



# BHU LAW SCHOOL Newsletter

Vol. III, No. 1, April-June 2014

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Mr. Anoop Srivastava

Mr. Ranjeet Kumar Tripathi

Mr. Mayank Pratap

Mr. Anoop Kumar

Mr. Saurabh Chaudhari

Mr. Laxman Singh Rawat



It is a matter of great pleasure for us that with the publication of the present issue of the Newsletter (Vol.- III, No.1), the 'BHU LAW SCHOOL Newsletter' has entered into the third year of its existence. Despite all odds and work pressure, we have continued its publication. The Newsletter had been launched with the idea to engage the members of legal fraternity in a meaningful debates and deliberations over a variety of contemporary issues and to enhance our interactions with the outside world. Now, on the eve of successful completion of the two years of its publication, I can do say with utmost satisfaction that our innovative effort in the form of Newsletter has been quite successful in achieving its goal.

I am extremely happy to note that the Law School is all set to introduce new courses and programmes from the coming academic session 2014-15. We are to start Five Year (ten-semester) BA LLB(Hons) Degree Programme, One year (two-semester) LLM Degree Course, and Eight Post graduate(Part-Time) Diploma Courses in Forensic Science and Medical Jurisprudence; Tax Management; Mass communication and Media Law; Human Resource Management Service & Industrial Law; Information Technology Law; Corporate Governance; Environmental Law: Policy and Management; and Intellectual Property Rights.

I thank my colleagues for their support and cooperation in publication of the Newsletter. I am especially thankful to the editorial team for their devotion and hard work for the publication of current issue. The untiring efforts of the Committee, in ensuring timely publication of the issue, should be acknowledged and highly commended. Finally yet importantly, I express good wishes to our research scholars for providing research assistance to the editorial committee.

B. N. Pandey

Published by

### LAW SCHOOL

Banaras Hindu University

Varanasi – 221005, India

email: dean.lawschool.bhu@gmail.com

Telefax : +91-542-2369018

<http://www.bhu.ac.in/lawfaculty>

## DISTINGUISHED VISITORS AT LAW SCHOOL, BHU during the Academic Session 2013-14



Hon'ble Mr. Justice  
Jasti Chelameswar,  
Judge, Supreme Court of India  
(29-03-2014)



Hon'ble Mr. Justice  
A. K. Sikri  
Judge, Supreme Court of India  
(19-04-2014)



Hon'ble Mr. Justice  
B. Amit Sthalekar,  
Judge, Allahabad High Court  
(20-04-2014)



Hon'ble Mr. Justice  
Aditya Nath Mittal,  
Judge, Allahabad High Court  
(30-03-2014)



Hon'ble Mr. Justice  
Giridhar Malviya,  
Former Judge, Allahabad  
High Court  
(29-03-2014)



Hon'ble Mr. Justice  
Kashi Nath Pandey  
Former Judge, Allahabad  
High Court  
(20-04-2014)



Hon'ble Mr. Justice  
G. S. Tiwari,  
Former Judge, Calcutta  
High Court  
(19-04-2014)



Hon'ble Mr. Justice  
D. D. Jha  
Judge, Patna High Court  
(20-04-2014)



Shri Vibhav Bhushan Upadhyay  
Former Advocate General,  
Govt. of U. P.  
(29-03-2014)



Sri Manan Kumar Mishra  
Chairman, BCI  
(05-04-2014)



Prof Gurdip Singh,  
V C, R M L N L U  
(05-04-2014)

## Faculty Updates

- Dr. Bibha Tripathi, Associate Professor, Law School BHU acted as resource person in 2<sup>nd</sup> Interaction for research scholars organized by the UGC Academic Staff College, BHU on "Human Rights of Women: Rhetoric and Reality" on 27<sup>th</sup> May 2014.
- Ph. D. degree awarded to Shree Mukesh Kuamr Malviya, Assistant Professor, Law School BHU from Barkatullah University, Bhopal. He has also been awarded an Excellence and Rashtriya level award by the India Friendship Forum, New Delhi. He has published a paper on the topic 'Principles of Law through Indian Constitution' in *Vidyasthali Law Journal*. He has participated in Northern India Regional Symposium, MGKVP, Varanasi.

and Ethics for Better Legal Services" to be organized by IBA-CLE Chair, National Law School of India University, Bangalore; Menon Institute of Legal advocacy Training, Trivandrum in association with Law School, Banaras Hindu University supported by Ford Foundation India from 22-24 August, 2014.

- Special Lecture for BA LLB (Five Year) students to be delivered by Prof N R Madhava Menon, founder VC, NLSIU, Bangalore and NUJS, Kolkata on 23 Aug. 2014.
- Inter Faculty Debate Series "Pravah" to be organized on September 6, 2014 on the topic "Are the Recent Charges against Judiciary Justified?" jointly by the Debate Committee, Law School, BHU and the Literacy Club, IIT, BHU.

- Intra Faculty Moot Court Competition to be organized on October 11, 2014.

The Clinical Legal Educational Programme and Legal Aid & Service Clinic Committee, Faculty of Law, BHU organized a one-day workshop on "Clinical Legal Educational Programme" on Saturday, 5.4.2014.



In this workshop, Judges, Lawyers, Law Professors, Legal Advisors, Clients and students were invited to participate and present papers. The chief guest Mr. Manan Kumar Mishra, Chairman, Bar Council of India and Senior Advocate, Patna High Court, inaugurated the workshop.



Prof. B.N. Pandey, Head & Dean, Faculty of Law and Director, Clinical Legal Education Programme(CLEP) & Legal Aid and Service Clinic(LASC), Law School, BHU has delivered welcome address and spoke

## Forthcoming Events

- Induction Programme for LLB (Hons) I Semester & BA LLB (Hons) I Semester Students to be organized in July and August.
- Three -day Professional Development Training Programme on "Teaching ADR Skill

## Activities at Law School

- ONE DAY NATIONAL WORKSHOP ON CLINICAL LEGAL EDUCATION ON APRIL 5, 2014

about historical perspective, objectives of these programmes and highlighted the achievements of CLEP & LASC. Dr. Shailendra Kumar Gupta, Joint Director, presented Annual Report and spoke about the Rejuvenation Action Plan of CLEP & LASC. In his inaugural address, Mr. Manan Kumar Mishra talked about the need of the quality legal education and importance of the clinical legal education in developing technical skills and professional knowledge amongst law students. During the workshop, the Legal Aid Clinic, Law School also organized the "Poster Exhibition on Role of Law and Lawyers and Social Change in India".

Two technical sessions held in this workshop. The theme of the first session was "Role of Lawyers and Judges in Social Transformation". Prof. R.K. Murali of Law School, B.H.U. chaired the Session and ten faculty members and students presented their papers. Theme of the second session was "Legal Aid in India, Role of NALSA, Legal Aid Clinics, NGOs, and Media in Legal Empowerment." Prof. Vinod Shanker Mishra, Law School BHU, chaired this Session. In this session, twenty-three speakers presented their papers.

#### ● SUMMER INTERNSHIP IN LEGAL AID AND PUBLIC ADVOCACY, 2014 FROM MAY 30 TO JUNE 28, 2014

In order to develop the professional skills amongst the law students and to sensitize them for social justice issues, Legal Aid and Service Clinic, Law School, BHU for the first time organized a month long summer internship program, 'SUMMER INTERNSHIP IN LEGAL AID AND PUBLIC ADVOCACY, 2014' for the law students during May 30 to June 28, 2014. This programme organized in association with Missouri Western State University, USA.



In this programme, seventeen students from four different universities had participated. During the programme ten training sessions were conducted. During these

sessions lecture, training, group discussion and fieldwork presentations were organized. In the first session, Prof. D. K. Sharma, Law School, BHU, addressed the interns and highlighted importance of legal aid and public advocacy in India.

During the internship, six lectures-cum-discussion session organized on theme of the internship. Mrs. Alpana Saxena, Senior Division Judge, District Court Varanasi and Secretary, District Legal Services Authority, addressed the students and highlighted the role of District Legal Services Authority. Dr. Shailendra Gupta, Joint Director, Legal Aid and Service Clinic, delivered a lecture on 'Social Justice and the Role of Legal Aid Clinics in India'. With the active cooperation of Prof. David Tushaus, Chairman, Department of Legal Studies, Missouri Western State University, faculty members of Missouri Western State University delivered four online lectures, through video conferencing.

Prof. Tushaus delivered lecture on 'Problems of Access to Justice and Role of Legal Aid Clinics in India and United States'. Professor Joanne Katzs discussed the role of restorative justice in American criminal justice system. Mr. Brady Kopek talked about the problems of wrongful convictions and need of legal aid to the victims. Prof. Jeremy G. Swenson presented a competitive study of Indian and US laws on Domestic Violence. During the internship, the Clinic allotted various topics to the interns for research. The interns were asked to visit the chambers of lawyers and judges for their practical knowledge.



The valedictory function was presided over by Professor B.N. Pandey, Head and Dean, Law School and Director, Legal Aid and Service Clinic. The interns presented their research works through power-point presentations. Mr. Vikash Saxena,

Additional District Judge at Varanasi, Mr. Arvind Rai, Judge, Small Causes Court at Varanasi, Mr. Rakesh Kumar Tandon, State Coordinator of the Art of Living, addressed the interns. Prof R.K. Murali congratulated the interns for their active participation and research work. Dr. R. K. Patel and Dr. V. K. Saroj provided academic and administrative support for the success of the program.

#### ● MAHAMANA MALAVIYA NATIONAL MOOT COURT COMPETITION, 2013-2014

Second Mahamana Malaviya National Moot Court Competition was organized in Law School, BHU on 19th and 20th April, 2014. The Moot Court Competition was inaugurated by the Hon'ble Mr. Justice A. K. Sikri, Judge, Supreme Court India. Total 17 teams from all over India participated in the Competition. Allahabad



University was declared the Winner and Galgotia University, Greater Noida was the Runners-up. Many distinguished alumni of Law School were also felicitated on the occasion.



The dignitaries whose gracious presence marked the occasion were Hon'ble Mr. Justice Dharni Dhar Jha, Judge, Patna High Court, Hon'ble Mr. Justice B. Amit Sthalekar, Judge, Allahabad High Court, Hon'ble Mr. Justice K N Pandey, former Judge, Allahabad High Court, Hon'ble Mr. Justice G. S. Tiwari, former Judge, Calcutta



High Court, and Dr. Rajeev Sangal, Director, I.I.T., BHU. The Organizing Secretary of the Moot Court Competition was Dr. Kshemendra Mani Tripathi.

### Legislative Trends



#### THE WHISTLE BLOWERS PROTECTION ACT, 2011 [Act No. 17/2014]

It is an Act to establish a mechanism to receive and inquire into complaints relating to disclosure on any allegation of corruption or willful misuse of power or willful misuse of discretion against any public servant. It also provides adequate safeguards against victimization of the person making such complaint. By virtue of Section 4 of the Act, any public servant or any other person including any non-governmental organization may make a public interest disclosure before the Competent Authority. It further provides that every disclosure shall be made in good faith and disclosed substantially true information. However, if the disclosure does not indicate the identity of the complainant or public servant or if such disclosure is found incorrect or false, no action shall be taken by the Competent Authority.

Explaining the procedure of inquiry, Chapter III of the Act provides that on receipt of a public interest disclosure, the Competent Authority shall ascertain that the complainant or the public servant was the same person who made the disclosure and then conceal his identity. After making discreet inquiry, the Competent Authority is of the opinion that the disclosure requires to be investigated. It shall seek comment or explanation or report and after receiving the report, and if the Competent Authority finds that such report reveals either willful

misuse of power or willful misuse of discretion or substantiates allegations of corruption, it shall recommend to the public authority to initiate proceedings against the concerned public servant. Safeguarding the persons against victimization, the Competent Authority may give suitable directions to the concerned public authority to protect such person who had filed a complaint or made disclosure or rendered assistance in inquiry under this Act. The Act lays down penalties for various offences. For not furnishing reports to the Competent Authority, a fine of upto Rs. 250 shall be imposed for each day till the report is submitted. However, it cannot exceed Rs. 50,000. For revealing the identity of complainant negligently or due to mala fide reasons, the penalty is imprisonment for up to 3 years and a fine of up to Rs. 50,000. For knowingly making false or misleading disclosures with mala fide intentions, the penalty is imprisonment up to 2 years and a fine of up to Rs. 30,000. Moreover, the Act also provides that any person aggrieved by an order of the Competent Authority relating to imposition of penalty for not furnishing reports or revealing identity of complainant may file an appeal to the High Court within 60 days.

#### THE TELECOM REGULATORY AUTHORITY OF INDIA (AMENDMENT) BILL, 2014

The Act came into force on May 28, 2014. The Amendment Bill substitute's section 5 sub-section(8),with the following text:-  
(8)The Chairperson and the whole-time members shall not, for a period of two years from the date on which they cease to hold office as such, except with the previous approval of the Central Government, accept-(a)any employment either under the Central Government or under any State Government; or (b)any appointment in any company in the business of telecommunication services.

As highlighted in the Statement of Object, sub-section (8) of section 5 of the Telecom Regulatory Authority of India Act, 1997

places certain restrictions on employment of persons who have served as Chairperson or Members of the Telecom Regulatory Authority of India after demitting office. However, under the provisions of the Insurance Regulatory and Development Authority Act, 1999, the Pension Fund Regulatory and Development Authority Act, 2013 and the Airports Economic Regulatory Authority of India Act, 2008, the Chairperson or Members of the Insurance Regulatory and Development Authority. The Pension Fund Regulatory and Development Authority and the Airports Economic Regulatory Authority respectively, are eligible for employment in the Central Government or any State Government after demitting office as Chairperson or Member, after a gap of two years.

#### THE GOVERNORS (EMOLUMENTS, ALLOWANCES AND PRIVILEGES) AMENDMENT ACT, 2014 [Act No. 8/2014]

It is an Act to amend the Governors (Emoluments, Allowances and Privileges) Act, 1982. This Amendment Act, 2014 provides that the ex-Governor shall be entitled to one personal assistant for the rest of his life. Keeping in view the high constitutional office that a Governor holds and considering his contributions in public discourse, a new Section 12A is inserted which provides that the ex-Governor shall for the remainder of his life be entitled to secretarial assistance of one personal assistant on reimbursement basis. However, it also provides that this emolument shall not be provided for the period the ex-Governor has been re-appointed as Governor, elected to either the Parliament or state legislature, or has been appointed to any office of profit under the state government or central government.

#### THE ANDHRA PRADESH REORGANIZATION (AMENDMENT) BILL, 2014

The Act came into force on May 29, 2014. The Andhra Pradesh Reorganization Act,

2014 (6 of 2014) was enacted on March 1, 2014 to provide for reorganization of the State of Andhra Pradesh into the States of Telangana and Andhra Pradesh. The Amendment is being made in order to enable the successor State Government of Andhra Pradesh to have flexibility in the identification of areas for implementing the rehabilitation and resettlement aspect of the Polavaram Multi-purpose National Irrigation Project, as well as to ensure continuity in the areas that form part of Andhra Pradesh and for administrative convenience.

### International Legal News and Events



United Nations

#### ● ONE HUNDRED AND THIRD SESSION OF THE ILC

The annual session of the International Labour Conference, which lasted for two weeks, concluded on June 12, 2014. The eradication of forced labour, the growing challenge of migration and the continuing need to bring people from the informal economy to the formal economy were some of the major areas under discussion. Nearly four and a half thousand delegates representing governments, employers and employees from around the world attended the session. During the session, Protocol to The Forced Labour Convention, 1930 was adopted. At International Labour Conference, each Member state of the ILO is represented by a delegation consisting of the two government representatives, one employer's representatives and one workers' representatives.

#### ● PROTOCOL TO THE FORCED LABOUR CONVENTION, 1930 (No.29) ADOPTED

On 11 June 2014, Protocol to the Forced Labour Convention, 1930, (No.29) was adopted by the International Labour Conference at its

one hundred and third Session, in Geneva. In his closing remarks Director General Guy Ryder pointed to the successful adoption of the forced labour protocol as a notable achievement. He said "... It is the fruit of our collective determination to put an end to an abomination which still afflicts our world of work, and to free its 21 million victims; it is a demonstration of our capacity to adopt international labour standards to meet real needs and .... to defend and promote fundamental principles and rights at work..."

"The issue of labour migration resonates with you all... realizing the undoubted economic potential of migration depends very heavily on making it fair. And that means adopting a rights-based approach which is still more frequently talked about than applied," Ryder, the Director General further said.

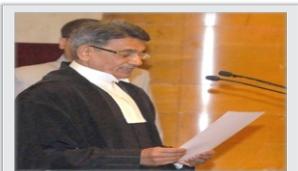
#### ● COMMITTEE AGAINST TORTURE CONCLUDES FIFTY-SECOND SESSION

The Committee against Torture on 23 May 2014 concluded its fifty-second session after adopting concluding observations and recommendations on the reports of Cyprus, Guinea, Holy See, Lithuania, Montenegro, Sierra Leone, Thailand and Uruguay on how they implement the provisions of the Convention against Torture in their countries. The fifty-third session of the Committee will be held from 3 to 28 November, during which it will review the reports of Australia, Burundi, Croatia, Kazakhstan, Sweden, Ukraine, United States and Venezuela.

#### ● ICTR APPEALS CHAMBER DELIVERS JUDGMENT IN THE BIZIMUNGU CASE

On June 30, 2014, the Appeals Chamber of the International Criminal Tribunal For Rwanda (ICTR) while delivering its judgment on the appeals filed by Augustin Bizimunguru affirmed the prosecution in part, and conviction of Bizimunguru, as superior, for genocide, extermination, murder and rape as crimes against humanity. The Appeals Chamber affirmed

his 30 years imprisonment imposed by the Trial Chamber for committing above crimes. The Appeals Chamber reviews only errors of law, which have the potential to invalidate the decision of the trial chamber, and errors of fact, which may occasion an injustice.



Hon'ble Mr. Justice R. M. Lodha, New Chief Justice of India  
Hon'ble Mr. Justice Rajendra Mal Lodha, has been appointed 41st Chief Justice of the Supreme Court of India on 11th April, 2014 and has assumed his office on April 27, 2014. He served as the Chief Justice of Patna High Court and as a Judge in Rajasthan High Court and Bombay High Court. Mr. Justice Lodha was born on 28 September 1949, his father Mr. Justice S. K. Mal Lodha, was Judge of Rajasthan High Court. He took B.Sc. degree and LL.B. from Jodhpur University. In February 1973, he got enrolled with the Bar council of Rajasthan and started practice at Jodhpur. He shifted to Jaipur in the year 1977 on formation of Jaipur Bench of the Rajasthan High Court. On 31 January 1994, Lodha was elevated from bar to the post of permanent judge of Rajasthan High Court at Jodhpur. On 16 February 1994, he was transferred to Bombay High Court. As a Judge of the Bombay High Court for thirteen years, he sat on almost all jurisdictions. He was again re-transferred to the Rajasthan High Court and on 2 February 2007, he re-assumed the office as a judge there. On 13 May 2008, he was appointed as the Chief Justice of Patna High Court. On 17 December 2008, Chief Justice of India K. G. Balakrishnan swore-in Justice Lodha as a judge of the Supreme Court of India.

#### Recent Judicial Decisions



*Pravasi Bhalai Sangathan v. Union of India and others, AIR 2014 SC 1591*

#### **AGGRIEVED MUST RESORT THE REMEDY PROVIDED UNDER A PARTICULAR STATUTE.**

On 12<sup>th</sup> March 2014, Supreme Court of India in this landmark judgment has very precisely stated that when the remedy is available in other statutes then writ jurisdiction can't be invoked. The present writ petition was filed by an organization dedicated to the welfare of inter-state migrants, in the nature of public interest seeking exercise of this court's extraordinary jurisdiction under article 32 of the constitution of India, 1950. The contentions of the party were that "Hate speeches" delivered by elected representatives (political and religious leaders) are violative of fundamental rights enshrined under Articles 14 (Equality before Law); 15 (prohibition of discrimination on grounds of religion, race, caste, or place of birth); 16 (Equality in matters of public employment); 19 (prohibition of certain rights regarding freedom of speech etc.); and 21 (protection of life and personal liberty) etc. Then the pertinent question before honorable apex court was what the proper forum to cope up this problem is. The bench comprising of Justices Dr. B. S. Chauhan, A. K. Sikri and M. Y. Eqbal observed that it is evident that the legislature had already provided sufficient and effective remedy for prosecution of author, who indulge in such activities. In spite of the above, petitioner sought reliefs which tantamount to legislation. Justice Chauhan while referring the Constitution of India Article 142 emphasizes that Directions / guidelines by the Supreme Court can be issued by apex court only when there is total vacuum in law. In case of vacuum of legal regime to deal with particular situation court may issue guidelines to provide absolution until Legislature acts to perform its role by enacting proper

legislation to cover the field-Supreme Court should not grant relief or pass order/direction, which is not capable of implementation. Supreme Court reiterated that when the statutory provisions and particularly penal law provide sufficient remedy to curb the menace of "hate speeches" Thus, person aggrieved must resort to the remedy provided under a particular statute. Finally court came to the conclusion that we should not entertain a petition calling for issuing certain directions which are incapable of enforcement/execution. The National Human Rights Commission would be well within its power if it decides to initiate suo-moto proceedings against the alleged authors of hate speech. However when court came to know that Law Commission has undertaken the study as to whether the Election commission should be conferred the power to de-recognize a political party disqualifying it or its members, if a party or its members commit the offences referred to. Court requested in this case to Law Commission that it examine the issues. And if deems proper define the expression "hate speech" and make recommendations to the parliament to strengthen the election commissions to the parliament to strengthen the election commission to curb the menace of "hate speeches" irrespective of whenever made.

**Ranjeet Kumar Tripathi**  
Research Scholar, Law School, BHU

**National Legal Services Authority (NLSA) v. Union of India, (2014) 5 SCC 438**

#### **THE PROPER RECOGNITION AND FUNDAMENTAL RIGHTS PROVIDED TO TRANSGENDERED PERSONS.**

The Apex Court in this case recognized the rights of transgendered persons. The Supreme Court accepted the broad definition of transgender as including persons who did not identify with the sex assigned to them at birth. By this judgment hon'ble court treat declared Hijras,

Eunuchs, apart from binary gender, as third gender for the purpose of safeguarding

their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature. The Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender. Supreme Court directed the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments. (4) Centre and State Governments are directed to operate separate HIV Sero-surveillance Centres since Hijras/ Transgenders face several sexual health issues. The ruling in *National Legal Services Authority (NLSA) v. Union of India* has far-reaching implications. It is a courageous decision that embeds the rights of transgendered persons primarily within the right to equality in the Indian Constitution. In this sense, it is a more dynamic decision than the Delhi High Court ruling regarding Section 377, which was largely based on the right to privacy. The Court held that non-recognition of gender identity violates the rights to equality and life, and that transgendered persons should not be compelled to declare themselves as either male or female. The lack of recognition of their gender identity curtails their access to education, health care and public places, and results in discrimination in the exercise of their right to vote and secure employment, driving licenses and other documentation where eligibility is contingent on declaring oneself as either male or female.

The Bench comprising K.S. Radhakrishnan and A.K. Sikri JJ has restored the image of the Court as capable of bold moves when it comes to addressing the denial of the right to be human simply because of one's sexual status and conduct.

**Mayank Pratap**  
Research Scholar, Law School, BHU

**Animal Welfare Board of India v. A. Nagaraja and Ors, MANU/SC/0426/2014**

## **BANNING JALLIKATTU EVENT, BULLOCK-CARTRACE ETC.**

On 7<sup>th</sup> May 2014, the Supreme Court upheld the Central Government notification dated 11.7.2011 that bulls cannot be used as performing animals, either for the Jallikattu events or Bullock-cart races in the State of Tamil Nadu, Maharashtra or elsewhere in the country. Moreover, the Court found that the Tamil Nadu Regulation of Jallikattu Act, 2009 is repugnant to the Prevention of Cruelty to Animals Act, 1960 and declared it unconstitutional and void. Expanding the definition of word "life" under Article 21 of the Constitution, the Bench comprising of K.S. Panicker Radhakrishnan and Pinaki Chandra Ghose JJ observed that any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. Recognizing the welfare and the well-being of the animals, the Supreme Court explained that the Prevention of Cruelty to Animals Act, 1960 is welfare legislation and was enacted to prevent the infliction of unnecessary pain, suffering or cruelty on animals. The Apex Court held that Jallikattu events, Bullock-cart race, as such is not for the well-being of the animal and by undertaking such events, organizers are clearly violating the first limb of Section 3 of the Prevention of Cruelty to Animals Act, 1960. Further, the Court took notice of the fact that Jallikattu event or Bullock-cart race, from the point of the animals is not an event ensuring their well-being or an event meant to prevent the infliction of unnecessary pain or suffering, on the contrary, it is an event against their well-being and causes unnecessary pain and suffering on them. Hence, both limbs of Section 3 of the Prevention of Cruelty to Animals Act, 1960 have been violated while conducting Jallikattu event and Bullock-cart race.

While interpreting the expression "or otherwise" under Section 11(1) (a) of the

Prevention of Cruelty to Animals Act 1960, the Court found that the legislature has intended to cover all situations, where the animals are subjected to unnecessary pain or suffering. The Court went on to add that under Section 11(1)(m)(ii) of the Prevention of Cruelty to Animals Act, 1960, if any person, solely with a view to providing entertainment incites any animal to fight, shall be punishable under the Prevention of Cruelty to Animals Act 1960. It may be noted that Section 5 of the Tamil Nadu Regulation of Jallikattu Act, 2009 which envisages a fight between a bull and bull tamers is prohibited. Declaring the repugnancy between Section 5 of the Tamil Nadu Regulation of Jallikattu Act, 2009 and Section 11(1)(m)(ii) of the Prevention of Cruelty to Animals Act, 1960, the Court declared that Jallikattu events are inconsistent and in direct collision with Sections 3, 11(1)(a), 11(1)(m)(ii) and 22 of the Prevention of Cruelty to Animals Act, 1960 read with Articles 51A(g) & (h) of the Constitution of India. It also violates Article 254(1) of the Constitution of India. It may be concluded by saying that the Supreme Court has made liberal and expansive interpretation of the Article 21 of the Constitution of India to include right to life is not only guaranteed to human beings but it also includes protection to animals.

Laxman Singh Rawat  
Research Scholar, Law School, BHU

*Pramati Educational and Cultural Trust® and others v. Union of India and others, 2014 Indlaw SC 333*

## **THE RIGHT TO EDUCATION ACT, 2009 UPHELD CONSTITUTIONALLY VALID**

The Constitutional Bench of the Supreme Court of India on 6<sup>th</sup> May, 2014 upheld the validity of the Right to Education Act, 2009 and held that only those provisions of the Right to Education Act, 2009 which applies to minority schools, aided or unaided, covered under Article 30 (1) of the Constitution is ultra virus the Constitution. The Court further held that Article 15 (5) of

the Constitution inserted by the Constitution (Ninety- third Amendment) Act, 2005 is valid and none of the rights under Articles 14, 19(1) (g) and 21 of the Constitution have been abrogated by Article 15 (5) of the Constitution. Moreover, the Court observed that the Article 21A of the Constitution inserted by the Constitution (Eighty-Sixth Amendment) Act, 2002 did not alter the basic structure or framework of the Constitution and is constitutionally valid. The Bench comprising of A. K. Patnaik, Sudhansu Jyoti Mukhopadhyaya, Dipak Misra, R. M. Lodha and Fakkir Mohamed Ibrahim Kalifulla JJ pointed out that the provisions of the Right to Education Act, 2009 are meant to achieve the Constitutional goals of equality of opportunity in elementary education to children of weaker sections and disadvantaged groups in our society. Therefore, providing free and compulsory education to children between the age group of 6 to 14 years are consistent with the right under Article 19 (1) (g) of the Constitution. Recognizing the provisions under Section 12(1) (c) read with Section 2(n)(iv) of the Right to Education Act, 2009, the Court found that an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority is required to admit in class I, to the extent of at least twenty five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion. Explaining the rationale for exclusion of minority schools, the Apex Court concluded the fact that the Right to Education Act, 2009 is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, those provisions of the Right to Education Act, 2009 which are applicable to minority schools referred in Article 30 (1) of

the Constitution are ultra vires the Constitution. The Court went on to add that by excluding the minority institutions referred to in Article 30(1) of the Constitution, the secular character of India is maintained and not destroyed. Advocating reservation in private educational institutions as a tool for social justice or empowerment of backward and marginalized class, it has been pointed out that education is an organic process that cannot be borrowed or super imposed on a society. Article 15 (5) has been enacted to provide reservation for backward and marginalized sections of the society in private educational institutions to help these sections of the society to develop the scientific temper, humanism and the spirit of inquiry and reform. Examining the validity of Article 15 (5), the Court declared that the view taken in the case of Ashoka Kumar Thakur that the imposition of reservation on unaided institutions by the Ninety-third Amendment had abrogated Article 19(1) (g) of the Constitution, is not correct. Referring T.M.A. Pai Foundation case, the Court was of the view that the admission of a small percentage of students belonging to weaker sections of the society by granting them free ships or scholarships, is not inconsistent with the rights under Article 19 (1) (g) of the Constitution. The Court concluded that the power under Article 21A of the Constitution of India vested in the State shall not be exercised to make any law which will abrogate the right of the minorities to establish and administer schools of their choice. One can conclude by quoting the Supreme Court of India in the instant case that 'Article 21A of the Constitution does not alter the basic structure or framework of the Constitution of India'.

**Saurabh Chaudhari**

Research Scholars, Law School, BHU  
*Indian Bank Association and others v. Union of India and others, AIR 2014 SC 2528*

**GUIDELINES FOR THE EXPEDITIOUS DISPOSAL OF CASES RELATING TO**

### DISHONOUR OF CHEQUE

The decision of April 21<sup>st</sup>, 2014 by the bench of K.S. Radhakrishnan and Vikramajit Sen, JJ. related to the seeking guidelines/directions for the expeditious disposal of the cases of dishonour of the cheque complaint under section 138 of the Negotiable Instruments Act, 1881. The Supreme Court took into consideration of the object of the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 that provides for speedy disposal of cases relating to dishonour of cheques through summary trial as well as making the offence compoundable. The Court issued following direction for dealing with cases under section 138 of the Negotiable Instruments Act:

**(1) Immediate Cognizance:** Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

**(2) Notice via Email:** MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and mailed or e-mailed address got from the complainant. Court, in appropriate cases, may take the assistance of the police or the nearby Court to serve notice to the accused. **(3) Instant Settlement:** Court may indicate in the summon that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, Court may pass appropriate orders at the earliest.

**(4) Quick Trial:** Court should direct, the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under section 251 Cr. P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by

the accused under section 145(2) for re-calling a witness for cross-examination.

**(5) Time Bound Disposal:** The Court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The decision requires to all Criminal Courts in the country dealing with section 138 cases to follow the above-mentioned procedures for speedy and expeditious disposal of cases falling under section 138 of the Negotiable Instruments.. It must not only remain law in books but be used as law in action.

**Anoop Srivastava**

Research Scholar, Law School, BHU

Law is reason, free from passion.'

-Aristotle (384 BC-322BC)

Law and order exist for the purpose of establishing justice and when they fail in this purpose, they become the dangerously structured dams that block the flow of social progress.'

-Martin Luther King Jr.(1929-1968)

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