Protection of Traditional Knowledge and Plant Intellectual Property Rights: Emerging Challenges and Issues in India

Sanjit Kumar Chakraborty, Assistant Professor, The WB National University of Juridical Sciences (NUJS)

Abstract

"Commercialization of biotechnological findings became an important vehicle in the knowledge-based global economy, but it is the law that makes them merchantable by securing intellectual property rights. It is upon the law, and especially intellectual property law, to act as the 'Gatekeeper' of 'Morality and Public Order', and 'to tame the genie of science' although not too severely, for the present and future generations." *Shoshana Berman*

Fraudulent practices in Banking Institutions: Legal Issues and Challenges

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Abstract

The continual presence of frauds in the banks is not a recent observable fact. Frauds in Indian banks only prove that financial flexibility exacerbate trend of shallow markets to cherish excessive speculation and deteriorate growth of the market in such way that recovery seems difficult. Revelations of fraud, evidence of insider trading and a ensuing debacle of investor interest have led to an almost insuppressible decline in Indian banks. The paper will also discuss different kinds of fraud and remedial measures. The paper deals with different kind of preventive, detective mechanism required for fraud investigation.

E-Pharmacy in India: Issues and Challenges

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Abstract

The e-commerce industry has reached the zenith of growth in India. One of the recent development is the pharma sector to target consumer online. While it is very convenient for consumers, the business is challenged by regulatory issues. The Drugs & Cosmetics Act, 1940 and the Drugs and Cosmetics Rule, 1945 which regulates the selling and distribution of drugs in the country prohibits selling of drugs without a prescription by registered medical practitioner. E-pharmacy carries with it certain disadvantages such as failure to maintain the quality of medicines, storage facility of drugs, self-medication, re-ordering of drugs in the same prescription, confusing the name of the drug with that of the drug manufacturer company. The government has formed a seven-member panel to look into the issue of online drug sales. The DCGI had appointed industry body Federation of Indian Chambers of Commerce and Industry (FICCI) to frame guidelines for the

online sale of medicines through e-commerce channels. While the country awaits the decision of the Centre on regulating the sale of drug online, the association of e-pharmacy Indian Internet Pharmacy Association has formed a body to regulate accredited members. This paper described the issues and challenges related to e-pharmacy in India.

Unveiling The Recondite Flawsof Dna Evidence- The Need to Reconsider Its Reliability

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Abstract

DNA analysis is conducted almost routinely in the course of criminal trial nowadays in order to establish a link between the suspect and the crime. The overt reliance on DNA can be attributed to the immense likelihood of the presence of DNA in a crime scene, and its easy extractability. Often considered to be an irrefutable evidence, today DNA is placed on a higher pedestal than most other evidences, and has also achieved the status of a circumstantial evidence in the court of law. The paper aims to critically analyze the reliability of forensic evidence obtained from DNA, and expose the recondite dangers associated with the extensive reliance on DNA evidence by the court and law enforcement, citing various international cases which proves the fallibility of DNA evidence.

Real Estate (Regulation and Development) Act 2016: Misplaced Euphoria?

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Abstract

The Real Estate (Regulation and Development) Act, 2016 has brought cheer and optimism amongst consumers who have struggled for years against heavy weight corporations and builders. The real estate sector has been one of the largest sources of black money and fraudulent transactions. Seeking to provide statutory recognition and protection to the rights of the buyers, the Act is much needed and fills a grave lacuna in policy and intends to regulate a sector which was hitherto unregulated. The paper highlights the history of the legislation, its salient features and how the provisions of the Act further the objectives listed out in the preamble. Taking a deeper and more critical look at the provisions, the Act falls short on various counts, and the practical implementation of some provisions seems rather difficult, if not impossible. Some of the shortcomings of the Act, unless remedied, are so fundamental that the Act fails to achieve its objectives of regulation, protection of consumers and speedy dispute redressal. Thus, this paper argues that without necessary amendments and observation of the practical implementation of the Act, the euphoria of the victory consumer rights and builders now being at the mercy of consumers is premature and at best, misplaced.

Million Preventable Deaths and Liability of The Tobacco Industry in India

Mr Amit Yadav, Ms Nisha Yadav

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Abstract

Tobacco is the only legally sold consumer product that kills half of its users in their lifetime. It continues to kill more than one million Indians every year. Even though larger pictorial health warnings, covering 85% of the principal display area of tobacco packs, now more expressly convey the dangers associated with tobacco use, tobacco induced disease, disabilities and deaths continue to impoverish millions of Indian families in absence of a clear liability of manufacturers of this inherently dangerous product. It is high time that tortious liability of the manufacturers of tobacco is fixed for the loss of life and livelihood due to tobacco use. The industry should also be liable for the non-implementation of the tobacco control and other legal provisions meant to regulate the industry. India may not be able to achieve its health goals as envisaged under the UN-SDGs 2030 without making the tobacco industry pay for health costs associated with tobacco use. If the dangers of tobacco products are to be eliminated from the country, the tobacco companies should be held liable for their misdemeanors and asked to compensate individuals and the Government for the outrageous social, economic, environmental and health costs incurred due to tobacco use.

Corporate Laws: Abuse of Dominance

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Abstract

The atop verbalization aptly applies to a position of strength enjoyed by an enterprise, in the market and thereby bringing the element of monopoly. A perfect competition is a boon for the consumer as it can maximize its welfare. Unfortunately the position is not the same for seller, as for him blessing would come in the shape of enjoying the monopoly. The monopolists control the market and can increase the prices or reduce the volume of goods to be infused in the market. Well in proper terms this position is definitely called a "dominant" position, as to how one or few people can actually bring a standstill in the market and affect the customers at large along with detrimental effect on its competitors in the market. Looking into the dictionary meaning of "dominance" one would find having control or influence over other as the meaning which can definitely not be termed as adverse. It is only when the word is prefixed by "Abuse" that makes it a matter of concern. We have the Competition Act, 2002 which aims at encouraging competition and shielding Indian markets against anti-competitive practises like "abuse of dominance" forming vital part of. The mere fact of dominance is inconsequential in so far as attracting the Act is concerned. Abuse of dominance is what is required to be proved. There are numerous factors determining dominance of an enterprise, like market share, economic power, entry and exit barriers to name a few. The paper will address the economic concept of dominance before attempting a narrative which can do justice to the title. This paper attempts to look at dominance and its abuse with supporting case laws and experiences along with coming of the Competition

Act, 2002 to chain the menace of Abuse of Dominance. In addition the paper will have comparisons with the international scenario in this respect.

Electoral Reforms in India: Perceptions of Supreme Court and Law Commission

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Abstract

Electoral reforms have been implemented in India mainly through judicial intervention and supported by legal opinion, and have helped to improve perception about the electoral process. Perception in a democracy like India might be defined as the opinion of the people gathered by surveys or election studies, and is sought to be represented in political campaigns or decisions on electoral process, interventions of the Election Commission of India (henceforth, ECI), judicial verdicts on reforms like candidate affidavits, and authoritative reports of commissions set up to explore electoral reforms. The successful implementation of reforms with judicial and legal support also entrenched the perception that democracy was ill served by the elected representatives who withheld such reforms that could improve the process. The present research sought to learn the substantive context provided by perception in judicial verdict and legal opinion in favour of electoral reforms. The research question of this study was, whether or not the judicial and legal interventions in the electoral process were inclusive of the perception about electoral reforms? The recommendations of the commissions set up by the government to explore electoral reforms had gathered dust until the SCI endorsed civil society action for reforms and facilitated the implementation by the ECI, as in the case of the filing of candidate affidavits. Similarly, the Law Commission had insisted on several reforms of the electoral process, most prominently, in its reports of 1999, 2014 and 2015. This paper would endeavour to qualitatively study the prominent SCI verdicts on electoral reforms and the Law Commission reports to ascertain whether the perceptions about the electoral process were included in the judicial and legal support for reforms.

Application of Margin of Appreciation to The Regime of Human Rights

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Abstract

The European Court of Human Rights (ECHR) has been established with the primary function to regulate those conducts which violate the human rights of the persons granted to them under the European Convention on the Human Rights (ECHR). The court is expected to apply these provisions in a uniform manner but the domestic authorities diverts from the provisions of ECHR considering their practical parlances. Hence, the problem before ECHR is related to how far the domestic authorities can take defense of principle of 'margin of appreciation' and what are the grounds on which this principle can be applied while considering the derogation of any human right of the convention. The paper will inquire into the cases which will suggest the relevance of 'margin of appreciation' in European context by addressing the following research questions: (i) How the 'margin of appreciation' has evolved in European legal framework?; (ii) What are the

facets of 'margin of appreciation' in European jurisprudence?; (iii) What is the 'litmus test' for examining whether a margin amounts to a legitimate action or a violation of human rights? Henceforth, the objectives of the study are to examine the scope of 'margin of appreciation' in European human rights system and to study the implications in applying 'margin of appreciation' by ECHR whereas the approach is analytical and descriptive involving qualitative methodology. The study engages the external desk-based research involving online desk research.

Multi-Tier Arbitrations: Perspectives From India and Abroad in Pursuance of The Centrotrade Minerals Ruling

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Abstract

The Supreme Court of India on 16th of December 2016, passed a landmark judgment in the recent case of M/S Centrotrade Minerals and Metal Inc. v Hindustan Copper Ltd. regarding the admissibility of two-tier arbitrations in India, wherein it was held by the apex court that a system of two-tier arbitrations was admissible in India. The case which had earlier been decided in 2006 was referred to a larger bench of the Honorable apex court, and it was ultimately decided that two instances of arbitration could be held to be permissible in the country. In the abovementioned matter there were two options available to the parties i.e. in case they were not satisfied with arbitration laws of India, they could exercise their right to appeal to the International Chamber of Commerce (ICC). Though, this judgment comes as a welcome change in the arbitration regime in India, giving parties a second opportunity to arbitrate the dispute for the second time, before going to a court of law to adjudicate the matter, yet the major question that arises here is whether this actually is a good step, or whether there are possibilities of the proposition laid down in this judgment complicating arbitration proceedings further? The judgment comes at a time of the enactment of the new Arbitration Amendment Act 2015, which is aimed at encouraging more amount of Foreign Direct Investments, through faster adjudication of transnational commercial disputes. Therefore what remains to be seen is whether this judgment will smoothen the ADR process in India or further complicate the process through multiple arbitral tribunals. The authors through this paper will be analyzing the impact of allowing multi-tier arbitrations in the Indian scenario by analysis of the Centrotrade judgment and perspectives from abroad.

Triggering the Corporate Insolvency Resolution Process by the Operational Creditor Under Insolvency and Bankruptcy Code 2016

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Abstract

Need of a comprehensive Insolvency and bankruptcy law was highlighted by the Law Commission Report in the year 1964. Unanimously The Insolvency and Bankruptcy Code 2016 is one of the biggest economic reform India has witnessed in recent times. The Code is to help establishments in financial distress and also to ensure repayment of debt in timely manner, therefore it is beneficial for debtor as well as creditor. The Code has made substantive changes in eleven enactments and

repeal few to avoid any conflicting situation. It has established Insolvency and Bankruptcy Board, which has been issuing notifications for framing rules and regulations for the functioning of this Code. Country cannot attract investment without giving easy and comprehensive exit option. Due to paucity of time and limitation of pages, it was not possible to make a comparative study. Therefore, the discussion is in the light of I & B Code 2016, in which there is complete mechanism to trigger the insolvency by stakeholders like corporate creditor, operational creditor, etc. This paper is confined on the initiation of the corporate insolvency resolution process by the operational creditor. In this paper, the attempt was to understand the statutory provision and also application of the same by adjudicatory authority, i.e., National Company Law Tribunal. It is also interesting to see how the appellate authority, i.e.., National Company Law Appellate Tribunal is interpreting the Code. Paper has also touched upon the latest Supreme Court judgment, which gives a perspective of interpretation where the statutes with economic impact are in question.

Case Comment Is NCLT Empowered with Dispensing of Meeting in Amalgamation?

Aishwarya Jain, Government Law College, Mumbai

Abstract

The case analyses the order of National Company Law Tribunal in JVA Trading Pvt. Ltd. and C&S Electric Limited dated 13 January 2017 with respect to the dispensation of members meeting in case of 'compromise, arrangement and amalgamations' under the Companies Act, 2013. The tribunal ousted itself of the power to dispense with the same claiming that the Act and the rules made there under have not clothed it with such a power. The case presented before the tribunal was for the amalgamation of JVA Trading Private Limited and C&S Electric Limited as per the provisions of Companies Act, 2013. This submission in the form of case comment has critically analyzed the position taken by the tribunal vis-a-vis the parallel position of high court in terms of previous companies act. The submission also briefly points out the recommendation of certain committees for dispensing with the members meeting when the drafting of new companies act was in progress. Moreover, the views have been put-forth with regard to the consequences of such a stance of tribunal on the timelines for conclusion of transactions in the nature of 'compromise, arrangement and amalgamations'. In conclusion, the case comment puts the opinion that this decision is going to put unnecessary burden on the company entering into such transactions when the holding of members meeting has been reduced to a mere formality.

Case Comment Allied Blenders and Distillers Pvt. Ltd. v/s Prag Distillery Pvt. Ltd. and Ors. (Delhi High Court, 06/01/2017)

Ms. Charu Srivastava1 Assistant Professor, College of Legal Studies, UPES, Dehradun, Uttrakhand

Abstract

There have been many decisions in the year 2016 which have offered clarity on jurisdiction relating to suits under Section 134 of the Trademark Act, 1999, Section 62 of the Copyright Act, 1957 and Section 20 of the Civil Procedure Code, 1908. One such case is discussed in this article which deals with the interpretation of application of Order VII Rule 10 as to what considerations should be thought of before returning a plaint due to lack of jurisdiction. Whether the application

filed under Order VII, Rule 10, The Code of Civil Procedure, 1908 is to be scrutinized on the basis of the averments made by the plaintiff in the plaint only or consideration to defendant's written statement is also to be given? Further whether a reasonable apprehension of a probable harm at a given place gives rise to cause of action?

Case Comment Supreme Court: Courts at Juridical Seat of Arbitration to have Exclusive Jurisdiction

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Abstract

Recently, a Division Bench of the Supreme Court in Indus Mobile Distribution Pvt. Ltd. v Datawind Innovations Pvt. Ltd. & Ors (Civil Appeal Nos. 5370-5371 of 2017, decided on April 19, 2017) has answered in the affirmative the question "whether, when the seat of arbitration is Mumbai, an exclusive jurisdiction clause stating that the courts at Mumbai alone would have jurisdiction in respect of disputes arising under the agreement would oust all other courts".

Book Review

Rav Pratap Singh PhD (Cantab), Advocate, P&H High Court, Chandigarh

Abstract

Zourting the People Public Interest Litigation in Post-Emergency India is an anthropological account of PIL in India. To begin with, the book explores the reasons for rise of PIL in the aftermath of Emergency. It questions the axiomatic explanation that the Supreme Court adopted PIL in order to restore its credibility after the Habeas Corpus case. Instead, the author argues that the enthusiasm of Justice Bhagwati and Justice Krishna Iyer in adopting 'swadeshi jurisprudence' was an important factor in the rise of PIL. The quest for indigenization of justice led to loosening of procedural formalities and the rise of PIL. The book is a thorough assessment of the nature of PIL proceedings, the range of actors involved in a PIL and its impact on city governance, particularly Delhi. I highlight that the author's focus on Delhi, lack of comparison with other High Courts and under exploration of some arguments are some of the shortcomings of an otherwise well-written and impeccably researched book.
