Prof. Kalpalata Pandey of MG Kashi Vidyapith, Prof. P.N. Pandey, former Dean, Faculty of Social Sciences, Prof. A.K. Kaul, Department of Sociology and Dr. Sunil Kumar Singh, Faculty of Education. Prof. M.P. Singh discussed the relevance of the Right to Education Act in the light of political economy. Professor David W. Tushaus, Visiting Professor in Faculty of Law, shared with the audience the

American experiences with regard to right to education. Mr. Dhananjay and Mr. Ajay, from an NGO, enlightened the audience on the practical aspects of the law. Prof. Harikesh Singh, former Dean, Faculty of Education, chaired the proceeding of the Dialogue.

b) Dialogue on "Regulation of Media in India: Legal and Policy Issues"



The second Inter-disciplinary Dialogue was held in the Law School, on "Regulation of Media in India: Legal and Policy Issues" on August 18, 2012. The dialogue was attended by several experts from different disciplines and media persons. The Chief Guest of this academic event Hon'ble Mr. Justice S.N. Shukla, Judge, Lucknow Bench of Allahabad High Court, said that judiciary always welcomes fair and healthy comments from media but difficulty arises only when media delivers its verdict even before a verdict is pronounced by the court. Professor B.C. Nirmal, Dean, Faculty of Law, while welcoming the participants stressed the need of media regulation. Dr. D.K. Mishra, co-ordinator of the event, presented thematic outlines of the discussion. Professor B.N. Pandey proposed a formal vote of thanks.

c) Dialogue on "Bio-diversity Conservation"

Third Inter-disciplinary Dialogue on the topic "Bio-diversity Conservation: From Rio to Nagoya" was organized on 31st August, 2012. The day-long session was attended by several dignitaries and experts on the subject including Professor J.S. Singh, Prof B.D. Tripathi, Professor Madhoolika Aggrawal, Professor A.S. Raghuvanshi and Professor M.P. Singh. Distinguished panelists reflected insightfully Prime aspects of biological diversity conservation, with respect to the scientific and legal issues. Professor Ali Mehdi, the coordinator of the event, initiated the Dialogue and produced the concept paper. In his welcome address Head and Dean, Professor B.C. Nirmal highlighted the international legal efforts so far taken

towards conservation of the biological diversity, including the access and sharing of benefits from the use of biotechnology.

5. Current Law Forum

On 25 August 2012, Professor David W. Tushaus, Chairperson, Department of Criminal Justice & Legal Studies, Missouri Western State University and Fulbright Scholar, BHU delivered a Lecture under the auspices of the Current Law Forum, Law School, BHU. Dwelling on the subject of 'death penalty in the USA', he examined the merits of the issues raised in opposition and support of death penalty. He also enlightened the gathering on some issues central to capital punishment debate in the US such as racial bias and wrongful convictions. Professor B.C. Nirmal, Head and Dean delivered the welcome address and introduced the theme of subject. Referring to the views of Justice Bhagwati on the subject and other liberal and progressive judges, he said that capital punishment has a certain class complexion. Finally, Dr Ajendra Srivastava, the Coordinator of the Current Law Forum, proposed a formal vote of thanks.

6. Hindi Debate Competition

On 16 September 2012, a debate competition in Hindi was organized to mark the 150th Birth Anniversary of Mahamana. The topic of the debate was "Bharat mein Lokpal sanstha ki sthapana ati-awashyak hai" ("In the opinion of the House the establishment of the institution of Lokpal is a necessity"). Professor S K Tewari, Dr Ramkumar Dangi, Dr Sharad Dharsharma and Dr Adesh Kumar were among the Jury members. Shri. M K Malviya was the coordinator of the event.

7. English Debate Competition

The Intra Law School English Debate Competition was organised on 15th September 2012. The topic for the debate was "Coalition Government is a hindrance to the parliamentary form of government". The competition was judged by a three – judge panel: Prof. R.P Pathak (Head, Dept. of Political Science, BHU), Prof. A.S Singh (Head, Dept. of History, BHU) and Prof. Satish Kumar Rai (Head, Dept. of Political Science, MG Kashi Vidyapith). Dr. K.M Tripathi was the coordinator of the event.

8. Group Level Youth Parliament

A Group Level Youth Parliament was organised in Law School, BHU under the directions of Ministry of Parliamentary Affairs, New Delhi on September 29, 2012. 120 students from different departments/affiliated colleges including Law School participated in the event coordinated by Dr. K.M Tripathi.

FORTHCOMING EVENTS

- University level Youth Parliament is to be organized on 13th October, 2012 as part of celebrations of 150th Birth Anniversary of Mahamana Pt. Madan Mohan Malaviya ji.
- Release of the inaugural issue of BHU Law School Newsletter by Hon'ble Vice-Chancellor, Dr. Lalji Singh on 13th October, 2012
- National Seminar on "Science, Technology and Law Reform" to be organized on 3-4 November, 2012.
- Faculty level Quiz-Competition to be organized on 14th Oct., 2012.
- Inauguration of Moot Court Hall of the Law School, Banaras Hindu University.
- Mahamana Pt. Madan Mohan Malviya National Moot Court Competition.
- International Conference as part of the celebrations of 150th Birth Anniversary of Mahamana Pt. Madan Mohan Malaviya ji.
- Launch of a new Journal on Environmental & Intellectual Property Rights Law.

FACULTY UPDATES

- Professor B. C. Nirmal, Dean, Faculty of Law, chaired one of the sessions of two-day National Symposium on "Human Rights Education: Issues and Strategies" on 8th September 2012, organized by VBS Purvanchal University, Jaunpur, U.P. as part of Silver jubilee Celebrations. He has also been nominated as an external member of the Academic Council of the DDU Gorakhpur University, Gorakhpur, U.P.
- Dr. R. K. Murali, Associate professor, Law School was invited by the Indian judicial Academy, Bhopal to deliver three lectures on "Human Rights: Civil liberties & Constitutional Democracy", "Bail, Arrest and Remand", and "Victimology & Human Rights: Decisional Jurisprudence" to Judicial officers of Lower, District, and High Court cadre on 14th to 16th September 2012.
- Dr. Ajendra Srivastava, Associate professor, Law School presented a paper "Human Rights Education and

Contemporary International law” in a two-day National Symposium on Human Rights Education, organized by VBS Purvanchal University, Jaunpur, on 8th September 2012.

- Dr. Sibaram Tripathi, Associate Professor, Law School participated in a two-day National Symposium on Human Rights Education, organized by VBS Purvanchal University, Jaunpur, and also presented a paper on human rights education on 9th September 2012.

- Dr. Bibha Tripathi, Reader, Law School delivered a lecture on “Women's legal rights in AZALIA : A Symbol of Womenhood”, at A TRAINING INSTITUTE FOR WOULD BE BRIDE on 24th September 2012. She also received Vishist Shikshak Samman by Maitri Bhawan on the occasion of Educational Seminar on “Vishva Nagrikta Bodh Srijan Shikshan ka Yogdan” on 9th September 2012.

- Dr. R. K. Patel, Assistant Professor, Law School, published two articles on “Importance of Legal Education and our Attention” and “Ethical Duties of Doctors and the Law”, in Volume 3(No.3) and Volume 5 (No.5) respectively of *Chotanagpur Law Journal*.

- Dr M.K. Malviya became member of the editorial board of *International Research and Review Journal*, published from Permar Technocrat, MMV. He was also selected as legal adviser of the “*Drishti*” a research journal published by the Student Council, BHU.

LEGISLATIVE TRENDS



The Monsoon Session commenced on 8th August 2012 and continued till 12th September 2012. The Government had listed 15 new Bills for introduction during the Monsoon Session of the 15th Lok Sabha. Out of these only 6 Bills were finally introduced. About 30 Bills were listed for consideration and passing. Only 4 bills were passed by both Houses. Following bills were passed by the Lok Sabha during Monsoon Session: The Chemical Weapons Convention (Amendment) Bill, 2012 as passed by

Rajya Sabha (30 August 2012); The All India Institute of Medical Sciences (Amendment) Bill, 2012 (30 August 2012); The North-Eastern Areas (Reorganization) Amendment Bill, 2011 (3 September 2012); The Protection of Women Against Sexual Harassment at Work Place Bill, 2010 (3 September 2012); The National Highways Authority of India (Amendment) Bill, 2011 (3 September 2012) The National Institute of Mental Health and Neuro-Sciences, Bangalore, Bill, 2012 as passed by Rajya Sabha (4 September 2012).

Act No. 30 to Act No.33 are summarized below.

THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION (AMENDMENT) ACT, 2012 (Act No. 30 of 2012)

was enacted to amend the Right of Children to Free and Compulsory Education Act, the new Act amended section 1 to insert sub-section (4) providing that the Act shall apply subject to the provisions of articles 29 and 30 of the Constitution. It also adds sub-section (5) which provides that the Act shall not apply to Madarsas, Vedic Pathshalas and educational institutions, primarily imparting religious instruction. Section 2 has been amended to include the definition of "child with disability" in clause (ee). Section 3 has been modified to substitute sub-section (1) to now provide (1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education. In sub-section (2), the proviso has been omitted; after sub-section (2), the following sub-section has been inserted, namely: (3) A child with disability referred to in sub-clause (A) of clause (ee) of section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and a child referred to in sub-clauses (B) and (C) of clause (ee) of section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities,

Protection of Rights and Full Participation) Act, 1995 :Provided that a child with multiple disabilities referred to in clause (h) and a child with severe disability referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 may also have the right to opt for home-based education. Section 21 has been amended and in sub-section (2), a proviso has been inserted, namely: Provided that the School Management Committee constituted under sub-section (1) in respect of, (a) a school established and administered by minority whether based on religion or language; and (b) all other aided schools as defined in sub-section (ii) of clause (n) of section 2, shall perform advisory function only.

THE CENTRAL EDUCATIONAL INSTITUTIONS (RESERVATION IN ADMISSION) AMENDMENT ACT, 2012 (Act No. 31 of 2012)

was enacted to amend the Central Educational Institutions (Reservation in Admission) Act. It modifies section 2 and after clause (i), the following clauses shall be inserted, namely: (ia) specified north-eastern region means the area comprising of the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and the tribal areas of Assam referred to in the Sixth Schedule to the Constitution; (ib) State seats, in relation to a Central Educational Institution, means such seats, if any, out of the annual permitted strength in each branch of study or faculty as are earmarked to be filled from amongst the eligible students of the State in which such institution is situated. In section 3 of the principal Act, the following provisos shall be inserted, namely: "Provided that the State seats, if any, in a Central Educational Institution situated in the tribal areas referred to in the Sixth Schedule to the Constitution shall be governed by such reservation policy for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes, as may be specified, by notification in the Official Gazette, by the Government of the State where such institution is situated. The proviso details the reservation scheme in certain cases. Clause (a) of section 4 is omitted. Section 5 of Act has been amended, in sub-

section (1), for the words "number of such seats available", the words "number of such seats available or actually filled, whichever be less," shall be substituted and in sub-section (2), for the words "three years", the words "six years" shall be substituted.

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012(Act No. 32 of 2012) was enacted to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto. The Act incorporates the obligation of clause (3) of article 15 of the Constitution, which empowers the State to make special provisions for children. It also enacts the obligation of the Government of India to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child.

The Act defines "child" as any person below the age of eighteen years. It provides that the words and expressions used in the Act and not defined but defined in the Indian Penal Code (45 of 1860), the Code of Criminal Procedure, 1973 (2 of 1974), the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) and the Information Technology Act, 2000 (21 of 2000) shall have the meanings respectively assigned to them in the said Codes or the Acts.

Chapter II defines sexual offences against children and penetrative sexual assault and provides for punishment thereof. It provides that a person is said to commit "penetrative sexual assault" if(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or(d) he applies his mouth

to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

THE ADMINISTRATORS-GENERAL (AMENDMENT) ACT, 2012(Act No. 33 of 2012)

was enacted to amend the Administrators-General Act, 1963. It amends sections 9, 10, 29 and 36 of Act 45 of 1963. In sections 9, 10, 29 and 36 of the Administrators-General Act, 1963, for the words "two lakhs", wherever they occur, the words "ten lakhs" shall be substituted.

INTERNATIONAL LEGAL NEWS & EVENTS



ICC is ten years old this year

July 1, 2012 marks the 10th anniversary of the entry into force of the Rome Statute governing the International Criminal Court (ICC). The Rome Statute was adopted on 17 June 1998 by 120 States which came into force on July 2, 2002 after it was ratified by 60 States. Over the past ten years, the ICC which is the first permanent international criminal court formed to try "the most serious crimes of concern to the international community" has become a fully functional institution. As of now it has 121 States Parties. Situated in The Hague, The Netherlands, the ICC handed down its first judgment in *Prosecutor v Thomas Lubango Dyilo* on 14 March 2012 holding Lubango Dyilo, a psychologist turned militia leader, guilty as a co-perpetrator of the war crimes and using girls and boys under fourteen as soldiers in his Congolese Rebel Army from September 2002 through August 2003.

ILO's Convention on Domestic workers to come into force in a year

On 5th September 2012, Philippines formally deposited the instrument of ratification of the Convention on Decent Work for Domestic Workers (Convention 189) with the International Labour Organization (the ILO) allowing the historic convention to enter into force in a year from now. Philippines is the second country after Uruguay to ratify the

domestic workers' Convention. The Convention setting out decent working conditions for the millions of domestic workers worldwide was adopted at the 100th annual session of the international Labour Conference (the General Conference) on 16 June 2011. India is a signatory of the Convention but has not ratified it as yet.

Maritime Labour Convention to enter into force in a year

On 20 August 2012, the Philippines deposited its instrument of ratification of the Maritime Labour Convention (MLC, 2006) with the International Labour Organization (ILO). The Philippines is the 30th State to ratify the landmark Convention promising decent work for the seafarers. Now the Convention is set to enter into force in less than a year. The MLC, 2006, popularly known as the seafarers' "Bill of Rights" sets out the world's 1.2 million seafarers' right to decent conditions of work on a wide range of subjects. The new labour standard consolidates and updates more than 68 international labour standards to the maritime sector adopted over the last 80 years.

ICJ has more than doubled its work rate since 1990

On 28 September 2012, the President of the International Court of Justice (ICJ) His Excellency Judge Peter Tomaka while addressing representatives of the United Nations Member States in New York on the occasion of the "high level meeting on the rule of law" said that in the last 22 years, the ICJ has rendered more judgments than during the first 44 years of its existence. "The average number of judgments rendered each year by the Court between 1990 and 2012(2.72) is twice as high as that recorded for the period 1946-1989(1.18)" said Judge Tomaka.

UN General Assembly annual meeting from September 18-October 1, 2012

UN General Assembly opened its sixty-seventh sessions on 18 September 2012 at the UN Headquarters, New York. The annual general debate began on 25th September which is to conclude on October 1, 2012. During the annual meeting of the world leaders from 193 Member States deliberations focused mainly on the following key issues: millennium development goals (MDGs),

climate change and sustainable development, food security, the role of mediation in the peaceful settlement of disputes, disarmament, and the UN reform, including reform of the Security Council, revitalization of the work of GA and reaffirming the central role of the organization in global governance.

High Level meeting of the General assembly on the rule of law, 24 September, 2012

Following opening week of the sixty-seventh session of the General Assembly, a high level meeting on the rule of law at national and international levels was convened on 24 September, 2012. It was attended by the Member States, non-governmental organizations and civil society. On this occasion, the General Assembly adopted a "Declaration on the High Level Meeting on the Rule of Law at National and International Levels".

Ban Ki moon for strong ties between UN and NAM

On August 30, 2012, the opening day of the 16th the Non-Aligned Movement (NAM) Summit in Tehran, the UN Secretary General Ban Ki moon stressed the need for UN and NAM to come closer and to rise against the challenge faced by the NAM countries. Addressing the two-day Summit, the Prime Minister Manmohan Singh urged the nations to unite in their fight against terrorism. He also expressed concerns over proliferation of weapons of mass destruction, piracy *jure gentium*, deteriorating situation in Syria and food insecurity. Syria and Palestine statehood dominated the agenda at the NAM Summit.

European Court of Justice on minimum reception conditions for asylum seekers

On 27 September 2012, the Court of Justice of the European Union while interpreting the relevant provisions of Directive 2003/9 concerning European Union law on asylum held that a Member State in receipt of an asylum claim is obliged to grant the minimum conditions for reception of asylum seekers even to an asylum seeker in respect of whom it decides to call upon another Member State as the state responsible for the application, to take charge of him or to take him back.

ICJ's decision on the obligation to prosecute or extradite

On 20 July 2012 the International Court of Justice delivered a significant verdict regarding a Member States' obligation under Article 6(2) of the 1984 Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment (CAT). In a dispute between Belgium and Senegal, the Court ruled that Senegal was under an obligation to make a preliminary enquiry into the act of torture allegedly committed by Mr. H Habre (former President of the republic of Chad) a non-national in his custody on the basis of the principle of universal jurisdiction enshrined in the Convention against torture.

Margaret Chan gains second term as WTO Director General

Dr Margaret Chan took over for a second five year- term as the Director General of WHO on July 1, 2012. Dr Chan joined the WHO in 2003 as Director of the Department of Protection of Human Environment. Prior to joining the WHO she worked for 25 years in Hong Kong's Department of Health.

Lise Grande is the new UN Country Team Leader in India

On 17 August 2012, Lise Grande, new UN Resident coordinator presented her credentials to Minister of State for External Affairs Ms Praneet Kaur. She has worked for the UN since 1994 serving in many countries and was involved in the UN peacekeeping operations.

RECENT JUDICIAL DECISIONS



Re: Special Reference No 1 of 2012

Auction is not the only permissible method for distribution of natural resources

The Supreme Court's Advisory Opinion of 27 September 2012 on the Presidential Reference (Special Reference No 1 of 2012) is immensely important as it examines some vexing issues of law concerning the scope of judicial review of policy decisions, constitutional validity of the methods other than the 'auction' in allocating scarce natural resources, the applicability of the public trust doctrine to the case of distribution of natural

resources in general and spectrum in particular, the reach and ambit of the principle of equality enshrined in Article 14 in the state's dealings with private individuals in distributing natural resources and the maintainability of a Presidential Reference under Article 143 pertaining to the interpretation of the true scope of an earlier decision. The main Opinion was delivered by Justice DK Jain for SH Kapadia CJ, Himself, Dipak Misra and Ranjan Gogoi JJ while Justice Jagdish Singh Khehar gave separate and concurring Opinion.

On the issue of maintainability of the Presidential Reference, the Court citing the earlier cases including Special Reference No 1 of 1964, (1965) 1SCR 413 (*Keshav Singh*) said that while exercising jurisdiction under Article 143(1) it can look into the correctness of an earlier decision if the issue raised is a larger one than decided in the earlier decision. So long the decision in the 2G Case is untouched, the Court is within its jurisdiction to evaluate and clarify the true ratio in that Case, the Court opined. Clarifying the true ratio of the *CPIL & Ors v Union of India & Ors* (2012) 3 SCC 1 ("2G Case") the Court pointed out that in that Case the Court was not concerned with the method of 'auction' in general but was concerned with the validity of those methods used in distribution of spectrum within a certain period, that is, from September 2007 to March 2008. Hence, the 2G Case could not be read as laying down a blanket rule that auction is the only permissible method for disposal of natural resources.

Regarding 'trusteeship' and 'public trust doctrine' the court was of the view that they do not prohibit the state from allocating the natural resources but require a high degree of judicial scrutiny. On the right to equality aspect involved in the matter, the Supreme Court said that the action of the state, "whether it relates to distribution of largesse, grant of contracts or allotment of land", has to be fair, reasonable, non-discriminatory and transparent.

On the principal issue whether 'auction' is a constitutional mandate in allocating natural resources, the Court opined that such a question should be answered in the negative. "...auctions are not the only permissible method for disposal of all

resources in general and spectrum in particular, the reach and ambit of the principle of equality enshrined in Article 14 in the state's dealings with private individuals in distributing natural resources and the maintainability of a Presidential Reference under Article 143 pertaining to the interpretation of the true scope of an earlier decision. The main Opinion was delivered by Justice DK Jain for SH Kapadia CJ, Himself, Dipak Misra and Ranjan Gogoi JJ while Justice Jagdish Singh Khehar gave separate and concurring Opinion.

natural resources across all sectors and in all circumstances". The Court even went to the extent of suggesting that taking auction as a constitutional mandate would be impermissible because such an approach may distort another constitutional principle embodied in Article 39(b).

On the scope of judicial review of policy decisions, the Court adhered to the well established principle of non-interference by the judiciary in policy issues. Heavily relying on the earlier jurisprudence, most notably, *RK Garg v Union of India* (1981) 4 SCC 675, *Premium Granites & Anr v State of TN* (1994) 2SCC 691 and *Balco Employees' Union v Union of India & Ors* (2002) 2 SCC 333, the Supreme Court suggested that methodology pertaining to disposal of natural resources falls in executive domain and any interference by the Court is uncalled for.

Ajendra Srivastava

Associate Professor

Sahara India Real Estate Corporation Ltd. & others v Securities and Exchange Board of India & another

Supreme Court examines right to report matters which are sub-judice

In this case decided on September 11, 2012, the Security and Exchange Board of India (SEBI) reported to the Hon'ble Supreme Court that securities given by the Sahara India Real Estate Corporation Ltd. and Sahara Housing and Investment Corporation were insufficient to secure their liabilities to the OFCD holders. The Supreme Court then directed the Sahara and SEBI that if possible, they should reach a consensus with respect to an acceptable security in the form of an unencumbered asset. The learned counsel for Sahara then addressed a personal letter on 7.2.2012 to the learned counsel for SEBI at Chennai enclosing the proposal with details of security to secure repayment of OFCD to investors. On 10.2.2012 one of the news channel flashed on television details of the said proposal. The television channel also named the valuer who had done the valuation of the assets proposed to be offered as security.

It was submitted before the Court that disclosure to the media by SEBI was in breach of confidentiality. After hearing the counsels for both parties on media reporting of sub-judice matter the Supreme Court said that although there

can be no across the board blanket guidelines on media reporting of sub-judice matters yet restrictions can be imposed if sought by an aggrieved party in a specific case.

The Court observed that under Indian Constitution no right in Part III is absolute. There can be exceptions in the interest of administration of justice. Apart from Section 151 of the Code of Civil Procedure, the High Courts and the Supreme Court have the inherent power to restrain the press from reporting where administration of justice so demanded. The Court held that there is no general law for courts to postpone publicity, either prior to adjudication or during adjudication as it would depend on facts of each case. Open justice permits fair and accurate reports of court proceedings to be published. The media has a right to know what is happening in courts and to disseminate the information to the public which enhances the public confidence in the transparency of court proceedings. However, sometimes, fair and accurate reporting of the trial may give rise to substantial risk of prejudice. In such cases, there is no other practical means short of postponement orders that is capable of avoiding such risk of prejudice. The Court was of the opinion that what constitutes an offending publication would depend on the decision of the court on case to case basis. Hence, guidelines on reporting cannot be framed across the board.

This decision makes it clear that every publication of the court proceedings by the media is not prohibited in India. However, the Court may impose restriction on publication of the proceedings of the court in the interest of justice in specific cases.

Dr. Dinesh Kumar Srivastava and

Dr. D.K. Misra

Associate Professors

Bharat Aluminium Co v. Kaiser Aluminium Technical Service, Inc.

Civil Appeal No. 7019 of 2005

Part I of the Arbitration & Conciliation Act 1996 not to apply to arbitrations done outside India

On 6th September 2012, in a landmark verdict, the Supreme Court of India held that arbitral proceedings held outside India will not be open to judicial scrutiny of Indian Courts which can only deal with

enforcement of foreign awards. Overruling earlier verdicts by the apex court in the cases of *Bhatia International v. Bulk Trading S.A. & Anr.*, (2002) 4 SCC 105 and *Venture Global Engineering v. Satyam Computer Services Ltd. & Anr.* 2008 (1) Scale 214, a five-judge Constitution Bench observed that "we are of the considered opinion that Part I of the 1996 Act (which deals with the arbitration held in India) will have no application to International Commercial Arbitration held outside India". It was further observed that such awards will only be subject to the jurisdiction of the Indian Courts when the same are sought to be enforced in India in accordance with the provisions contained in Part II (which deals with enforcement of foreign awards) of the Act.

In the *Bhatia International* case, the Supreme Court in 2002 had held that Part I of the Act, dealing with the power of a court to grant interim relief, could be applied to arbitrations with its seat in country other than India unless the parties specifically opted out of such an arrangement. The implication of the 6th September Judgment is that now Indian Courts have no jurisdiction to pass interim orders in relation to arbitration done outside India. The Court held that Scheme of the Act makes it abundantly clear that the territorial principle, accepted in the UNCITRAL Model Law, has been adopted by the Indian Act.

The 6th September decision makes it clear that in keeping with the scheme of the international instruments such as Geneva Convention and the New York Convention as well as the UNCITRAL, the regulation of conduct of arbitration and challenge to an award would have to be done by the courts of the country in which the arbitration is being conducted. In relation to the opinion expressed in *Bhatia International* that unless the application of Part I of the Act is allowed non-convention country awards cannot be enforced, the Bench in the present case observed that "we are of the opinion that merely because the Act of 1996 does not cover the non convention awards would not create a lacuna in the Act. If there was no lacuna during the period in

which the same law was contained in three different instruments, i.e. the Arbitration Act, 1940 read with 1961 Act, and the Arbitration (Protocol and Convention) Act, 1937, it cannot be construed as a *lacuna* when the same law is consolidated into one legislation, i.e. the Arbitration & Conciliation Act, 1996. The Court clarified that in order to do complete justice, the law now declared by this Court shall apply prospectively, to all the arbitration agreements executed hereafter. The judgment with its prospective effect is expected to come to the aid of firms which obtain arbitral awards in their favour in foreign countries but face hurdles as these come under judicial scrutiny in Indian Courts. The decision is also a welcome verdict from the point of view of minimizing the court intervention in the conduct of international commercial arbitration proceedings. Harmonization of laws is one of the most important concerns of UNCITRAL and to that end the present decision is a good initiative. The only missing link in the verdict is that it leaves the question of enforcement of awards passed in non-convention countries unanswered on the ground that the lacuna is to be corrected by the Legislature, but till that time the law remains uncertain.

Dr. Rajnish Kumar Singh

Assistant Professor

Namit Sharma v. Union of India

MANU/SC/0744/2012

Information Commissions to have judicial members also

On 13th September 2012, the Supreme Court delivered an important judgment on the composition of Central and State Information Commissions under Right to Information Act 2005. A bench comprising Justice A.K. Patnaik and Justice Swatanter Kumar passed this order on a PIL challenging sections 12 and 15 of the Right to Information Act 2005 enumerating the qualifications needed for the appointment of members to the commission.

The Court held that only sitting or retired Chief Justices of the Supreme Court or High Courts can head the Central and State Information Commissions and asked the government to amend the RTI

Act accordingly. In this regard the Supreme Court made following important observations-

- That like other quasi-judicial bodies, persons from judicial background be also appointed as members of the Central and State Commissions—and this should be done after consulting the Chief Justice of India and Chief Justices of respective (concerned) High Courts.
- That the CIC at the Centre or State level shall only be a person who is or has been a Chief Justice of High Court or a Judge of the Supreme Court of India.
- That the Government should prefer a person who is or has been the judge of the High Court for appointment as Information Commissioners.
- That the commission should sit in Benches comprising a judicial member and an expert member to decide any case under the transparency law.

The Court did not quash the impugned sections of the Act but asked the government to modify the provisions so that people from judicial background are preferred for the post. It is also relevant to note that presently none of the eight members of the CIC, including the Chief Information Commissioner, are from judicial background. The Judges opined that the interest of justice demanded having judicial members to head such bodies.

It is believed that the present judgment might lead to delays in dealing with cases as the order says that the work of the commissions will now be done in benches of two members, one of whom will be judicial member. Prior to the present order there was no requirement for the commission to work on benches of two members; one member benches were disposing off the cases. Therefore, unless the number of Commissioners (members) is increased, the cases heard and disposed off would be drastically reduced. This might make the pendency of cases in commission a problem much like the judiciary faces today. Further, an important question still remains: how can a retired Supreme Court judge who retires at the age of 65 be appointed to the post of CIC or an Information Commissioner when the retirement age for these posts is also 65?

Dr. V.K. Pathak

Assistant Professor



My Experience with Legal Aid Programme of Law School, Banaras Hindu University

As a Fulbright Scholar I have had an excellent experience this semester at the Faculty of Law, Banaras Hindu University. Dean B.C. Nirmal has been very supportive of my work here as well as many faculty. I have especially enjoyed the opportunity to discuss legal and social issues with fellow faculty members and students.

Working in BHU's Legal Aid Clinic has been my greatest experience. Faculty and students have been very receptive to adopting new approaches in the clinic, thanks in large part to the Legal Aid Clinic Joint Director, Dr. S.K. Gupta and his willingness to adopt new ideas. BHU has a group of excellent faculty and student volunteers. The students are working on several new projects this year. A poster presentation and a cultural group will be showcased at BHU Law School's Science, Technology and the Law Reform Conference in November. The posters and the cultural groups educational talents will then be taken into the community to provide legal education to laypersons. The Legal Aid Clinic is planning other educational programs, while other students may perform legislative and administrative advocacy.

My hope is that the rejuvenated Legal Aid Clinic will become a hallmark of BHU's law school in the future. Law schools like BHU hold the key to creating a more just society for all Indians, not just through the direct work of the clinic; but also by developing more socially conscious future professionals. Finally, I have together with the Law School legal Aid Committee put together a research team of students who will study the use of clinical education in the United States and India as part of our access to justice project. When the study is completed we will have a better picture of what legal aid clinics are doing in India and the United States.

**David Tushaus, Professor,
Missouri Western State University and
Fulbright Scholar, Law School, BHU**

"A judge is a law student who marks his own examination papers".

Charles de Montesquieu

"I have always found that mercy bears richer than strict justice".

Abraham Lincoln

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Single Copy : ₹ 40
Annual : ₹ 150

printed by : MILESTONE-9935967786