INDIAN INSTITUTE OF LEGAL STUDIES

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NEWSLETTER

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NEWSLETTER

ISSUES ON CURRENT NEWS:

JNU ROW:

"*Afzal hum sharminda hai, tere katil jinda hai*", a statement that has changed the lives of certain people and the perspective of the rest. In the Jawaharlal Nehru Campus, New Delhi, on 9th February, 2016, some of the students have sparked the rage of the entire nation with their 'anti-national slogans" which has attracted wrath and despise from different sector and people alike, evident from the various posts and tweets in social media along with the posters encouraging the attack on one student named Kanhaiya Kumar with attractive rewards for the same.

However, one that sends shivers down the spine is the glaring outburst of the lawyers of Patiala House Court who have reportedly beaten Kanhaiya and have dared to do the same in future. Several journalists along with Kanhaiya Kumar, were also assaulted in the court premises on February 15 and 17 and in furtherance of which a PIL has been filed by Counsel Kamini Jaiswal who has sought suo moto initiation of Contempt of Court against the three main Advocates involved in the said act.

Charges of sedition and criminal conspiracy has been lodged against Kanhaiya under section 124-A and 120-B of the Indian Penal Code, 1860 respectively and he was arrested on 12th February. The Delhi High Court has granted a six-months interim bail on 3rd March with the condition that he shall not "actively or passively" participate in such an activity again. Two other JNU students, Umar Khalid and Anirban Bhattacharya, also allegedly accused of raising anti-India slogans during the same event, are in judicial custody. "We don't want freedom from India, but we want freedom in India", a recent statement by Kanhaiya after his release sends the message to thousands who are seeking a stand, either for or against him.

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FORMER JUDGES, SENIOR LAWYERS WRITE TO CJI DEMANDING SUO MOTO ACTION AGAINST HATE SPEECH:

As on 5th March, 2016: In an impassioned plea to the Judges of the Supreme Court of India, a faction of former Judges, jurists, scientists, police officers and businessmen have demanded that suo moto constitutional action be taken on the issue of the "alarming and threatening statements being made by persons currently in power and holding constitutional positions within the Union Government." They have demanded that a Permanent and Sitting Commission be appointed to monitor and oversee all such meetings happening, in order to prevent a situation of "hate driven provocation and attacks on marginalized sections."

The letter justifies the appeal for suo moto action by pointing out that it is in fact the ruling party at the Centre and its representatives at the Central and local level who are "stoking these dangerous sentiments that amount to nothing else than incitement to violence." It lists down several instances of such statements being made, the aftereffect of which has been fear and insecurity among the citizens of India.

These offenders, the letter says, need to be proceeded against under Sections 124A, 153A, 153B, 292, 293, 295A, 505 of the Indian Penal Code. They further urge that the culprits be punished for violating their constitutional duty under Article 51A (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious diversities.

MANDAMUS TO GUARD CHILD AGAINST SEXUAL ABUSE:

Nelson Mandela said, "*There can be no keener revelation of a society's soul than the way in which it treats its children".* A child who is fragile and defenseless is the hope of the upcoming generation, for whose

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NEWSLETTER

EDITORIAL NOTE:

The recent endeavor "NEWSLETTER" adds another feather to the cap of Indian Institute of Legal Studies (herein after referred to as IILS). Since its inception, IILS has continuously strike to evolve new parameters and experiments in new domains to enhance the quality of legal education. IILS always keeps its students and faculties engross in various participative curriculum so as to extend its sphere of legal education.

"NEWSLETTER" is a self publication of IILS covering items such as Current News, various Constitutional Amendments, Current Legislations/ Notifications, the recent landmark Judgments and Articles. Newsletter has been launched by the guidance and support of its Chief Mentor, the Chairman of IILS, Sri Joyjit Choudhury who under his personal supervision has given shape to this remarkable publication which shall not only be a source of current legal affairs for students, faculty but shall also assist Legal Practitioners, Advocates to be updated with present legal affairs.

We fervently hope that "NEWSLETTER" shall be victorious in its journey ahead and accomplished the tasks for which it has evolved.

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Indian Institute of Legal Studies

education the parents incur huge expenditure and are sent to expensive institutions with anticipation to get the best of education and facilities. It is alarming to the conscience of the society to witness the frequent cases of child abuse, and most astonishing to find it happening in those educational institutions and schools which had once promised the child of a great future.

Child abuse is one of the most heinous crimes which the present age is witnessing and is widespread and rampant. However there is no special law or any guidelines relating to the prevention of such abuse in school premises which has fixed the liability of the administration in the event of any occurrence within the premises of that school.

In pursuance of the growing menace, Vineet Dhandwa, a lawyer filed a PIL in the Supreme Court on 29th February, 2016, seeking framing of guidelines to fix responsibility and liability of the school administration in whose premises the incidents of sexual abuse takes place, because in most cases the educational institutions depict no liability whatsoever. The Court however directed the Petitioner to approach the Centre in this regard and a bench headed by Chief Justice T.S. Thakur said "law is there and it will take its own course. As and when any such incident takes place the concerned person will be prosecuted as per the law. Even if we formulate directions it will not be easy for us to implement those. You rather approach the Central Government".

The Court further directed the Petitioner to file an application for issuance of a writ in the nature of mandamus directing the Respondent Union of India to take necessary measures to curb the menace of child sexual abuse in educational institutions by enacting appropriate statute laying down rules, regulations and guidelines for fixing the liability of the administration. Such a step would indeed bring a passage of change in reforming the lives of children and their parents who live under the looming shadow of fear.

SC NOTICE TO CENTRE ON ESTABLISHING NATIONAL COURT OF APPEAL:

The Supreme Court on Feb 26, 2016 sought response from the Centre on a PIL seeking setting up of National Court of Appeal with regional benches in major cities to decide cases arising from High Courts.

A Bench headed by the Chief Justice T.S. Thakur, issued notice to the Central Government seeking response on a plea for setting up of National Court of Appeal within regional Benches. The Court has appointed Senior Advocates K.K. Venugopal and Salman Khurshid as Amicus Curiae in this case.

The apex court's decision came while hearing a PIL by Puducherry based V. Vasanthakumar who pressed for establishment of a National Court of Appeal at Chennai, Mumbai, and Kolkata.

The Petitioner submitted that the establishment of 'National Court of

Appeal' would rectify the inequality in the state of affairs in as much as the said National Court of Appeal would have benches in all possible regions of the country. This would considerably reduce the cost of litigation and would enable the litigants to have the services of the Lawyer who appeared for them before the High Court.

Interestingly in 2010, K.K. Venugopal in his landmark Jain Memorial Lecture on the subject "Towards a holistic restructuring of the Supreme Court of India" advocated the proposal of establishing National Court of Appeal.

He proposed: "The Constitution should be amended by adding Article 136A, whereby the Zonal Court of Appeal would exercise the powers which were therto being exercised by the Supreme Court under Article 136 of the Constitution. On the other hand, the Supreme Court would thereafter entertain appeals from the High Court by restricting the scope of Article 136 to cases involving constitutional issues, validity of Central and State laws, difference of opinion between High Courts or between Courts of Appeal and Presidential References and suits between States or States and the Centre. If, however, any question arises before a Court of Appeal, which would fall within the curtailed jurisdiction of the Supreme Court, it would refer the same to the Supreme Court of India for decision."

SC NOTICE TO CENTRE ON PIL FOR PLAIN PACKAGING OF TOBACCO PRODUCTS:

The Supreme Court on 8th March, 2016 issued notice to the Health Ministry on a PIL which sought immediate implementation of plain packaging rules for cigarette and other tobacco products saying jazzy covers and those with messages only attracted more consumers.

The Union Health Ministry in September 2014 issued a notification making it mandatory for cigarette manufacturing companies to carry statutory warning against smoking on both sides of a cigarette pack with pictorial depiction of throat and mouth cancer covering at least 85 per cent of the packaging.

The PIL has been filed by Umesh Narain Sharma, an Allahabad-based Lawyer contending that presently in India tobacco products are packed in very attractive packaging to entice youths to take up tobacco consumption. Such packaging also draws attention away from health warning and makes them redundant. Therefore, to counter this tactics of the Industry, plain packaging is the best strategy which would prohibit brand colours, logos and graphics on tobacco packages, thus eliminating package as mini-billboards that promote tobacco consumption.

The Allahabad High Court had already recommended immediate implementation of plain packaging of cigarette and other tobacco products.

MOU SIGNED BETWEEN INDIA AND SWEDEN ON TECHNICAL COOPERATION IN RAIL SECTOR:

On February 15, 2016, a Memorandum of Understanding (MOU) has been signed between Ministry of Railways and the Ministry of Enterprise and Innovation of the Kingdom of Sweden on Technical Cooperation in Rail Sector. MOU was signed by Mr. Girish Pillai, Adviser / Infrastructure on behalf of Ministry of Railways and Mr. Oscar Stenstrom, State Secretary on behalf of Swedish government.

Following cooperation areas are identified in the MOU:

(a) Benchmark Railways policy development, regulations, organization and specific characteristics for each country.

(b) Exchange of knowledge, technical expertise, innovation, technology, sustainable solutions and research.

(c) Other cooperation projects agreed between the participants, such as, tilting coaches/trains, capacity allocation (time tabling) and optimization of maintenance and improved freight/combination traffic.

(d) Training and continuing education program in reliability and maintenance of Rail transport system for Railway engineers and managers.

The main objectives of MOU are to develop cooperation activities in the Railway area to promote efficiency and sustainability and achieve concrete results with regard to bilateral trade, investment, research and technology transfer. It will remain in force for 5 years from the date of signing. It can be extended for a further period of 5 years with the written consent of both sides.

LEGISLATIONS/ NOTIFICATIONS:

NEW AADHAAR BILL INTRODUCED AS MONEY BILL IN LOK SABHA:

On 3rd March, 2016: The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill, 2016 was introduced by the National Democratic Alliance (NDA) Government in the Lok Sabha as a money bill, in the presence of opposition from Congress and the Biju Janata Dal.

The Bill seeks to provide statutory basis to Aadhaar, providing for "good governance, efficient, transparent, and targeted delivery of subsidies, benefits and services", from public funds, to the citizens through assigning of unique identity numbers to them. The legislative backing would enable the use of this identification number for better targeting of subsidies. Parliamentary Affairs Minister M. Venkaiah Naidu claimed that this would save Rs 20,000 crore by avoiding subsidies being taken by the undeserving.

The National Identification Authority of India Bill, 2010 is already pending in the Rajya Sabha. The Standing Committee on Finance chaired by Yashwant Sinha had detected certain deficiencies in the 2010 Bill, and had recommended the Central Government to reconsider the Unique Identification Scheme. So far, more than 98 crore Aadhaar numbers have been generated, of which 16.5 crore are PAHAL beneficiaries, while Aadhaar numbers have been seeded in 11.19 crore Bank accounts. The PAHAL scheme provides for Direct Benefit Transfer of LPG (DBTL) to the consumer.

Last year, a Supreme Court bench comprising Justice J. Chelameswar, Justice S.A. Bobde and Justice C. Nagappan had allowed the use of Aadhaar cards also for MNREGA, Jan Dhan Yojana, pension and provident fund schemes, along with public distribution system and LPG subsidy. The Court had clarified that linking of Aadhaar for providing these services will only be on voluntary basis and no person shall be deprived of any benefit for want of Aadhaar.

The said Bill has been passed by the Lok Sabha on 11th March, 2016 that aims to ensure targeted services to intended beneficiaries by assigning them unique identity numbers. These numbers will be given to each person who has stayed in India for 182 days in the year preceding the date of application.

SOFTWARE PATENTS – INDIAN SCENARIO:

The impression about Indian patent law is that it does not permit software patents in view of Section 3(k) of the Patents Act, 1970 which declares that mathematical or business methods, computer program *per se* and algorithms are not inventions for the purpose of patent registration. However, the position is that Indian law on software patents is not different from UK or European Union law. On February 19, 2016, the Indian Patent Office came out with revised Guidelines for Examination of Computer Related Inventions (CRIs). In the introductory part itself of the Guidelines, the position has been made quite clear that Patent Office is not averse to software patents subject to the condition that "claimed invention" should not be any of the excluded categories mentioned in Section 3(k).

In order to assist patent seekers for CRIs, the Guidelines invites attention to relevant provisions in the Patents Act, 1970 regarding three basic conditions of patentability, namely, novelty, inventiveness and industrial application of a claimed invention. Besides, the Guidelines also refer to Information Technology Act, 2000 to explain IT-related terms. If a term is not defined in either of these two Acts, the Guidelines seek to explain the term by referring to dictionary meaning. The Guidelines then proceed to refer to Indian case law on patents.

An important pitfall which the Guidelines advise patent seekers to avoid is "means plus" which might result in rejection of patent application. Precisely, the Guidelines give the following advice to the patent seekers, "The claims in means plus function form shall not be allowed if the structural features of those means are not disclosed in the specification.… Further, if the specification supports implementation of the invention solely by the computer program then in that case means plus function claims shall be rejected as these means are nothing but computer programme per se. … Where no structural features of those means are disclosed in the specification and specification supports implementation of the invention solely by the software then in that case means in the 'means plus function' claims are nothing but software."

The Guidelines also throw light how Patent Office perceives non-inventions mentioned in Section 3(k), and other excluded subjects mentioned in Sections 3(l), (m) and (n). The Guidelines then gives three key indicators to determine patentability of CRIs. This is followed by 15 examples where each of hypothetical patent claims is anaylsed. On the whole, the Guidelines, though not exhaustive and not even authoritative work on law relating to software patents, provide sufficient guidance to one who intends to seek patent in India.

AMENDMENTS:

SERVICE TAX (AMENDMENT) RULES, 2016

Introducing significant changes to the Service Tax Rules, 1994, the Department of Revenue, Ministry of Finance, has notified the Service Tax (Amendment) Rules, 2016 thereby including many entities under the service tax umbrella while exempting a few. The Notification published on 1st March, 2016, manifests some of the announcements made by the Finance Minister in his budget speech:

- The Amendment introduces specific exemption for the Senior Advocates from the payment of service tax, while it continues to levy the same from a firm of advocates and individual advocates.
- Legal entities such as One Person Company and Hindu Undivided Family have been brought under the definition of "assessee". However, the taxability of a One Person Company has been kept conditional to the valuation of its taxable services exceeding fifty lakh rupees.
- In a move towards encouraging single premium annuity policies, the composition rate of service tax rate applicable to such policies has been reduced from 3.5% to 1.4%.
- 30th day of November of the succeeding financial year has been declared as the deadline for the submission of annual return of service tax for every financial year.
- Upon a delay in filing the annual return, the Amendment requires a penalty at the rate of one hundred rupees per day, subject to a maximum of twenty thousand rupees.

STRINGENT PUNISHMENT FOR ATROCITIES ON SCHEDULED CASTES, TRIBES UNDER NEW ACT:

As per the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, actions like tonsuring of head, moustache, or similar acts which are derogatory to the dignity of members of SCs and STs, will now be treated as offences of atrocities.

The offences include denying access to irrigation facilities or forest rights, "garlanding with chappals", compelling them to dispose or carry human or animal caracass, or to dig graves, using or permitting manual scavenging, dedicating a SC or ST women as devadasi and abusing in caste name. They also include imposing social or economic boycott, hurting a SC or ST woman by removing her garments, forcing a member of SC/ST to leave house, village or residence, or acts or gestures of a sexual nature against members of SCs and STs etc.

Impeding certain activities related to voting especially to vote or not to vote for a particular candidate will also be considered an offence."Certain criminal (IPC) offences like hurt, grievous hurt, intimidation, kidnapping etc, attracting less than ten years of imprisonment, committed against

members of SC/ST, will be treated as offences punishable under the Prevention of Atrocities Act," said a statement issued by the Ministry of Social Justice and Empowerment. "Presently, only those offences listed in IPC as attracting punishment of 10 years or more and committed on members of Scheduled Caste/Scheduled Tribe are accepted as offences falling under the Prevention of Atrocities Act, "Under the Act, Exclusive Special Courts will be established and Exclusive Special Public Prosecutors will be appointed to try the offences under the Prevention of Atrocities Act to facilitate tenable speedy and expeditious disposal of cases.

Special Courts and Exclusive Special Courts will have the power to take direct cognizance of offence and as far as possible and complete trial of the case within two months, from the date of filing of the charge sheet.

AMENDMENT OF RULES REGARDING QUOTING OF PAN FOR SPECIFIED TRANSACTIONS W.E.F. 1ST JANUARY, 2016:

The Government has amended Rule 114 B Income-tax Rules for enhancing the monetary limits of certain transactions which require quoting of PAN and in order to bring a balance between burdens of compliance on legitimate transactions. In case of transactions of sale or purchase of goods and services, PAN will be required to be quoted, irrespective of the mode of payment if the transaction exceeds rupees two lakh. The changes made to the Rules have been notified through S.O. No. 3545(E) dated 30th December, 2015. These changes took effect from 1st January, 2016.

JUDGMENTS:

"ENVIRONMENTAL COMPENSATION" OF RS. 50 CRORE IMPOSED FOR ILLEGAL SAND MINING ON THE BANKS OF RIVER YAMUNA:

CASE- Gurpreet Singh Bagga v. Ministry of Environment and Forests, Original Application No. 184 of 2013, decided on February 18, 2016.

The National Green Tribunal came upon the applications filed by two environmentalists who complained of rampant illegal mining of minor minerals like sand, boulders, etc, in Saharanpur and more particularly, on the river banks and river bed of the Yamuna. Applicants alleged that there was a cartel which was running for more than last 10 years and carrying on this activity, causing serious environmental degradation. NGT ordered for a complete prohibition on carrying on of any mining of minor minerals in the flood plain of river Yamuna in the district Yamunanagar (Haryana) and Saharanpur (Uttar Pradesh) and all other villages situated on the bank of river Yamuna and rivers Kaluwala Rao, Solani and Badshahibagh Rao for a period of 45 days from the date of the judgment. NGT also asked the five lease holders to pay "environmental compensation" of Rs 50 crore for and on behalf of 13 mine lease firms for carrying out excessive unauthorized mining resulting in damage and degradation of environment.

The Tribunal also issued other directions in the matter, which included constitution of a high powered committee to provide complete mechanism for establishing check posts to ensure that there is no illegal transportation of mined minerals in these areas, check on over- loading, Haryana and Uttar Pradesh governments were directed to submit a complete and comprehensive mining plan to the panel, it was also directed that mining activity (if at all permitted) should be carried out in a semi-mechanized and scientific manner or totally non-mechanized manner and if any person was found to be violating these directions and carrying on mining of minor minerals then such person would be liable to pay Rs 5 lakh as environmental compensation for each such event.

HIGHER SECONDARY SCHOOL LEAVING CERTIFICATE CAN BE ACCEPTED AS PROOF OF AGE:

CASE: Hina v. Union of India and Ors, Civil Appeal No. 1676 of 2016 [SLP © No. 37555 of 2012] as decided on 23rd February, 2016

The Supreme Court, in this case has held that Higher Secondary School Leaving Certificate can be accepted as proof of age. The Applicant had submitted an application for allotment of retail outlet of petroleum/diesel dealership and as the age proof she submitted her Higher Secondary School certificate. The Corporation rejected her application on the ground that age proof submitted is not as per norms. The High Court, though observed that the rejection is on technical grounds, dismissed the Writ petition holding that it would not be proper to direct the Corporation to add/amend or alter the conditions of advertisement. Division Bench comprising of Justices Kurian Joseph and R.F. Nariman observed even an Affidavit was sufficient as proof of age as per the norms.

The Court further said "The requirement of the Corporation is only a proof regarding the age. No doubt, certain documents are specified in the Eligibility Criteria which would be accepted by the Corporation as proof of age. In case, a copy of the Secondary School Leaving Certificate can be accepted as proof of age, it does not even strike to common sense as to why the copy of the Higher Secondary School Leaving Certificate, duly attested, cannot be accepted as proof of age." Setting aside the High Court order, the Apex Court directed the Corporation to conduct the selection afresh, allowing the participation of these applicants as well along with those who have been considered as eligible by the Corporation.

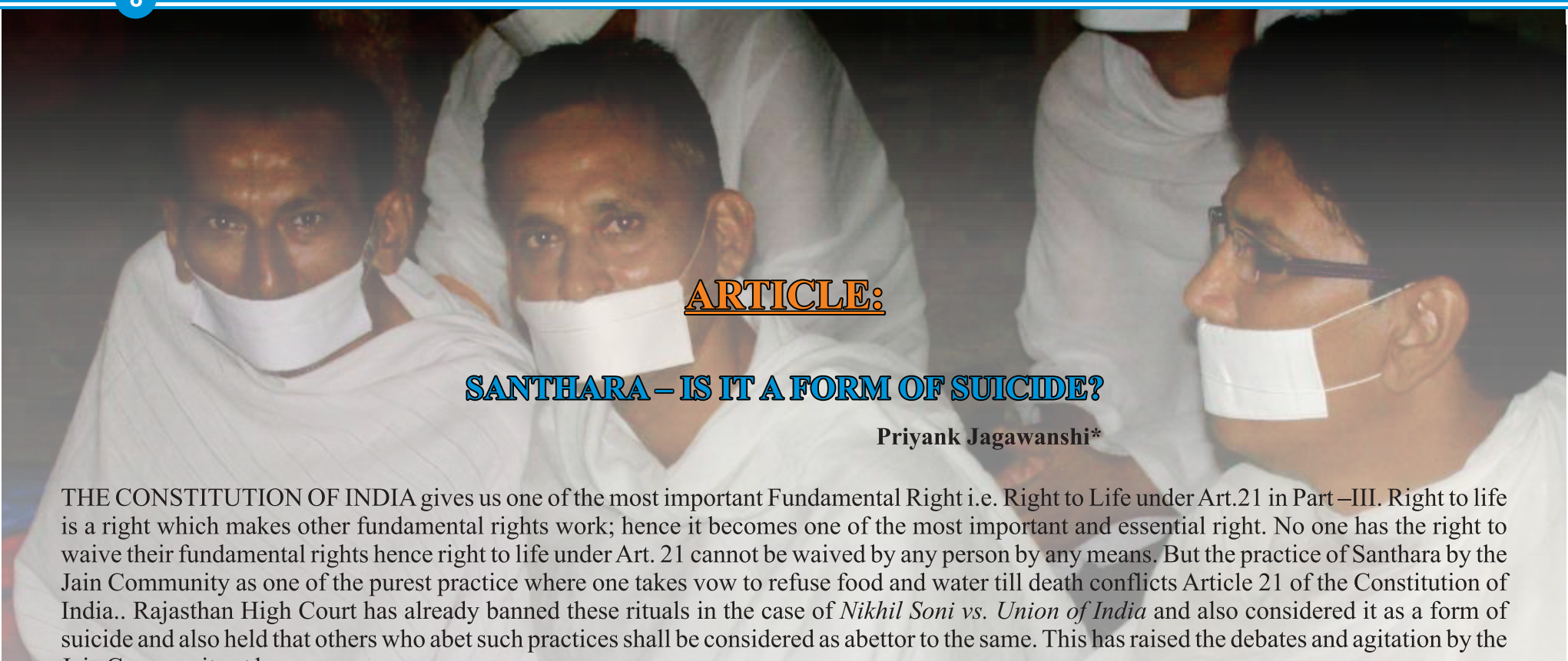
THE REGULATION FOR COMPENSATING CALL DROPS UPHELD: DELHI HIGH COURT:

Case: Cellular Operators Association of 0India v. Telecom Regulatory Authority of India, W.P. (C) 11596/2015 as decided on 29/02/2016

A Division Bench of Rohini C.J. and Jayant Nath J. upheld the controversial regulation issued by the Telecom Regulatory Authority of India that imposes pecuniary liability upon all the Indian telecommunication companies to compensate the customers for the call drops faced by them.

Appearing collectively as the Cellular Operators Association of India, the petitioner companies represented by Harish Salve and Abhishek Manu Singhvi argued against the validity of the Consumer Protection (Ninth Amendment) Regulations, 2015 stating that it was *ultra vires* the ambit of Section 36 of the principal Act, which confers TRAI with the power of making regulations. Also invoking the doctrine of occupied field, the petitioners argued that the issue of call drops had already been taken care of by Quality of Service Regulations and hence both regulations were mutually contradictory/destructive. Calling the Ninth Amendment Regulations arbitrary and unreasonable, the petitioners claimed that the regulations have come to levying penalty without ascertaining the reason for call drops. To the contrary, TRAI represented by P.S. Narasimha (ASG) strongly averred for TRAI's statutory power to issue the Ninth Amendment Regulations citing its statutory responsibility to protect consumers' interest. The respondent further contested against the application of doctrine of occupied field by discerning the difference in objectives of both the regulations. Also dismissing the contention of arbitrariness raised by the petitioners, the respondent showed more than 400 drive tests conducted prior to issuing the Ninth Amendment Regulations.

Concluding that TRAI was well within its powers to issue the Regulations, the Court observed that the Regulations were neither arbitrary nor unreasonable. Also, noting the reliability of the Technical Paper developed by TRAI before issuing the Regulations, Court remained convinced that it was possible to implement the Regulations in all propriety. Agreeing with the contention raised by the respondent, the Bench discarded the applicability of the doctrine of occupied field and upheld the Regulations in their entirety with its pre-scheduled date for compliance.



ARTICLE:

SANTHARA – IS IT A FORM OF SUICIDE?

Priyank Jagawanshi*

THE CONSTITUTION OF INDIA gives us one of the most important Fundamental Right i.e. Right to Life under Art.21 in Part –III. Right to life is a right which makes other fundamental rights work; hence it becomes one of the most important and essential right. No one has the right to waive their fundamental rights hence right to life under Art. 21 cannot be waived by any person by any means. But the practice of Santhara by the Jain Community as one of the purest practice where one takes vow to refuse food and water till death conflicts Article 21 of the Constitution of India.. Rajasthan High Court has already banned these rituals in the case of *Nikhil Soni vs. Union of India* and also considered it as a form of suicide and also held that others who abet such practices shall be considered as abettor to the same. This has raised the debates and agitation by the Jain Community at large.

Now this practice can be considered at par with the Constitution of India and also against the Constitution of India as Indian Constitution also gives us the Fundamental Right regarding freedom of religion. Santhara which is very much associated with religious practice in Jain Community can be considered proper as per freedom of religion under Article 25 of the Constitution of India which gives the fundamental right to freedom of conscience and free profession, practice and propagation of religion under fundamental right to freedom of religion. Having this right makes the person to follow such practice or profession as associated with their religion.

Now the question comes that whether all such kind of practices violate or in conflict with Article 21 or not gives us the Right to life. This debate also leads further with Euthanasia. Practices can be stopped if those are against life under Article 21. If something a person acquires by chance, how can he refuse such thing by choice. If life is given naturally then how one can simply end his/her life by choice? Santhara is the practice of refusing the natural gift of life by choice by following the norms established under Jain community. To avoid these conflicts one has to look into the reasonableness of the same. Practices can be followed by persons who are associated to their respective religion. But those practices shall be reasonable in nature. It does not conflicts any law, rules and regulation. Right to freedom of religion is given to everyone but practices performed in the name of religion if violates such laws, then such practices has to be stopped at some extent. Freedom to follow practices which are associated with the religion is given and no one can stop such practice but practices rituals which are against the fundamental rights shall be banned. Right to life is the natural right and one should keep this right above other rights.

Ban on Santhara is because it violates Article 21 of the Constitution of India. It does not mean that the fundamental right to freedom of religion is getting restricted. It is not a restriction over any rights under Article 25. Freedom of religion and associated practices is given to all people but practices or rituals shall be reasonable in nature which does not violate any laws.

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