VOLUME VI ISSUE –I (Jan-March 2020)

IILS QUEST

A Quarterly Journal authored by IILS Students
Published in the IILS Website

INDIAN INSTITUTE OF LEGAL STUDIES

Recognised under Section 2(f) & 12B of the UGC Act, 1956
UG & Post Graduate Advanced Research Studies in Law
Accredited by NAAC
Affiliated to the University of North Bengal
Approved by the University Grants Commission, New Delhi
Recognised by the Bar Council Of India, New Delhi

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MESSAGE

FROM THE PRINCIPAL'S DESK

Law students, the world over face a peculiar paradox. On the one hand, law schools relentlessly prod them towards academic pursuits and, specifically, getting their writing published. On the other hand, only a disproportionately few journals actually accept student submissions. In response to this, many universities have opted to establish journals exclusively intended for students.

IILS-QUEST is one such initiative serving several purposes. One, it serves as forum for student scholarship to reach a wider audience, and hence encourage and incentivize student involvement in research. Secondly, since most such journals are student-run in character, they

also familiarize students with the editorial and other skills required for producing academic journals. The IILS-QUEST is a wonderful initiative in this direction by the Indian Institute of Legal Studies.

It is a quarterly, student-run academic journal published regularly. IILS-QUEST has been initiated to fulfill the mandate of promoting research, scholarship, and writing skill among law students, it accepts contributions on all areas of law, and even social sciences issues bearing a legal incline. Undergraduate and postgraduate students of any discipline, not necessarily law, are invited to contribute.

I congratulate all the students who have actively taken this responsibility to run “IILS-QUEST". My best wishes are with the students of IILS, and I hope IILS-QUEST will be a continued success story.

Prof. (Dr.) Ganesh Ji Tiwari
Principal,
Indian Institute of Legal Studies

MESSAGE

FROM THE REGISTRAR'S DESK

It's a blissful moment when we find the fruition of efforts and initiative, painstakingly undertaken by our students, to shape the 'IILS QUEST', a Students' Journal. It acts as the platform for manifestation of the power of creation and talent of the students of our Institute. The IILS Quest has traversed a significant passage of time, and indeed it will move forward in pursuit of knowledge and truth of life and society. I congratulate all the students who have shouldered the responsibility and played the crucial role to bring out this valuable edition amid this pandemic situation prevailing in our country.

Shri Sanjay Bhattacharjee

Registrar,

Indian Institute of Legal Studies

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ARTICLES

SOCIAL NETWORKING SITES: A THREAT TO PRIVACY OF INDIVIDUALS AND AN INVITATION TO CYBER-CRIME.

By Sandip Kumar Singh
B.Com. LL.B Semester X

ABSTRACT

This article states how the use of internet and the social networking sites has become a threat to the privacy of every individual present on the social media platform with their personal identity and how it is an invitation to various forms of crimes such as CYBER CRIME, KIDNAPPING, HUMAN TRAFFICKING, etc.

INTRODUCTION

We all know that under the constitution of India the access to or the use of internet is a fundamental right of the Indian citizens, guaranteed **under Article 19(1)** and today the use of internet has become an essential part of human being of this generation. Internet also includes

the use of social networking sites like **Facebook, WhatsApp, Instagram, Twitter,** etc. which has also become one of the most important parts of our life. Millions of people visit these websites regularly to be in touch with their friends, share their thoughts, photos, videos and even discuss their personal life. At present, these are not just the media of communication but have also emerged as platforms to voice their own personal opinion and mobilize people for global revolutions.

As we know everything has good as well as adverse side/impact which is the universal truth that cannot be denied, similarly these social networking sites exert both positives and negative impacts. Commonly users take many risks and make mistakes while using these social networking sites like using unauthorized programmers, unauthorized network access, misuse of passwords and transfer of sensitive information from their personal accounts. However, the excessive trust over social networking sites can be used to perpetrate a variety of cyber attacks and data leakage. Due to the daily increase in the number of social media users, there is also a significant increase in the number of cyber attacks on them.

While greater connectivity via the World Wide Web promises large-scale progress, it also leaves our digital societies open to new vulnerabilities. Cyber crimes know no borders and evolve at a pace at par with emerging technologies.

RECENT REPORTS ON CYBER CRIMES

In 2018, there were over 27 thousand cases of cyber crimes recorded in the country, marking an increase of over 121 percent compared to the number of cases just two years ago. While the nature of crimes ranges from petty online frauds to lottery scams and sexual harassment, the most targeted crimes seem to be in the banking and finance sector.

It is important to remember that cyber vulnerabilities aren't just limited to private sectors. Some of the most dangerous data breaches have been with respect to government data. One such security breach was that involving ***India's unique citizen identification system- the Aadhaar,*** which got hacked in early 2018, compromising extensive personal information including bank details, address and biometrics of over a billion Indians.

In 2018 alone, India recorded over two thousand cases of cyber crimes related to sexual harassment and over 700 cases of cyber bullying against women and minors.

Most cyber crime incidents in India went unreported. And even when crimes were reported to authorities, the infrastructure and process to tackle such cases were largely inefficient.

CYBER CRIME

"Any criminal activity that uses a computer either as an instrumentality, target or a means for perpetuating further crimes comes within the ambit of cyber crime"[1]

Cybercrime is the use of a computer as an instrument to further illegal ends, such as committing fraud, trafficking in child pornography and intellectual property, stealing identities, or violating privacy.

Cybercrime, especially through the Internet, has grown in importance as the computer has become central to commerce, entertainment, and government. It is the latest and perhaps the most complicated problem in the cyber world.

WHY CYBER CRIME IS INCREASING DAY BY DAY?

Cyber crime is the modern way of committing crime by the technologically advanced and equipped criminals where the chances of being detected and caught are very less. It is the new terminology of crime which involves digital way of crime. Generally in any business

[1]Tarun Aroara, The Concept of Cyber Crimes: An Introduction", Legal News & Views, Vol.22, No.6, June 2008.p.28

an entrepreneur likes to take lower risk and expect higher return in its investment, and as such the technologically advanced and equipped criminals commit cyber crime because they have lower risk involved in this type of crime and the rate of return is high as compared to any other types of crime. Mainly due to this reason the cyber crime is committed by criminals so as to access information, data and use it for good returns; but to catch criminals is difficult. Hence, because of this cyber crime is increasing day by day in every part/corner of the world.

COMMON SOCIAL MEDIA SECURITY RISKS

- **Cyber defamation:** It refers to the publication of false information in the electric form. Cyber defamation is punishable under Section 499 of Indian Penal Code and section 4 of IT Act, 2000.
- **Cyber stalking:** It includes the online stalking of any person to cause any type of harm to that person. Generally, these are done to keep an illegal watch on a person so that they can manipulate them according to their benefit. It is also an offense under the 354D of Criminal Law (Amendment) Act, 2013.
- **Cyber pornography:** It includes online porn videos or magazines or anything else which provides an online medium for the stimulation of sexual behaviors. Obscenity without a

social purpose or profit cannot claim protection under the ambit of free speech or expression.

- **Idle social media accounts:** Idle social accounts are generally targeted by the hackers who try to send fraudulent messages under ones name. Knowing the account is unmonitored, once they are able to get control, they could send anything from false information to virus linked attachments which can cause a serious harm to the account holder as well as their followers.

WHY AND HOW THE ACCESS TO INTERNET AND USE OF SOCIAL NETWORKING SITES IS A THREAT TO PRIVACY OF INDIVIDUALS WHO ARE ON SUCH ONLINE PLATFORMS?

AND

HOW THE USE OF SOCIAL NETWORKING SITES IS AN INVITATION TO VARIOUS FORMS OF CRIMES SUCH AS CYBER CRIME/ KIDNAPPING/ HUMAN TRAFFICKING Etc.?

As we know under the constitution of India **the access to or the use of internet** is a fundamental right of the Indian citizen's guaranteed under Article 19(1) which deals with Freedom of speech and Expression. Also Article 21 of our constitution gives one of the most essential

fundamental rights i.e. the right to life and personal liberty to the Indian citizen which includes the **right to privacy and right to live with dignity.**

These days the access to internet (being a fundamental right of the Indian citizens) is a basic necessity and is as important as food, clothing and shelter for any individual in the smart cities. The twentieth century is no less than a dream come true and it has also brought to reality the idea of a global village, where digital technology has interconnected people from one part of the world to the other but this connectivity of people in virtual world has also brought the risk of data and information leakage through the medium that is used by our generation for such connectivity. And it also puts risks on the privacy of individuals who are on such online platforms.

Nowadays users of social media/ sites are less bothered about their own safety and privacy; rather they are more worried about how their profile and pictures look in social media accounts. The users simply posts their pictures of each and every moment and also they posts on their user handle about their travelling information while they are travelling and this way they unknowingly put themselves under risk without worrying about their own safety and privacy.

Our generation is active on social media/sites where we tend to give our

personal information or details, and also share our images on such sites which are public. As such our information and our images are available to both the known as well as unknown person and in return our credential information and images can be misused by the cyber criminals to taint our reputation, or to cause any other types of cyber attacks in many ways like- Identity theft and invasion of privacy, spam, hacking etc.

Today social media accounts are solely made for the purpose of hacking the personal banking or transactional details and cause financial harm to the person. In recent years, there has been a severe increase in the number of these types of cyber attacks and generally, people are not able to protect themselves from these attacks due to the lack of knowledge on the part of the user and also insufficient or incapable of watchdog bodies.

At present, the SOCIAL NETWORKING SITES also act as a tracker for the criminals that enable them to easily track the targeted victim to abduct or traffic them abroad.

While Indian citizens enjoy one of their fundamental rights to access internet and social networking sites, but at the same time they themselves knowingly or unknowingly put their privacy at risk and curtail their right to privacy by themselves. Even if our account is at the highest security level, there is a greater chance of having your identity stolen. The same has been seen in many cases like in the instance when

almost 300 million account holders' personal information were leaked from Facebook which claims to be one of the safest sites to provide cyber security about its content.

CYBER LAWS IN INDIA

Cyber Crimes, in India are registered under three main heads, The IT Act, The IPC (Indian Penal Code) and State Level Legislations (SLL).

CASES OF CYBER LAWS UNDER IT ACT:

- Tampering with computer source documents – Sec. 65
- Hacking with Computer systems, Data alteration – Sec. 66
- Publishing obscene information – Sec. 67
- Un-authorized access to protected systems – Sec. 70
- Breach of Confidentiality and Privacy – Sec. 72
- Publishing false digital signature certificates – Sec. 73

CASES OF CYBER LAWS UNDER IPC AND SPECIAL LAWS:

- Sending threatening messages by email – Sec 505 IPC
- Sending defamatory messages by email – Sec 499 IPC
- Forgery of Electronic records – Sec 463 IPC
- Bogus websites, Cyber Frauds – Sec 420 IPC
- Email Spoofing – Sec. 463 IPC
- Web- Jacking –Sec. 383 IPC
- Email abuse – Sec 500 IPC

Cyber Crime under special cells:

• Online sale of Arms Act

• Online sale of Drugs under Narcotic Drugs and Psychotropic Substances Act

PREVENTIVE MEASURES

- Users should always update their software and anti viruses for better protection.
- New users or kids must be given awareness of how to use social media in an effective and secure way.
- Always avoid sending any media, documents or photographs to an unknown person on social media as they can use those things for cyber crimes and various other crimes.
- Payments made in purchasing applications or games in social media accounts must be made in secure mode so that hacker may not be able to hack those payment modes.
- Some hackers are using popular Facebook Messenger (FM) service as a platform to spread fake and hoax links which when clicked can turn into huge cyber threats. So, if anybody who gets a suspicious link from a friend on Facebook Messenger should from be very careful while clicking the link inserted in the message.

- Website owners and intermediates must monitor website traffic and also take appropriate steps on the abnormal activity when detected.
- The users should refrain from sharing all their personal information so as to keep themselves away from any kind of cyber attacks.

CONCLUSION

Cybercrime has emerged as a crime of the modern society with increase in the use of new technologies. From the very beginning it has been menacing the social media platform. We might have heard regularly or seen many cases of cyber attacks which have been caused on the social media platform. There is no competent court to have jurisdiction over these matters as the cyber crimes are borderless. There is an urgent need for an effective policy for the use of social media platforms. There must be some efficient measures to find cyber evidences. As the world knows that cybercrime is a borderless crime, all the nations should come forward to make a concurrent and strict law to protect the online source as it can harm any person, organization or whole country since all data is present online and leakage of these data can have a devastating effect.

EXTRADITION

By Sristi Gazmer
B.A. LL.B Semester X

ABSTRACT

Ordinarily each State exercises complete jurisdiction over all the people within its territory. However, sometimes there may be cases when a person after committing crime runs away to another country. In such a situation, the country affected finds itself helpless to exercise jurisdiction to punish the guilty person. This situation is undoubtedly very detrimental for peace and order. Fugitives undermine the world's criminal justice systems. The present day fugitives are techno savvy and highly dependent on their cell-phones. They may be charged with a violation of the law but they may easily escape arrest; they may be released on bail, and then flee to avoid prosecution or. When fugitives flee to escape their charges, cases are not adjudicated; convicted criminals fail to meet their liability, and victims of their crime are

denied justice. If fugitives are not pursued by means of an effective legal methodology to locate them and tried or restored to prison a subtle message is conveyed to others -fleeing from the law or failing to comply with the law is somehow acceptable.

The inability of a State to exercise its jurisdiction over fugitives who are within the territory of another state would seriously undermine the maintenance of law and order unless there is a system of state co-operation to overcome the same. The awareness amongst nations about the social necessity of developing inter jurisdictional co-operation is reflected in the existing widespread practice of returning a person who is accused or who has been convicted of a crime to the State in which the crime was committed. In other words, owing to these reasons the practice of extradition came into vogue.

INTRODUCTION

Extradition may be briefly described as the surrender of an alleged or convicted criminal by one State to another. More precisely, extradition may be defined as the process by which one State upon the request of another surrenders to the latter a person found within its jurisdiction for trial and punishment or, if he has been already convicted, only for punishment, on account of a crime punishable by the laws of the requesting State and committed outside the territory of the requested

State. Needless to say extradition plays an important role in the international battle against crime particularly in the present era in which the crimes and criminals have become a strong organized force with destructive global ramifications.

Extradition is a complex, international process that involves the municipal law, inter-country agreements, international law, courts, requirements of individual governments, interests of individuals, etc. In general, extradition is seen as a gesture of goodwill from the country which is holding the suspect towards the country to which it gives the fugitive criminal to. Most countries are not obliged to give up a suspected criminal to another country's legal system. Since there is no common international law governing extradition, countries have begun set up individualized extradition treaties and arrangements with other countries. There are several factors that come into play regarding the decision to extradite.

DEFINITION

Over a period of time the law relating to extradition evolved according to changing times. Taking into consideration the evolving perceptions of international community regarding extradition and the existence of varying legal regimes governing extradition decisions in individual countries, United Nations took steps to design Model Extradition Treaty, 1994 and Model Law of Extradition in 2004 with a hope to

bring harmonization of extradition regime.

i. LAWRENCE- Lawrence defines Extradition as "the surrender by one state to another of an individual who is found within the territory of the former, and is accused of having committed a crime within the territory of the latter, or who having committed a crime outside the territory of the later is one of its subjects and as such by its law amenable to its jurisdiction".
ii. OPPENHEIM- According to Oppenheim, "extradition is the delivery of an accused or a convicted individual to the state or whose territory he is alleged to have committed or to have been convicted of, a crime by the state on whose territory the alleged criminal happens for the crime to be".

GROWTH OF EXTRADITION UNDER INTERNATIONAL LEGAL REGIME

"Extradition" under Public International Law regime has always been developing with the needs of the society, and the growing demand for prosecutions for accused individuals has lent more functionality to this branch of study. In the last few decades we have witnessed some very important decisions being given by domestic as well as international courts, on extradition matters, which have encouraged the victims more

and more to seek justice.

Extradition laws like any other discipline under international law has been developed from state practices, which eventually have led to recognizing of some basic principles, which are now widely adopted in the bi-lateral and multilateral treaties.

This paper would firstly, explain the origin and meaning of the term "extradition", while referring to both primary and secondary sources of literature, with the objective of understanding the general principles of extradition, as has developed over centuries. With the changing dynamics of international relations, the scope of extradition laws also have been changing, making it pertinent to understand the development of the extradition laws with reference to some watershed moments in history. It is well known that extradition while keeping up with the needs of the society have been amenable to changes in its way of being executed. However, if we try to locate the most important phase of its development in the recent decades, then the existing terrorist threats or successful terrorist attacks definitely needs to be zeroed down. Terrorism on the other hand can be safely be said to have become global, in the sense of being carried out and the effects being felt by more than one nation at the same time. To meet the challenges of the threats posed by acts of terrorism, the comity of nations have also with the passage of time developed a well detailed multi-lateral treaty system, which monitors the extradition issues as well. The researcher intends to lay out the major developments in the extradition laws with

reference to terrorism in particular and the way the treaty laws have developed to keep up with the new challenges imposed by the threat of terrorist attacks.

PRINCIPLES OF EXTRADITION

In International Law, the rules regarding extradition are not well established mainly because extradition is a topic which does not come exclusively under the domain of International Law. Law of extradition is a dual law. It has operation national as well international operation. Extradition or non-extradition is determined by the municipal Courts of a State, but at the same time it also a part of International Law because it governs the relation between two States over the question whether or not a given person should be handed over by one State to another State. This question is decided by the national Courts but on the basis of international commitments as well as the rules of International Law relating to the subjects.

In the absence of any multilateral treaty or Convention, extradition is done by States on the basis of bilateral treaties where in provisions are made in accordance with the municipal laws by which they have agreed between themselves to surrender the accused to the requesting State in case such person comes under the purview of a given treaty. Bilateral treaties are supplemented by national laws or legislation at municipal level. Thus many States have national legislations. They have made

rules regarding extradition of fugitive criminals. For example, in India, the rules regarding extradition have been made in the Extradition Act of 1962 and the Extradition (Amendment) Act, 1993. Similarly, other States also have their own extradition laws.

One way or the other, bilateral treaties, national laws of several States and the judicial decisions of municipal Courts led to develop certain principles regarding extradition which are deemed as general rules of International Law. Though there are numerous provisions which deal with extradition, each case has to be considered individually and according to the applicable provisions. However, these general rules are common to most extradition laws. It is quite evident that the traditional International Law gives each State liberty to exercise absolute and exclusive administrative and jurisdictional power irrespective of the will of other State or States. This legal postulate is deeply rooted in one of the oldest conceptions of Law of Nations, namely the concept of sovereignty which vests in a State, in the absence of any other supervising authority with complete independence of action in its internal as well as external activities. It is internal independence that empowers a State to exercise absolute and supreme authority over all persons and things found within its frontiers. Similarly, external independence gives a State absolute liberty of action outside its borders to manage its international affairs according to its own discretion.

However, this independence does not give unlimited liberty of action to a State to do what it likes without any restriction whatsoever. The mere

fact that a State is a member of international community limits its liberty of action with regard to other States. Thus sovereignty is a territorial concept and has no application outside its territory.4 Moreover a sovereign State, is fully entitled to put any limitation or restriction on its sovereignty by entering into an international agreement or treaty with another sovereign State or States or with some organisation enjoying international personality or by usages generally accepted as expressing Principles of Law to regulate relations between these co-existing independent communities. Thus, the sources of the right to demand the extradition of fugitive offenders from justice of foreign States are not only contingent or conventional stipulation, but based on wider and broader principles of morality, solidarity and convenience. All these principles stand for the conservation of law and order, the observation of justice and the repression of crimes through the prosecution and punishment of guilty persons.

Thus the most modern extradition treaties seek to balance the rights of the individuals with the need to ensure extradition process that operates effectively and are based on principles that are now regarded as established international norms, which are designed not only to protect the integrity of that process itself, but also to guarantee the fugitive offender a degree of procedural fairness. In practice, therefore, the return of criminals is secured by means of extradition agreements between States. Although International Law does not require such treaties to follow a particular form, certain general principles of

extradition law have emerged from the practice of States, which are commonly incorporated into extradition agreements. In 1990 the General Assembly of the United Nations approved a Model Treaty on Extradition containing many of these principles, which aims to provide 'a useful frame work' for States in the negotiation and revision of bilateral agreements7 and Revised Manuals on the Model Treaty on Extradition and on the Model Treaty on Mutual Assistance in Criminal Matters, 2004. Exactly no amendment has been made to the Model Treaty on Extradition, December 14, 1990. In the Revised Manuals on the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters, 2004, the text remains the same.

The general principles are being discussed here taking into consideration the practice of the States.

EXTRADITION TREATIES OR ARRANGEMENTS

The first and the foremost general principle of extradition is the Extradition Treaties. The consensus in International Law is that a State does not have any obligation to surrender an alleged criminal to a foreign State on account of principle of sovereignty that every State has legal authority over the people within its borders. Such absence of international obligation and the desire of the right to demand such criminals of other countries have caused a web of extradition treaties or

agreements to evolve. Most countries in the world have signed bilateral extradition treaties with most other countries. No country in the world has extradition treaty with all other countries8. Extradition treaties and legislation not only supply the broad principles and rules of extradition but also dictate the very existence of the obligation to surrender fugitive criminals. It is clear that States do not extradite criminals in the absence of a treaty or a municipal law which empowers them to do so. The existence of commitment to the requesting State is an express condition precedent to extradition in the United States, Great Britain, and the countries of the Commonwealth whose extradition laws are modelled to those of Great Britain. The majority of international extradition agreements are bilateral treaties. During the nineteenth and early twentieth century, the extradition law as it is known today was developing and spreading from Europe to the rest of the world. Many States concluded bilateral treaties specific to the demands of those particular relations. Bilateral treaties make for a piecemeal approach to extradition practice, given that some differences will arise during each set of negotiations, but the agreement will be that best suited to the two Parties in particular situation10. Undoubtedly though, bilateral treaties will continue to be the most numerous forms of extradition arrangements, yet the different approaches by States to international treaties in domestic law also affects extradition laws. In England and Australia, for instance, the treaty on its own cannot empower a court to

grant surrender, domestic legislation has to be passed to implement the treaties.

The Statutes permit extradition and the treaty can only be used to fill any gaps or to improve the rights of the fugitive. In France and Switzerland extradition treaties are self-executing and provide the law for the extradition hearing with the domestic legislation filling the gaps and being a substitute mechanism when no treaty exists. In practice there is a little difference in two approaches.

In the case of *United States v. Rausher*, the Supreme Court of the United States stated the American view on extradition in these terms:

"It is only in modern times that the nations of the earth have imposed upon themselves the obligation of delivering up these fugitives for justice, to the states where the crimes were committed, for trial and punishment. This has been done generally by treaties. Prior to these treaties and apart from them there was no well-defined obligation on one country to deliver it was upon the principle of comity and it

Since 1815, the British Courts have constantly maintained a similar attitude as that of the United States. Prior to that date the view was held by the Law officers of the Crown that the Royal Prerogative extended to the power of surrendering aliens to foreign States and that there existed judicial authority to the same effect.

The statement of Lord Russell in 1862 made the position more clear than ever, when he said:

"The principles of international law recognize no right to extradition apart from treaty. While a government may, if agreeable to its own constitution and laws, voluntarily exercise the power to surrender a fugitive from justice to the country from which he had fled, and it has been said that it is under a moral duty to do so the legal right to demand his extradition and the correlative duty to surrender him to the demanding country exists only when created by treaty." The same principle has found expression in the judicial practice of those countries which form part of the British Commonwealth. Therefore an Indian Court15 declined to deliver up one Tarasov to Russia, because there was no treaty on extradition between the Soviet Union and India. Basically, on the same plea Ghana, Maldives and Pakistan refused to surrender the alleged criminals found within their territories to the demanding states viz. Federal Republic of Germany, Ghana and India in the absence of any treaty on extradition between the asylum and the requesting States. In contrast to this view the courts of Latin American States as well as of the European continent have demonstrated a greater willingness to grant extradition in the absence of a treaty arrangement. However, when there is a treaty arrangement between two or more States, a demand for extradition would only be granted in the cases and in conformity with the conditions formally prescribed in the treaties. While bilateral treaties were the first method to be used to conclude extradition relations, States have also developed alternative forms of arrangements.

Thus the extradition treaties may be deemed declarative of an existing reciprocal relationship or creative of the substantial basis of the very process. As has been stated by Whiteman: “Extradition treaties do not, of course, make crimes.” They merely provide a means whereby a State may obtain the return to it for trial or punishment of persons charged with or convicted of having committed acts which are crimes at the time of their commission and who fled beyond the jurisdiction of the State whose law it is charged, have been violated”. (general principles of extradition)

EFFECT OF WAR ON EXTRADITION TREATIES

There have been two different opinions on the question of extinction of treaties as a result of the outbreak of war, ranging from total abrogation of the treaty to the continued enforcement of the treaty. The doctrine sometimes, asserted, especially by earlier writers, that war *ipso facto*, abrogates the treaties of every kind between warring Parties. The contemporary view is that whether the stipulations of a treaty are cancelled by the war depends upon their extrinsic character. It is obvious that war must extinguish certain treaties, such as those of friendship and alliance, because of their very nature, whereas treaties contemplating a permanent arrangement of rights are not to be

abrogated by the occurrence of war, but merely suspended during the conflict.

Thus in *Karnath v. United States,* the Court observed that:

"There seems to be a fairly common agreement that at least the following treaty obligation remain in force; stipulations in respect of what shall be done in a state of war; treaties of cessation, boundary and the like; provisions giving the right to citizens or subjects of one of the high contracting powers to continue to hold and transmit land in the territory of the other; and generally provisions which represent complete Acts. On the other hand, treaties of amity, of alliance, and the like having political character, the object of which is to promote relations of harmony between nation and nation, are generally regarded as belonging to the class of treaty stipulations that are absolutely annulled by war".

Several tests have been suggested in order to access the effect of war on treaties. Whether a treaty should be regarded as having abrogated altogether or as being merely in suspense during the period of hostilities, or as continuing in force during hostilities, has been said to depend on the objective compatibility of the treaty with a belligerent situation. Alternatively (or conjointly), the subjective intentions of the Parties or their political conduct with regard to the treaty may be considered. On any test, a treaty of perpetual friendship and alliance, for example, would fall to the ground on the outbreak of hostilities, whereas the Geneva Convention on the Treatment of Prisoners of War

would by virtue of its very object apply during hostilities. Extradition treaties die at neither of these two extremes. The effect of war on extradition treaty was at issue in *Agrentov.Horn*where the fugitive argued that, despite the purported 'revival' by the United States of the extradition treaty with Italy pursuant to Article 44, of the Peace Treaty of 1947, the treaty has been abrogated by the outbreak of war and could be replaced only by an altogether new treaty. The court avoided the theoretical question by basing its decision on a consideration of the 'background of the actual conduct of the two nations involved acting through the political branches of their governments.'

In the light of the provisions of the Peace Treaty which invited notification by the state department of the revival of the treaty in question, and the subsequent conduct of the Parties evidencing an understanding that the treaty was in force, the court was moved to the conclusion that the treaty had been merely suspended, and had not been abrogated, during the war.

Similar problem had further been discussed in *Gallina v. Fraser case* where it was contended that decision in the *Agrento v. Horn* was based solely on the ground that the Political Department determines whether or not a treaty survives a war and was therefore erroneous. The court relied on *Charlton v. Kelly* in acknowledging the pre-eminent role of political departments in interpreting treaty obligations. It however, stressed, that it was not relying "solely" on the views of the political

departments. It further admitted that while some treaties must necessarily be considered as extinguished by a state of war.

Thus it can be concluded that during the war certain class of treaties definitely extinguish between the belligerent States for e.g. those of amity, alliance and having political party until they are revived by express or implied renewal on the return of peace. However all the jurist agree on the point that a treaty stipulating for permanent rights as general agreement and professing to aim at perpetuity do not cease on the occurrence of war.

STATE SUCCESSION AND EXTRADITION TREATIES

A State generally goes constitutional changes in three forms;

i) Change of Parties or Ministers

ii) A change in the constitutional character of a government, in other words, when a State changes its constitutional framework so fundamentally as to suggest that new entity has been created.

iii) When a State changes its status for e.g. gaining independence or cease to be an international person through incorporation into or absorption by another

State either voluntarily or as a result of conquest or annexation.

So far as the first change is concerned no question of International Law arises. It is an established fact that all the treaties that have been concluded between sovereign States are not personal but national and thus like other national rights and obligations are inseparable as has been rightly said by Sir James Marriot;

“The sovereign contracts, not for himself as a private person (for that idea would be injurious to sovereignty) but as a public one. In other words, he binds himself, his 80 successors and his people, as great representatives of a whole kingdom, who neither dies nor changes in his national capacity.”

Therefore changes in governments do not affect the States international engagement because governments come and go, but the State remains as international person.

In the second form of change when a State changes its constitutional framework emerging from a monarchy into a republic or vice versa or from democratic into a totalitarian State, there seems to be a common agreement among jurists and publicists that the changes in the constitutional frame work of a State have no influence on its international rights and obligations arising from treaties concluded by the former regime. On this point Wheaton has very clearly observed;

“They (real treaties) continue to bind the State, whatever intervening changes may take place in its internal constitution, or in the persons of its rulers. The State continues the same, notwithstanding the change and

consequently the treaty relating to national objects remains in force so long as the nation exists as an independent State".

Thus, it is clear that generally, the question of State succession arises whenever there is a change in the country's status rather than government. This question arose recurrently whenever former colonies of a given State become independent or when a State ceases to be an independent international person through incorporation into or absorption by another State either voluntarily or as a result of conquest or annexation. Ordinarily States on attainment of independence, assume the treaty obligations applicable to their respective territories which were formerly binding on the parent State.

In *Terlinden v. Anes* it was contended by the fugitive that the creation of the German Empire in 1871, had terminated the Extradition Treaty between the United States"whether an extradition treaty exists is an issue with major foreign policy implications and one which does not easily fall within the sphere of the judicial branch of government."

Another viewpoint is that the States are free not to assume treaty obligations of the parent State on the attainment of independence, if they think so, a new State has been said to begin its life with 'a clean slate' so far as the treaties of its predecessor are concerned. Similarly an annexation and absorption automatically destroys all the previous treaties concluded by the extinct State. This view was endorsed by German Supreme Court when it declared;

"The extradition treaties concluded between France and the German States are extinguished in consequence of the Law of January 30, 1934, regulating the reorganisation of German Empire by virtue of which Germany has become a Unitarian state while the German States have ceased to exist in their capacity as subjects of International Law.

EXTRADITION AND POLITICAL OFFENCE

Another accepted principle in International Law is that the political offences may not give rise to extradition. Under existing extradition treaties, as well as in most-systems of municipal laws, extradition shall not be granted if the offense for which extradition requested is regarded by the requested State as a political offence or an, offence connected with political offence. The United Nations Model Treaty on Extradition, 1990, arranges it as a mandatory ground for refusal by the requested State as compared with the optional ground for refusal.38 Article 3(a) of the Model Treaty states as under:

"Extradition shall not be granted if the offence for which extradition is requested is regarded by the requested State as an offence of a political nature". Again under Model Law on Extradition 2004 under Chapter 2, Section 4 deals with offences of political nature. It States:
"Extradition (shall not be granted) (may be refused), if the offence for which it requested is an offence of a political nature".

Similarly Article 3(1) of the European Convention, 1957 also provides: "Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested party as a political offence or as an offence connected with a political offence."

Article 4(4) of the Inter American Convention, 1981 stipulates similar provisions.

The Indian Extradition Act, 1962 also makes the law for such exclusion. Section 31 (1) of the Act lays down that a fugitive criminal shall not be surrendered or returned to a foreign State if the offence in respect of which his surrender is sought is of a political character.

KINDS OF EXTRADITION TREATIES

There are mainly two types of extradition treaties

1. List Treaty: The most common and traditional is the list treaty, which contains a list of crimes for which a suspect will be extradited.

2. Dual Criminality Treaty: This type of treaty has been recognized since 1980. It generally allows for the extradition of the criminal suspect if the punishment is more than one year imprisonment in both the countries.

Under both types of treaties, if the conduct is not a crime in both countries then it will not be an extraditable offence.

Thus it can be concluded that the purpose of Extradition treaty is that

a) No criminal should go unpunished.

b) Country does not have extra-territorial jurisdiction except in some serious offence.

c) It works as warning for the criminals.

d) To eliminate the crime from the society.

OBJECTIVES OF EXTRADITION

A criminal is extradited to requesting state because of the following reasons:

- **i.** Extradition is founded on the broad principle that it is in the interest of the civilized communities that criminals should not go unpunished and on that account it is recognised as a part of the committee of nations that one state should ordinarily afford to another state assistance towards bringing offenders to justice.
- **ii.** Extradition has a deterrent effect because Extradition acts as a warning to criminal that they cannot escape punishment by playing to another state.
- **iii.** Criminals are surrendered as to safeguard the interest of territorial state.
- **iv.** Extradition is done because it is a step towards the achievement of international cooperation in solving international problems of a social character.
- **v.** Extradition is based on reciprocity.

vi. The state on whose territory the crime has been committed is better position to try the offender because evidence is more freely available in that state only.

EXTRADITION LAW IN INDIA

In India for the first time an Extradition Act was enacted in 1902. Prior to the enactment of the Act of 1062 extradition in India was regulated on the basis of the United Kingdom Extradition Act of 1870. The Act of 1870 was a law for whole of the British Empire. The surrender of fugitive criminals amongst the countries of British Empire was regulated by another Act, i.e.., the Fugitive Offenders Act of 1881. Thus, extradition to and from countries of British Empire was treated on different footings to that of extradition from other countries. The Indian Extradition Act of 1903 was enacted to provide for more convenient administration in British India and to supplement the Extradition Act of 870 and to the Fugitives Offenders Act of 1881. Thus, the Act of 1903 was supplementary to the above two Acts. The Act of 1903 continued to be in force after India became independent. Presently India has extradition treaties with 47 countries and extradition arrangements with 9 countries. List of extradition treaties includes a few pre-independence treaties. From 2002 to 2016, sixty two fugitives have been extradited by foreign countries to India on the basis of

extradition treaties. Crimes for which they have been extradited include murder, kidnapping, fraud, cheating and terrorism. India has also extradited 49 persons to other states. Indian citizen constituted the bulk of these offenders. (Agarwal, 2019)

CONCLUSION

It is clear from the conceptual analysis that extradition law is a mixture/amalgamation of international and domestic law involving a complex admixture of levels and forms of regulation which incorporate different levels of international and domestic law.

The problems faced by the authorities on account of the absence of a uniform code on the principles that govern extradition of the fugitives and criminals in obtaining the custody of criminals have been pointed out. Moreover the political intervention has been observed as another major problem hampering the process of extradition.

Extradition treaties and legislations not only supply the broad principles and rules of extradition but also dictate the very existence of the obligation to surrender fugitive criminals. The majority of international extradition agreements are bilateral treaties, though nowadays alternative forms like multilateral treaties and regional arrangements have also been developed by the States. Thus, the extradition treaties may be deemed declarative of an existing reciprocal relationship or creative of the substantial basis of the very process.

PRINCIPLES OF NATURAL JUSTICE

By Devjani Roy
B.B.A. LL.B Semester VI

ABSTRACT

The Laws which pertain to the concept of Natural Justice have always held a latent significance as compared to that of various other laws. Almost every other nation or country has witnessed the disputes on the validity and invalidity of these laws due to the complexities that are involved as to the absence of any legal sanctions to them, and the same goes for India. Therefore, it has become highly significant to understand that, whether the theories of the Natural Law are practically valid or invalid. The present article shall deal mainly with the Principles of Natural Law at the basic level, as is being provided under the Indian Context. You shall learn about the theories under the same and also their importance. This article shall also include the exceptions to those principles and practical application in day to day lives.

INTRODUCTION

Principle of Natural Justice has been derived from the word '*Jus Natural'* of the Roman law. The term 'Natural Justice' expresses a close relationship between the common law and the moral principles and also describes what is right and what is wrong but it is not a codified law. Natural Justice has been regarded as an effective procedural safeguard as against any undue exercise of power by an administrator. The main element of Natural Justice is that the right of being heard (Audi Alteram partem). No matter what, but it is true that the concept of Natural Justice is not very clear and, therefore, it is not easy to define it also; yet the principles of natural justice are accepted and enforced. Natural justice has been considered to be a branch of public law. This principle has been adhered to by all the citizens of the civilized State and with the supreme importance. In other words, natural justice simply means to make a sensible and a reasonable decision by making a procedure on a particular issue. Sometimes, it may happen that it does not matter what is the reasonable decision but at the end, what matters is the procedure and also who all are engaged in taking and giving the reasonable decision. This principle is not restricted within the concept of "fairness" as it has different colours and shades which vary from case to case.

The aim of the rule of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice for just, equity and good

conscience. This principle also provides equal opportunity of being heard, gives the concept of fairness, also to fulfil the gaps and the loopholes of the law, this principle gives aid to or protects the Fundamental Rights. And it is the basic feature of the Constitution. The principle of natural justice should be free from biasness and it is the duty of the court to give parties a fair opportunity to be heard and also to inform all the reasons and decisions taken by the court. These rules operate in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.

Basically the natural justice consists of 3 rules.

'Hearing rule' – it states that any person or any party who is affected by the decisions, which has been made by the court or the penal against them should be given a fair opportunity, so that he can express his point of view to defend himself.

'Bias rule' – this rule basically expresses that the panel of expert members should be free from any short of biasness while taking the decision.

'Reasoned decision' it states that 'bias' means an operative prejudice, whether unconscious or conscious in relation to a party or issue, hence, the decision, order or judgment of the court which is given by the presiding authorities should be valid with a reasonable ground.

The traditional English law recognizes the following principles of the natural justice:

NEMO DEBET ESSE JUDEX IN PROPRIA CAUSA

No man can be a judge in his own cause

AUDI ALTERAM PARTEM

Let the other side be heard.

ORIGIN

It is said that the principles of natural justice are of very ancient origin, that is, a very old concept and this concept was known to the people of Greece and Rome. The notion of the natural justice system emerges from the religious and philosophical beliefs about how we see ourselves with respect to nature. Kluckhohn's (1953) analysis provided his one of the most noted description of the philosophical principles that governs our relationship with nature. He claimed that human beings think of themselves as being (a) an inherent part of the nature, (b) subjugated to the nature, (c) separate from nature. Each of these stated views shapes a particular natural justice belief and thus a distinct moral stance towards the nature. It was observed that some cultures emphasize their harmonious relationship with the nature and would also tend to adopt a morality of caring, others emphasize their submissiveness towards nature and would tend to adopt a morality of divinity. Still there are few others who emphasize their control over the nature and would tend to adopt a morality of justice.

The concept of natural justice was acknowledged as early as in days of Kautilya, Arthashastra, and Adam. According to Bible, in the case of

Eve & Adam, when both Adam & Eve ate the fruit of knowledge, which was forbidden by God, the latter did not pass sentence, i.e.; before giving the sentence, Adam was called upon to give him a fair chance to defend himself and the same process was followed in the case of Eve too. Later on, the principle of natural justice was accepted and adopted by the English Jurists to be so fundamental as to over-ride all laws. The word natural justice was derived from the Roman word 'Jus-Naturale' and 'Lex-Naturale', which planned the principles of natural justice, natural law and equity.

Evidently, the principles of natural justice is not a new invention however it isn't manmade either, however, it has been derived from our core moral conscience and built upon by several philosophers and jurists. Aristotle being one of the biggest proponent philosopher of natural justice as a support for a virtuous existence that advances lives of the individuals and promotes a perfect community; and people should employ practical wisdom or active reason to be consistent with virtuous existence.

In India, this concept was introduced at a very early time. In the case of **Mohinder Singh Gill v. Chief Election Commissioner**, the court held, the concept of fairness should be in every action whether it is Judicial , Quasi-Judicial , Administrative and or Quasi-Administrative work.

RULES OF NATURAL JUSTICE

- NEMO JUDEX IN CAUSASUA
- AUDI ALTERAM PARTEM

- SPEAKING ORDERS OR REASONED DECISION

NEMO JUDEX IN CAUSA SUA

Nemo judex in causa sua (or nemo judex in sua causa) is a latin phrase which literally means "No one should be a judge in his own case" i.e. no man can act as both and at the same time – a party or a suitor and a judge and the deciding authority must be impartial and without any bias, because it leads to biases. The rule is very strictly applied to the appearance of any possible bias, even if there is actually none: ***"Justice must not only be done, but must be seen to be done".***

This principle is more popularly known as the DOCTRINE OF BIAS.Bias means an act which leads to an unfair activity whether of a conscious or unconscious stage in relation to the party or a particular case. Therefore this rule is required to make the judge impartial and give judgment on the basis of evidence received and recorded as per the case.

Justice Gajendragadkar has then observed in a case reported in **M/s Builders Supply Corporation v. The Union of India and others**[1], "it is obvious that the pecuniary interest, howsoever small it may be, in a subject matter of the proceedings, would wholly disqualify a member from acting as a judge".

Lord Hardwick observed in one of the infamous case, "In a matter of so tender a nature, even the appearance of evil is to be avoided." Yet it has

[1] AIR 1965 SC 1061

been laid down as principle of law that pecuniary interest would disqualify a Judge to decide the matter even though it is not proved that the decision was in any way affected.

This is thus a matter of faith, which a common man must have, in the deciding authority. Imagine, if one sits in his own case as a judge and decides the case, the justice delivery system will never be free from criticism. So it is imperative that no one shall be a judge in a case where s/he is either directly or indirectly a party. This principle is applied in those cases also where the deciding authority has some personal interest in matters other than pecuniary interest, where this may be in shape of some kind of personal relationship with one of the parties or may be an ill will against any of them.

In the case of **A.K. Karipak v. Union of India**[2]**,** a precaution was taken by a member of the selection Board to withdraw himself from the selection proceedings at the time his name was considered. The precaution taken couldn't cure the defect of being a judge in his own cause since he had participated in the deliberations when the names of his rival candidates were being considered for selection on merit.

In another case order of punishment was held to be vitiated, as the officer who was in the position of a complainant/accuser/witness, could not act as an enquiry officer or the punishing authority. There may be a possibility, consciously or unconsciously to uphold as Enquiry Officer what he alleges against the delinquent officer. **(State of U.P. v.**

[2]AIR 1970 SC 150

Mohammad Nooh)[3]

The position may, however, be different when merely an official capacity is involve in taking a decision in any matter as distinguished from having any personal interest. There are certain statutes which provide that only the named officers may resolve the controversy, if any, arising out between the organization and the other persons, e.g., in matters related to nationalization of routes, Government officers or authorities were vested with the power to dispose of the objections. In such matters, it has been held by the Supreme Court that the proceeding will not vitiate as it was only in the official capacity that the officer was involved and therefore, it would not be correct to say that he was a judge in his own cause being an officer of the Government.

Exceptions to this rule:-

- Where disclosure could be prejudicial to public interest.
- Exclusion in case of emergency.
- When prompt action is needed.
- Where no right of person is infringed.
- Exclusion on the ground of no fault decision maker.

Types of Bias

The principle of natural justice or fairness is the sine qua non of the democratic government. Principles of natural justice includes rule against bias, where bias include the following:

[3]AIR 1958 SC 86

1. Personal Bias.
2. Pecuniary Bias.
3. Subject matter Bias.
4. Departmental Bias.
5. Policy Notion Bias.
6. Bias on the account of obstinacy.

Personal Bias

Personal bias may arise out from a relation between the party and the deciding authority, viz., arise out of friendship, relationship, professional grievance or even enmity. This leads the deciding authority in a doubtful situation to make an unfair activity and give judgment in favour of his person; such situations or equations arise due to various forms of personal and professional relations. Here likelihood of bias is to be given more credence than for the actual bias.*" it is difficult to prove the state of mind of a person. Therefore, we have to see whether there is reasonable ground for believing that he was likely to have been biased".* It is necessary to give a reasonable reason for bias in order to challenge the administrative action successfully on the ground of personal bias.

Pecuniary Bias

In this type of bias if it is seen that if any of the judicial body has any kind of financial benefit, how so ever small it may be it will lead administrative authority to biases. It is obvious that if the adjudicator is

having any pecuniary interest than his decision would be affected in the subject matter of the proceedings. It was held in the case of **Mohapatra v. State of Orissa**[4] that when the author of a book was a member of the committee set up for selection of books, and his book was also under consideration by that committee, the possibility of bias could not be ruled out and the selection by that committee cannot be upheld. Thus, in addition to the direct personal interest, the test laid down by the court is to consider the real likelihood of bias. In other words, probability of bias is sufficient to invalidate the right to sit in judgment and there is no need to have the proof of actual bias.

Subject Matter Bias

In this type of bias when the deciding authority is directly or indirectly involved in the subject matter of a particular case it leads to subject matter bias. In the case of **Muralidhar vs. Kadam Singh**[5], the court on the ground that the chairman's wife was a member of Congress party whom the petitioner defeated refused to quash the decision of Election tribunal.

Departmental Bias

The issue or problem of departmental bias is very common in every administrative process; as it is not checked effectively so on every small interval period it will lead to negative concept of fairness which

[4] AIR 1984 SC 1572
[5] AIR 1954 MB 112

may get vanished in the proceeding.

Policy Notion Bias

The Issues which are arising out of the preconceived policy notion is a very dedicated issue. The audience sitting over there does not really expect judges to sit with a blank sheet of paper and give a fair trial and decision over the matter.

Bias on the Account of the Obstinacy

The Supreme Court has discovered a new criterion of biases through the unreasonable conditions. This new category emerged from a case where a judge of Calcutta High Court upheld his own judgment in an appeal. A direct violation of the rules of bias is done because no judge can sit in appeal against in his own case.

AUDI ALTERAM PARTEM

The second principle of natural justice 'AUDI ALTEREM PARTEM' is a Latin term which literally means **"to hear the other side"** or in other words it means that no person can be condemned or punished by the court without having a fair opportunity of being heard. This principle is a sin qua no of every civilized society.

Justice Black once said "A person's right to an opportunity to be heard in his defense is basic in our system of jurisprudence".

It is found that in many jurisdictions, a bulk of cases is left undecided without giving it a fair opportunity of being heard. Hence, the literal meaning of this rule is that both the parties should be given a fair chance to present themselves with their relevant points and fair trial

should be conducted. This rule is considered to be an important rule of natural justice and its pure form is not to penalize anybody without having any valid and reasonable ground. A prior notice is to be given to the party so that it comes to his knowledge of what all charges are framed against him. *This rule is also known as 'rule of fair hearing'.*

Features of Audi Alteram Partem

1. Right to Notice – The right to notice means **right of being known.** A person cannot defend himself unless he is aware of the case against him. Therefore, before the proceeding starts, the authority concerned is required to give notice to the affected person or party of the case against him. The parties should be given valid and proper notice of the matter to further proceed with the procedure of fair trial method; even if the statute does not include the provisions of issue of notice then it will be given prior to make the decisions.

The notice given to the accused should be with regards to the charges framed and also the proceedings to be held against him. Punishment can only be given on charges mentioned in the notice and not for any other charges.

2. Right to present the case and evidence –After the accused party receives the notice he must be given a reasonable time period to prepare and present his case in a real and effective manner. There should be no refusal on an unreasonable ground or due to arbitrary. It is the right guaranteed to both the parties to represent their case. The adjudicatory

authority must provide the party with a reasonable opportunity to present his case. This can be done either orally or in writing.

In ***Union of India*** **v.** ***J.P. Mitter***, the court refused to quash the order of the president of India in a dispute relating to the age of high court judge on the ground that the President did not grant oral hearing even on request. The Court was of the view that when the person has been given an opportunity to submit his case in writing, there is no violation of the principles of natural justice if an oral hearing is not granted.

3. Right to know evidence against him –No evidence personal or oral should be received at the back of other party and if such evidence is recorded, it will be the duty of the authority that such evidence must be made available to the other party.

In some cases, it may happen that the circumstances are such that no evidence can be taken in the presence of the party but on the back of them. However, in such cases, the gist of the evidence so collected against the party concerned must be brought to his notice and the party concerned should be given an opportunity to rebut the evidence so collected.

4. Right to rebut evidence –The opposite party has the right to rebut the issue raised against him. The court's duty is to grant permission for the rebuttal to the party so that he can express his views and defend himself.

5. Right to cross examination –Right of fair hearing includes the right of cross- examination of the statement made by the parties. The principles of natural justice will get violated if the tribunals denied the right to cross–examination. It is mandate to give all necessary documents and failure to do so will also encroach the principle. The department should make available officers, who are involved in the procedure of investigating and do cross-examination. Cross-examination is defined under section 137 of Indian Evidence Act, 1872. There are even some certain exceptional cases, where, the right to cross-examination can be denied or rejected. In an infamous case of **Hari Nath Mishra v. Rajendra Medical College[6],** a male student was charged off some indecent behavior towards a female student. So, here the right to cross-examination was denied for the male student as it will lead to embracement for the female student and it will also not lead to violation of natural justice.

6. Right to Legal Representative –Every party has a right to have a legal representative in the process of inquiry. Each party will be presented by the legally trained person and no one can deny. Similarly, the department has the same right to direct its officer even though there are investigating officer in conducting an adjudicating proceeding.

Exceptions to this rule:-

- Public interest.
- During the emergency period.

[6]AIR 1973 SC 1260

- Express statutory provision.
- Nature of the case is not of a serious nature or kind.
- If it doesn't affect the status of an individual.

SPEAKING ORDERS OR REASONED DECISION

It is now universally recognized that giving reasons for a certain decision is one of the fundamentals of good administration and a safeguard against arbitrariness. The refusal to give reasons may excite the suspicion that there are probably no good reasons to support the decision. Hence reasons are very useful as they may reveal an error of law or the grounds for an appeal or simply remove what might otherwise be a lingering sense of injustice on the part of the unsuccessful party. When an order is to be passed which is in form of an appealable order, the requirement of giving reasons would be a real requirement. Thus, reasons are also required to be given when the appellate or revisionary authority affirms the order of the lower authority.

Reasoned decision basically, has 3 grounds on which it relies:-

Firstly, it is a satisfactory part of the party against whom the decision is being made.

Secondly, the aggrieved party gets and has the chance to demonstrate before the appellate and revisional court the reason which makes the authority to reject it.

Thirdly, the responsibility to record reasons works as obstacles against

arbitrary action by the judicial power vested in the executive authority.

EXCEPTIONS TO THE PRINCIPLES OF NATURAL JUSTICE

The principle of natural justice is certainly not rigid in nature rather based on certain flexibilities and exceptions. This is done with the view to avoid rigidity and hence also to prevent abrupt decisions by the court of justice. The exceptions to the principles of Natural Justice are as follows:

NEMO DEBET ESSE JUDEX IN PROPRIA CAUSA

Doctrine of Necessity:

This doctrine, the doctrine of necessity, is an exception to 'Bias'. The law permits certain things to be one as a matter of necessity. It can be invoked in cases of bias where there is no authority to decide the issue. If the doctrine of necessity is not allowed its full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would get benefit from it. If the choice is between either to allow a biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision-making.

Doctrine of Absolute Necessity:

This doctrine is also taken as an exception to 'Bias' where it is absolutely necessary to decide a case of Bias and there is no option left. In the case of **Election Commission of India vs. Dr. Subramaniam Swamy**, the SC was asked to decide whether the CEC TN Seshan, who

was allegedly biased in favour of Swamy, because of the long friendship, could participate in the giving of opinion by the EC.

On appeal, the SC confirmed that Seshan should not give opinion. The Court observed that in view of the multi-member composition of the EC and its earlier decision in T.N Seshan v. UOI, where it was held that decisions of the EC should be by majority, while giving opinion under Art 192(2) of the Constitution, the CEC could get himself excused from sitting on the Commission.

AUDI ALTERAM PARTEM

In the below mentioned exclusionary cases, the rule of Audi Alteram Partem is held inapplicable not by way of an exception to "fair play in action", but because nothing unfair can be inferred by not affording an opportunity to present or meet a case.

Statutory Exclusion:

Natural justice is taken by the courts when an action is being taken by the administration is silent under the parent statute as to its application. Omission to mention the right of hearing in the statutory provision does not ipso facto exclude a hearing to the affected person. Either expressly or by necessary implication, natural justice can be excluded by a statute. But such a statute may be challenged under Art.14 of the constitution, so it should be justifiable.

Legislative Functions:

Exclusion is justified if the nature of administrative action is legislative. If any administrative action, taken in violation of natural justice,

doesn't apply to a single individual or a few specified person and is of general nature, it may be called legislative. Usually, an order of general nature, and not applying to one or a few specified persons, is regarded as legislative in nature. Legislative action, plenary or subordinate, is not subject to the rules of natural justice because these rules lay down a policy without reference to a particular individual. On the same logic, principles of natural justice can also be excluded by a provision of the Constitution.

Emergency and Public Interest:

In India, it has been generally acknowledged that in cases of extreme urgency, where interest of the public would be jeopardized by the delay or publicity involved in a hearing, a hearing before condemnation would not be required by natural justice or in exceptional cases of emergency where prompt action, preventive or remedial, is needed, the requirement of notice and hearing may be obviated. Therefore, if the right to be heard will paralyze the process, law will exclude it.

Confidentiality:

Exclusion of natural justice can also take place when confidentiality is demanded and is necessary to be maintained i.e., to say if application of the rule of fair hearing breaks any confidentiality which is detrimental to national interest or public order, in that case this rule may be excluded.

Interim Action:

In Inter- Disciplinary action like suspension etc. there is no requirement

to follow the principle of natural justice.

Useless Formality:

'Useless formality' theory is no doubt yet another exception to the application of the principles of natural justice but it should be used with great caution and circumspection by the Court otherwise it would turn out to be wheel of miscarriage of justice. It can only be used where on the admitted or undisputed facts only one conclusion is possible and under the law only one penalty is permissible. The Court may not insist on the observance of the principles of natural justice because it would be futile to order its observance.

Impracticability:

Natural justice can be followed and applied when it is practicable to do so but in a situation when it is impracticable to apply the principle of natural justice then it can be excluded. In R. Radhakrishna v. Osmania University it was found that because of mass copying the entire entrance examination of M.B.A, was cancelled by the authority of University. The court in this case held that notice and hearing to all candidates is impossible, since assumed national proportions.

Academic Evaluation:

Where nature of authority is purely administrative no right of hearing can be claimed. A student for an unsatisfactory academic performance was removed from the rolls without giving any pre-decisional hearing, in this case, the Supreme Court held that where the competent academic authorities examine and assess the work of a student over a period of

time and declare his performance as unsatisfactory, application of fair hearing is not needed.

CONCLUSION

Finally, it can be concluded by saying that the principles of natural justice and its application is not new rather they seem to be as old as the system of dispensation of justice itself. Natural justice is basically a concept of fair adjudication by following some rules, it is also considered as the price of rule of law and a branch of public law. Different jurists have described the principle in different ways. Some called it as an unwritten law or the law of reason. It has however not been found to be capable of being defined, but some jurists have described the principle as a great humanizing principle intended to invest law with fairness to secure justice and to prevent miscarriage of justice. With the passage of time, some principles have evolved and crystallized which are well recognized principles of natural justice. This principle and its rules is the formidable weapon which can be hold and used to secure justice to the citizens. Most importantly this principle describes what is right and what is wrong.

BLOGS

DISCRIMINATION TOWARDS SEXUAL MINORITIES IN INDIA

By Avantika Palit
B.A. LL.B Semester II

Sexuality keeps on being a context of standout amongst the most challenged issues in present day politics, to such an extent that it is relatively difficult to discuss modern liberal democracy.

Homosexuality in India has been a subject of discussion since ancient times to modern times. It is only in the final decade of the 20th century that the LGBTQ community has been brought to the fore the rights of those discriminated against because of their sexuality. As reported in various studies homosexuality or sexual orientation is common in every culture or society. However, 'homophobia' is chiefly a product of Judeo-Christian morality spread to various parts of the world through European colonialism. It has been seen as an offence in Manusmriti as well as the Islamic Shariat law.

Hindu texts have taken positions regarding the homosexual characters

and themes. Rigveda, one of the four canonical sacred texts of Hinduism says Vikriti Evam Prakriti, which some scholars believe recognizes homosexual dimensions of human life, like all forms of universal diversities. The ancient Indian text Kamasutra written by Vatsyaya dedicates a complete chapter on homosexual behaviour.

It has also been observed in the renowned book written by Devdutt Patnaik named as 'Jaya', taking the incidents of the great *Mahabharata war* into consideration where *Aravan* came forward to sacrifice himself to ensure the victory of Dharma. But, he insisted that he must have wife who will weep for him when he died. When all attempts to get Aravan a wife failed, *Krishna* rose to the occasion and transitioned himself into a female form known as *Mohini* and married Aravan. This tale comes from the north Tamil Nadu's oral traditions where Aravan is worshipped as Kuthandavar, a form of Shiva.

In another Indian Mythology, *Shikhandi* is another important character in Mahabharata. She was born as a female but grew up to be a male. Thus, this proves that homosexuality has been in the society since ages as Hinduism is considered to be one of the oldest form of religion and civilization.

Sexual orientation refers to the sexual preference to which one is sexually and romantically attracted. Transgendered persons question

the gender identity they were biologically assigned at birth and reject it either partially or completely. Every person regardless of sexual orientation, gender identity and gender expression are entitled to their rights. LGBT (lesbian, gay, bisexual and transgender), the rights administered to them are not special rights, but the same human rights that should be afforded to all individuals.

Being heterosexual, homosexual, bisexual, or transgendered is not just about sexuality. It's about complex lifestyles that have an impact on every aspect of a person's life, including the emotional, psychological, social, and professional. The universal declaration of human rights include right to life, privacy, equality before law, etc and certain freedoms like freedom of speech and expression, freedom from discrimination and violence, etc. Therefore, on account of being human, these rights and freedoms shall also be vested upon people belonging to LGBT community. But it is often seen that the homosexual people are deprived of these rights due to fear due to fear, torture etc. When it comes to India homosexuality is considered to be a crime under section 377 of Indian Penal Code, 1860 which got decriminalized on 6th September 2018 by India's Supreme court.

There has been made certain amendments in the Indian judiciary in the recent times from the case of **National Legal Service Authority V. Union Of India, 2014** where it has been observed that the law guarantees certain rights to the section of homosexual and transgender

people under the 'yogyakarta principles', such as the *right to enjoyment of universal human rights*, *the right to equality and non-discrimination*, *the right to recognition before law* recognizing them as the 'third gender category'.

Today, in India there has become more acceptance towards the LGBT community but their struggle is still not over. While we see some LGBTs accepting their sexuality, there still remains a greater portion of LGBT groups who are not free to openly express their gender choices. Social media groups and corporate initiatives have also come forward with increasing awareness on LGBT rights.

Yet there are certain villains in the Indian society where the acceptance of gender identity of their kin is still a pathway of thorns, resulting in horrifying acts of as we have heard in the testimonies many of them are oppressed by police, extortion, illegal detention, abuse, honour kills and corrective rapes which had led to a doom down to humanity. This community of people have not been accepted and understood as a gamut of the human condition instead they are stereotyped as deviants and have been suffering from constant marginalized social status.

Though there has been constant efforts made by the law in order to provide this community with the equal human rights that they deserve as all other human beings thus by making amendments in the **Section 377** of the **Indian Penal Code, 1860** and by the introduction of **The Transgender Persons (Protection of Rights) Bill, 2019** which

prohibits discrimination against the LGBTQ community with respect to education, employment and the ability to rent or buy property,

Conclusively, a person's choice of partner should not be restricted because of his or her sexual orientation. It not only restricts their basic rights but also takes away their right to live with dignity enshrined within the right to life and liberty. In the case of **Navtej Singh Johar & Ors. v. Union of Ministry of Law and Justice Secretary** it was also noted that social morality also changes from age to age. Though the Indian society is changing and certain rights such as right to vote, right to marriage etc has been provided to this community coming out as a homosexual in Indian society has been a tough pathway for the youths due to the feeling of shame, lack of family and moral support, lack of social acceptance and respect which they actually deserve.

Thus, homosexuality will remain a taboo if we continue to disrespect and not treat them equal to us and it is high time that LGBTQ should be freed from the clutches of the orthodox society and progress the scope and ambit between the community and disgrace the regressive laws and embrace progressive laws.

RETHINKING CANCER

By Shruti Garg
B.Com. LL.B Semester II

Cancer is caused by combined genetic and non- genetic changes induced by environmental factors that triggered inappropriate activation and inactivation of specific genes. Although the enfeebling physical symptoms of cancer have long known, the psychological and social impacts of cancer have become the subject of examination only relatively recently.

It is important to rethink how we approach the complex problem of curing cancer to obtain the much- heralded impact on patients. Scientists should take the opportunity to connect better with clinicians to understand the full palate of issues when treating patients, including financial considerations, difficulties in patient recruitment potential for toxicity and difficulty of compliance with complicated dosing regimes.

Important parts on which we must lay emphasis while coping with cancer are the emotions and feelings. Mental health treatment that claims to alter tumour growth is not recommended as the only form of cancer treatment, nor should it be sought just because someone thinks it

might prolong life but mental health care and emotional support can help patients and their loved ones manage cancer and its treatment.

People who have cancer or who've been treated for cancer may have physical or emotional difficulties as a result of the disease or its treatment. Many conventional approaches can help people cope with these problems who are distressed about being diagnosed with cancer, medicines can control nausea related to chemotherapy and exercise may help decrease treatment related fatigue but in order to treat mental health things like acupuncture, group support, mindfulness and relaxation techniques can be used to help reduce distress and cope with the emotions that come with cancer diagnosis.

Most of the study results on the subject tended to show no link between personality cancer, but a few seemed to support the idea. In 2010, the largest and the best designed scientific study to date was published. It looked at nearly 6000 people who were followed overtime for a minimum of thirty years. This careful study controlled for smoking, alcohol use and other known cancer risk factors. The study showed no link between personality and overall cancer risks.

Patients living with cancer should feel confident in the future, knowing that living normally with the disease for decades is possible. One day cancer will be eliminated until then, we might consider a more flexible definition of 'cure' one that says although cancer hasn't been entirely eradicated it is not going to affect a patient's ability to live a normal life. Surrounding oneself with positive energy such as inspirational

books and uplifting music can add on an extra touch of buoyancy to help a float as one faces the tsunami known as cancer treatment.

SHORT STORIES

THE MAN WITH THE GOLDEN CANE

By Dipanjan Nandi Chowdhury
B.B.A. LL.B Semester II

It was late at night. The family had just completed their dinner, and all of them gathered in the living room trading stories and amusing each other.

This group included my uncle, Mr Shankar Choudhry, P. I. He was a retired cop turned Private Investigator. While we were caught up with depicting stories conjured in our dreams, he sat at the corner seat by the shelves, adjusting his thick square-rimmed glasses, and smoking a cigarette. Inevitably, in an inquisitive tone, he addressed "Do you individuals want to hear a case story?" Apu, the youngest of all my cousins, enthusiastically asked: "Is it a homicide case? A spine-chilling one? If so, then please proceed. We'd love to know about it."

Uncle Shankar took a deep breath, and began narrating.

"This was a couple of years ago. I had recently retired from the force and started working as a P. I. This was most likely my third case as a P. I."

"It was about 11am," he proceeded, "right before the festive season. I was in my office enjoying a warm and splendid cup of tea. I had quite recently shut my previous case, and was in a rather reluctant mood. I was having a conversing with DCP Ghosh, who also happened to be my good friend, about the recent increase in drug peddling in the city. Suddenly, a woman rushed into my office, her face consumed with anxiety and terror. She was panting and sweating. So, I offered her water and asked her to calm down."

He stopped to take a short puff off his cigarette. Then he continued: "After a while, the woman calmed down and gathered her thoughts barely enough to introduce herself. She said "My name is Mrs. Gupta, and I reside with my husband and my son on the outskirts of the city. Our family has an ancestral home in the village, adjacent to the city. My husband and son visit the ancestral home once every year. They usually stay there over a weekend, and then return home. But this time, it has been 3 months and they haven't returned yet". She informed me that she had tried all possible ways of communication but was unsuccessful. She even visited the ancestral home, but to no avail. She sought help from the police too but it was futile. Desperate to find her husband and son, she came to me."

Apu enquired: "Why did she not get any help from the police?"

"The police, upon investigation, found out from the servants that they had never entered the ancestral home the last time that they visited." said Uncle Shankar.

"What happened after that, Uncle Shankar?" Apu asked eagerly.

"I took up the case and launched my own investigation" said the detective adjusting his thick square glasses.

"At first, I contacted my colleagues in the force to get a whiff of the preliminary details and information that they had procured in this case. It was of no use since they had barely prodded anything in this particular case. So I had to start from scratch. After a long while I had something interesting before me", said Uncle while putting off his cigarette in the ashtray, and then he proceeded to light another.

"I began my investigation by visiting the ancestral property. Located by the bank of the local river, the enormous property once used to be a beautiful mansion, but now it has been reduced to debris with dilapidated pillars; only one section of the mansion stood intact. Accompanied by Mrs. Gupta, I reached the mansion. The servants looked rather suspicious to me. I proceeded to question them about their master's recent visit. To which one of the two servants replied that Mr. Gupta and his son had visited the property, but they never returned after they decided to go for a drive around the village." The detective then paused for a while and then continued “I questioned the locals about the whereabouts of Mr. Gupta’s car that morning. After a while,

one of the locals informed me that he saw them drive towards the forest with the haunted house."

"Haunted house!" Apu squealed with excitement.

Then Uncle continued. "The locals informed me that there was a very old house that was built during the British period in the forest, which was believed to be haunted. Many of them, who had visited the place, informed me that they had often seen a man with a golden cane walking through the woods at night, and he would mysteriously disappear into thin air at the bungalow's gate."

"What happened next?" Apu enquired anxiously.

"I visited the property" replied Uncle Shankar. "Visiting the bungalow required police clearance and so I was joined by Inspector Sengupta, the officer in-charge of the village police station. Sengupta was a local boy and knew a lot about the place.

"The locals who have ever dared to visit this place in the woods have often reported to have seen a shadow like figure with a cane wandering around the bungalow." said Sengupta. He added "these sightings have been reported for a few years, after the death of the bungalow's owner. He was a middle-aged man who died under mysterious circumstances. Since then the locals claim to have seen him in and around the property. Anyway, since we still have to visit the property, I suggest we do it during the day."

The next morning we visited the bungalow: though old it was still quite well maintained for its age. The fence was stout and rigid, and the gate

was well-built as if it had been repaired recently. The east side of the property looked out to the banks of the river. A dock constructed by the river bank looked old but was surprisingly well-maintained and clean for its time. Furthermore, a door leading directly from the docks to the house was present. All in all, this bungalow seemed peculiar for its age." said Uncle Shankar.

He continued "it felt like there was more to the case than just the two missing people, and the bungalow bore a very important connection to it. We entered the bungalow, and the furniture and everything inside it seemed have been used regularly. It felt as if people had been living in there. Suspecting of some illegal activity going under the disguise of ghostly aberration, Sengupta and I decided to patrol the bungalow at night. It was almost midnight and there were no living things in or around the forest. Sengupta and I hit behind the large tree that was adjacent to the bungalow. Our eyes were fixed towards the docks as we had a feeling that whatever was at the root of all the action was stemming from the docks. A little while later a boat arrived at the docks. From the boat came a few men carrying some crates and also emerged *the man with the golden cane* in his hand. It was as if the man with the golden cane was instructing the rest of the people to carry the crates to some place inside the bungalow. I wanted to ambush them but Sengupta stopped me. He reminded me that I was no longer a cop, and for barging into such a situation I would require the permission of police and they in turn would require warrant.

We got a warrant and reached the bungalow the very next night. I had a feeling that whatever happened to Mr. Gupta and his son was done by these people who were carrying the crates in the docks. It was probable that whatever they were doing was illegal, and Mr. Gupta and his son came to know about their operations. "

Apu asked "So there were no ghosts? But only people, who pretended to be ghosts?"

"Precisely" replied Uncle Shankar. "That night Inspector Sengupta and I waited by the bungalow while the rest of the police force surrounded the forest. We were assured that whoever these people were, they were very dangerous and were doing something illegal. Again around midnight a small ship stopped by the docks and out of that ship stepped out a group of men carrying big crates. *The man with the golden cane* was also there along with them. Sengupta instructed his men to barge in and arrest them. Ambushed by the police, the man with the golden cane tried to flee the scene. Sengupta and I followed him. After a brief chase we caught up with him, and Sengupta arrested him. He had a hat over his head and a cloth mask covering his face."

"So who was he? And, where were Mr. Gupta and his son? Were they alive?" Apu questioned.

"All the answers to your question lie within the identity of the man with the golden cane" said Uncle Shankar with a smirk on his face.

"So who was he?" Apu asked again.

“We took him to the police station. Locals gathered around the police station to know the identity of this fraudulent individual who had terrorized them from for so long. The man stepped down from the Police vehicle, and was taken inside the police station. His hat was removed and his mask was pulled off revealing his identity.

“Mr. Gupta!” Sengupta exclaimed.

“You see there was a very specific reason as to why Mr. Gupta and his son used to visit their ancestral home once every year. They were heading a drug racket that was peddling drugs all over the city. And the bungalow in the forest was their front for this illegal operation. To keep people from suspecting anything fishy going on inside the bungalow, they created the persona of ***the man with the golden cane***: a ghostly apparition that kept the locals from visiting the bungalow, and finding out what these people were actually up to.”

“What happened then?" Apu asked.

“Mr. Gupta and his crew were arrested with drug-peddling charges, however, his son had managed to escape and as a result could not be apprehended.” concluded Uncle Shankar.

“After the case had ended Mrs. Gupta visited me again. She thanked me as I helped find her husband and son, and she was happy that her husband was serving his time for the crimes he committed. She was a little worried about her son as he was still at large. She paid me my due, and we never saw each other again” said Uncle Shankar, as he proceeded to leave.

“It's getting late, I should leave” saying this he walked out of the door, and alighted his car. He drove away…probably to his next adventure. I didn't see him again until the next holidays where he visited us with another very interesting case story, however, that must be reserved for a later discussion.

POEMS

BLAME

By Deepisha Gupta
B.Com. LL.B Semester X

At the point when I was five, I was advised to stay silent
Talk less wear more, and remain inside.
They said the world is a terrible spot,
Be that as it may, just the young ladies, for this situation.
Thus, I wore short less frequently,
The tone of my voice needed to mollify.
I thought progressively about what individuals would think,
My preferred shade should be pink!
Try not to accuse me, I was shown along these lines,
I was just attempting to act a specific way.
Like a lady
Like a lady, they say.
At the point when I was ten, I was advised to hold back,
You′re just a young lady, you′re not good enough.
You′re excessively shrewd for a young lady, excessively

commanding,

Who asked you to answer back? Presently, continue standing!

So, I returned home, keeping my head low,

With much less certainty, strolling moderately.

Pondering internally, I shouldn′t have retaliated,

Perhaps I should′ve gone for cookery, rather than banter club.

Try not to accuse me, I was shown along these lines,

I was just attempting to carry on a specific way.

Like a lady, they say.....

At the point when I was thirteen, the comments expanded step by step,

From the manner in which I talk, to the kilograms I weigh.

That is the point at which the dissatisfaction entered,

What′s more, they said you′re a young lady; don′t act naturally focused!

Presently that I′m sixteen, I′ve understood the predicament,

In this male ruled world, ladies are objectified.

They have to have a pretty face, a delightful figure,

With hair thicker yet midriff sleeker.

Fault

It′s a bias that the general public has framed,

The male predominant and the ladies normed.

We should change the world make it a superior spot,

Better in the sense, where balance exists!

Let society assume the fault, we were shown along these lines.

How about we rethink the conduct with a specific goal in mind.

Of a “Lady” I state

COVID -19

By Shambhabi Gupta
B.Com. LL.B Semester II

At the beginning of the year
Everything seemed good.
Gradually it appeared to be the days
Full of doom.
The cause of this ruin is nothing but a VIRUS,
That lead all the population to the token of minus.
Sudden lockdown was the need of the hour,
Doctors, nurses, police had the only power,
The biggest challenge was to strive
Just to keep ourselves alive.
"Stay home, stay safe"; was the only slogan
To end this explosion.
Then Unlock1 was announced
Offices, shops, malls were reopened.
Life was just getting reconvened

Suddenly

A new announcement,

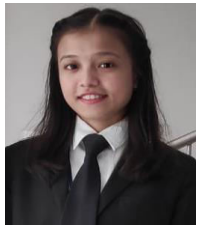
Lockdown returns

The terrific silence spread over the town

Kindly cooperate and don′t hang around

This too shall pass, let′s begin the countdown.

I AM STILL A CHILD AT HEART

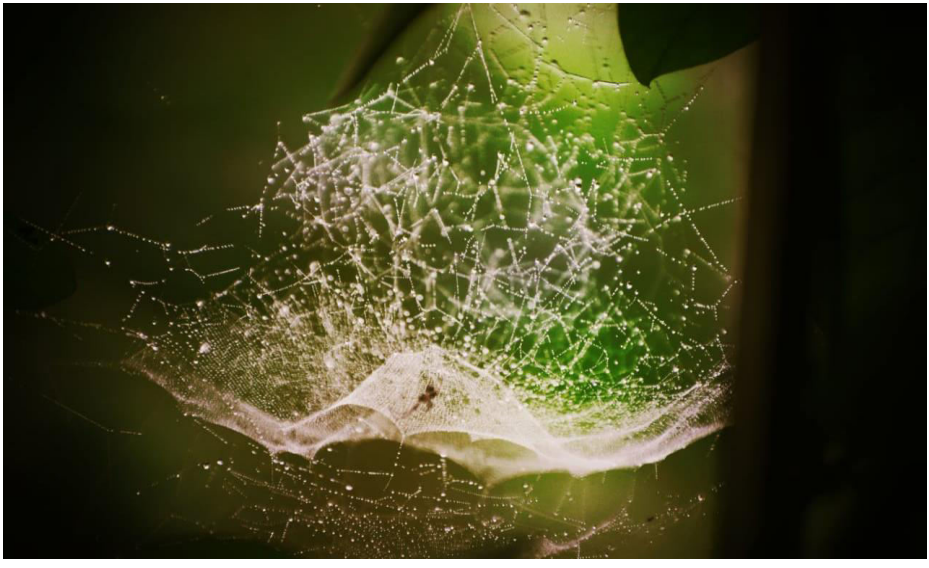


By Simran Chettri
B.B.A. LL.B Semester II

I am still a child at heart:
I find happiness in small things.
Little efforts of people
Make me feel happy.
My eyes are dim with childish tears,
When I read fairy-tales.
I imagined my life would always be the same.

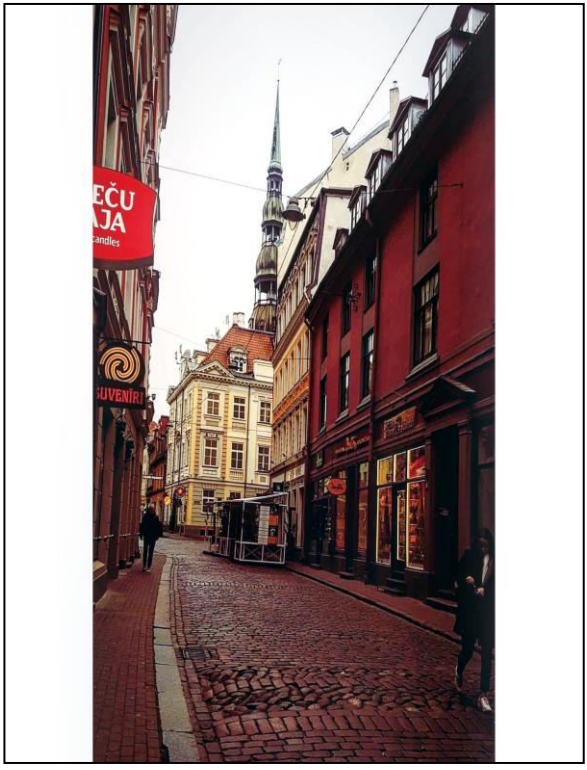
But it was just a figment of my naive imagination-
The reality stands in utter contrast.
I am still a child;
I am still curious, about the silliest of things.
Happiness still harks back to a childish desire,
No matter how old you are.

PHOTOGRAPHY



BONANI ROY
LLB SEMESTER II

SANDIP KR. SINGH
B.Com LLB SEMESTER X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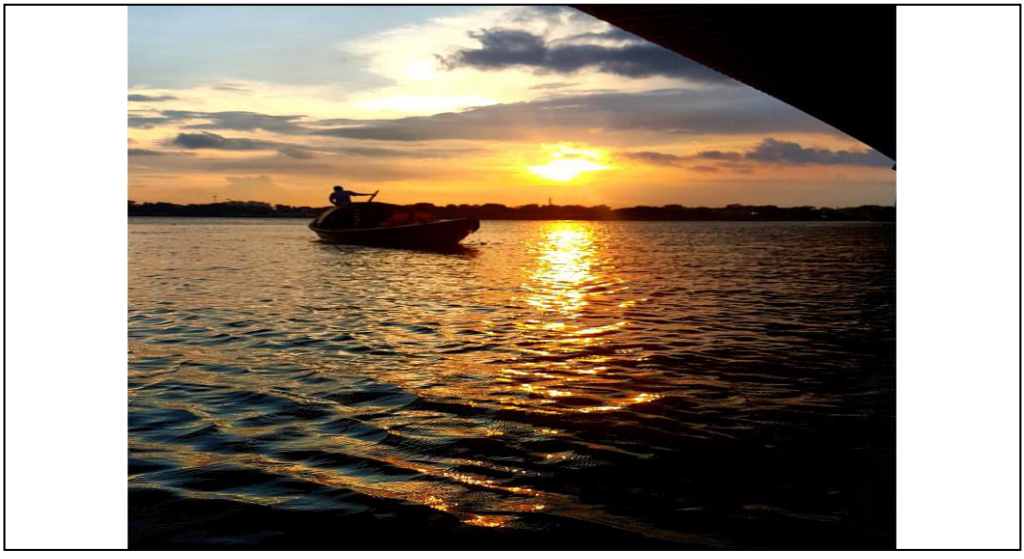

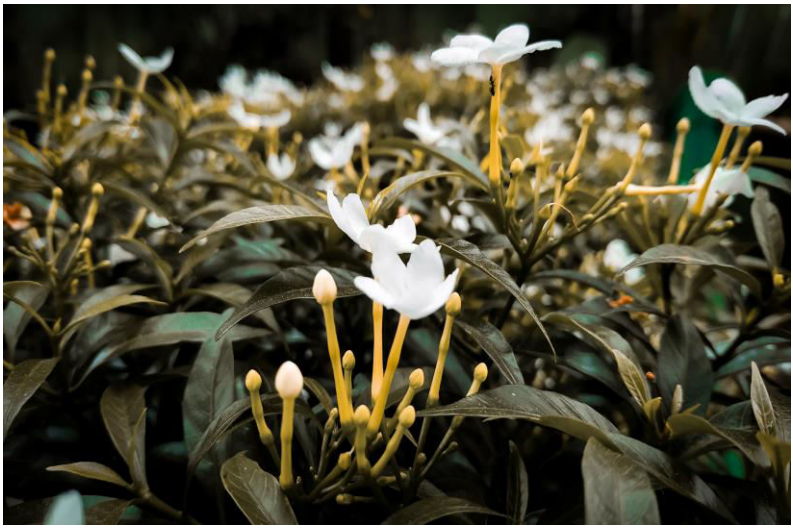

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