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Amity University Gurugram is a part of India's leading education group, which has pioneered a global culture in education in India. The Amity Group is home to over 150,000 students, pursuing 300 Programmes in 60 diverse disciplines, from Pre-school to Ph.D.

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- 1,50,000 **Students**
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- 26 **Schools & pre-schools**
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- 50,000 **On-campus Placements in the last years**
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Amity University, Amity Education Valley, Gurugram, Manesar, Haryana, India.
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BI-ANNUAL **NEWSLETTER**

AMITY UNIVERSITY GURUGRAM

AMILAWYERS

ISSUE 1 • VOLUME 2

2019

AMILAWYERS
AMITY LAW SCHOOL

AMITY LAW SCHOOL

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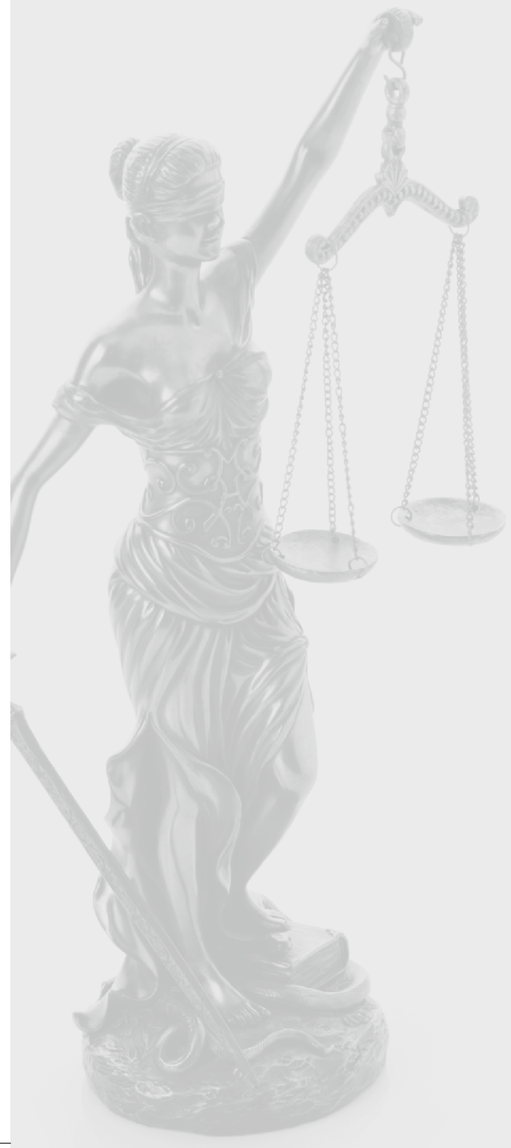


MESSAGE FROM THE CHANCELLOR

With an intent to focus on legal news and current industry trends, Amity Law School (ALS) publishing its newsletter, Amilawyers, is praise worthy. It gives me immense pleasure to pen a few words for the Second Issue of this Newsletter. The higher education sector is going through a massive transformation throughout the world and India is also part of this revolution. We, as Amity Universe, are emerging as a glowing example in setting and achieving new standards of pedagogic quality in this paradigm. ALS, despite being a young institute, is embracing the challenges present by the new context of higher education and has emerged as a beacon in the field of legal education. I am happy to note that at ALS, it is believed that the process of imparting knowledge is not confined to the constraints of classroom but the students get on-ground training. Here every student is thought to be a potential leader and is given an opportunity for all-around development. The institute has worked vigorously for its budding talents to be shown a new path and attitude for making them capable of facing the on-ground challenges. I congratulate all the Contributors and Editorial Board for bringing out such a remarkable piece of work. I have no doubt that Amilawyers will create a dynamic bond with its Alumni.

Dr. Aseem Chauhan
Chancellor
Amity University Haryana

MESSAGE FROM THE **VICE- CHANCELLOR**

Across Amity, we take pride in the research and innovative work done by our Faculty, Scholars and Students and there can be no better example of passion and dedication than Amity Law School (ALS) in this regard. So far, ALS has been successful in providing holistic education to the students at all levels. This has prepared them not only to fit in the society well, but to lead the society whenever and wherever required.

At ALS, we strongly believe and practice that 'Knowledge is power' and integrity is the greatest strength. In order to develop a visionary, innovative and creative society, the School has continuously endeavoured to professionalise its effective resource management. In ALS, the process to shape mind and character of our students is based on grooming and mentoring. The School has proved that leadership is the capacity to take a vision and turn it into a reality.

The Second Issue of ALS newsletter, Amilawyers, is a step forward towards the excellence the School strives to achieve. I take this opportunity to commend the School for the job well done and full of landmark results. I am sure that Amilawyers will continue to add up to their many glorious and distinguished milestones.

Prof. P.B. Sharma
Vice- Chancellor
Amity University Haryana

MESSAGE FROM THE DEPUTY **VICE-CHANCELLOR**

It gives me great pleasure to learn that Amity Law School, Amity University Gurugram, is bringing out its second newsletter. In a very short span of eight years, Amity Law School, AUG, has made tremendous progress with the Bar Council of India (BCI) increasing our intake to five sections of 60 students each for under graduate Law Course.

ALS has maintained very high standards in special areas of law such as Religion, Education, Minorities, Human rights and Civil liberties, Comparative Law, Personal Laws, gender equality and juvenile justice. It is a matter of pride for us that students of Amity University Gurugram Law School have excelled in National Moots, debates and other co-curricular activities. Our Law Library has a priceless pool of resources for a law student. The feather in the cap is of course, the innovative and dynamic approach to teaching law, adopted by an extremely enthusiastic and inspiring Head Maj. Gen. Praveen Kumar Sharma and his team of highly qualified and dedicated faculty, who are firmly committed to pursuit of excellence in all spheres.

Maj. Gen. B. S. Suhag (Retd.)
Dy. Vice Chancellor
Amity University Haryana

MESSAGE FROM THE **PRO VICE- CHANCELLOR**

I congratulate Amity Law School for another edition of their very innovative initiative Amilawyer. From the time of its inception ALS has earned many accolades and continues to create new parameters and standards in the study of law. We are confident that our students of law will be the future thought leaders and will emerge as conscientious keepers of justice for the nation.

Study of Law is more than a profession. As students of law we not only learn to uphold the directives given in our constitution but also become part of social and political fabric which makes it our duty to ethically differentiate between right and wrong. We have the examples of great leaders like Mahatma Gandhi, Sardar Vallabh Bhai Patel and Jawahar Lal Nehru who were more than just lawyers and leaders and became harbingers of peace, justice and freedom for the country. It is our responsibility to follow the spirit of justice and take our country to achieve greater heights. I wish Amity Law School success in all their endeavours.

Since its inception the ALS is acclaimed for its contribution to teaching, research and innovative practices. ALS has grown into a multi-disciplinary school catering to the changing and ever evolving, dynamic state of law and research. Today, AUH is proud that ALS meets the limitless expectations to nurture professionals and scholars of high proficiency and competence who can provide their talents in the judiciary world and allied streams. We are committed to creating a platform for exceptional ideas and emerge as the very epitome of Excellence.

Prof. (Dr.) Padmakali Banerjee
Pro-Vice Chancellor
Amiry University Haryana

DIRECTOR SPEAKS

These has been an unusually long delay in publication of this Second Issue. The period, since the first time came out, has been extremely busy, very eventful and fruitful. Our students have excelled in all field academics, sports and other extra-curricular activities. The faculty members have richly contributed through their research oriented articles and paper presentations in various National and International Conferences. If I report on all the events that we organised or participated in. I am likely to consume the whole space; but report I will though briefly.

Maj. Gen. P.K. Sharma (Retd.)
Professor and Director, ALS
Dean Faculty of Law

WE ARE PROUD OF YOU

A.	SHRI BALJIT SHASTRI AWARD.		
S. No.	**Name of Awardee**	**Course**	**Batch**
1.	Ms Monica Yadav	Master of Laws	2011-2013
2.	Col YS Sindhu (Retd)	Master of Laws	2012-2014
3.	Mr. K Remruatfela	Master of Laws	2014-2015
4.	Mr. Govind Kumar Saxena	Master of Laws	2015-2016
5.	Ms Sangeeta	BA LLB (H)	2012-2017
6.	Mr. Mayank Shekhar	BA LLB (H)	2013-2018
B.	**INSTITUTE TOPPER.**		
S. No.	**Name of Awardee**	**Course**	**Batch**
1.	Ms Shabanoo Begum	Master of Laws	2012-2014
2.	Ms Sangeeta	BA LLB (H)	2012-2017
3.	Ms Shringar Bhattaria	B.Com LLB (H)	2013-2018
C.	**GOLD MEDAL.**		
S. No.	**Name of Awardee**	**Course**	**Batch**
1.	Mr. Abhishek Choudhary	Master of Laws	2013-2014
2.	Ms Dipika Rani	Master of Laws	2014-2015
3.	Mr. Nishant Khosla	Master of Laws	2015-2016
4.	Ms Shweta Tyagi	Master of Laws	2016-2017
5.	Mr. Sankalp Pandey	Master of Laws	2017-2018
6.	Ms Sangeeta	BA LLB (H)	2012-2017
7.	Ms Shringar Bhattaria	B.Com LLB (H)	2013-2018
8.	Ms Vanshika Mittal	BA LLB (H)	2013-2018
9.	Ms Monika Sharma	BBA LLB (H)	2013-2018

ACHIEVERS

STUDENTS APPOINTED AS JUDICIAL OFFICERS

Mr. Raghav Sharma
BA LLB
(2012-2017)

Mr. Apoorv Bhardwaj
PhD
2017 Batch

Dr. Atul Sud
Director Legal, Regulatory & Corporate Affairs Perfetti Van Melle India Pvt. Ltd.

SECURING "PRIVACY"- INDIAN CONTEXT

A long-standing debate on whether 'privacy' was a right guaranteed under our Constitution, has been now settled by the Honourable Supreme Court of India ("SCI") by a unanimous judgment of its constitution bench affirming in its favour. This affirmation is recorded by the SCI in its judgement delivered in Puttaswamy Case [Writ petition (civil) No. 494 of 2012, decided on 24 August 2017]. Judicial and legal activism, and the resultant outcome of this landmark judgment, emanated from a statement of the then Attorney General- when he urged that existence of a fundamental right to privacy is in doubt in view of decisions rendered in the cases of M.P. Sharma (1954 SCR 1077) and Kharak Singh (1964 1 SCR 332).

It is pertinent to mention that 'privacy' has not been defined in any statute, being a common law country, the SCI placed reliance on some of its past decisions and on the Anglo-American literatures available on this subject. The SCI was equally mindful of the influence that technological advancements have had on an individual's life; which fact too impelled them to have a fresh look at its definition & contours in the current environment dominated by information and data exchange. Consequently, the SCI has now clarified that the term "Privacy" comprises of not only freedom of the physical self but also of the informational and decisional aspects of an Individual's life.

In this context, reference to the judgments cited above becomes relevant. Broadly stated, in M.P. Sharma case and in Kharak Singh case, the SCI did allude to and secured protection of the physical aspect of privacy. While it was in Menaka Gandhi (1978(1) SCC 248) that it was held that an individual freedom can only be curtailed by the due process of law. However, majority view of the SCI remained that 'privacy' was a mere overlapping reflection of various rights and freedoms that the Constitution of India provided to its citizens under Part III of the Constitution, and that privacy was not a specifically guaranteed right thereunder.

It is therefore important to delve into these cases to ascertain as to how the concept of privacy evolved in India. The majority view of the SCI, till a very long time, maintained that 'privacy' was a mere overlapping reflection of various rights and freedoms that the Constitution of India provided to its citizens under Part III of the Constitution. It was the seeds of the dissenting voices sown over five decades, within these judgements, which appealed to the conscience of the SCI and persuaded then to hold that the "minority view"- which had recognized 'privacy' as a guaranteed right under our Constitution- is the right and the logical view to hold in the present day and age.

Some of the observations made by the SCI in these judgements are quite relevant to understand the circumstances and the thought process that prevailed at that point of time that, at the cost of repetition, I am tempted to reproduce the same for reference of my readers. The M P Sharma case related to investigations into corporate affairs of a company and in this case the SCI observed:
"A power of search and seizure is in any system of jurisprudence is an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under Article 20(3) would be defeated by the statutory provisions for searches."

In Kharak Singh case, issue related to keeping track of movements of a hardened criminal, and the SCI had observed:
"…the freedom guaranteed by Article 19(1)(d) is not infringed by a watch being kept over the movements of the suspect. Nor do we consider that Article 21 has any relevance in the context as was sought to be suggested by learned Counsel for the petitioner. As already pointed out, the right of privacy is not a guaranteed right under our Constitution and therefore the attempt to ascertain the movements of an individual which is merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III."

What is noteworthy is the fact that in the same judgment, Justice Subba Rao dissented and held that Article 21 embodies the right of the individual to be free from restrictions or encroachments. In his view, though the Constitution does not expressly declare the right to privacy as a fundamental right, such a right was essential to personal liberty. The dissenting opinion of Justice Subba Rao placed the matter of principle as follows:
"In an uncivilized society where there are no inhibitions, only physical restraints may detract from personal liberty, but as civilization advances the psychological restraints are more effective than physical ones. The scientific methods used to condition a man's mind are in a real sense physical restraint, for they engender physical fear channelling one's actions through anticipated and expected grooves. So also, the creation of conditions which necessarily engender inhibitions and fear complexes can be described as physical restraints. Further, the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life. It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty. Every democratic country sanctifies domestic life; it is expected to give him rest, physical happiness, peace of mind and security. In the last resort, a person's house, where he lives with his family, is his "castle"; it is his rampart against encroachment on his personal liberty…".

On the issue of ability of the government to curtail the right of an individual to travel/move about freely, reference to Menaka Gandhi case becomes relevant and in this case the SCI observed:
"the right of an individual to travel abroad was held to be subsumed within article 21 as a consequence of which any deprivation of that right could only be by a procedure established by law which has to be fair, just and reasonable. ……. The consequence of the Gopalan doctrine [AIR 1950 SC 27] was that the protection afforded by a guarantee of personal freedom would be decided by the object of the State action in relation to the right of the individual and not upon its effect upon the guarantee.

The dissenting view in Kharak Singh's case and above observations in Maneka Gandhi's case were duly taken note by the three-judge bench, which was initially hearing Puttaswamy case. Since the decision in the above noted cases had been rendered by a larger bench, it was only appropriate for the three-judge bench to refer this matter to the constitution bench. Their observations while referring the matter to the constitution bench are equally significant:
"What is at stake is the amplitude of the fundamental rights including that precious and inalienable right under Article 21. If the observations made in M.P. Sharma (1954 SCR 1077) and Kharak Singh (1964 1 SCR 332) are to be read literally and accepted as the law of this country, the fundamental rights guaranteed under the Constitution of India and more particularly right to liberty under Article 21 would be denuded of vigour and vitality."

In view of the above strong observations recorded by the three-judge bench, the case was finally placed before a nine-judge constitution bench of the SCI. After hearing the matter at length- the following proposition emerged for consideration by the constitution bench:
"The basic question whether privacy is a right protected under our Constitution requires an understanding of what privacy means. For it is when we understand what interests or entitlements privacy safeguards, that we can determine whether the Constitution protects privacy. The Court has been addressed on various aspects of privacy including: (i) Whether there is a constitutionally protected right to privacy; (ii) If there is a constitutionally protected right, whether this has the character of an independent fundamental right or whether it arises from within the existing guarantees of protected rights such as life and personal liberty; (iii) the doctrinal foundations of the claim to privacy; (iv) the content of privacy; and (v) the nature of the regulatory power of the state."

To address the above issues, the SCI relied upon some of its recent decisions wherein related facets of 'privacy' had been raised and considered, including- the right to abortion, the right to refuse medical examination, same sex marriages, phone tapping, publication of individual's information, need of secrecy in rape cases etc. A fleeting reference to some of the decisions which did touch upon the elements of information and decisional aspects of privacy would also be helpful. Relevant ones being:

- Suchita Srivastava v Chandigarh Administration [(2009) 9 SCC 1)] - which dealt with the autonomy of a woman and, as an integral part, her control over the body. Chief Justice Balakrishnan held that the reproductive choice of the woman should be respected.
- State of Karnataka v Krishnappa [(2000) 4 SCC 75] - while dealing with a case involving rape of an eight year old child, a three judge Bench of this Court held: "Sexual violence apart from being… dehumanising… is an unlawful intrusion of the right to privacy and sanctity… It offends her dignity."
- In Sharda v Dharmpal [(2003) 4 SCC 493]- the appellant and respondent were spouses and the respondent had sued for divorce and filed an application for conducting a medical examination of the appellant which was opposed. The Court held that "……., when there is no right to privacy specifically conferred by Article 21 of the Constitution of India and with the extensive interpretation of the phrase "personal liberty" this right has been read into Article 21, it cannot be treated as an absolute right…" The right of privacy was held not to be breached.

The SCI also considered various Anglo-American texts/literatures in support of its rational, including drawing reference from works of Greek philosopher 'Aristotle'- who spoke of a division between the public sphere of political affairs and the personal sphere of human life. Aristotle's distinction between the public and private realms can be regarded as providing a basis for restricting governmental authority to activities falling within the public realm. On the other hand, activities in the private realm are more appropriately reserved for "private reflection, familial relations and self-determination". In the words of James Madison "A man's property in one sense could comprise his land, merchandise or money and in another sense comprises of his opinion, free communication of them ……." In other words, if a man is said to have his right to property then he must equally be said to have a property in his rights.

Much of the discussions and reference to this emerging concept, were also drawn upon by the SCI from US, and took note of the decision in Griswold v Connecticut [381 US 479 (1965)] in which a conviction under a statute on a charge of giving information and advice to married persons on contraceptive methods was held to be invalid. This Court adverted to the dictum that specific guarantees of the Bill of Rights have penumbras which create zones of privacy. The Court also relied upon the US Supreme Court decision in Jane Roe v Henry Wade [410 US 113 (1973)] in which the Court upheld the right of a married woman to terminate her pregnancy as a part of the right of personal privacy. The following observations of Justice Mathew, indicate a constitutional recognition of the right to be let alone :
"There can be no doubt that the makers of our Constitution wanted to ensure conditions favourable to the pursuit of happiness. They certainly realized as Brandeis, J. said in his dissent in Olmstead v. United States [277 US 438 (1928)], the significance of man's spiritual nature, of his feelings and of his intellect and that only a part of the pain, pleasure, satisfaction of life can be found in material things and therefore, they must be deemed to have conferred upon the individual as against the government a sphere where he should be let alone". These observations follow upon a reference to the Warren and Brandeis article; the two decisions of the US Supreme Court noted earlier; the writings of Locke and Kant; and to dignity, liberty and autonomy. In words of Justice Mathew – 'Any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing……"

As would be seen the SCI while dealing with this issue, did not only look at mere legal precedents, but also adopted a very pragmatic approach in holistically considering international jurisprudence and developments in the socio-economic sphere to arrive at the correct definition of the term 'privacy'. Accordingly, while clarifying constitutional provisions they did not hesitate to direct that a suitable law should be framed by the government to effectively deal with such issues, in cases where protecting state interests assumes priority. The judgment summarizes and clarifies upon the legal propositions as follows:

1 The observation that privacy is not a right guaranteed by the Indian Constitution is not reflective of the correct position. M P Sharma is overruled to the extent to which it indicates to the contrary.
2 Kharak Singh has correctly held that the content of the expression 'life' under Article 21 means not merely the right to a person's "animal existence" and that the expression 'personal liberty' is a guarantee against invasion into the sanctity of a person's home or an intrusion into personal security. Kharak Singh to the extent that it holds that the right to privacy is not protected under the Indian Constitution is overruled.
3 (A)Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian Constitution;
(B) Life and personal liberty are not creations of the Constitution. These rights are recognised by the Constitution as inhering in each individual as an intrinsic and inseparable part of the human element which dwells within;
(C) Privacy is a constitutionally protected right which emerges primarily from the guarantee of life and personal liberty in Article 21 of the Constitution. Elements of privacy also arise in varying contexts from the other facets of freedom and dignity recognised and guaranteed by the fundamental rights contained in Part III;
(D) Judicial recognition of the existence of a constitutional right of privacy is not an exercise in the nature of amending the Constitution nor is the Court embarking on a constitutional function of that nature which is entrusted to Parliament;
(E) Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level privacy sub-serves those eternal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty;
(F) Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being;
(G) This Court has not embarked upon an exhaustive enumeration or a catalogue of entitlements or interests comprised in the right to privacy. The Constitution must evolve with the felt necessities of time to meet the challenges thrown up in a democratic order governed by the rule of law.
(H)Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. An invasion of life or personal liberty must meet the three-fold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate state aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them; and
(I)Privacy has both positive and negative content. The negative content restrains the state from committing an intrusion upon the life and personal liberty of a citizen. Its positive content imposes an obligation on the state to take all necessary measures to protect the privacy of the individual.
4 Decisions rendered by this Court subsequent to Kharak Singh, upholding the right to privacy would be read subject to the above principles.
5 Informational privacy is a facet of the right to privacy. The dangers to privacy in an age of information can originate not only from the state but from non-state actors as well. We commend to the Union Government the need to examine and put into place a robust regime for data protection.

In conclusion, the SCI has affirmed that right to privacy is protected as part of the right to life and fundamental liberty under Article 21. A unanimous decision by the constitution bench on the issue of privacy was need of the hour; especially in the wake of the aggression with which provision of GDPR are sought to be implemented and enforced upon companies having a multinational footprint. Further, detailed treatment of issues of digital privacy, which are of increasing importance both in India and internationally, will always come to rescue of individuals whose private, personal or information space/discretion gets encroached upon or threatened by any arbitrary state action. The posterity should also remain grateful to Mr. Puttaswamy for his grit in raising this fundamental question and to the SCI for having delivered a reasoned, rational and progressive judgment on this very sensitive issue.

Dr. Ajay Bhatt
Associate Professor, Amity Law School

GENDER JUSTICE AND EMPLOYMENT IN INDIA

Gender Justice is one of the Human Rights which is indispensable for development and essential to achieve progress in humanity. It is a matter of basic rights and refers to a world where everybody is treated equally. Gender Justice can be defined and understood as justice amongst all, equality towards male and female without discrimination before the law. The term Gender Justice has different notions and entails several issues in the Indian society. The Preamble of the Constitution states that 'there should be equality for all among the citizens in respect and term of opportunity and status'.

Gender Justice entails ending the inequalities between women and men that are produced and reproduced in the family, community, market, society and the state. Discrimination is a light that holds back progress towards any social justice, in both developed and developing countries alike. In India, with a highly utilitarian approach, poor parents do not aspire for a female child for two selfish reasons. Firstly, because of the fabulous dowry to be paid on the daughter's marriage that the parents consider a daughter as a financial liability. Secondly, because the daughter must leave the parent's house after marriage and thus, she is no longer considered useful as an earning member of the family. The battle for Gender Justice, therefore, has been a long-drawn struggle.

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution of India aims to ensure Equality of Opportunity and Status and provides for a better living condition in the society. Part III of the Constitution enumerates and provides to all the citizens of India Fundamental Rights without any form of discrimination in which Articles 14, 15 and 16 specifically prohibit any form of discrimination based on sex.

The Maternity Benefit Act, 1961 had been regulated for the employment of women in certain establishments for certain period before and after childbirth and to provide maternity benefit and certain other benefits. The 73rd and 74th Amendments to the Constitution of India provided for Reservation of Seats (at least 1/3) in the local bodies of Panchayats and Municipalities for women.

Exploitation of women has been held to be an old social phenomenon which is one of the structures in which the society functions in India. We can say exploitation and oppression of women has its deep roots in the society through cultural and religious practices and this can be seen in any religion like Hindu, Muslim etc.

In India, the root cause of gender inequality and discrimination against women lies in the patriarchy system, where male completely dominate over the female. This kind of system has its root and validity in the practice of religious and cultural beliefs.

The existing laws in the modern society have brought about a significant change in the society, especially in women's status and condition. The emergence of certain adequate legislations have not only moved to eradicate the inequalities but have also provided for better and equal protection of the citizens in the society. These provide better living condition for the women in the society without discrimination and not only these are removing discrimination but also providing and empowering women in several conditions. Over a period of time and proper implementation of various legal provisions in this regard, we now find more and more women are getting jobs in every field of employment and are also participating in all walks of life.

More and more women are being made aware of their rights and responsibilities towards the society and it is time that they should not be treated as a mere household item but rather should enjoy equal status and opportunity which have been their rights to claim too, in the first place.

Not withstanding the existence of such legislations and the promotion and protection of women's status in India, there still occur several violations of the women's right, Domestic Violence against women is still reported in several places. A lot has been done and a lot needs to be done.

Dr. S.K. Tripathi
Associate Professor, Amity Law School

EARLY YEARS OF JUDICIARY IN BRITISH INDIA

Administration of Justice in Presidency Towns of Madras, Bombay and Calcutta was informal and unorganized in the 17th century. There was hardly any distinction between Civil and Criminal Administration of Justice; the men who decided cases were not expert in law as they lacked legal training and education. Gradually the East India Company was becoming a territorial power and it looked forward to improving the administrative machinery including judiciary. A Charter in this regard was issued by King George I in the year 1726. It can be called the first judicial charter as far as the British Rule in India is concerned.

Under the provisions of 1726 Charter, a Corporation was established in each Presidency Town. Out of the Members of the Corporation, one Mayor and nine Aldermen constituted the Mayor's Court and it superseded all the existing Courts. The Mayor and seven Aldermen of the Mayor's Court were to be the British born citizens. The Court was empowered to try and decide all civil matters arising in the Presidency Towns. The Mayor and Aldermen could be removed by the Governor in Council. The Statutes and Common Laws of England came to be administrated in the Mayor's Court. Although for criminal matters, a Justice of Peace was appointed in different areas of the Presidency Towns.

The system of Mayor's Court did not succeed because of various reasons. These Courts administrated the Laws of England only, without keeping in mind customs and practices of India. Those who presided the Mayor's Court were not the Legal Experts but the people from mercantile group. Another demerit of the Mayor's Court was that it could see only civil matters , criminal matters remained with the executive i. e., Governor in Council. Besides the above, the jurisdiction of Mayor's Court in respect of the natives was also not clearly defined. Those who lived outside the Presidency Towns were subjected to the native laws and native Courts.

In order to get rid of the difficulties faced by the Mayor's Court under the provisions of Charter of 1726, another Charter was issued in the year 1753. As per the provisions of this new Charter, Mayor's Court was kept under the subjection of Governor in Council. Now the Aldermen were to be appointed by the Governor in Council who also selected the Mayor from out of the panel of two names recommended by the Aldermen. The Governor in Council were vested

with the power to dismiss the Mayor. Since Mayor's Court was the creation of Governor in Council, it lost its autonomy and independence.

The Courts mentioned above were meant to hear cases relating to Englishmen and other foreigners, the natives were generally excluded from their jurisdiction unless they were brought before it voluntarily by the Hindus and Muslims. They were put to great inconvenience as the Court of Request tried only cases up to the value of Five Pagoda. In Madras, certain changes were affected in the Choultry Court when the Mayor's Court began to function in the year 1727. Justices of Peace were appointed to function as Judges in the Choultry Court and they were empowered to try cases up to the value of 20 Pagodas. Appeals lay from this Court to the Mayor's Court and then to Governor in Council. Sheriff's Court was also created to try cases without appeal to the Mayor's Court, unless Judgements involved sum greater than Five Pagodas.

In Calcutta, Indians were placed under the jurisdiction of the Zamindar's or Collector's Court, presided over by a single Judge. After the Charter of 1753, the Zamindar's Court could take cognizance of cases over the value of Five Pagodas while cases below that value were tried by the Court of Requests. Sometimes disputes arose between the Zamindar's Court and the Mayor's Court over the jurisdiction in civil matters.

The case of Bombay was different. Since the Company claimed full sovereignty over the island, it did not deem it necessary to setup separate Court for trying disputes of the natives. Unlike in the Presidency Towns of Madras and Calcutta, the Mayor's Court continued to entertain suits of the Indians.

Thus we see in the above discussion that the system of justice delivery in British owned territories remained workable with a number of shortcomings but the Acts of 1726 and 1753 tried to streamline and unify the system of Administration of Justice in

British Indian territories in the first half of eighteenth century.

Mr. Atul Jain
Assistant Professor, Amity Law School

CONVENTIONAL VS. UNCONVETIONAL TRADEMARK

Intellectual Property Rights allow people to assert ownership rights on the outcomes of their creativity and innovative activity in the same way that they can own physical property. Trademark is one of the areas of Intellectual Property whose purpose is to protect the mark of the product or that of a service. It is defined as a **"mark capable of being represented graphically and which is capable of distinguishing the goods and services of one person from those of others and may include shape of goods, their packaging and combination of colors, and may include a device, brand, heading, label ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colors or any combination thereof."**

Trademarks are very closely related to commerce and have kept pace with changing times and globalization. As technology continues to evolve, products are being distributed, sold and advertised in new ways. The challenge is how to protect and enforce the selling power of a brand that is no longer limited to a Trademark, but rather is a combination of conventional and unconventional marks.

The conventional idea of a Trademark only involves the use of names, designs, etc. to distinguish products. With an increase in the level of competition along with the technology and the fact that there is a limit to being innovative in the said fields, there has emerged the concept of Non-Conventional Trademarks, more specifically, sound marks and smell marks. When one takes a stroll out in the open and hears a jingle playing on the television of some neighbouring house, one often does not know what is being said in the advertisement but knows which product the advertisement is for because of a unique tune associated with it. Similarly, while passing a certain area, the smell of Lucknawi Biriyani in the air makes one's mouth water automatically. It is not that one is actually watching the advertisement or sitting in the restaurant serving the Biriyani, but there are certain sounds and smells that one usually associates with things that they are aware of.

Recent years have witnessed a dynamic evolution in the jurisprudence of Trademark Protection Laws on account of unprecedented technological progression which allowed producers across the globe to participate in "extreme branding", aimed at making the public at large recognize their product with the help of sound, packaging shape, colour, smell and others aids. Such other aids constitute Unconventional Trademarks. Trademark Laws, which earlier only took cognizance of words, symbols, letters, devices and colour combinations, now give similar treatment to Unconventional Trademarks.

Mr. Pranshul Pathak
Co-ordinator Amity Law School

A DIRTY DEED, INVESTIGATED THROUGH SEED
(A true story of advance forensic investigation)

Derek and Eileen Severs, a wealthy retired couple lived in a small village, Hambelton situated on narrow peninsula into Rutland Water one of the Europe's largest man-made lakes. Severs had been living there for past 20 years in their house 'The Bungalow'.

Suddenly on, Saturday afternoon, November, 1993 the couple went missing. Last seen was when Mr Severs was at The Finches Arms Pub and Mrs Severs attended a 'Charity Bazar' in the Church.

Five days later friends called the police. Police immediately drove out Severs' home, the couple's 37 years old son Roger, answered the door and replied that 'his mom and dad are on holiday in London'. Police took a quick look around the house and found nothing. But Derek's friends were apprehensive because the Severs had never gone away without informing. Neighbours informed Severs' would not ask their son Roger to house sit, he being a disappointment to them. After closely looking Severs' house police noticed that backyard had recently been excavated, and there were signs of fire in the garden.

Roger told the police that his parents went London from Peterborough train station. The police enquired there but to no avail as police found no evidence that they ever left.

The police decided to conduct forensic search and found stains on the side of bathtub and on back seat of Derek's car but after performing ***Kastle-Meyer Test*** (a damp cotton swab is used to wipe the stain and then some ***Phenolpthhalein and Hydrogen Peroxide*** are added) found blood samples. Police found a large number of green fibres in the hallway of the house and on Roger's trousers and that the fibres were recently removed. The investigators suspected that Roger was involved with his parent's disappearance.

Police finally got a break as they learned of a strange event occurred before the Severs were reported missing. A police officer on patrol recalled seeing a man, matching Roger's description, in an isolated area called The Exton Avenue Woods. Police found a bloody towel at Exton Avenue Woods but no other evidence that the bodies were buried there. The towel matched those in the Severs' house but without blood samples it was difficult to know whose blood was it.

While studying photographs of Severs' car investigator found something suspicious about the mud. The colour of the mud just did not look right, the stain was lighter than one expects on a vehicle. The detective then called Dr Tony Brown a geologist, University of Exeter, to begin examination of debris from the wheels of the said car.

Dr Brown, using microscope, discovered a tiny bits of vegetation mixed in with the mud, including minute pieces of moss, leaves and grass, there was even a small piece of fishing line. He also discovered more than 20 different types of pollen. ***Pollen is a fine powder like matter which is produced by trees and plant life, it functions as the male seed in fertilization.*** To identify pollen Dr Brown needed to isolate microscopic pollen granules from the soil first by using a series of filters and then by adding ***Hydrofluoric acid*** (a chemical so powerful that it can dissolve glass). Dr Brown was able to identify most of the pollens in the sample but for one type of pollen. He then ran through a normal process of identifying unknown pollens and found a match.

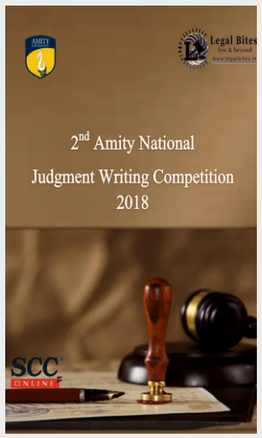
The pollen was from a tree not common in England i.e., ***'Horse Chestnut Tree'*** a tree native to Asia. The pollen from the Horse Chestnut Tree is heavy as a result it float straight down to the ground very close to the tree itself. Dr Brown was convinced that the car had recently been parked near a Horse Chestnut Tree. On the request of the police Dr Brown identified five possible locations to search.

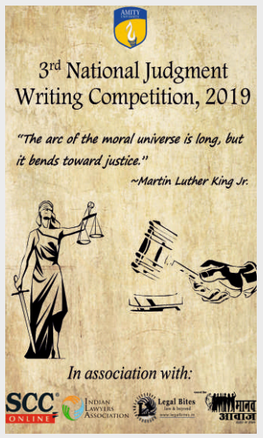
First woodland closest to the Severs' house was searched but an entire day of looking went futile. Police searched the second area when an officer poked a stick into one of the mounds and found the bodies of Derek and Eileen Severs. Bodies were wrapped in green blanket, fibres of which matched with the fibres found in Severs' hallway and on the trousers of Roger. The top layer of leaves and soil was similar to the soil found at the Exton Avenue Woods, where Roger had been seen by the police. There was even a layer of roof tiles to stabilize the bodies; the tiles matched the roof tiles of Severs' home.

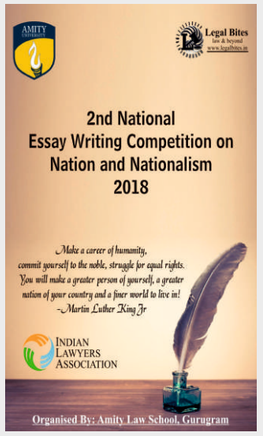
All of the evidence pointed to the Severs' only son Roger. On interrogation Roger revealed that he vexed of a heated argument strike his mother eight times on her head while she was in the bath room and wrapped her body in green blanket and dragged her to the kitchen leaving a trail of green fibres. After when Derek arrived, Roger struck him ten times on head causing blood spatter on garage door. He placed his father's body into backseat of the car and his mother's body in the trunk where green blanket fibres were later discovered. Roger then drove to the location where the bodies were found. Due to paucity of time Roger instead of digging a grave placed the bodies into a ravine and covered them with roofing tiles and leaves. ***But the most important piece of evidence came as Roger was driving away is pollen from the Horse Chestnut Tree.*** Roger could never have imagined that this pollen would lead police to his parent's grave. Roger Severs was charged with murdering his parents and later convicted to life sentence.

GLIMPSES OF CONVOCATION 2019

ONLINE EVENTS ORGANISED 2018-19







GLIMPSES OF 2ND INTERNATIONAL CONFERENCE ON LEGAL DIMENSIONS ON INFRASTRUCTURE GROWTH & DEVELOPMENT 2019

GLIMPSES OF 4TH NATIONAL MOOT COURT COMPETITION 2019

Ms. Monica Yadav
Assistant Professor, Amity Law School

IMPACT OF EU GENERAL DATA PROTECTION REGULATIONS (GDPR) ON DATA PROTECTION LAWS IN INDIA

India has emerged as one of the leading hubs for Information Technology (IT) and Information Technology Enabled Services (ITES) which handle and access sensitive and personal information of people around the world. To a large extent, future of business will depend on how well India responds to the changing regulatory changes unfolding globally. India will have to assess her preparedness and make convincing changes to retain the status as a dependable processing destination.

The vast volume of data being processed by and available with these sectors brings into focus the need for dedicated legislations for protection of personal data, which have not yet been formulated in India. Primarily the issue of Data Protection is governed by the contract between parties defining the terms related to personal data, its retention, transmission and mode of handling. However, such contractual arrangements are not necessarily the best available remedy as in case of breach of any data security, getting an effective remedy under contractual obligations is both difficult and time consuming.

The European Union lays down a very high threshold for understanding the concept of Privacy. According to them, Privacy can be understood as the right of an individual to be free from unauthorized intrusion and the ability of that individual to control and disseminate information that identifies or characterizes the individual. This understanding of Privacy is reflected in the Data Protection Laws across countries in the EU and the EU GDPR.

The Information Technology Act, 2000 addresses the issue of Data Protection but is not as stringent and dedicated as GDPR. It incorporated provisions

regarding privacy and data protection by prescribing both civil (Section 46) and criminal (Section 72) liabilities for protecting privacy of individuals, but unlike GDPR, it does not address many issues like, retention policies, purging the data on demand by the individuals, sharing of personal data and in general an individual's control over their personal data and its usage.

India's relatively weak Data Protection Laws make us less competitive than other outsourcing markets in this space. Moreover, GDPR imposes stringent penalties in cases of non-compliances, necessitating the need for regulation with a programmatic approach to Data Protection. The 'adequacy requirements' under the GDPR allow the European Commission to consider whether the legal framework prevalent in the country to which the personal data is sought to be transferred affords adequate protection to data subjects in respect of privacy and protection of their data.

India, therefore, will have to formulate an adequate Law for Data Protection which satisfies the criteria laid down under GDPR.

Dr. Shiv Raman
Assistant Professor, Amity Law School

CYBER HYGIENE AND DIGITAL RIGHTS MANAGEMENT

Introduction: The Digital Rights Management (DRM) is a systematic arrangement of protection of Digital Intellectual Property rights through digital media. The basic objective of DRM is to restrain the unlawful alteration, use, modification, deletion or transmission or distribution of Copyrights. The DRM system empowers the publisher and authors to protect their rights more appropriately to the 'digital world' in the same manner as in case of physical print area. The digital technology & advanced softwares facilitate the use to make the copy of original content with no cost. In absence of DRM we can't prevent others from accessing intellectually protected property. The DRM, refers to the exercise of controls which restrains an individual from unauthorised copying, transmitting, editing, deletion or violating the privileges of author or IP Rights holder to others. The DRM functions at three stages:

1. Establishment of Copyright over the portion of substance.
2. Management of the sharing of the copyright substance.
3. Scheming whatever the consumer could do to the substance after the distribution.

Common Techniques of Digital Rights Management: The following are the DRM techniques which are inclusive of:

- **The Management of Restrictive Agreements:** It provides the right of accession of digital contents, copyright and control over the public domain.
- **Encryption and Scrambling of the significant substance and insertion of a tag:** It is designed to control access and reproduction of information.

Requirement of DRM & Prevention of unlawful data sharing on web.:

The following are the requirements which explain the necessity of adoption of DRM and prevention of data sharing without any authority or unlawfully on the internet:

1. Imposing restriction over the devices through which content could be used.
2. the number of times over which content can be downloaded.
3. Imposing restriction over the number of devices onto which content could be loaded.
4. Authorization of use on content only up to the time subscription.
5. Ensuring the access of availability of non-interrupted internet connection continues.
6. Imposing limitations over numeral time activations.
7. Imposing restriction on accession by any region or geographical area.

Reasons for a failure of DRM:

The main reason of failure of DRM is need of "standardized technologies". The conventional DRM technologies are not efficient. Further, the attacks made them completely worthless. As a result, many body corporates develop their own DRMs with their own propriety rights. The DRM schemes undergo numerous vulnerabilities and shortcomings. The reason is obvious because the technology is equally beneficial to both public and attackers. The assailant abuses the weakness and circumvention of DRM methods.

Protection mechanisms for DRM: The Protection mechanisms are listed below:

- Secure storage: It is based on database encryption and integration, which is saved in permanent storage device. It provides the authorization to use database which is restricted by authentication process.
- Protected implementation: It provides the safe 'execution conditions' based on the 'installed Operating System'.
- Secure substance trail: This 'data path' ensures that the DRM user of codec can't be used through the main operating system.

Conclusion: No right is absolute. Every right has a corresponding duty. Cyber Law is not the exception to it. So, **no one** can claim digital rights without following the duty associated with that. The awareness and implementation of Cyber Hygiene is mandatory for the Management of Digital Rights. Prevention is better than cure. Further the guilty associate can't demand equity unless he has taken precautions to refrain himself from crime.

Ms. Nidhi Sharma
Assistant Professor, Amity Law School

SUSTAINABLE CONSUMPTION AND PRODUCTION OF PLASTIC BAGS AND ENVIRONMENTAL CHALLENGE

Introduction:

With the Summer Vacation shopping frenzy approaching fast, we all need to pause and take stock of our real impact upon our environment. Every time we show our scholarly approach while dealing with environmental issues but now, with the year 2019 approaching its end, we have to find the time for awareness in between spending rounds. Through this article I like to highlight certain important facts about recycling plastic bags while touching other environmental issues and international and national commitments to the curb the problem of Plastic Bags.

India, home to 1.3 billion people and the world's second most-populated nation, continues preparations to abolish all single-use plastic by 2022 in a plan announced last year that may be the world's most ambitious undertaking. Showing this commitment, Supreme Court bench headed by Chief Justice H.L. Dattu while hearing a PIL filed by Karuna Society for Animals & Nature, Puttaparthi, VSPCA Vishakhapatnam and three individuals, Pradeep Nath, Clementien Pauws and Rukmini Sekhar rapped the State Governments for their inaction in banning the use and manufacture of plastic bags in their States.

The ingestion of plastic from plastic bags chokes the stomach of stray animals .A research states that, " the cows are filled with plastic waste at times over 50 kilos in weight and in most of the cases a 'healthy' cow is in fact a 'plastic-choked cow' or a cow full of plastic. One of the significant contributing factors to the ill health among cows and bulls is the gastro-intestinal injuries caused by ingestion of plastic in the form of plastic carrying bags. These bags which have been used to carry food or food-waste may contain food remnants and smell like food to animals. Animals cannot necessarily differentiate between the food and the plastic and so ingest the plastic in their quest for life-sustaining food," Considering these facts bench urged the States to be compassionate about the pain and suffering of animals who consume these bags on the streets.

Such decisions encourage Indian Government's preparation and commitment to restrict the production and consumption of Plastic Bags and reduce their harmful impact on stray animals, land, oceans and marine species.

International Scenario:

It is estimated that the world consumes each year up to 5 trillion Plastic Bags, mostly made of polyethylene, a low-cost polymer derived from petroleum, which takes at least 500 years to degrade. Only 9 per cent of all plastic waste is recycled. According to United Nation tallies till this date 127 countries have adopted regulations such as taxes, bans, and technological innovation regarding plastic bags,. Twenty-seven countries have adopted bans on other single-use products, including plates, cups, cutlery, or straws.

Possible Solution:

While implementing Preventive Waste Management, the best approach for the plastic debris is reduce, reuse, and recycle.

The Reusable Shopping Bag: The Answer to the Environmental Plastic Issue:

Eco-friendly purses and green bags are fully fashionable, reusable and sustainable for all our shopping requirements and come with very compelling reasons such as-

- These are not likely to end up in marine debris and landfills. In comparison to Plastic Bags, cotton, canvas, and jute bags do not take around 500 years to disintegrate, and they do not break down in micro-particles that are equally harmful to our planet.
- Use of Canvas or Jute bags will do huge favor to meager jute farmers of Orissa and Rajasthan and will certainly be a sustainability measure in developing our nation.
- Though not lacking their limitations such as food leakage and its manufacturing issues such as cotton shopping bag requires to grow cotton which further requires a fair bit of energy, land, fertilizer and pesticides, which can have all sorts of environmental effects — from greenhouse gas emissions to nitrogen pollution in waterways etc, but this being biodegradable, makes it absolutely an environmental friendly effort.

Conclusion:

It is unrealistic to believe that we can remove all plastic from our lives forever. What we can do, on the other hand, is to give recycled plastic a chance. Some major players in the eco-industry are currently taking plastic out from the oceans and recycling it into their plants. Every time and everything cannot be recycled in a professional setting such as heavily painted Plastic Bags, cling covers, pre-packaged frozen foods bags, and plastic sheets with an adhesive surface. However, such stuff can be repurposed by turning these into personal projects such as flower pots , outdoor taps, rugs, clothes bags and decorative festive lights etc. I suggest an avid shopper to opt for a reusable bag for environmental reasons, make sure you actually reuse your environment friendly bags most often before it had a smaller global warming impact than a lightweight Plastic Bag used only once.

While making remarkable efforts to reduce impact of plastic over environment for our future generations, it is equally essential to teach them sustainability at home so that they could become responsible, eco-friendly entity of society.

We need to understand that when we recycle Plastic Bags or say no to plastic we actually are contributing a lot to a better world!

Dr. Vijay Pal
Assistant Professor, Amity Law School

SOCIAL MEDIA AND PROPAGANDA WAR

"Whoever controls the media, controls the mind" - Jim Morrison

We are well aware of the fact that the means of communication do not remain static. They started with pigeon post, moved on to postal letters, then to telephones and now to smart phones and social media. As of today, social media is becoming an integral part of our life. Our day starts with checking and updating our social media accounts and ends on a similar note.

Social Media is an umbrella term and, refers to websites and applications that enables users to create, share content, interact and to participate in social networking. It includes Facebook, Twitter, WhatsApp, LinkedIn etc.

Silent rise of Social Media like Twitter, Facebook etc. played a major role in influencing people, resulting in election of Mr. Barack Obama in 2008 as the first black President of the USA. A similar story was repeated in India both in 2014 and now in 2019 where Mr. Narendra Modi won the elections and was chosen as the Prime Minister.

Social Media as tool for political campaigning and advertising is on the rise and it's going to get even more attention in future elections globally. People are able to give opinion on various aspects ranging from schemes, initiatives, and legislations. Governments are nominating candidates for election based on polls on Social Media to increase their chances of winning.

Social Media was used as social issues propaganda tool during 2010, when a widespread discontent against autocratic regimes across Middle-East, often referred to as Arab Spring, erupted. While discontent was not new, what was new was the Social Media and its power. Social Media played a huge role in mobilising people who were demanding democracy and voice in decision making.

Social Media has made massive and unprecedented changes across all forms of Media. Twitter and Facebook have emerged as major forums for news. Major news corporations have gone digital to tap into the consumer base in technology domain. Social media has given rise to Citizen Journalism and is being touted as the 5th pillar of democracy.

Regulation in India

Regulation of Social Media presents a complex dilemma as it has to balance between Right to Freedom of Speech and Expression guaranteed under Article 19 and restrictions to it as enumerated under Article 19(2) of the Constitution of India. Some legislations, as mentioned below, have been passed to deal with the issue specifically.

Information Technology Act, 2000 – under it Social Networking Media is an "intermediary" and is liable for various acts or omissions that are punishable under the laws of India. Section 79 of the Act mandates that if there is some objectionable material on a site then there is ought to be action within 36 hours of the offence being pointed out.

Indian Penal Code (IPC) - Promoting Enmity Between Groups On Grounds Of Religion, Race etc. (S. 153A), Defamation (S. 499), Insulting The Modesty Of A Woman (S 509), Criminal Intimidation (S 506), Sedition (S124-A), Defamation (S 499 and S 500) etc. can be invoked against content on Social Media.

Many instances of IPC provisions being used wrongfully to curb the voice of dissent and constructive criticism, resulting in creation of repressive and intolerant society without democratic ideals highlights the loopholes in the system.

The practice of Paid News is not an electoral offence under the Representation of Peoples Act 1951(RPA), despite Law Commission recommending amendment of RPA to this effect.

Remedial Outlook and Legislations

Social Media is itself becoming the means for educating and making people aware of the issues and challenges it faces.

With end-to-end encryption on Social Media it is becoming harder to catch the culprit and regular refusal of such companies to comply with divulging the information about the culprit, demands new approach to this issue. Artificial Intelligence can be utilized so that privacy of customers is not hampered as done by IIT Kharakpur. This would require formulation of law to this effect.

Aspect of Data Protection and Privacy has to be tackled with utmost urgency as in today's world everything has been commodified on Social Media resulting in huge chunks of data generation. It is rightly said that "data is the new oil". Personal Data Protection Bill, 2018 based on BN Srikrishna Committee recommendations needs to be implemented.

Dr. Archna Sehrawat
Assistant Professor, Amity Law School

LITTLE CHANGE TO BEGIN WITH

"Education is the most powerful weapon which you can use to change the world"
-Nelson Mandela

We go to a supermarket near our house, to buy our groceries, go to the billing counter and the person behind the counter asks us if we want a carry bag? And, usually, we do want it and end up paying Rs.10 or Rs.20 or sometimes more for the carry bag. Same is the scenario witnessed and experienced in the showrooms we shop at. We barely give it a thought even though everyone of us does not really like paying those extra Rs.10 or Rs.20 or even Rs.3. It does seem unfair to us, but because the amount is trivial, we let the unfairness perpetuating. Do we have the intention to buy the carry bag with shop's or brand's name written on it? Do we have an intention to advertise for them, not for free but by paying them? Is it not the duty of the retailers to facilitate carrying the stuff bought from their shop by the customer? We all know the answer to these questions, but still keep mum and barely take any 'legal' or 'social' action.

Same situation was experienced by Mr. Dinesh Prashad Raturi, who purchased a pair of shoes for Rs.399 from Bata and an extra charge of Rs.3 was levied from him for the carry bag with Bata's logo on it. But, unlike most of us, instead of keeping quiet on this, he decided to move forward and he filed a Complaint before Chandigarh Consumer Dispute Redressal Forum. He submitted that the 'red paper carry bag' provided by the shop was bearing the advertisement of the brand 'Bata' and he had no intention to purchase the said carry bag. He further complained of being used as an Advertising Agent by Bata at his own cost and this amounts to 'Unfair Trade Practice'.

Disposing of the above-mentioned Complaint, the Chandigarh Consumer Forum, comprising of Mr. Ratan Singh Thakur (President), Mr. Surejeet Kaur (Member) and Mr. Suresh Kumar Sardana (Member), has taken a breakthrough step to stop this unfairness. Agreeing with Mr. Raturi, the Consumer Forum observed that the Company by providing the carry bag with its Logo on it, has used the Consumer as Advertising Agent of the Company. By doing so the Company has tried to form an Agency Relationship with the Complainant against his free will. Clearly, he neither had any intention to carry forward the relationship by paying for the bag nor was he interested to advertise for Bata Company in any form. The Forum suggested that it was an Unfair Trade Practice because 'Bata' used its Customer as its Advertising Agent and at the same time was charging him for the same. It further went on to say that if 'Bata' claims itself to be an environmental activist, it should give the paper bag free of cost and stop minting so much money from customers.

The Forum while allowing the Complaint to succeed, directed Bata to provide free carry bags to all the customers who purchase products from its shop and to refund Rs.3 to Mr. Raturi who was wrongly charged for the carry bag. Consequently, a total fine of Rs.9000 was also imposed on Bata.

Certainly, Rs. 9000 is indeed not a huge amount, but this order speaks millions. It is an example of utter unfairness that each one of us witness and experience almost every day. Despite there being an easy legal remedy to it, barely anyone has resorted to it because well, it is convenient to pay a few Rupees extra than going all the way to Consumer Forum and complain.

In this case, it is not just the step by Forum which is praise-

worthy but it is certainly a very responsible step on part of the Complainant too. It gives a lesson to all of us that Law will help those who would wake up to their rights.

Ms. Papiya Goldar
Assistant Professor, Amity Law School

RE-INSERTION OF THE PROVISION FOR ANTICIPATORY BAIL IN UTTAR PRADESH

Anticipatory Bail is back in Uttar Pradesh after almost 33 years. The provision of pre- arrest bail was scrapped in 1976 during the Emergency era. The accused will now get advance bail in the State in cases of non-bailable offences. The Uttar Pradesh Government has re-introduced Anticipatory Bail in the State after reviving Section 438 of the Code of Criminal Procedure, 1973 (CrPC).

Section 438 Criminal Procedure Code which provides for Anticipatory Bail had been omitted by Uttar Pradesh Government during the Emergency and has been brought back following recurrent demands for its reinsertion by way of Writ Petitions, recommendations of the State Law Commission and orders of various Courts and the Supreme Court, asking the Government to consider bringing it back into effect. It noted that the Uttar Pradesh State Law Commission had in its Third Report, way back in 2009, recommended reinsertion of Section 438 of the CrPC in its application to Uttar Pradesh. A Committee had been constituted under the State Home Department to mull over the reinsertion of Section 438. This Committee recommended reinsertion of the Section along with some amendments. The same were passed in the State Assembly and then sent to the President for approval. The same was approved on June 1 2019 and thereafter, published in the Gazette making the section effective from June 6 2019. It is to be noted that the Uttar Pradesh Government had last year told the Supreme Court that it is working towards bringing

back Section 438 CrPC in the State. The Apex Court was hearing the petition moved by Advocate Sanjeev Bhatnagar for reinsertion of Section 438 in its application to Uttar Pradesh. Section 438 CrPC was omitted in its application to Uttar Pradesh by Section 9 of the Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 1976 (UP Act No. 16 of 1976). The State Law Commission in its report submitted by Justice V C Mishra in 2009 recommended repealing Section 9 and noted that, "The only reason given in the Statement of Objects and Reasons for its (S. 438) omission, has been creating practical difficulties." Back then, several State Governments had criticised the working of Section 438, in that, it hampers effective investigation of serious crimes, the accused misuse their freedom to criminally intimidate and even assault the witnesses and tamper with valuable evidences. In view of the above circumstances, some State Governments like West Bengal, Maharashtra and Uttar Pradesh made local amendments to the Code of Criminal Procedure. Uttar Pradesh was the only State to have omitted the provision of Anticipatory Bail. The deletion of this provision not only went against those anticipating arrest but also burdened the Courts. In the case of Smt. Sudama & Others vs. State of U.P. & Others, the Allahabad High Court had suggested that if the provision on Anticipatory Bail was available in the State of Uttar Pradesh, the burden on the High Court and other courts would substantially reduce and would allow Judges to deal with more pressing matters.

Ms. Meenakshi Soni
Assistant Professor, Amity Law School

INDIA'S YOUNG POPULATION, ASSET OR LIABILITY?

According to latest census, India has 600 million young people. No other country has more young people than India. It accounts for more than half of India's population. No matter how poorly this youth is placed now, they make up the world's largest workforce and there is no reason why the world should not be looking towards them.However, India also needs to understand that it is still a long way to consider this youth as asset. Only 2.3% of India's workforce has formal training in skills and less than 20% Indian graduates are immediately employable.

It is well accepted that human capital is a bigger asset than any other natural resource and when India has the second largest youth population after China, we should take the advantage of this fact. Currently India is climbing the ladder of economic revolutionand it is world's seventh largest economy by nominal GDP and the third largest byPurchasing Power Parity. India's young population can play a major role in its country'sjourney but for that we must prepare this workforce accordingly. While we can flaunt the India's demographic dividend, we should not ignore the worsening situation of upskilling this workforce. Latest survey says that less than one out of four MBAs only is employable; one out of five Engineers get job and only one out of ten Graduates get employed. This data shows that though our youth is educated but not employable and this is dangerous. There can be two reasons behind this –either our education system needs reform, or our Government is not able to produce enough jobs. I find that both the reasons are contributing equally for the current employability of our youth.

If we talk about the solution, then there is a long road ahead. The Government has initiated several measures to promote skilling, but it will take years for showing tangible results. Though Government's role will be pivotal but private sectors will also have to come ahead and bring this skill enhancement reform. On the front of generating employment,Government needs to bring major changes in the areas of infrastructure, ease of doing business and competitive market. Once these basic building blocks are there then only employment opportunities can be generated in sufficient number.

Once we are capable of upskilling our youth and of generating right environment of employment, no country will be able to stop India from becoming the world's largest economy.

Mr. Sanjay Pandey
Assistant Professor, Amity Law School

OCTRINE OF BASIC STRUCTURE

"While infallibility is no attribute of a Constitution, its fundamental character and basic structure cannot be overlooked. Otherwise the power to amend may include the power to repeal. This is a reduction adabsurdum. By a stroke of judicial creativity the amendatory provision of Article 368 was justly handcuffed in Kesavananda Bharati ((1973) 4 SCC 225)."

- Justice V.R.Krishna Iyer

The basic features" principle was first expounded in 1964, by Justice J.R. Mudholkar in his dissent, in the case of Sajjan Singh v. State of Rajasthan (AIR 1965 SC 845). He wrote,

"It is also a matter for consideration whether making a change in a basic feature of the Constitution can be regarded merely as an amendment or would it be, in effect, rewriting a part of the Constitution; and if the latter, would it be within the purview of Article 368 ?"

Let us begin with the history of the doctrine. The argument that the Parliament's amending power is subject to substantive limitations was first raised in Sankari Prasad Deo v. Union of India (AIR 1951 SC 458). The challenge in Sankari Prasad was premised upon the wording of Article 13 of the Constitution, which prohibits the State from making any law in violation of any Fundamental Right enumerated in Part III. It was argued that a Constitutional amendment was "law", properly called; and so, under Article 13, it was impermissible for the State to amend Part III of the Constitution. The argument was unanimously rejected by a Constitution Bench of the Supreme Court, which held that the Parliament had the power to amend any provision of the Constitution, without exception.

The question came up again fourteen years later in Sajjan Singh v. State of Rajasthan (AIR 1965 SC 845), also before a Constitution Bench. Gajendragadkar C.J., speaking for him and two others, upheld Sankari Prasad. However, Justices Hidayatullah and Mudholkar expressed doubts about the verdict.

The position of law was then reversed in I.C. Golak Nath v. State of Punjab (AIR 1967 SC 1643). An Eleven Judge Bench of the Supreme Court, by a slender margin of 6 to 5, and by divided majority opinions, held that the Parliament had no power to amend Part III of the Constitution. All provisions dealing with Fundamental Rights were thus placed beyond the reach of the legislature. The Parliament's response was immediate and telling. In order to overcome Golak Nath, it enacted the Twenty-Fourth Constitutional Amendment. This provided, inter alia, that the prohibition in Article 13 would not apply to an amendment of the Constitution under Article 368. It also substituted the words "amendment by way of addition, variation or repeal" for only "amendment" in Article 368. The Constitutional validity of the Twenty-Fourth Amendment, amongst others, was strongly challenged.

Six years later, in 1973, the largest ever Constitution Bench of 13 Judges, heard arguments in Kesavananda Bharati v. State of Kerala (AIR 1973 SC 1461). The Supreme Court reviewed the decision in Golaknath v. State of Punjab, and considered the validity of the 24th, 25th, 26th and 29th Amendments. The Court held, by a margin of 7-6 that although no part of the Constitution, including Fundamental Rights, was beyond the amending power of Parliament (thus overruling the 1967 case), the **"basic structure of the Constitution could not be abrogated even by a constitutional amendment".**

The decision of the Judges is complex, consisting of multiple opinions taking up one complete volume in the law reporter "Supreme Court Cases". The findings included the following:

- All of the Judges held that the 24th, 25th and 29th Amendment Acts are valid.
- Ten Judges held that Golak Nath's case was wrongly decided and that an amendment to the Constitution was not a "law" for the purposes of Article 13.
- Seven Judges held that the power of amendment is plenary and can be used to amend all the articles of the Constitution (including the Fundamental Rights).
- Seven Judges held (Six Judges dissenting on this point) that "the power to amend does not include the power to alter the basic structure of the Constitution so as to change its identity".
- Seven Judges held (Two Judges dissenting, one leaving this point open) that "there are no inherent or implied limitations on the power of amendment under Article 368".

Ms. Neha Mishra
Assistant Professor, Amity Law School

DEMOCRATIC SOCIALISM A COLLECTIVE SPIRIT

"Our basic aim is to create an ideal 'welfare state' on a socialistic pattern, a classless society in which none is exploited, where there is no class conflict, regional rivalry or groupism. Our object is to promote individual initiative and social and moral orientation of people. In short, we are to evolve an entirely new pattern of our social, cultural, ethical and economic outlook of our entire nation." —Pt. Nehru in his Presidential address to the A.I.C.C. Lahore in 1929.

Socialism is essentially a humanitarian ideal. It seeks to bridge the ever widening gap between the rich and the poor by bringing about a better-ordering of the means of production and distribution. It is always skeptical of the welfare content of private ownership and, therefore, advocates collective ownership for the maximization of collective welfare. In India we speak of 'Democratic Socialism' believing in Evolutionary Socialism and the inevitability of a happy marriage between the 'collective spirit' and the 'individual spirit'. Like Democracy, Socialism has also lost the sharp edge of its meaning; it is almost like a flute on which everybody can play one's own tune.

Democratic Socialism is a term meant to distinguish a form of Socialism that falls somewhere between authoritarian and centralized forms of Socialism on the one hand and Social Democracy on the other. The rise of Authoritarian Socialism in the twentieth century in the Soviet Union and its sphere of influence generated this new distinction. Authoritarian versions of Socialism are generally forms of State Socialism that are highly centralized, equating State and Society, and they employ extensive intervention into, and control of, public and private life, including communications, culture, and social life, in addition to centralized control of the economy. In the simplest language Democratic Socialism means the blending of socialist and democratic methods together in order to build up an acceptable and viable political and economic structure. To put it in other words, it means to arrive at socialist goals through democratic means. It also denotes that as an ideology socialism is preferable to any other form such as Capitalism or Communism.

The Indian approach to Socialism, as conceived by Gandhi and particularly by Nehru is India's distinct contribution to the world Socialist Movement. India does not believe in Extremism, Capitalism and Communism. Between these two extreme forms of society, there must be a common ground acceptable to both the opposing groups. So, Nehru opted for a compromise formula known as 'Democratic Socialism'.

Democratic Socialism aims at following a middle course between one extreme of Individualism-cum-capitalism and the other extreme of Communism-cum-Totalitarianism. However, it is no easy matter to pursue the middle path in a parliamentary democracy like India where there are numerous political parties and regional and parochial groups sufficient to disintegrate the unified national interests. Still we are trying to reconcile the implications of both Democracy and Socialism, to evolve programmes which postulate State action in defined spheres of State activity for elimination of social and economic inequalities.

To ensure success for Democratic Socialism in India, there are certain requirements which must be followed like provision of equal facilities to all sections of the people; prevention of concentration of economic power in a few hands through State regulation and legislation; elimination of monopolies and monopolistic trends in business, industrial or other organizations, progressive extension of the public sector in key industries and power generation and public control over significant areas of economic power; maximum utilization of technology for increasing production and lessening the burdens of manual labour.

In the social sphere, the aim is the elimination of social inequalities through legislation and extensive State-implemented welfare activities. The co-operative movement, with its democratic basis, can play a vital role in the realization of Democratic Socialism, which provides for an orderly transition from a Capitalistic to a Socialistic Economy. In our Plans, the Co-operative Movement is accorded a prominent place in rural economy where the traditional agricultural economy of Zamindars and Money-Lenders and conventional methods of agriculture has transformed into the new technology oriented methods and facilities of agricultural credit, marketing, processing of commodities and distributions and sale of food grains.

In fine, the implementation of Democratic Socialism should conform to Indian values and traditions of life. Our approach should be cautious, very cautious. The Bhubaneswar Congress Resolution sums up the Congress ideal of **"Democratic Socialism" which should be the effort of every Indian national to fructify, "that a society where in poverty, disease, and ignorance shall be eliminated wherein property and privilege in any form occupy, if strictly be in limited place, wherein all citizens have equal opportunities and wherein ethical and spiritual values contribute to the enrichment of the individual and community life".**

In the simplest language, Democratic Socialism means the blending of Socialist and Democratic methods together in order to build up an acceptable and viable political and economic structure. To put it in other words, to arrive at Socialist goals through Democratic means.

Ms. Toshi Rattan
Assistant Professor, Amity Law School

CRIMINAL LAW (AMENDMENT) ACT, 2018 & ITS ENHANCED DETERRENCE

In difficult times it is natural for any civil society to demand more security, more stringency, and for the fulfillment of the two, more laws. But the question arises –what is 'more'? The recent incidents of rape in Kathua and Unnao, have re-ignited the fading memories of December 16, 2012. The massive public outcry and agitation post-Nirbhaya, not only ensured radical amendments in the criminal laws but also awakened the State, society and individual to recognize rape and crime against women as a mainstream societal issue. Despite stringent laws passed post-Nirbhaya, the collective conscience was taken aback with Kathua rape case, where an 8 year old fell prey to the savage lust of a gang, faced brutal sexual assault and murdered. As a consequence, the Government was prompted to take 'corrective measures' leading to the introduction of The Criminal Law (Amendment) Bill, 2018 in the Parliament. The Bill having been passed by Lok Sabha and the Rajya Sabha received the Presidential Assent on August 11, 2018 and came into force as the Criminal Law (Amendment) Act, 2018 (CLAA) from April 21, 2018.

The Act amends four Central Legislations namely: The Indian Penal Code, 1860, The Code of Criminal Procedure, 1973, The Indian Evidence Act, 1872, and The Protection of Children from Sexual Offences Act, 2012.

Under IPC, with regard to rape of a woman under 16 years of age, sub-section (3) to Section 376 has been inserted which provides punishment in such cases has to be rigorous imprisonment of a minimum 20 years which may extend to life imprisonment (which means the remainder of that person's natural life). However, the Constitutional validity of the minimum imprisonment of 20 years provided under Section 376(3) is questionable when judged on the ground of proportionality. At a time when sexual experimentation among adolescents is not an uncommon phenomenon, the severity of the minimum 20 years' imprisonment, transcends the limits of reasonableness and fairness. Let us assume a girl who is under 16 years of age enters into a consensual physical relationship with a man (18years of age). This being a case of statutory rape, once the fact that the Prosecutrix is below the age of consent (18 years in India), is proved, the question of consent becomes irrelevant and sexual intercourse with her amounts to rape irrespective of her consent. But a sentence of '20 years' imprisonment to the man, in the absence of judicial discretion (which existed prior to 2013) appears to be unreasonable and too harsh. The Judge will be mandatorily required to sentence the man 20 years' imprisonment, who will eventually get released at the age of 38 years or may never get released in the event of life imprisonment. This will create counterproductive results in the future.

The CLAA also creates three new offences (Section 376AB, 376DA, 376DB, IPC). These offences cater specifically to the rising cases of rape against minors. These new offences make gradation in terms of severity and punishment for raping minors. Section 376AB creates a new offence where minimum punishment for raping a woman below 12 years of age is 20 years imprisonment which may extend to life imprisonment and maximum sentence may be that of death. Sections 376DA and 376DB are the extension of provisions relating to gang rape which deal with incidences of gang rape where a woman is under 16 years of age or under 12 years of age. Section 376 DA of the IPC has introduced a mandatory sentence of life imprisonment for gang raping of a girl below 16 years of age. Whereas, Section 376DB of the IPC which deals with gang rape of a girl under 12 years of age, comes with enhanced punishment of life imprisonment or even death.

The most drastic and striking feature of the CLAA is the provision of death penalty in cases related to rape of minors. Prior to the enactment of CLAA, the scope of death penalty in rape cases was only limited to a few aggravated cases of rape. The CLAA has extended the death penalty to all cases of rape where the age of the victim is under 12 years of age. These amendments aim at deterring the increasing trend of sexual violence against minors. From a long time, there has been a consistent demand from public that rape being a heinous crime should have death penalty so that it will create a deterrent effect on growing incidences of sexual assault. In a country, where death penalty is perceived as a sin-qua-non to deterrence, the misplaced perceptions about the deterrent nature of death penalty found support in the legislative enactments on Criminal Law in 2013 and the recent CLAA.However, the 'deterrence' which the law seeks to bring has been brought about at the cost of proportionality and reasonableness of criminal laws. On a bare perusal of the provisions one can make out the manifold increase in the sentences which the State believes would act as a deterrent to such acts of sexual violence. However, the law fails to reconcile itself with the ground realities of gender related sexual violence in India, and the established principles of criminal law.

From all this, we can say that the IPC and its recent anti-rape amendments continue to ail from ambiguities, inconsistencies, and legislative apathy towards its reformation. A hasty legislation, drafted with intent to calm public impulse, may augur well for optics and political rhetoric. However, in the hindsight, it compromises the quality of law reforms, and clogs the judicial system with petitions praying for an authoritative declaration on the law.

Ms. Sanjum Bedi
Assistant Professor, Amity Law School

CLONING – BIOETHICAL ISSUES AND NEED FOR LEGAL FRAMEWORK

Cloning is emerging as a significant tool in the field of Biotechnology. Can you imagine a human baby evolving from just one parent i.e. either father or mother? Cloning has made it possible. Cloning is a process by which an identical organism is produced by transferring the DNA of the donor's somatic cell (any cell other than the gametes) into an enucleated (nucleus removed) egg cell. Hence, the zygote formation takes place in pursuance of a chemical reaction under restricted conditions. The somatic cell and the egg cell can be of the same person. The most fascinating thing about Cloning is that both the donor and the produced Clone are totally identical in all aspects. However, a Clone and a **Test Tube Baby** are two different phenomenon. In Test Tube Fertilization, the sperm and the egg from two different organisms (male and female) are taken and fused outside the human body. Then after fertilization, it is implanted into the mother's womb. It creates progeny similar to normal conception and the child carries DNA of both the parents. Whereas in Cloning , the Clone that is created carries only the desired DNA of only one organism. Cloning for reproduction purpose, is called as **Reproductive Cloning.** Cloning for tissue repair purpose is called as **Therapeutic Cloning,** which is utilized for Organ Transplantation hence, mitigating disabilities due to accidents.

The first ever produced living mammal through Cloning was **Dolly**-the sheep, produced in Scotland . However, it died very early at the age of six, as it suffered arthritis and lung cancer. Even **Samrupa,** who was the first cloned buffalo, produced in India (Karnal), could not survive for more than five days and died due to lung cancer. The death of both Dolly and Samrupa , and many other cloned animals who have succumbed to death because of sickness, has put a big question mark on the protection of **Animal Rights.** No doubt, it can help us to protect the endangered species from extinction but anything left uncontrolled and unchecked without any Legal Framework, shall lead to devastating effects.

There are various ethical and legal issues related to Cloning of Human Beings. The technique is opposed by many thinkers who argue that Cloning will affect the privacy and rights of a person which touches the boundaries of Human Rights and it will violate many other entitlements, if practised without the consent of the donor and without any legal safeguards. In many countries, where there is no Legal Framework related to it just like India , the society will become vulnerable to evils like Identity Theft and other health issues related to the Clone. It is also considered as unethical because the identity of the donor parent may not be known at times and would also lead to diminishing scope of marriage as it allows procreation with just one gender which would prove fatal for the society in the long run. The concept of 'Designer Babies' shall prove a threat to the declining female sex ratio in various countries already struggling with gender related problems.

India does not have any particular Act or Law for Human Cloning .However, Indian Council of Medical Research (ICMR) and Department of Biotechnology (DBT) prohibited Human Reproductive Cloning as per "National Guidelines for Stem Cell research" 2017, updated by NAC-SCRT. However, India permits Cloning of animals, and encourages regulated research in this area. India allows use of embryonic and somatic stem cells for research purposes and allows the creation of a human zygote by SCNT (Somatic Cell Nuclear Transfer) or any other method and Therapeutic Cloning but in a restricted form. Cloning can be done on human beings, animals, plants as well as digital data.

Fun Facts!

Did you know that Twins are forms of Clones?

Did you know that it took 277 tries before producing Dolly?

Did you know that the United Nations General Assembly approved (March 2005) a non-binding declaration to ban all forms of Human Cloning?

Did you know that the first clone was produced by splitting a Sea Urchin embryo?

Did you know that a goat was cloned with spider silk protein so that spider silk can be extracted from the milk.

Ms. Ankita Sharma
Assistant Professor, Amity Law School

FOUNDER OF MODERN LEGAL EDUCATION IN INDIA: MADHAVA MENON

Grooming a line of lawyers with his vision by establishing the National Law Schools in India was one of the most important works of the father of modern Indian Legal Education, Late Professor N.R. Madhava Menon. He is known for introducing the concept of Five Year Integrated LLB Course in India. His contribution in the field of law is immense. He was not only a visionary but also a dedicated teacher.

Dr. N.R. Madhava Menon was born in the year 1935 and became a Lawyer at a young age of 19. He completed his degrees B.Sc. and B.L. from Kerala University, LL.M. and Ph.D. from Aligarh Muslim University. For economic reasons he started teaching Law at a College along with his practice of Law. He then realised that he was better at teaching rather than pursuing Law as an Advocate.

In the year 1965, Professor Menon joined Delhi University as a Professor and Head of Law Department while serving as Principal of Government Law College, Pondicherry and Secretary of the Bar Council of India Trust. At the invitation of Bar Council of India, Professor Menon shifted base to Bangalore in 1986 to establish a new system of Legal Education that came to be known as National Law University. For the next 12 years he was associated with National Law School, Bangalore as Founding Vice-Chancellor. He then moved on to establish National University of Juridical Sciences in Kolkata and National Judicial Academy at Bhopal. He was a Member of Law Commission of India for two terms along with being a Member of various Committees and Commissions.

In the year 1994, Professor Menon was honoured with Living Legend of Law Award by the International Bar Association and he further moved on to achieve several prestigious awards in his lifetime. He was bestowed upon with the highest civilian award for outstanding public services, Padmashree in the year 2003. He also wrote his autobiography, The Story of a Law Teacher: Turning Point that describes the journey of life and works of Prof. Menon in the field of law. To commemorate his services to the legal field there is a Best Law Teacher Award and a Plaque instituted in his name.

On 8 May 2019, Dr.NR Madhava Menon passed away at the age of 84 at Thiruvananthapuram, succumbing to liver cancer. He will always be remembered as the Father of Modern Legal Education in India, a renowned academician and an epitome of integrity. The Nation is grateful to him for his contributions in shaping the legal field in India with his values and passion for Law.

Ms. Asha Meena
Assistant Professor, Amity Law School

BOOK REVIEW
LAW RELATING TO DYING DECLARATION IN INDIA

"Truth sits upon the lips of the dying men" -Matthew Arnold, Sohrab and Rustum

Dying Declaration has been a debated topic in India for a long time now. A person who is on the death bed or is about to die does not lie, is the basic foundation on which the law on Dying Declaration rests. A Dying Declaration is considered credible and trustworthy evidence based upon the general belief that most people who know that they are about to die, do not lie. As a result, it is an exception to the Hearsay Rule, which prohibits the use of a statement made by someone other than the person who repeats it while testifying during a trial, because of its inherent untrustworthiness. Dying Declaration has been considered as an important evidence throughout the world but the fitness of the deceased is of great concern in such cases. A person who makes a Dying Declaration must be competent at the time he or she makes a statement, otherwise, it is inadmissible. A Dying Declaration is usually introduced by the Prosecution, but can be used on behalf of the accused also. The Supreme Court of India has liberally considered Dying Declarations. If the Court is satisfied regarding the truthfulness then whether it is an Oral Dying Declaration or certificate of any Doctor or Magistrate is attached or not is immaterial and such Dying Declaration is admissible. ***"Law Relating to Dying Declaration in India"*** is a comprehensive, well researched and up to date work on this topic. This book helps the readers to enhance their knowledge on Dying Declaration. The book contains chapters dedicated to definition and extent of the Law of Dying Declaration, National as well as International scenario, important judgments and recent cases, along with the procedure defined under various laws, and evidentiary value of the above topic. The author has in length discussed the Law of Dying Declaration in Indian context and has compared it to the foreign context. The Law relating to Dying Declaration is a very significant part of the Criminal Law of India because sometimes the declaration is the sole evidence for conviction. Dying Declaration is a statement by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death and it becomes relevant under Sec. 32(1) of the Evidence Act, 1872, in a case in which the cause of that person's death comes into question. Simple, easy and lucid language, binds the readers and helps them to go through the contents quickly. The balanced and straight forward approach towards every possible related topic makes it a simple book on the topic. It is very helpful for both the lawman and layman who wish to have an insight into the much talked about topic in Criminal Law. It will be of immense use to the students, legal fraternity, researchers and investigating agencies.

Ms. Rachi Singh
Assistant Professor, Amity Law School

USA TO TERMINATE INDIA AS GSP BENEFICIARY

In March 2019, the President of the United States, Donald Trump who is famous for his protectionist policies, informed the Congress that he intends to end India's preferential trade treatment under Generalized System of Preferences (GSP). The main reason that is being cited by America for this drastic move is that India has failed to provide America equitable and reasonable access to India's market in different sectors because of the excessive trade barriers being imposed by India.

Most Favored Nation (MFN)

Non-discrimination is a fundamental principle of multilateral trading system and is recognized in the Preamble to the WTO Agreement as a key instrument to achieve the objectives of the WTO.

Non discrimination in the WTO is embodied by two principles:

1) Most Favored Nation: Treating other WTO Members equally.
2) National Treatment: Treating foreign and local products equally, once these enter the domestic market of the Country.

These two principles apply to trade in goods, trade in services and trade related aspects of Intellectual Property Rights.

The MFN Principle ensures non discrimination between trading partners. If a WTO Member grants to a country an advantage in terms of trade, it has to give such advantage to all WTO Members.

Generalized System of Preferences

However, this principle of WTO is not without any exceptions. One of the main objective of WTO is to promote the growth of the developing countries. In order to achieve this objective, the WTO has provided for GSP, as one of the exceptions of MFN.

Under GSP, a developed nation may give an exemption of or lower tariff rate to the developing or least developed countries, when imports are made from such countries. WTO imposes a condition for maintaining GSP, i.e., it has to be generalized, non-discriminatory and non-reciprocal.

The United States Trade Representatives conducted a review for India's eligibility under GSP Program in August, 2018. The reason for this review was the excessive trade barriers imposed by India on the goods exported from USA. Thus, USA announced in March 2019 that it intends to terminate India's designation as a beneficiary developing country under the GSP Programme.

However, on 3rd May, 2019, a group of 25 influential American Lawmakers has urged the US Trade Representatives not to terminate the GSP Programme with India, saying that the country's companies seeking to expand their exports to India could be affected.

Moreover, India also has the option to approach the WTO, if USA terminates India under the GSP Programme. India can argue in WTO that the whole concept of GSP is not based on the principle of reciprocity of removal of trade barriers by India. USA's stand is rather self-centered and in violation of essential principle of non-discrimination under WTO. It is interesting to see how the things take their course in the near future.

AMITY LAW SCHOOL - INSTITUTE PAR EXCELLENCE

Amity Law School approved by the Bar Council of India, is one of the premier institutions for pursuing a legal career. It is focused to produce litigation specialists, corporate lawyers, mediation & arbitration experts, and professionals to draft legal instruments, policy maker, researchers and academicians, diplomats, comparative law experts for burgeoning LPO industry and others to meet the diverse requirement of legal human resource.

The brilliant young minds at the school are nurtured under the tutelage of a world-class faculty that demands innovative thought and has been able to initiate an interdisciplinary approach to all topics of study. The faculty includes prominent scholars of economics, philosophy and history, as well as leading specialists in every area of law. Amity Law School fosters an inquiry-led and evidence-based approach for creating knowledge and Academic citizenship, whereby we commit ourselves to harnessing our intellectual abilities in the interest of our nation and humanity.

Programmes Offered

- BA, LLB (Hons.)* – 5 years
- BBA, LLB (Hons.)* – 5 years
- B.Com., LLB (Hons.)* – 5 years
  **Approved by Bar Council of India*
- LLM- 1 Year (Corporate Law, Constitutional Law and Criminal Law)
- Ph.D. - Law

MOOT COURT SOCIETY

At ALS Gurugram, Moot Court is an integral part of the academic curriculum and it is being regulated by the "Amity Law School Moot Court Society". The society has been established with the primary aim to enhance the intellectual flexibility as well as to help the law students to perform well under pressure. All these qualities are required to be a successful legal practitioner. Various internal Moot Court competitions, debates and other activities are being conducted by the society to provide training and skill development to the students.

EVENTS & ACTIVITIES

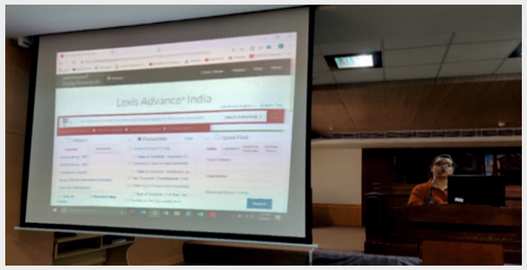
1. Dr. T.K. Vishwanathan & Ms. Sushma Sahu addressing law students during inaugural function of 3rd Amity Moot Court Competition organized by Amity Law School.
2. Guest lecture on GST by Mr. Balesh Kumar (Principal ADDL. Director General) DGGSTI
3. Guest Lecture on "Advocacy (Mooting) as a Learning and Technology Tool" by Ms. Theresa Lynch, Director of Advocacy, Birmingham Law School, University of Birmingham, UK.
4. Chief Guest Mr Justice Swatantra Kumar (Former Chair Person NGT) addressing during 1st Amity International conference on legal Dimensions of Environment.
5. Hon'ble Chief Minister of Haryana addressing law students during inaugural ceremony of Amity International Conference on Legal Dimensions on 27th - 28th Oct. 2017.
6. Mr. Justice A K Patnaik being felicitated during the 4th National Moot Court competition.
7. Winners of Amity Moot Court Competition.
8. Shri Ram Jethmalani, Member of Parliament and Shri Salman Khurshid, former Cabinet Minister for Law during 2nd National Moot Court Competition held at Amity University Gurugram.
9. Mr. Justice Deepak Mishra (Former Chief Justice of India) inaugurating the 4th National Moot Court Competition.
10. Inaugural function of 2nd International Conference on legal "Dimensions of Infrastructure Growth and Development"

GUEST LECTURE ON PRACTICAL ASPECTS OF ARBITRATION, CONCILIATION AND MEDIATION

by Mr. Ashim Sood, Advocate, Supreme Court of India BY LEGAL AID CELL, Amity Law School, Gurugram

COFFEE WITH EXPERT ON CRACKING JUDICAL SERVICES

WORKSHOP ON LEGAL RESEARCH METHODOLOGY IN COLLABORATION WITH LEXISNEXIS



Mr. Ravi S Tiwary
DEO, Amity Law School

एमिटी की छांव में

सन 2014 में जब,
थियेटर को मैने त्याग दिया
नौकरी अब मुझे करनी है,
मन में ये अब ठान लिया
चाचा ने ये रिफरेंस दिया
विवेक सर के छ=छाया में
उन्होने मुझें भेज दिया

मिली नोकरी लॉ डिपार्ट में
समझते हमको सब बेचारे थे
मैं तो मौज में रहता था
क्योंकि पाठक सर बॉस हमारे थे।

किया ज्वाइन जब काम यही था,
परीक्षा में सबको बैठाना है।
काम इतना ज्यादा था कि,
भूल जाओ की खाना है।

समय सारणी के लिए,
विपिन कौशिक ही भाता था।
जब भी जरूरत पडने पर,
सामने उसको पाता था।

हुआ आगमन ऐसे व्यक्ति का,
जो कॉडिनेटर से भी उपर है।
शिक्षा के प्रांगण में वो,
डायरेक्टर सबसे सुपर है।

शुरू हई कहानी ऐसी,
संगठन भी हमसब जीत गये।
एक नया इतिहास रचने को,
रिकार्ड हमसब बना गये।
उसके बाद तो आदत ऐसी,
तीन साल विजेता बने रहे।
संगठन संगठन सबके दिलो में,
खौफ ये बनकर बने रहें।

विधि संकाय का देखा देखी,
हर संकाय ग्राउंड पर जाने लगे।
प्रदर्शन विधि संकाय का देख के,
जोश में तालियां बजाने लगे।
एक गेम बास्केट बॉल का,
मंडी जिसका दिवाना है।
प्रतिज्ञा की है उसने कि,
संगठन इसबार भी लाना है।
कभी सम्मेलन कभी मूट कोर्ट,
कराना हमारी आदत है।
शीर्ष पर हमसब बने रहे,
यही हमारी चाहत है।

चाहे मंत्री चाहे नेता,
इनसे कोई ना बडा हुआ।
बुलाना पडा जब भी इनको,
चौबे पाठक शुक्ला खडा हुआ।

कोई भैया कोइ दीदी,
विधि में हमको मिल गया।
कसम से उस समय दोस्तो,
चेहरा खुशी से खिल गया।
संगीत कला ड्रामा सबके,
नेहा मिश्रा जी दिवानी है।
कराये इनके प्रोग्राम में,
भीउ ता आनी ही आनी हे।

कभी इस्टर्न कभी वेर्स्टन,
यूपी पर बहस होता रहा।
हम चारो लडते रहे,
बाकी फैकल्टी सोता रहा।

रवि तिवारी हूं भभुआ से,
कविता सबको सुनाता हूं।
खुश मिजाज हरदम रहता हूं,
शायद इसीलिए सबको भाता हूं।

श्री मेजर जर्नल पीके शर्मा,
श्री प्रांशुल पाठक जी प्यारे हैं।
कहे रवि इ दिल से बात
ये दोना आइडियल हमारे हैं।

Editor
Himanshu Saini
B.B.A L.L.B (H)
Final Year

Creative Head
Sachin Juneja
Director-Market Promotions

Under the Guidance of
Maj. Gen. P.K. Sharma (Retd.)
Professor and Director, ALS
Dean, Faculty of Law