Government Law College
Estd. 1855 MUMBAI, INDIA

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méLAWnge

ANNUAL MAGAZINE 2018-19

GOVERNMENT LAW COLLEGE

THE MAGAZINE COMMITTEE

Sitting (L-R) : *Isha Prakash, Priyanshi Vakharia, Kanika Kulkarni, Prof. Mr. P. B. Daphal, Prof. Dr. R. S. Ratho, Principal Smt. Suvarna K. Keole, Prof. Mr. H. D. Pithawalla, Misha Matlani, Rhea Rao, Ira Misra*

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Collective effort is indispensable to the creation of a publication. *méLAWnge* 2018-19, like its predecessors, has been borne from the combined endeavours of students, writers, lawyers and stalwarts alike. The momentum required to bring this edition to light, has been immense.

As shown in the cover, it takes a tremendous amount of effort to keep the pencil rolling—even if one person pulls away, the others have to toil twice as hard to keep the pencil from slipping. This collective effort is also reflective of the individual struggle involved in being a part of the team, through various trials and tribulations. The cover of the 89th edition justifies the journey of the editorial team over the course of the past year.

MEMBERS

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Simran Grover
Souparnika Seshadrinathan
Suchita Rankhambe
Sushant Dhakane
Tanishq Mohta
Tanya Goel
Tarak Shah
Vedant Bajaj

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कानून एवं न्याय,
भारत सरकार
Minister
Law & Justice,
Electronics & IT
Government of India.

सत्यमेव जयते

Shri Ravi Shankar Prasad
Minister of Law & Justice, Electronics & IT

MESSAGE

The legacy and renown of an institution are reflected in its periodic publications. The glory of Government Law College, Mumbai, does not need an introduction. I am happy to note that in keeping with the spirit of the heritage of the College, the Committee of Students of the College is bringing out a magazine, *méLAWnge* 2018-19. I am hopeful that the contents of the magazine will benefit the students and act as an inspiration for the young aspiring legal professionals.

I wish all the very best for the successful publication of the magazine and congratulate the young brains behind it.

(Shri Ravi Shankar Prasad)

मुख्यमंत्री महाराष्ट्र
Chief Minister of Maharashtra

सत्यमेव जयते

Shri Devendra Fadnavis
Chief Minister of Maharashtra

MESSAGE

It gives me immense pleasure that Government Law College, Mumbai is bringing out its special issue of annual college magazine *'méLAWnge'* for the year 2018-19.

It is praiseworthy that since the inception, with the relentless efforts, the college is striving hard to make available world class infrastructure, latest development and aids and ideal ambience with a view to nurturing high skilled professionals.

I hope that the initiative of college magazine will help the students to inculcate the qualities of communication, expression, research and understanding various problems prevailing in the society which will help them in future to serve as good professionals.

I extend my best wishes to the magazine and wish the students a successful future.

(Devendra Fadnavis)

From the Principal's Desk

Judge Smt. Suvarna K. Keole

Mahatma Gandhi once rightly said, *'By education, I mean an all-round drawing of the best in child and man in body and spirit.'* A premiere institution like Government Law College lives by this saying and provides to its students, the facilities to explore their numerous passions and interests and to develop their skills and hone their great potentials.

In addition, this prestigious college has the honour of being an alma mater of, and being associated with, numerous successful luminaries who have tirelessly and relentlessly rendered services to our nation such as the Father of our Constitution, Dr. B.R. Ambedkar; the Chief Justice of India, Hon'ble Justice H.J. Kania; the first Indian Chief Justice of the Bombay High Court, Hon'ble Justice M.C. Chagla and other eminent dignitaries drawn from different streams, the college has continued to thrive in excellence.

In the academic year 2018-19, the college is surging ahead to achieve new heights under the able guidance of Hon'ble Justice S. C. Dharmadhikari, Chairman of the Governing Council and its other members.

A perfect college, in my opinion, is one where the students have a variety of passions, obstacles and energies. We, the teachers, ensure that their energy is channelised in the right way to achieve positive results. It is our responsibility to figure out which strategy will work for which student because everyone has a different personality. We work to make a difference in the lives of every student we meet. The life lessons learnt by the students of Government Law College will be useful to transform them not only into successful professionals but also responsible citizens of India.

The contents of the Magazine offer a glimpse of the year gone by, engrossing articles, inspiring interviews and stimulating puzzles. The rich content of the Magazine will serve as food for thought for its readers.

The teaching staff, office staff and I extend our best wishes to all the members of the Magazine Committee as they bring out the 89th edition of the Magazine.

Judge Smt. Suvarna K. Keole
Principal

Editor-in-Chief's Message

Prof. Dr. Rachita S. Ratho

As the academic year 2018-19 draws to a close, I find myself greatly elated and gratified to pen down a message for the 89th edition of *méLAWnge,* the Annual Magazine of Government Law College. The magazine comprehensively represents every element that builds this college recording all the curricular, co-curricular and extra-curricular activities of this great institution. Following its grand launch, the 88th edition of *méLAWnge,* 2017-18, was heartily appreciated by innumerable readers. Government Law College has always provided a platform for young budding lawyers to articulate their views and shape their ideas through various activities. The magazine also reaches out to luminaries to share their thoughts and experiences with the readers.

'Knock-Out!', the Annual Debate and Flagship Event of this Committee, was on the topic – *'Our Pride is in Your Cour Now: Is the Abrogation of Section 377 the Duty of a Judicially Active Supreme Court or a Competent Parliament?'*. Ex-student, Advocate Sakshi Bhalla and final year student Janak Panicker represented Side Proposition, while ex-student, Advocate Kunal Katariya final year student André Charan, represented Side Opposition. The Moderator for the debate was the esteemed Ms. Flavia Agnes. It proved to be an excellent debate from both the sides and Side Opposition won the majority vote of the House.

The Committee organized the 18th Dinesh Vyas Memorial Government Law College National Legal Essay Writing Competition and the Belles-Lettres: J.E. Dastur Memorial Government Law College Short Fiction Essay Writing Competition 2018 – 19 on a national level, and the intra-college Sir Dinshah Mulla Legal Essay Writing Competition under the aegis of Mulla & Mulla & Craigie, Blunt & Caroe.

My heartfelt gratitude is extended to Hon'ble Justice Mr. Kathawalla, for judging the final entries of the Vyas Competition. We are honoured and privileged to have had Mrs. Rashmi Palkhivala judging the final entries of the Belles-Lettres Competition. I am thankful to Mr. Soli Dastur, Mr. Shardul Thacker and Mrs. Kunti Vyas Jhaveri for their continuous support to the Committee and for being a guiding force at every step.

I am grateful to our Principal, Hon'ble Judge Smt. Suvarna Keole, for her constant guidance and support throughout the year, in all our endeavours. I would like to thank Prof. Mr. H. D. Pithawalla for his invaluable service to the Committee, and for constantly encouraging and motivating our students. I thank all the full-time, part-time, C.H.B. faculties and the non-teaching staff for their suggestions and constant encouragement.

Lastly, I take this opportunity to thank the Student Editors, Priyanshi Vakharia, Misha Matlani, Kanika Kulkarni, Treasurer, Rhea Rao and Marketing Head Isha Prakash. I would also like to thank every single member of the Magazine Committee for their constant and tireless efforts to make this edition of *méLAWnge* a booming success.

Finally, as this editorial draws to an end, I wish *méLAWnge* all the best for its future aspirations.

Prof. Dr. Rachita S. Ratho
Editor-In-Chief

Professor-In-ChargeMessage

Prof. H. D. Pithawalla

As another academic year draws to a close, I find myself looking back at the 89th edition of *méLAWnge*, the Annual Magazine of Government Law College, with an insurmountable sense of pride, satisfaction and elation. The magazine has been a dedicated labour of love for the entire team, teachers, students and contributors alike. *méLAWnge* traces the college's journey through the academic year 2018-19, keeping record of all the curricular, co-curricular and extra-curricular activities of this great institution. Government Law College has been a blossoming institution for the young people of today to hone themselves as the lawyers of tomorrow. It becomes a stage for students to articulate their views and shape their ideas through various activities.

The year began with the Annual Debate and Flagship Event of the Magazine Committee *'Knock-Out!*, which was on the topic – *'Our Pride is in Your Court Now: Is the Abrogation of Section 377 the Duty of a Judicially Active Supreme Court or a Competent Parliament?'*. Ex-student, Advocate Ms. Sakshi Bhalla and final year student Janak Panicker argued for the Proposition, while ex-student, Advocate Kunal Katariya and final year student André Charan, represented the Opposition. The Moderator for the debate was the esteemed Mrs. Flavia Agnes. The Opposition team won the majority votes of the House.

The Committee successfully organised the 18th Dinesh Vyas Memorial Government Law College National Legal Essay Competition 2018-2019 and the Belles Lettres: The J. E. Dastur Memorial Government Law College Short Fiction Essay Writing Competition, 2018-19 on a national level and the intra-college Sir Dinshah Mulla Legal Essay Writing Competition 2018, under the banner of Mulla & Mulla & Craigie, Blunt & Caroe.

I am sincerely grateful to Hon'ble Justice Mr. Kathawalla, for judging the final entries of the Vyas Competition and Mrs. Rashmi Palkhivala for judging the final entries of the Belles-Lettres Competition. I am also grateful to Mr. Soli Dastur, Mr. Shardul Thacker and Mrs. Kunti Vyas Jhaveri for their unwavering dedication to the Magazine Committee at every turn.

I am grateful to our Principal, Judge Smt. Suvarna K. Keole, for her constant guidance and support throughout the year in all our endeavours. I would like to thank all the Professors of our College. I appreciate the efforts of our patrons and contributors, without whose assistance, we would not be able to uphold the legacy that *méLAWnge* has created in the past century.

Lastly, I would acknowledge the efforts of Priyanshi Vakharia, Misha Matlani and Kanika Kulkarni, Treasurer, Rhea Rao and Marketing Head, Isha Prakash. I applaud every single member of the Magazine Committee for their constant and untiring efforts to make this edition of *méLAWnge* a grand success - as always.

Without further ado, I would like to invite every single reader to the 89th edition of *méLAWnge*, with the sincerest hope that it brings you as much pleasure in reading as it did for us in creating it.

Prof. H. D. Pithawalla
Professor-In-Charge

General Secretary's Message

Kajol Punjabi

Government Law College is the oldest law college in Asia, and an important role is played by the Magazine Committee every year to bring out the uniqueness of this institution and the characteristics which make this college, as stated by the Bar Council of India, an unarguable giant in the history of legal education.

As it is very often stated, "GLC is like a buffet, which dish to choose is the option of the student." Truly, GLC offers its students innumerable opportunities, but the choice to grab a specific opportunity is with the students. This is what makes our college stand out from any other institution. GLC has given its students a chance to grow, to develop not only as good lawyers but as good human beings and most importantly as responsible citizens of this Country. The various committees of this college do commendable work to contribute to the glory of GLC. The committees in the college truly represent the four I's viz. Initiative, Imagination, Individuality and Independence. The soft skills imparted by the college's ambience boosts a students' confidence and creativity has helped to boost the confidence, creativity which contributes, in great measures, in making their respective vocation and their life even more meaningful.

méLAWnge gives the students of GLC an opportunity to state their free and independent opinion on a number of issues of contemporaneous relevance and reflects their understanding of these issues on a public platform thus making it an excellent platform for the students of this prestigious institution to show case their writing skills on such issues. méLAWnge inter alia celebrates the multifarious accomplishments of the students of this renowned institution and thus, encourages them to accomplish further.

It is a privilege and honour to serve this prestigious institution as its General Secretary. I extend my heartfelt thanks to the Principal, the faculty members, the alumni and the students who have contributed to the progress of this college, which is why it stands as one of the most prestigious institutions today.

I take this opportunity to congratulate the Magazine Committee for success of its 89th edition of méLAWnge and convey my best wishes for this edition.

Kajol Punjabi
General Secretary,
Government Law College

Editorial

Kanika Kulkarni, Misha Matlani, Priyanshi Vakharia

The process of writing (or in our case, compiling of writing) is always an illuminating one, even in ways one might not have particularly wanted it to be. Admittedly, our three-year tryst with the colossal publication that is *méLAWnge* has been far from what we imagined it to be. And yet, at the end of our tenure as Editors we are left perplexed, as the 89th edition of *méLAWnge* which sent us through such extremities of emotion, calmly takes its place behind the distinguished line of editions which preceded it. Perhaps, as a team, that is the stamp we leave behind in the pages to follow—the determination, the persistence and the single-mindedness that it takes to carry on a tradition that has been so seemingly effortless for the past 89 years, despite whatever hurdles that may be present.

We commenced the year with our Annual Debate and Flagship Event, Knock-Out!,on the topic 'Our Pride is in Your Court Now: Is the Abrogation of Section 377 the Duty of a Judicially Active Supreme Court or a Competent Parliament?'. We thank Advocates Ms. Sakshi Bhalla and Mr. Kunal Katariya, final year students Mr. Janak Panicker and Mr. André Charan and our Moderator Ms. Flavia Agnes for making Knock-Out! so memorable.

We are grateful to the judges of the three competitions organised by the Magazine Committee: the 18th Dinesh Vyas Memorial Government Law College National Legal Essay Competition 2018-2019 was adjudicated by Hon'ble Justice Mr. Kathawalla; the Belles Lettres: The J. E. Dastur Memorial Government Law College Short Fiction Essay Writing Competition, 2018-19, was adjudicated by Mrs. Rashmi Palkhivala, and the Sir Dinshah Mulla Legal Essay Writing Competition 2018 was adjudicated by Mr. Shardul Thacker. We are indebted to our preliminary judges, Ms. Amanda Rebello, Ms. Helina Desai and Mr. Sidin Vadukut.

We are grateful for the contributions of Justice (Retd.) Mrs. Sujata V. Manohar for Interviews; arbitration experts Mr. Gary Born, Mr. Tom Valenti and Mr. Naresh Thacker for Stalwarts Speak; Mrs. Zia Mody, Dr. Sujay Kantawala, Mr. Aman Kacheria and Mr. Akshay Aurora for A Prodigal Parliament; and GLC alumni Mr. Amal Sethi and Ms. Vandita Morarka for After GLC. We are immensely gratified to have witnessed an overwhelming contribution of students' pieces, ranging from articles and opinions to comics and essays towards *méLAWnge* 2018-19.

We appreciate the support of our Principal, Hon'ble Judge Smt. Suvarna K. Keole. We were guided by our Editor-in-Chief, Prof. Dr. R. S. Ratho, Professor-in-Charge, Prof. Mr. H. D. Pithawalla, and Faculty Members Prof. Mr. P. B. Daphal and Prof. Mr. K. L. Daswani. We are grateful to the entire administrative and support staff, and the faculty for their assistance. Although we were unable to accept the support of our patrons this year, we are grateful for their association with the committee over the course of the last two decades.

We owe a special mention to our wonderful designing team of Mr. Venu S. Bhoga, Mr. Sanjay Angane, Mr. Vishwanath R. Nivalkar, Ms. Nikita Awasthi, Ms. Kruti Mehta and Mr. Arputham Pillai of Finesse Graphics & Prints Pvt. Ltd.

In organising and making the magazine, and in the smooth functioning of the committee, we appreciate the considerable effort of our student members. *méLAWnge* 2018-19 is more than just a labour of love for us—we had no dearth of barriers to overcome this year, but we owe our ability to do so to Ms. Rhea Rao, Ms. Isha Prakash and Ms. Ira Misra, who have unfailingly waded through the tides with us. *méLAWnge* 2018-19 is incomplete without them.

Our last word, goes to you, dear reader. We hope you find *méLAWnge* 2018-19 as insightful, as witty, as endearing, as hopeful and as awe-inspiring as the six students who embarked upon this adventure endeavoured it to be.

INTERVIEW

Mrs. Justice Sujata Manohar (Retd.)

Former Judge, Supreme Court of India

Mrs. Justice Sujata Manohar (Retd.), first lady to be elevated as the Chief Justice of the Bombay High Court and the Kerala High Court. Even as a Supreme Court Judge, she took a strong independent stance defending the rule of law against political and public pressures. After her retirement, she was an active member of the National Human Rights Commission.

> "The women wanted to know what their rights were, they wanted legal advice relating to their own specific problems and they wanted somebody who could advise them free of charge because not all of them could afford to go to a lawyer."

Could you give us brief highlights from your experience as Member of the National Human Rights Commission? Has this experience had an impact on any previous views held in your tenure as judge?

I became a member of the National Human Rights Commission (NHRC) in 2000, soon after I retired from the Supreme Court. It revived memories of the work I had done as a lawyer prior to my becoming a Judge in 1978. Actually, the work I am referring to, is my work with various women's organisations as one of the few women lawyers then practising. The women wanted to know what their rights were, they wanted legal advice relating to their own specific problems and they wanted somebody who could advise them free of charge because not all of them could afford to go to a lawyer. As a result, I have given free legal advice as a lawyer to a large number of womens' organisations as well as to individual women and men who came to me for help. Those were the days when there was no State Legal Aid Programme. The poor and the middle-class had to depend on free Legal Aid Programmes of non-governmental social or legal organisations. I also gave a number of talks to various womens' groups ranging from women labourers to women bank officers.

In the NHRC the range of activities was very wide. The NHRC had 5 members; 3 judicial and 2 others. On major areas of work the NHRC worked with all the members. For example, when I joined the NHRC, Orissa had been hit by a devastating cyclone. The NHRC decided that supervising proper relief

operations that reach the people was a part of the NHRC's mandate. It deputed a Senior Honorary Officer to go to Orissa and supervise relief operations. For some of its work, the NHRC appointed its individual members to be in charge. I was in charge of programmes relating to women and children and relating to HIV and AIDS.

I realised that while the NHRC had in the past dealt with sporadic cases of trafficking, there was very little understanding of the entire process of trafficking, who were the most vulnerable to trafficking, was the law adequate to prevent trafficking or to help women who had been rescued from the traffickers' net. I organised an action/research programme with the help of the Institute of Social Science in Delhi. The NHRC had its own representative who was an ex-police officer on this programme who monitored the entire research and action connected with it. We had 11 NGOs associated with this programme, who were working in this area. At the end of 3 years, we produced a book on trafficking in India which had mapped out vulnerable areas for trafficking, why women and children were trafficked, the inadequacy of law to deal with the problem and the rescue operations which had been undertaken by the NHRC in the course of this study. Not just the trafficked victims, but also traffickers were interviewed for the first time. It became the first study of its kind in the world.

The Supreme Court had requested the NHRC to supervise some women's homes where rescued women were lodged. I was struck by the abuse of such women and the lack of livelihood alternatives for them. We suggested corrective measures. Fortunately, at least some of them were implemented.

We had some educational seminars and allied programmes in the area of HIV/AIDS, smoking and tobacco related problems, child labour, problems of the

"At the end of 3 years, we produced a book on trafficking in India which had mapped out vulnerable areas for trafficking, why women and children were trafficked, the inadequacy of law to deal with the problem and the rescue operations which had been undertaken by the Commission in the course of this study."

handicapped and so on. There was never any dearth of work. In addition, we received complaints from all over India about police inaction, police excesses, crimes against women, rapes which were not investigated, abuse of the elderly by their own children, forced marriages and many others in addition to complaints regarding the treatment of prisoners in jail, jail facilities, police encounters and many others. These complaints were individually examined and when necessary, evidence was also taken before orders were passed. The stature of the NHRC was such that every State carried out the orders of the NHRC, although it was not statutorily bound to do so.

Justice J.S. Verma was then the chairman of the NHRC. He and I were a part of the bench which delivered the Vishakha judgment. We now had to monitor its implementation by different government departments. The NHRC invited the concerned secretaries of government departments for this purpose. Ultimately with some difficulty, some of them could be persuaded to set up the committees which could examine complaints relating to sexual harassment. It was very rewarding work and I can say that the experience of being in the NHRC strengthened the views I had as a judge and gave me an opportunity to implement some of the programmes which as a judge I had thought should be set up.

With the Vishakha guidelines, you laid out an outline for working women against sexual harassment. What more can be done, in this age, for securing and ensuring that, women are given their independence? Where do you think today's women stand?

Vishakha guidelines are now incorporated as law although it took almost two decades to do so. Many things are still required to be done to give women equal status and opportunity. Our country has people professing a whole range of beliefs and traditions. We have extremely progressive and educated families and we have families which are very traditional that have strong notions relating to women's subordinate position in the family and society. I am an optimist and I believe that over the years we are moving in the right direction; eliminating prejudices and opening up opportunities for women. However, much remains to be done. Laws cannot by themselves bring about progress. We need committed organisations and social workers to work with the law and bring about changes in social thinking. Women themselves can be agents of such change if they inculcate right values in their children.

You have laid a lot of stress on enforcing Foreign Conventions. according to you, been an increase in the involvement of the Indian Judiciary in these conventions? What should be achieved with these conventions?

India is a signatory to many international conventions. The UN Universal Declaration of Human Rights and its two Covenants- on Civil and Political Rights and on Economic, Social and Cultural Rights, have had a major impact on our Constitution and its Chapters on Fundamental Rights as well as Directive Principles of State Policy. The Indian Judiciary has at times looked at India's international commitments under these international treaties in order to interpret constitutional provisions relating to Fundamental Rights and Directive Principles of State Policy. This approach is now finding favour with Courts of other countries such as South Africa or Canada. Our Supreme Court has also held that where the law is silent, the Court can look at such International Treaties that we have signed to fill the gap. So international conventions do play an important role in judicial interpretation of constitutional and statutory provisions.

You have made remarkable observations and submissions on human trafficking like the Palermo Trafficking. This was in 2002. In 17 years, how has the need to prevent human trafficking evolved and what must be done to curb it?

The problem of human trafficking has become aggravated over the years as a result of events that have forced a large number of vulnerable people to migrate

to other countries. Their vulnerability in refugee camps and as unwanted migrants can be exploited by criminal gangs of traffickers. I am informed that the earnings from trafficking are second only to earnings from trading in drugs. Unfortunately, our law on prevention of immoral trafficking has not yet been amended as was recommended originally by the NHRC. The focus should be on preventing and punishing the traffickers rather than on treating the victims of trafficking as wrongdoers. Vulnerable areas need to be properly monitored to curb the activities of traffickers.

What are your thoughts on community service as a punishment? Do you believe it will be effective enough to implement more often in India?

Community service can be effectively used as a punishment in certain kinds of offenses. We need to work out with the help of social workers and psychiatrists, appropriate areas where such punishment can be effectively used.

Did you face any difficulties, as a woman, during your time as a Judge, especially since you were the first woman Chief Justice of both, the High Court of Mumbai and Kerala? Do you believe that the situation has improved since then?

As a woman, I did not face any difficulties as a Judge or as Chief Justice of Bombay and Kerala High Court or as a Judge of the Supreme Court. It has been a very happy experience of equality at the workplace. My colleagues have always treated me with respect and have abided by my directions when required. Women lawyers however, in my time did have problems in getting work. As a result, we had very few women judges in those days. The situation has improved somewhat, but the number of women judges or senior women lawyers for that matter is still small. Hopefully the situation will soon improve, looking to the number of young women lawyers who are doing well in the profession.

What are your thoughts on the steady rise in the number of vacancies in the Judiciary of India? How do you believe this can be corrected?

The rise in the number of vacancies in the Judiciary is a matter of great concern. Of course, it is always difficult to get suitable persons to accept judgeships. But that is not the complete explanation of the large number of vacancies at present. There is a need to improve service conditions of Judges to attract good lawyers.

We also require from the legal profession their contribution to the system as Judges. The legal profession has responsibilities. towards society. If lawyers desire to function in an effective and efficient judicial system, their contribution to the system by top lawyers accepting judgeships is necessary. The quality of legal education also needs attention. And above all we require good management practices. Every vacancy can be foreseen from the day a Judge is appointed. There is no reason why names to fill the vacancies cannot be finalized well in time before the vacancy occurs.

What, according to you, is the most trying part of being a Judge? Similarly, what is the most satisfying part of being a Judge?

The most satisfying part of being a Judge according to me is being able to do justice. The work has tremendous job satisfaction. It is also at times challenging work and one also gets the satisfaction in such situations of having solved a difficult question satisfactorily.

The most trying part can be having to listen to a futile argument or dealing with parties and lawyers who have not done their work in the time allotted. A Court which receives proper assistance from lawyers can function much faster and deliver judgments which are sound. So, lawyers do have an important responsibility in the area of administration of justice.

USE OF SOFTER APPROACHES TO COUNTER-TERRORISM IN INDIA

– Akilesh Menezes , V-III

The infringements on our nation's borders and the violence in Jammu and Kashmir have only grown in recent years. The response of the Government has primarily been to use offensive military action to shut down rebellious activities in the valley whenever the tension escalates. However, it is clear that this cycle of violence will continue, as long as effective methods to counter-radicalise the more belligerent elements of society are not employed.

Offensive military conduct cannot be used in itself as a long-term solution to terrorism. Terrorism involves a combination of having the motivation to take action and having the ability to act on that motivation.[1] The most effective counter-terrorist strategy, would therefore, disable the operational capabilities of a terrorist group, while simultaneously breaking the motivations that fuel them.[2] However, the approach taken in India is an overreliance on offensive action. A surgical strike immediately after a terrorist attack may make headlines and give people a brief taste of victory,[3] but it totally disregards the fact that the same surgical strike will be instrumental to the process of birthing the next generation of terrorists. It becomes a tool of radicalisation, to spread the idea that the government oppresses its own civilians.[4] Terrorism is a process, not an event, and the approaches used to tackle it should reflect that.

Divisions in society and communalism are some of the main factors for the rise of terrorism in our country.[5] It is essential for the Government to move beyond the idea that upper-level dialogue with leaders of interest groups is the *deus ex machina*, which will resolve all existing issues in terror hotspots. At the ground level, what is severely lacking is the trust of the people in their government. It therefore becomes the responsibility of the local government to build trust between the community and itself, which it can do through positive governance and administration. The government must especially make the Muslim community aware of the state's commitments to democratic participation, justice, and equality. Efforts to combat Islamophobia must be publicised, and the government should ensure effective communication between itself and local authorities, religious institutions, schools, recreational associations, etc. to effect better ground level preventive measures of counter-terrorism.[6] These measures, combined with efforts to shut down propaganda, write counter narratives, and engage persons of interest, can provide a doubled effect of increasing security, as well as community building.

A secondary level of counter-terrorist policy must be directed towards fear management and reduction. The main goal (and result) of a terror incident is the spread of fear. This fear can deeply impact communities as well as individuals and can cause major disruptions in the functioning of society and in people's mindsets. Suspicion and ostracisation of aliens, failing trust in the government and police, drastic counterterrorist policies, and eroding social cohesion are all possible reactions to a terror incident; and are reactions, which terrorists aim to elicit through their actions.[7]

A good response to this is the inculcation of resilience as a protective factor against the spread of fear. 'Psychological resilience' was a term coined in 1983, to describe children's successful psychosocial development despite the existence of multiple, seemingly overwhelming developmental hazards.[8] Practically speaking, a resilient individual or society can proactively adapt to and recover from disturbances, which, within the social system, deviate from the norm of expected disturbances, such as terrorism.[9]

Public education plays a key role in building up the

resilience of the general populace. In August 2004, the United Kingdom government distributed leaflets to every household in the country, providing information about necessary precautions to be taken and appropriate behaviour in the case of emergency, especially with regards to terrorist attacks.[10] After the London bombings in 2005, research revealed that people who had read the advisory leaflets were less likely to change their behaviour (i.e. alter their travel intentions and avoid public transport when travelling to the center of London) in response to the attacks than those who had not studied the leaflet.[11] This shows that precautionary measures can often avoid the spread of panic and distrust in the event of a terrorist attack. During an attack, the employment of good communication strategies can massively help in the reduction of fear. Comprehensive communication strategies involve the disclosure of accurate, truthful, and consistent information to the public.[12] Listening and responding to the public's concerns is also a part of this process. Honesty and openness are seen as the best practices in crisis communication.[13] Openness about risks promotes trust, prevents the distribution of disinformation, and fosters credibility of the authorities with both the media and public.[14]

In India, the reporting of terror attacks involves either an overblowing of the incident, or too little coverage. Facts often vary with different media houses, and there is no consistent flow of information. Employment of effective communication during attacks by the authorities would greatly reduce the panic created by the media frenzy. In the aftermath of an attack, communal tensions build up, especially in less urban areas. Recognition of the terrorist threat, while providing effective precautionary measures, through well placed public education campaigns, can greatly improve societal resistance to terrorism as a whole.

Right now, what is desperately needed in the Valley is a change in the narrative. Serious ethical questions have been raised before the Government in light of some of the atrocities committed by the Army, and the Government needs to take action in order to regain the trust of its citizens in Kashmir. The employment of softer counter-radicalisation measures, which increase co-operation between citizens and the government, as well as fear management techniques which improve the overall resilience of the public, will help in providing a long-term solution to the pestilent issues of terrorism in India.

END NOTES

[1]Boaz Ganor, The Counter-Terrorism Puzzle; A Guide for Decision Makers 41-43; (Herzliya: The Interdisciplinary Center for Herzliya Projects) (2008)

[2] Id.

[3]Venkataramakrishnan R., If Modi's surgical strikes had been successful, why would India need a second attack?, SCROLL.IN, (2 October, 2018) https://scroll.in/article/896604/the-daily-fix-if-modis-surgical-strikes-had-been-successful-why-would-india-need-a-second-attack

[4] El-Said, New Approaches to Countering Terrorism: Designing and Evaluating Counter Radicalization and Deradicalization Programs

[5]Basia Spalek, Counter-Terrorism: Community-Based Approaches to Prevent Terror Crime 61-62 (Palgrave Macmillan) (2012)

[6]Jonathan Paris, "Approaches to Anti-Radicalization and Community Policing in the Transatlantic Space," Hudson Institute (2007).

[7]Edwin Bakker, Tinka Veldhuis, "A Fear Management Approach To Counter Terrorism", (ICCT) (2012)

[8]N. GARMEZY, M. RUTTER, STRESS, COPING AND DEVELOPMENT IN CHILDREN, (New York: McGraw-Hill.) (1983)

[9]L.K. COMFORT, R.A. BOIN, C. DEMCHAK, DESIGNING RESILIENCE: PREPARING FOR EXTREME EVENTS, (Pittsburgh University Press) (Eds.) (2010)

[10] M Government, Preparing For Emergencies. What You Need To Know, (2005) http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_17661 8.pdf.

[11]Id

[12]W. Seeger., Best Practices In Crisis Communication: An Expert Panel Process 232-44. Journal of Applied Communication Research, Vol. 34, No. 3, (2006)

[13]Id

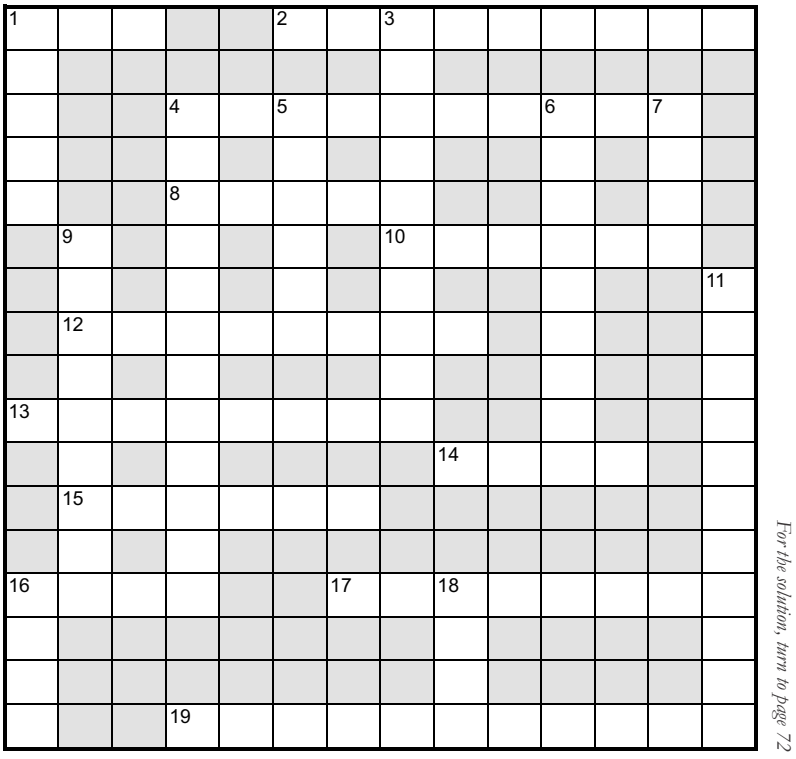
[14]Supra n. 12

THE LEXCRYPTIC WORD 9

by Prof. K. Daswani

Note from the author :

This is the ninth straight year that the Lex Cryptic is being published by the Magazine Committee . As the name suggests it is a cryptic crossword of words connected with or used in law. Except for Lex cryptic -3 which was a 'Business law' edition and Lex Cryptic-5 which had an 'International Law' theme, the others have been based on general words of law. Queries and suggestions about clues and answers are welcome.



For the solution, turn to page 72

CLUES:

ACROSS

1. An outstanding whose time has come (3)
2. This doctrinal canon may be scientific or legal (9)
4. Tom Cruise's impossible endeavours trapped in little advertisements can be relevant when proved (10)
8. Arafat Ali conceals something incurable (5)
10. Fiery confused before Churchill's sign of triumph means to authenticate (6)
12. When me in mint is brewed around you know it is looming (8)
13. Demolish from the French to the land of Prince Hector (7)
14. Falsehood preceding a direction is a prior claim (4)
15. May sounds like an off road car but this conversion is unlawful (6)
16. They are not the nays in Parliament (4)
17. Seem a ten around maybe a means of access (8)
19. Cap a pilot in confusion can lead to a form filling or a function (11)

DOWN

1. It follows little Deborah for a kind of entry (5)
3. Sugar leader stirred with nine volts are indigents (10)
4. A fat firm is on a roll to provide assertions of truth (12)
5. A subject of Newton´s laws is found to be moved in a court proceeding (6)
6. Emergency edict that can short circuit the democratic process (9)
7. To live in restrain (4)
9. From a conviction perspective it is quite obvious (9)
11. Possibly an organisation of repute, maybe academic, medical of Governmental (12)
16. One of the ways in which one abets (4)
18. Place for dispute resolution in the Far East (4)

A PRODIGAL PARLIAMENT: AN INFLUX OF 'BILLS'

"You do not examine legislation in the light of the benefits which it will convey if properly administered, but in the light of the harms it would do and the harms it would cause if improperly administered."

-Lyndon B. Johnson, 36th President of the United States of America

The institution of distinctive and specialised legislations buttresses the administration of justice. The law is an instrument of justice, and in that light it is imperative to hold our legislations to a standard of scrutiny that is every bit as tenuous as Lyndon B. Johnson declares. This year's theme section tackles two Acts of Parliament passed in the last year: The Specific Relief (Amendment) Act, 2018, and The Fugitive Economic Offenders Act, 2018.

The Fugitive Economic Offenders Act, 2018, has been introduced as a deterrent to fugitive economic offenders from evading the process of law in India by staying outside the jurisdiction of Indian courts, to preserve the sanctity of the rule of law in India. The Specific Relief (Amendment) Act, 2018, has substantively changed the ethos and texture of The Specific Relief Act, 1963, by taking away much of the discretion of the courts, introducing the remedy of substantive performance and by instituting new provisions to deal with infrastructure project contracts. In order to gain a holistic perspective of the applications and repercussions of these Acts, this section showcases perspectives of professionals and graduate students, who bring to light distinct aspects of the two legislations.

I. FUGITIVE ECONOMIC

Dr. Sujay Kantawala

Dr. Kantawala is a practising Counsel in the Bombay High Court appearing in Civil, Criminal, Indirect Tax writs and various types of public interest litigations. He graduated with a First Class from GLC in the year 1991, coming in 2nd overall in the University of Mumbai. Dr. Kantawala was also the Secretary of the Magazine Committee in the year 1989. He has also taught in GLC for a short period.

FEOA, 2018 – A BRIEF STUDY

The Government of India has finally come up with an apparently apt solution in order to deal with Economic Offenders fleeing the jurisdiction of Indian courts. This has altered an effective legal blow to the numerous scams that have virtually brought our country to an economic slowdown and have drastically hampered the banking and financial eco-system. In recent times, India has witnessed a rising number of economic offence cases, like the mining and coal scam, illegal betting in cricket scam, the Nirav Modi – Mehul Choksi Bank Frauds case and the most popular of all, the Vijay Mallya saga. These offenders obviously don't work alone. They have an intelligent team planning all the time. The under-staffed agency has to work day and night to collate all the data, arrest the available accused and confront some of the best legal brains in the country. This Act gave them the ammunition they were looking for.

The Fugitive Economic Offenders Act, 2018 (hereinafter **"FEOA 2018"**) is an Act of the Parliament that came into force on 21 April 2018, which enables and strengthens the working and implementation of the Prevention of Money Laundering Act, 2002 (hereinafter **"PMLA 2002"**). Elaborate Rules have been drafted, in aid of the present Act - which exhibit careful application of mind as regards the pressing need of the hour, and lay down a simple and quick procedure to be followed in the confiscation of properties and assets of Economic Offenders who evade arrest and prosecution by purposefully remaining outside the territorial jurisdiction of Indian courts. Economic offences involving an amount of and above INR100 Crores, are listed in the Schedule of the FEOA 2018. As per the Act, a Court ('Special Court' under the PMLA 2002, has to 'declare' a person as a 'Fugitive Economic Offender' (hereinafter **"FEO"**). Due process, as per the Act/Rules has to be followed in its strict sense. The Act extends to the whole of India and also defines and recognises the concept and importance of a 'contracting state', as the sale proceeds of any criminal activity, wherever stashed, are like poisonous fruits which can only emerge from a parent poisonous tree. It is thus, in the interest of like-minded nations to co-operate with each other in all respects to deal with this cancer of money-laundering, which can have dangerous consequences, to say the least.

The Act has been made with the specific purpose to provide for measures to deter and defeat FEO from evading the

OFFENDERS ACT, 2018

process of law and inflicting of commensurate and adequate punishment by not remaining available within the constructive custody and jurisdiction of Indian Courts. It has also been enacted with a higher objective of preserving the sanctity of the Rule of Law in India, which is the touch stone of the Constitution of India. Though it took many long years for the Legislature to finally come up with a near practical solution to curb the mischievous mechanisms resorted to by the ingenious 'Economic Offenders', we finally have in place, a law that seeks to bring within its ambit all such persons who have for so many years, by planning, evaded the clutches of law, and have escaped to foreign destinations physically, and have parked their ill-gotten sale proceeds of crime and related criminal activities in so-called tax havens, at the expense of the honest tax payers of the nation. The Statement of Objects and Reasons of this Act reveals the seriousness of the situation and the resultant menace.

The Act inter-alia provides for: -

- An inclusive definition of FEO;
- Attachment and Confiscation of Property of FEO;
- Disentitlement of the FEO from putting forward or defending any civil claim;
- Appointment of an 'Administrator' for purposes of the proposed legislation.

Further, upon a bare reading of the Act and the various allied Rules, it appears that Section 5 of the FEOA, 2018 is similarly worded to Section 5 of the PMLA, 2002. It has been drafted on almost the same lines and both these enabling provisions, though occurring in different statutes, inter-alia provides for the same thing, i.e. attachment of the property of a person which was acquired and stashed away from 'proceeds of crime', or which is a benami property owned by a shadow 'Fugitive Economic Offender'. This also displays the intention of the legislature to consolidate the power and grip of the Regulatory and Adjudicating authorities over such declared 'Fugitives' who are purposefully absconding from the territorial jurisdiction of the Indian courts. Section 2(n) of the legislation provides that a 'Special Court' means a Court of Session designated as a Special Court under Section 43(1) of the PMLA 2002. This dedicated Court is regularly hearing matters already, in fast track mode.

One unique provision under the Act is the bar from putting forward or defending any civil claim once an individual has been declared as a 'Fugitive Economic Offender' by the virtue of Section 12 of the Act by the Special Court. The bar so stipulated under the Act is elementally different from an order of moratorium under the Insolvency and Bankruptcy Code Act, 2016. While the latter stipulates the halt on all relevant proceedings for both litigants, the former has the effect of disabling the FEO from filing or defending any civil claims. For these reasons, Section 14 has been questioned by certain critics apparently on the weak argument that this practically amounts to denying the Fundamental Right of Access to Justice to the Accused Person. The Rules also provide for provisional attachment of the FEOs property. Now we wait for our vigilant and vibrant judiciary, which is the last bastion of hope in our democracy to implant its wisdom and iron out whatever creases are sought to be argued by FEOs to try and evade the clutches of this Act and only then the intent to promulgate this historic legislation would succeed in the interest of this great nation.

Mr. Akshay Aurora

Akshay Aurora is an alumnus of Government Law College, Mumbai and a J.D. candidate at Osgoode Hall Law School, Toronto, Canada. Akshay was an associate at Trilegal, Mumbai where he worked on several financial crime related matters. Akshay currently specialises in Public international law, international trade law, and refugee law.

The Fugitive Economic Offenders Act: A faux pas of a constitutional level?

At the outset, I do believe that there is arguably a case to be made out against certain provisions of the Fugitive Economic Offenders Act, 2018 (hereinafter **"Act"**).

The first provision I find problematic is that of pre-trial confiscation. The Director makes an application that s/he has reason to believe that an individual is a Fugitive Economic Offender (hereinafter **"FEO"**) (Section 4). An FEO is an individual against whom a warrant has been issued who is outside India (Section. 2). So far we have no determination that this individual has actually committed the offence in respect of which the warrant is issued. The Special Court then issues a notice to the individual; if the individual does not show up, the Special Court will have to satisfy itself that the individual is an FEO. In order to qualify as an FEO, a warrant must be issued and the individual must be outside India. Once it is so satisfied, a declaration will be made that the individual is an FEO upon which the Special Court may pass an order confiscating any property, benami or otherwise, proceeds of crime or otherwise, owned by the FEO. (Section 12(2)(b)).

So we now have a procedure that allows the state to exercise its coercive power by confiscating an individual's property merely on the basis of the fact that a warrant has been issued in respect of such person and that such person is outside India. This is troublesome, primarily because the power of the state is to 'confiscate' and not simply to attach. Per Section 12(8), this means that the rights and title in the property now vest with the Central Government. This confiscation is absolutely unfettered - it is not limited by the amount needed to be recovered from the individual, and is not in any manner restricted such as under Smugglers and Foreign Exchange Manipulators Act, 1976 where confiscation could only take place upon conviction.

There is an evident lack of scrutiny before the coercive power of the state is levied on an individual, there seems to be no requirement that the Special Court test the veracity of the Director's allegations before such confiscation is undertaken. The Act is also silent on what happens to the property if the FEO is subsequently acquitted by a Court. Arguably, this violates the principles of natural justice, which are undoubtedly a part of the Indian Constitution.

Secondly, the provision disallowing civil claims is likely to be held unconstitutional. This provision outdoes any previous legislation, and to my mind, there is nothing of the sort in previous white-collar crime legislation.

Section 14 starts with a non-obstante clause, thus making it very powerful to start off with, and then proceeds to

disallow not only the individual declared an FEO, but also any company or Limited Liability Partnership in which the individual so declared is a promoter, Key Management Personnel etc from putting forward or defending a civil claim. This is a direct bar to an individual's and corporation's right to access courts - which is likely to be struck down as being contrary to Article 21. By extending the provision to corporations and LLPs, the legislature seems to not only coerce the FEO but also the employees and shareholders of a company in which the FEO is interested (in the manner specified in the Act). The section seems to run contrary to the principle of access to justice, a principle that has been affirmed by the Supreme Court of India to form a part of India's Fundamental Rights, particularly Article 21 of the Constitution of India (See *Imtiyaz Ahmed* (2012 2 SCC 688) at para 25, *Anita Kushwaha v Pushap Sudan* at para 29).

It would be interesting to see how a challenge to this section would be defended, there does not seem to be much of a rational connection between the objective of this act and this blanket denial of access to courts under this provision. In Canadian constitutional law, this would be struck down as an 'overbroad' and 'grossly disproportionate' provision, going far beyond what the Act purports to do. Another point to note is that India ratified the United Nations Convention Against Corruption in 2011 and is now using it as a justification for an Act passed in 2018. However, this justification is well-founded in the provisions of the Convention. Article 54(1)(c) of the Convention makes a similar pre-conviction confiscation provision in the case of offenders that cannot be prosecuted by reason of death or absence.

The Act suffers from many gaps, and deterrent statutory provisions are very rarely successful at deterrence (see death penalty provisions). For one, the reason for placing a pecuniary limit for the Scheduled Offences amazes me. Do those committing Scheduled Offences involving INR 90 crore or 99 Crore not require the mighty deterrence that this Act seems to bring in? It seems like an arbitrary number to me, not grounded in any empirical data or analysis.

Secondly, the Act is heavily dependent on mutual assistance between countries. In order for it to work to its fullest extent, the Ministry of External Affairs will have to ensure that there are suitable arrangements made and that there are a sufficient number of countries with which India has these arrangements. As India's extradition record will show, India does not excel at such bilateral mutual assistance agreements.

Thirdly, the Act simply forgets to address key procedural issues. Section 11(2) provides that if the individual enters appearance through an advocate, an additional one week is given to him/her to file a reply. What happens thereafter? The Act doesn't tell us. Section 12 simply says *'after hearing an application under Section 4'* - what is the duration within which such application must be decided? Once again, the Act is silent.

Lastly, the Legislature must realise that its outlook to law-making is flawed. India is not a country where deterrence is a successful punishment mechanism. Instead, the Legislature must concentrate on ensuring that banking regulations are overhauled in order to ensure that another Mallya or Modi isn't created.

II. The Specific Relief

Mrs. ZIA MODY & Ms. Anshika Misra

Mrs. Mody is one of the founding partners of AZB & Partners. She served as Vice President and member of the London Court of International Arbitration from 2009 to 2013, and as a member of the World Bank Administrative Tribunal from 2008 to 2013. She was assisted by Ms. Anshika Misra in writing the following piece.

The Specific Relief (Amendment) Act, 2018

The rationale for the Specific Relief (Amendment Act), 2018, (hereinafter **"Amendment Act")** that amends the Specific Relief Act, 1963 (hereinafter **"SR Act")**, more than 50 years after its enactment, was spelt out by Union Law Minister, Ravi Shankar Prasad, while introducing the Specific Relief (Amendment) Bill, 2018, (hereinafter **"Bill")** in the Rajya Sabha: *".. The amendment is very small. But, it is in a way changing the nature of the law itself, that it is designed to promote India's ranking in the Ease of Doing Business. It is designed to ensure that contracts are executed within executed (sic) time. …Most important, it focuses upon infrastructure projects…."*.[1] While the thrust of the government's pitch for the Amendment Act was to put infrastructure projects on a fast-track by reining in not only errant contractors but also the Court's discretion and powers to grant injunctions in such matters, its effect on the common man would be much more than the intended access to public utilities.

A party's right to choose the remedy it wants The Amendment Act came into force from October 1, 2018, and has introduced amendments to 11 sections of the SR Act (hereinafter **"Amended SR Act")**, which governs commercial and personal contracts. Of these amendments, the most significant is that specific performance of a contract is no longer a discretionary remedy, but can be claimed by a party as a mater of right before a Court.

Under the un-amended SR Act, the grant of specific performance by a Court was discretionary and was granted more as an exception in cases where (a) monetary compensation for breach of contract was inadequate; or (b) the extent of damage caused by the breach could not be ascertained. This discretionary nature of the remedy created "considerable uncertainty" in enforcement of contracts, noted the six- member Expert Committee, constituted to review the SR Act, in its Report dated May 26, 2016. [2] The Amendment Act provides that Courts shall enforce specific performance of a contract when claimed by a party, and can refuse such remedy only on the limited grounds in the statute.[3] The amendment to Section 14 has narrowed the grounds on which specific performance can be refused. Further, the Amendment Act provides for disposal of suits within 12 months from the service of summons [4] and empowers Courts to appoint experts for assistance on any issue.[5] The increased certainty of enforcement, should impact the way contracts are negotiated and encourage parties to perform their contracts. However, the Amendment Act has not retained certain mitigating factors including where enforcement of a contract would lead to some hardship not foreseen at the time of execution; or the plaintiff has an unfair advantage, as recommended by the Expert Committee. [6] In line with the Expert Committee's recommendation that a non-defaulting party ought to be able to choose the remedy it wants, the Amendment Act introduces substituted performance.[7] Now, after giving a 30-day notice to a contract-breaker, the non-defaulting party, has the option of availing substituted performance through a third party or through its own agency. The party suffering the breach is entitled to recover the costs incurred for the substituted performance from the

party committing the breach. This should cut delay in performance of contracts and the uncertainty in recovering costs.

Infrastructure Projects

The Amendment Act gives a strong fillip to 'infrastructure projects'. Section 20A, inter alia, provides that no injunction shall be granted by a Court in relation to an infrastructure project (defined in the Schedule to include transport, energy, water and sanitation, communication and social and commercial infrastructure), where the injunction would cause impediment or delay in the progress or completion of the infrastructure project. [8] Special Courts are to be instituted by the State Government in consultation with the judiciary to try suits with respect of contracts relating to infrastructure projects. The Expert Committee made these recommendations to ensure progress of public works without interruption after reviewing case law, including one where a public road widening project was held up by orders of injunction for 24 years.[9] The Schedule to the Amendment Act adopts a very wide classification of infrastructure projects, and the Schedule can be amended further. While this maybe intended to skew the balance of convenience towards the intrinsic public interest in such infrastructure projects, any State action would still need to meet the standard of non-arbitrariness.

Way ahead

Given the over-arching reach of the Amendment Act, the Government ought to have taken the benefit of public consultation to gauge the effect of Bill's provisions. There was no public discussion on dropping the recommendations made by the Expert Committee including the recommendation to enable a third party to a contract, who is entitled to a benefit under the contract, to seek specific performance. The Amendment Act is already being criticised as yet another instance of *'legislate in haste, amend at leisure'*.[10] Further, in the absence of a 'savings clause' in the Amendment Act, which brings about a substantive change in law, the Courts will be called upon to rule on the prospective / retrospective applicability of the Amendment Act,[11] as it did for the 2015 amendments to the Arbitration and Conciliation Act, 1996. [12]

END NOTES

[1] See page 404 onwards of the Official Report of the Rajya Sabha's proceedings for July 23, 2018: http://164.100.47.5/official_debate_hindi/Floor/246/F23.07.2018.pdf

[2] Page 60, Expert Committee Report. The Report was not made public by the law ministry. It was made available under the RTI Act in April 2018: https://drive.google.com/file/d/0B-UXtJuPbi3ak0wbENVdUdjQTZWcTNQSW5vNWpUSWVNYnc0/view

[3] Section 10 of the Amended SR Act. The Amendment Act has also removed the requirement of averment of readiness and willingness to perform the contract in the suit in order to seek specific performance. Proving the same would suffice.

[4] Under the proviso to Section 20C of the Amended SR Act, the Court can grant a six-month extension after recording reasons.

[5] Section 14 A of the Amended SR Act.

[6] Pages 80 – 91, Expert Committee Report

[7] Section 20 of the Amended SR Act

[8] This has also been added as a ground (sub-clause (ha) to Section 41 of the Amended SR Act) to refuse injunction.

[9] Pages 15-34, Expert Committee Report

[10] https://barandbench.com/specific-relief-amendment-act-hurried-legislation/

[11] The Supreme Court skirted this issue in its judgement dated October 9, 2018, in Sushil Kumar Agarwal v. Meenakshi Sadhu, 2018 SCC Online SC 1840, involving Section 14(3)(c), which was omitted by the Amendment Act. The SC noted that it had not been called upon to examine the effect of the Amendment Act provision, and in any case, it had held that Section 14(3)(c) was not attracted in the particular case. [paras 35-36]

[12] Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd & Ors, (2018) 6 SCC 287

Mr. Aman Kacheria

Aman Kacheria is an associate with Rashmikant & Partners, and specialises in litigation and alternate dispute resolution. He regularly assists in matters pending before the Supreme Court of India, the Bombay High Court, the Delhi Court, and several tribunals, including the NCLT (Delhi and Bombay bench) and the SAT. He also regularly assists in domestic and foreign seated arbitrations, including those instituted before the SIAC and the LCIA.

Will It Change The Way We Do Business In India?

Introduction

The Specific Relief (Amendment) Act, 2018 (hereinafter**"Amendment Act"**), which substantially amended the Specific Relief Act, 1963 (hereinafter**"1963 Act"**) was passed by the Parliament on 23 July 2018 and was published in the Official Gazette on August 2018.[1] 'Specific Relief' is defined as a remedy granted by Courts, requiring precise fulfillment of contractual or legal obligations by a defaulting party when monetary damages are inadequate or inappropriate. The Amendment Act significantly departs from the 1963 Act, and makes specific performance of a contract a rule, rather than an alternative to monetary compensation for non-performance.[2] The Amendment Act is based on the recommendations of an Expert Committee Report,[3] which recognized that a system, which mandated contract enforcement, is *'essential for the smooth flow of trade and commerce, and for developing confidence in investors.'* Broadly, the Expert Committee recognised that often, parties would rescind on their contractual obligations, finding it easier and commercially palatable to pay the monetary compensation, rather than perform their end of the bargain.[4] This would particularly hamper businesses that based their services primarily on the performance of a prior contract.

The Expert Committee Report

Espousing the need to ensure performance of a contract, the Expert Committee has ensured that the Amendment Act contains limited grounds for Court's to refuse to grant specific performance – in line with the UNIDROIT Principles of International Commercial Contracts. The Expert Committee made most of its recommendations in an attempt to reduce Court interference while ensuring that contracts are performed in a manner as contemplated for by the parties.

Albeit the Amendment Act does not reflect all the recommendations made by the Expert Committee,[5] it encapsulates the essence of the Expert Committee Report to ensure that Courts enforce contractual obligations between parties, in a manner so as to not hamper trade or commerce adversely. This assurance is necessary in the milieu of increased foreign investment in India, particularly since parties on the receiving end of contractual obligations would rather have these obligations performed than being compensated in monetary terms for any loss suffered due to their non-performance.

Discretion of Courts while granting specific performance

Under the 1963 Act, Courts were not bound to ensure that contracts were specifically performed, and had discretion as to whether it was to be granted. Accordingly, decreeing performance of a contract almost became an exception, and awarding monetary compensation the rule. Departing from this, the amendment to Section 10 replaces the words 'may, in the discretion of the Court' with the word 'shall', thereby limiting Courts' interference in granting specific performance. Under the Amendment Act, specific performance of a contract must be granted, subject to Section(s) 11(2), 14 and/or 16 of the amended 1963 Act, and Courts are now required to give reasons for not enforcing a contract. In line with judicial precedent,[6] the Amendment Act factored that there was no necessity to aver readiness and willingness to perform the contract on behalf of the plaintiff, and it would be sufficient if the averments in substance and spirit indicated the

continuous readiness and willingness of the parties to perform their part of the contract. The Amendment Act, however, does not factor in the Expert Committee's recommendations of additional grounds to refuse specific performance such as (i) where performance would cause undue hardship, which was not foreseeable at the time of entering into the contract; and (ii) where the terms of the contract, although not voidable at the first instance, gives one of the parties an unfair advantage over the other.

Substituted Performance

Section 20 of the Amended Act provides for parties to avail performance of a contract through third parties, or through its own agency, at the cost of the defaulting party. This is one of the exceptions to Courts decreeing mandatory specific performance by the defaulting party, and a welcomed one since parties now have the autonomy to contract out, in the event of a default, and satisfy performance through third parties to the contract. Earlier, a party attempting substituted performance would be mandatorily required to mitigate its damages, under Section 73 of the Indian Contract Act, 1872, pursuant to a party defaulting on their contractual terms, and a claim for compensation against such party, would relate only to costs 'foreseeable' at the time of entering into the contract.

Expert opinions

The Amendment Act allows Courts to appoint experts on contracts that involve a technical interpretation or any other specific issue to assist Courts to come to an informed decision relating to the performance of such contracts. Parties were always permitted to lead expert evidence even prior to the amendment, however a Court appointed expert would reduce any partiality and ensure objectivity by the expert. Expert opinions may also prove of assistance to Courts while interpreting contracts relating to cross border transactions, involving complex legal structures across jurisdictions.

Conclusion

Lastly, specifying strict timelines for Courts to dispose of suits[8] has promoted speedy disposal of disputes similar to the recent amendments to the Arbitration and Conciliation Act, 1996. While mandatory performance despite undue hardship would give rise to inharmonious situations, where a Court may have to decree specific performance despite the circumstance, the need of the Amendment Act is crucial. Since the Amendment Act has led to a repeal and substitution of their respective corresponding provisions of the Act, in terms of general law, it would not operate retrospectively and would not apply to suits currently pending before Courts, instituted prior to its passing.[9] Whether the Amendment Act will, in fact, change the way business is conducted in India is ambiguous, since it would only have a bearing on proceedings filed pursuant to the Amendment Act. That being said, it will definitely reduce litigation, and altering the nature of specific performance from an exceptional relief to a mandatory decree is likely to ensure contractual enforcement.

END NOTES

[1] See Black's Law Dictionary, Bryan A., Garner, (8th Edition), pg. 1435.

[2] Which was the position under the 1963 Act.

[3] The Expert Committee was set up on 28 January 2016, and submitted its report to Union Minister for Law and Justice D.V. Sadanand Gowda on 20 June 2016. A copy of the Expert Committee Report has not been made available for public viewing, but has been provided to those who have requested for the same pursuant to an application made in accordance with the Right to Information Act, 2005.

[4] Specifically since Court's would follow 'damages is the rule and specific performance the exception' principle, thereby ascribing a monetary compensation for the non-performance of a contract, rather than ensuring that a particular contract is performed in the manner in which the parties had agreed.

[5] For example, the amendments made to Section 6 of the 1963 Act – which, inter alia, defined the word possession to include physical, legal or joint possession, to primarily essentially ensure that (i) some of the joint possessors of a property may choose to file a Suit under Section 6, while the other may not; and (ii) to address the position of a licensee, who is in use and occupation of the property, but not in legal possession of the property.

[6] Motilal Jain v. Ramdasi Devi AIR 2000 SC 2408.

[8] A time period of twelve (12) months has been prescribed, which can be further extended by six (6) months pursuant to the Court recording reasons for the same.

[9] In terms of Section 6 of the General Clauses Act, 1897, the rights accrued, obligations cast and previous operation of a repealed legislation is saved.

Free Spaces: Navigating Street Harassment in India.

- *Akshita Sharma, V-III*

"If they haven't learned it anywhere else, street hassling teaches girls that their sexuality implies their vulnerability".[1]

Street harassment, although an everyday social reality, has been a largely overlooked and silenced form of sexual harassment, underpinned by our collective indifference and denialism. The large-scale trivialisation of public harassment may be explained by the uniqueness of the harm, occurring against women mostly, though not necessarily against them alone; and the inadequacy of the present theoretical legal framework which qualifies what is and what is not sexual harassment on behalf of women; and not very accurately so.

PART I.

Street harassment exists on a continuum of possible events, beginning with abrogation of civility and ending with a possible transition to violent crime such as assault, rape or murder.[2] It takes many forms and is multi-functional regardless of the content of the act.[3] Here, language performs a major role: it helps transmit social ideologies of the attacker onto his target in public, unlike other forms of sexual violence where the use of language may not be as purposeful. Any incident of street harassment has five characteristics: the public locale; the gender of and the relationship between the harasser and his target – remarks passed among unacquainted members of opposite sex; any positive response that frustrates the harasser's attempts to objectify is unacceptable (and so is anger/use of force); remarks directed at body parts that are not for public consumption.[4] The study of its effects: domination, oppression, exclusion, and invasion[5], is crucial to our understanding of street harassment as a form of endemic violence. Unwanted intrusions upon women remind us that regardless of hard-won rights, it is our sexuality that is definitive to men. It reinforces spatial boundaries-the public space is for men; where women are only objects for visual gratification, and the private home, for women. The 'free' spaces then become a site to negotiate our constitutional rights of equality and liberty with men.

PART II.

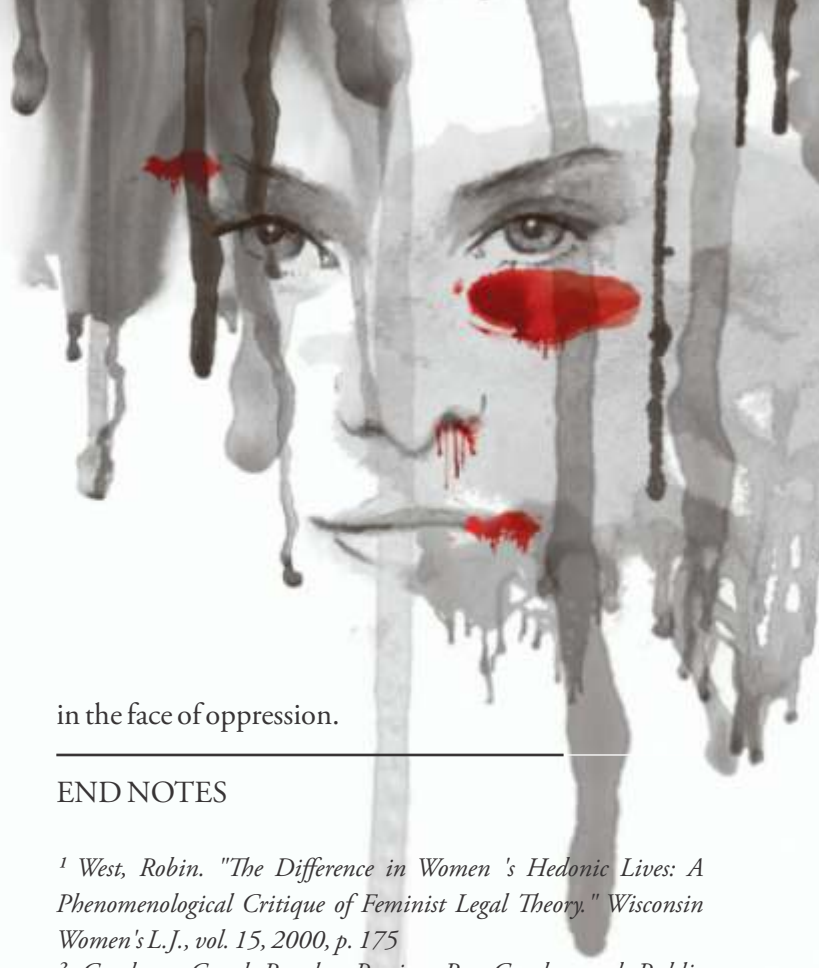
I take into account two provisions: Section 354 and Section 509 of the Indian Penal Code, 1860, to dissect our legal understanding of sexual harassment.

The provisions are indeed expansive,[6] yet essential to both are: (i) the intent required to establish the wrong, and (ii) women being reduced to a vague standard of undefined modesty. The essence of modesty was interpreted by the Supreme Court to mean a woman's *'sex'*, and that *'from her very birth she possesses the modesty which is the attribute of her sex'*[7] – indulging gender essentialism in what should be a purely legal category indifferent to social constructions and biases.

An ephemeral experience lacking assault, say, getting touched in public, may not necessarily be suffered as violating 'modesty', but merely as annoyance and hurt. Considering further that the wording of both sections puts the onus on the assaulter to interpret modesty in his target, it follows that women sex-workers thought to be lacking character are those whose modesty cannot be outraged, irrespective of the non-consensual nature of the act. When modesty is itself defined by a patriarchal culture, then it is likely to significantly affect those who are recognised as 'victims' and our interpretations of street harassment. It is suggested that the focus should shift from the 'intent' of perpetrator to the 'consent' of the victim, whilst the intent may be used later to determine the quantum of punishment.

PART III.

A Bill passed by France in 2018, imposes hefty fines on street harassment and breaks dominant notions of justice, while exposing the inadequacy of the current



system. The established framework of dispute resolution — which involves, firstly, naming the wrong and the wrongdoer; secondly, blaming the perpetrator by externalising the harm, and finally, claiming the remedy from them, as done in courts is eclipsed by the on-the-spot aspect of the law which helps in directly claiming a remedy, for the injury suffered.[8] Furthermore, the expensiveness is intended both to deter the agent from repeating the act and to compensate the victim without having to resort to traditional mechanisms.[9]

In a country like India where varying socio-economic and cultural factors come into play before women set out to seek justice, such fines would seem ideal. However, when we place the rich and influential in a legal equality with the poor and disenfranchised, more often than not, it is the former rather than the latter who have been able to secure the benefits and advantages to be derived therefrom.[10] Such model could therefore unequally impact working class men since their place of business is often the street, while giving leeway to the privileged white-collared class without addressing the long-term needs of women. In principle, the model furthers efficiency in administering justice, but negatively affects its fairness and quality.

The apparent invisibility of the perpetrator and the scrutiny of his intent; distribution of limited manpower, and the subjectivity of law enforcers would far outweigh its supposed benefits. A policeman may interpret compliments from strange men on the street as 'harmless', while that could be deemed invasive by women. So, it must be what a 'reasonable man' would think of the 'harm'. Since the reasonable man is actually 'a dispassionate instantiation of community norms';[11] the injury would need to be established by an inherently unequal standard. Street harassment is a gender-specific harm in which men have no experiential basis, it is wholly inconsistent to apply such a standard to female victims.[12]

We must prioritise transformative justice, that recognises the biopolitics and harms of sexual harassment, rather than forcing passivity onto women in the face of oppression.

END NOTES

[1] West, Robin. "The Difference in Women 's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory." Wisconsin Women's L.J., vol. 15, 2000, p. 175

[2] Gardner, Carol Brooks. Passing By: Gender and Public Harassment. University of California Press, 1995

[3] Kissing, Elizabeth. "Street Harassment: The Language of Sexual Terrorism." DISCOURSE & SOCIETY, vol. 2, no. 4

[4] Davis, Deirdre. "The Harm That Has No Name: Street Harassment, Embodiment, and African American Women." UCLA Women's Law Journal, vol. 4, no. 2, 1994

[5] Id.

[6] note: Definitions have not been reproduced for sake of brevity. I have also not considered the entire spectrum of sections 354A-D, IPC for their strict requirements may prove ineffective in street harassment cases. For example, 354A punishes physical contact only when coupled with sexual overtures. Voyeurism under 354C is an offence only when the woman engages in "private" acts, that is, those occurring in private spaces.

[7] State Of Punjab v. Major Singh, (1967) AIR 63.

[8] see Laniya, O O. "STREET SMUT: GENDER, MEDIA, AND THE LEGAL POWER DYNAMICS OF STREET HARASSMENT." COLUMBIA JOURNAL OF GENDER & LAW, vol. 14, no. 1.

[9] Civil remedies for street harassment have been pursued in common law countries, and contain great potential for India where they remain unrealized. A civil suit may be pursued; say, an action in tort for assault during street harassment; or where content is slanderous in public, then an action for defamation.

[10] Brandon, Gerard. "Unequal Application of the Criminal Law." Journal of Criminal Law and Criminology, Yale Law School, vol. 1, no. 6.

[11] Post, Robert. "The Social Foundations of Privacy: Community and Self in the Common Law Tort." California Law Review, p. 961, vol. 77.

[12] Laniya, supra note 9, at 126.

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Illustrated by : Jayansh Soni V-III

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THE POLICY REVIEW

Crack In The Pillars: Will The Indian Democracy Sustain?

The Policy Review is organised by the Debating and Literary Society of Government Law College as part of the Policy Debate.

The Policy Debate is a panel discussion where professional experts of multiple fields deliberate on the most pressing issues of current times. This year's theme was 'Crack In The Pillars : Will the Indian democracy Sustain?'

This year's edition of the Policy Debate witnessed a stellar panel consisting of Mr. Shyam Divan, Senior Advocate, Supreme Court of India, Mr. Kanchan Gupta, Veteran Journalist, Mr. Milind Khandekar, Journalist, Mr. Meghnad S. Public Policy Expert and Mr. Abhijit Iyer Mitra, Senior Fellow at the Insititue of Peace and Conflict Studies. The Chief Guest was Hon'ble (retd.) Mrs. Justice Sujata Manohar and the Guest of Honour was Adv. Ramakant Gaur. The policy debate was moderated by Prof. Mr. Kishu Daswani.

The following entry won the first place in the Policy Review. It has been co-authored by Nidhi Gupta and Sakshi Mohan of Chanakya National Law University, Patna.

INTRODUCTION

Constitutions are envisaged by their drafters to form a fundamental law for the governance of a nation. When its interpretation is entrusted to the judiciary, an exalted task is reserved with the judge that has monumental consequences for wellbeing of the people. Since the dawn of Independence, the Indian Judiciary has made consistent and singular efforts to adhere to the maxim boni judicis est ampliare jurisdictionem (it is the duty of a good judge to extend the jurisdiction) which is premised on the principle that law must change with society to retain its relevance. In the words of Vivian Bose J., the Constitution is not 'dull lifeless words… static and hidebound as in some mummified manuscripts, but living flames… tongues of dynamic fire potent [enough] to mould the future as well as guide the present'[1].

In as much as the Judiciary takes it upon itself to give new interpretations to the law to reflect the changing needs of the society, it embarks on the perilous road of creating laws, thereby marking a departure from the Blackstonian doctrine of the "declaratory" function of the courts, holding that the duty of the court is not to "pronounce a new law but to maintain and expound the old one. Therefore this essay explores whether the judiciary harms parliamentary sovereignty in the process of creating laws and if it threatens the survival of the Indian democracy.

The anger directed at the judiciary for trespassing in the legislative domain is premised on the doctrine of separation of power. However, it is pertinent to point out that the doctrine does not envisage strict separation of power, but separation of function in order to protect the underlying fundamental values such as features of Basic Structure Constitutionalism.

SEPARATION OF FUNCTION

Generally when a court invalidates a legislation it neither approves nor condemns the legislative policy. It merely determines whether the legislation is in conformity with, or contrary to, the provisions of the Constitution, thereby upholding primacy of constitution over legislative powers of the parliament. Similarly, when the Court strikes down an executive order, it does not do so in a spirit of confrontation or to assert its superiority but in discharge of its constitutional function and to prevent excess of authority or abuse of powers. In all such cases, the court discharges its function as a judicial sentinel, guarding the ark of the constitution.

Indian Constitution does not tilt in favour of the pure doctrine as it rejects the structural separation. The Constitutional Assembly Debates did not support the intention of laying down "prohibited areas" in the Constitution, where one organ couldn't interfere with the others powers. Ramaswami J. expressed the view that in India there is no strict doctrine of separation of power. [2] It was noted that the constitution has not vested judicial or legislative power in separate departments of the State. The articles of the constitution do not establish black or white areas. There is no pre-determined doctrine of separation of power in India. It has evolved with the history and experience of the specific constitutional system as prevailing in our nation.

THE SEPARATION DOCTRINE TO PREVENT TYRANNY

The accumulation of all powers, legislative, executive, and judicial in same hands would be tyranny. The doctrine of separation of powers does not mean that the various departments should be completely and absolutely independent of each other. Montesquieu did not mean that the departments should have no partial agency or control over the acts of each other, but simply that whole power of one department should not be in the same hands the whole power of another. Perfect independence and perfect separation of powers are neither easy in practice nor desirable.[3] Separation of function is given more emphasis in order to ensure an effective system of Checks and Balances. For the development of the nation, it is essential that all the three limbs of the State function in complete harmony. An overlap between the domains of power of the three

organs is inevitable because the line of control that separates these domains is blurred and often overlooked in the interest of harmony between the three organs.

The egalitarian ideas of Justice and Rule of law are the very fabric, the substratum of a democracy and the primary duty of the judiciary as a sentinel of democracy is to uphold them. Indian society is marred with poverty, systemic violence and exploitation of the weak. In this context, invoking the doctrines of self-restraint, strict constructionism or passive interpretation will not absolve the court of its constitutional duty to bring about justice and uphold the Rule of Law. Therefore, so long as a judicial action is undertaken to protect and fortify our fundamental constitutional fabric, superficial rips caused due to the separation doctrine will not be grave enough to be considered as a crack in the pillar of democracy. S.B. Sinha J. aptly dealt with the question of judicial activism versus judicial restraint-

"The judge made law is now well recognized throughout the world. If one is to put the doctrine of separation of power to such rigidity, it would not have been possible for any court to create new rights through interpretative process." [4]

Therefore judicial encroachment in the legislative domain will be justified if the end goal to be achieved is protection of fundamental values of the constitution. The researchers in the next section will trace how the judiciary has protected the fundamental values of the constitution since independence.

JUDICIAL ACTIVISM AS A TOOL FOR ENFORCING DEMOCRATIC IDEALS

The Courts' path from AK Gopalan to Menaka reflects how the court breathed the modern interpretations of the ideas of liberty and equality into the constitutional fabric. The expansion of the ambit of right to life to include right to livelihood, right to a life with human dignity indicates the social consciousness inherent in our judiciary. The iconic concept of Public Interest Litigation, a unique brainchild of our Supreme Court introduced wide ranging changes in the modalities of access by relaxing the traditional rules of locus standi and it is yet another example of how the courts have actively gone beyond what the original lawmakers had intended in order to bring about social justice.

Judicial activism is imperative in an area of legislative vacuum, where the declaratory function of the courts will not suffice to dispense justice. If the judiciary, like the legislature and executive, was to be apathetic to the needs of the citizen, he would be left with no recourse except to protest which would in turn harm the social order of our country.

IMPACT OF COURTS IN EVOLUTION OF LAW: AN ANALYSIS OF COMMON LAW IN GREAT BRITAIN

Great Britain is home to eminent jurists belonging to the Positivist School of law, such as Austin and Bentham, who propounded a minimum role of Judges in the Society. The influence of their works led to a widespread acceptance of the Separation of Power doctrine in the British Legal System. However, this did not prevent the Courts from evolving legal principles which as per Austinian philosophy should have been in the realm of the Sovereign.

A prominent example is Blackburn J. in Rylands v Fletchers[5], where he adapted the rule of tort liability to the era of expanding industrial enterprise in a once predominantly agricultural society. This can be further illustrated by the case of Donoghue v Stevenson,[6] where a direct action by a user or consumer against the manufacturer of a faulty product, is technically an abandonment of the principle that A, if contractually liable to B cannot be simultaneously liable in tort for the same action or omission to C.

CONSTITUTIONAL MORALITY V. POPULAR MORALITY

For a democracy to truly sustain, it must not be a mere popular democracy but should also be a constitutional democracy. A democracy with no space for constitutional morality is a whitewash and it leads to an arbitrary, erratic operation of the constitution. More worryingly, a democracy without the guiding tenets of constitutional morality runs the risk of degenerating into a majoritarian, totalitarian government. Constitutional morality was relied on by our court in Adi Saiva

Sivachariyargal Nala Sangam v. State of T.N.[7], Shayara Bano and Ors. Vs. Union of India (UOI) and Ors[8] to settle matters of great controversy, especially when there is a legislative vacuum surrounding the issue. More recently, the judgment decriminalizing homosexuality very categorically discussed and upheld constitutional morality over popular morality.

Traditionally, while Parliament is a representative of the popular morality, the judiciary safeguards constitutional morality. Therefore while, the legislature exercising exclusive domain over law making is justified, the legislation may be pernicious to the moral or social fabric of the Constitution and create strains on our constitution so as to promote selfish ends to the great detriment of the Public Good[9]. In order to withstand the increasing pressures on Fundamental Rights, the judges had to rely on value-based vision of judicial statesman rather than bank on the 'governing wit' of a judge who considers himself bound by the black letter of the text10. Such judicial innovations which protect Fundamental Rights are therefore not unjustified even if they inevitably lead to dilution of separation of power.

This is reinforced if one were to look at it from a purely Kelsenian point of view. While popular morality may result in the parliament enacting a law abridging rights of the minority, this act will derive its validity in turn from the grund-norm. The researchers find that constitutional morality is the grund-norm on which the edifice of our Indian Legal system is built. Therefore while the separation of powers has been diluted, it has led to strengthening the pillars of democracy by safeguarding the very tenets on which it rests.

A CAUTIONARY TALE

The Judiciary has witnessed several dominant trends regarding judicial interference since the last five decades. The most prominent of them is the retreat shown by the Judiciary during the period of Emergency and the subsequent re-assertion in the post-liberalism period as protector of fundamental values of the constitution. This shift has met with criticism and the rise of the eternal question Quis custodiet ipsos custodes? (who watches the watchmen). Therefore, the Judiciary must exercise self-restraint and indulge in responsible judicial law making. It must take care so as to not encroach into the domain of the Legislature or the executive authorities. The judiciary must exercise judicial restraint and maintain the delicate balance as the failure to do so may result in loss of independence of the judiciary. By exercising self-restraint, the great faith posited by the constituent assembly in the judiciary to act as a sentinel of justice will hold steadfast.

The researchers therefore conclude that the Judiciary in discharging its' constitutional mandate, has diluted the doctrine of separation of power. However, this dilution has increased the checks & balance and it ultimately leads to enforcement of democratic values in India. So long as these democratic values are flourishing, the edifice of our Indian Legal System can proudly withstand even the most tempestuous of storms which would seek to destroy it, for the pillars of democracy are holding fast and will not crack under pressure.

END NOTES:

[1] State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75.
[2] Ram Prasad v. State of Bihar AIR [1952] Patna 195.
[3] John A. Fairlie,"The Separation of Powers" (1923) 21 Michigan Law Review 393.
[4] State of U.P. v. Jeet S. Bish, 2007 (6) SCC 586.
[5] (1868) LR 3 HL 330.
[6] [1932] AC 562.
[7] (2016) 2 SCC 725.
[8] 2017 SCC OnLine SC 963.
[9] A.S. Anand," The Indian judiciary in the 21st century" (1999) 26 India International Centre Quarterly 61.
[10] Justice Ashok K Ganguly, Landmark Judgements That Changed India (first published 2015, Rupa 2017) 5.

LIONS OF THE LAW

Over the years, the Indian legal system has borne witness to some of the most brilliant and dynamic legal practitioners. Their zeal in the courtroom and passion for the law has inspired countless young lawyers to follow their illustrious path. Their exemplary and extraordinary careers have laid the benchmark for excellence and has earned them the title of 'Legends of the Law', as declared by the Bar Council of India.

However, what makes this section truly memorable is that the photographs and captions used to follow the unique journeys of these eminent personalities, are sourced from our archives. In this section of méLAWnge, we pay a heartfelt tribute to a few of these legal legends, whose contributions have changed the face of the Indian legal system. This year, we pay homage to a great legal academician and one of the most eminent principals of our college, Dr. T. K. Tope. The photographs are sourced from various magazines from the years Dr. T. K. Tope was associated with Government Law College. The captions have been quoted from a piece, titled '*Shri T. K. Tope A Tribute*', written by Senior Counsel Rafique A. Dada (or Professor Dada as he then was) in the 1971-72 edition of the Annual College Magazine.

Dr. T. K. Tope was one of the greatest legal luminaries of his time and was a leading scholar in Hindu Law, Constitutional Law and International Law. His various successes are not at all surprising given that he is descended from Tatya Tope, who was a great freedom fighter. Not only was he the first academic law teacher to be appointed the principal of our college, he was also the first academician to be appointed to the Law Commission of India. In the year 1971, after his fourteen-year reign at Government Law College, he was appointed as the Vice-Chancellor of Bombay University, which is a great achievement in and of itself. His knowledge of Sanskrit and study of Hindu scriptures made him one of the best teachers of Hindu Law. Due to his passion for law and rigorous study of its many thought-provoking topics, he is one of the foremost academic legal scholars in India. His tenure as principal of Government Law College has left a mark on our institution, even after all these years.

DR. T. K. TOPE

...NOW OUR VICE CHANCELLOR

1971-1972

"It was in the year 1947 that he joined the college as a full-time professor. It must have been a great challenge for him to teach law, for he had started his academic career as a professor of Sanskrit. He brought to bear upon the law his sharp, incisive intellect and soon his hold over the subject marked him out as a grand-master."

The Hon'ble Shri P. Govinda Menon with Principal Tope, members of the staff and students.

1967-1968

"He eschews cheap popularity. His personality naturally commands respect. His popularity is based on the firm foundation of his dedication to teaching."

Members of the Teaching Staff (with Mrs. Tope and Miss Tope)—1958-59

1959


GLIMPSES OF THE PRIZE DISTRIBUTION
Principal T. K. Tope presenting his Report and Address

1970-1971

"Principal Tope was the first academic law teacher to be appointed the principal of our college. He was a torchbearer of a great tradition. Principal Tope kept the legend alive."

"Principal Tope has a passion for law. He follows it evolution with keen interest. He pinpoints its fallacies. Law, to him, is a hand maid of Justice. To this end, he had dedicated his legal thought and writing."


Mr. Justice Chandrachud Speaking to the Students
GLIMPSES OF THE PRIZE DISTRIBUTION

1970-1971


FAREWELL FUNCTION TO PRINCIPAL TOPE

1974-1975

"His tenure as Principal will long be remembered. We are confident that his performance as the head of the Government Law College will be summed up thus.....He was indeed Colossus."

KNOCK OUT!

Our Pride is in Your Court Now: Is the Abrogation of Section 377 the Duty of a Judicially Active Supreme Court or a Competent Parliament?

Proposition Advocate	Moderator	Opposition Advocate
Ms. Sakshi Bhalla & Mr. Janak Panicker	Ms. Flavia Agnes	Mr. Kunal Katariya & Mr. André Charan

Knock-Out!, the flagship event of the Magazine Committee, is an annually organised debate, between two participating teams of two speakers each who engage in intense deliberation and put forth their views on a contemporary matter, to win the vote of the House. Each team consists of one current student of GLC and one ex-student of GLC who is now a practicing advocate. The winner of the verbal battle is ultimately decided by the Moderator of the debate, who is a prominent legal luminary, with considerable expertise in the area of law pertaining to the issue at hand, with the help of the audience.

The topic for this year's edition was **'Our Pride is in Your Court Now: Is the abrogation of Section 377 the Duty of a Judicially Active Supreme Court or a Competent Parliament?'** Ex-student, Advocate Ms. Sakshi Bhalla and final year student Mr. Janak Panicker represented side Proposition, while ex-student, Advocate Mr. Kunal Katariya and final year student Mr. André Charan, represented side Opposition. The Moderator for the debate was the esteemed Advocate Ms. Flavia Agnes, who was instrumental in making Knock-Out! a stimulating debate and an overwhelming success.

FORMAT

Make Your Point:
Each panelist is given 7 minutes to introduce his/her points .

Fight It Out:
In this round, the discussion is open to everyone - the moderator, the panelists and the members of the audience.

Vote of the House:
The moderator expresses his/her own views on the topic and puts it to the vote of the House.

This year, in the wake of the *Navtej Singh Johar & ors v. Union of India* judgment passed by the Supreme Court of India held Section 377 of the Indian Penal Code to be unconstitutional and essentially decriminalised homosexual relations in India. However, legal analysis has pointed to an issue that arose, namely if the Supreme Court overstepped its jurisdiction in the abrogation of the section or if it was upon the Parliament to take up this issue.

While tackling a topic with the sheer multitude of complexities and applications, both sides proposed lucid arguments and compelling points of law. Their rigorous analysis prodded thought-provoking questions from the audience and an engaging and enlightening commentary by Ms. Agnes, herself.

summarises the opening arguments of the four speakers. Ms. Sakshi Bhalla and Mr. Janak Panicker argue for Proposition, and Mr. Kunal Katariya and Mr. André Charan defend side Opposition.

Mr. Janak Panicker

Section 377 essentially criminalises carnal intercourse against the order of nature. Its abrogation falls squarely in the domain of Supreme Court. The Supreme Court is the ultimate protector of Fundamental Rights guaranteed under the Constitution.

The Parliament has largely been inactive when it comes to Section 377. The 172nd Law Commission actually intended to decriminalise homosexuality. However, the Parliament did nothing about it. In 2001, the NAZ Foundation petitioned the Delhi High Court to declare Section 377 as unconstitutional. Over 15 years later, the Parliament has still done nothing. Even before the Delhi High Court, the two wings of the Government, the Ministry of Home Affairs and the Home Ministry, took opposing views of Section 377; the Home Ministry said Section 377 must stay, while the Ministry of Home Affairs thought otherwise. In 2018, the Union of India decided not to present any views before the Supreme Court.

"Having Section 377 simply does not work. It is a law that is not only old but it is also Draconian and Victorian and hence, it simply must go"

-Janak Panicker

The Courts must assess the provisions of Section 377 and determine its constitutional validity by checking it against the Fundamental Rights enshrined in Part III of the Constitution. Section 377 violates the equality and equal protection guaranteed by Article 14 as it is arbitrary, vague and has an unlawful object. Section 377 disallows adults of the same gender from having a consensual sexual relationship by penalising any non 'penile-vaginal' intercourse. Article 15 of the Constitution prevents all kinds of discrimination against citizens on the basis of sex. Now sex has not been given a narrow interpretation both in India and internationally. In *NALSA v. Union of India*, the Court not only recognised the rights of transgender persons, but also acknoweldged sexual orientation as being part of sex. The J.S. Verma Committee, which brought about the Criminal Law Amendment Act, 2013 emphasised that sexual orientation was covered under sex as given in Article 15. Article 19 guarantees Freedom of Expression. Section 377, precludes members of the LGBTQ+ community from exercising their Right to Freedom of Expression freely. Although Article 21 ensures the Right to Life and Personal Liberty, this is not mere animal existence. The Courts give Article 21 expansive meaning: right to life includes the right to live and love with dignity, the right to privacy and the right to health. Section 377 targets consensual acts between consenting adults in the privacy of their bedrooms and as such, violates Articles 14, 15, 19 and 21. Moreover, the cases of *NALSA v. Union of India* and *Justice K. S. Puttaswamy (Retd.) & Anr. v. Union Of India & Ors.* guarantee equal protection to transgender persons and enshrine the Right to Privacy respectively. Section 377 is a draconian law and hence, it simply must go.

Mr. André Charan:

Justice Madan B. Lokur, once said, *"We must not confuse access to justice with a system of judicial activism."* It is in through this lens of introspection that I present our five-fold argument. We clarify, the seemingly revolutionary judgments of the Supreme Court, are nothing more than reform in a vacuum. The instantaneous reaction to such judgments is wide scale jubilation: there is a myopic tendency to rejoice at a mere appearance of change and often, a failure to assess the actual result of these judgements. Indeed, this instance of judicial overreach will not alleviate discrimination but in fact, enhance it.

Legislation creates a wide range of rights which the LGBTQ+ community requires such as marriage rights,

"We need a competent parliament system, because today, we have a bench of liberal judges that read down Section 377. Tomorrow, we may not."

– André Charan

adoption rights, health care rights and other protections, accorded to minorities, which being in the nature of positive rights can only and must only be accorded by the Parliament. The law also indeed provides the negative rights-sentencing laws against discrimination.

Primarily, this is ad-hoc justice, in the absence of positive law. In the absence of the law, the relief provided can only be through approaching the court and the relief is then, subject to judicial discretion and not codified law. Secondly, in the instance of discrimination, the first line of recourse is the police. However with no sentencing laws in place, a charge sheet cannot be filed, the Magistrate cannot bring an accused into custody and organisations which assist the LGBTQ+ community can only seek recourse through Writ Petitions. If sentencing laws are enacted, not only will they definitively deter discrimination but Lower Courts could also adjudicate such matters efficiently. Thirdly, when the judiciary is overtly proactive and penalises the accused on a case by case basis, the possibility of judicial overreach extends and the disproportionality of their punishment cannot be ignored, given that no uniform system exists. The Parliament took sixteen years to enact a law post the creation of the Vishakha guidelines in *Vishakha v. State of Rajasthan.* So, this seemingly progressive judgement creates a vacuum which sets back the rights of LGBTQ+ community. Fourthly, the creation of a system where the Parliament is unable to confront the Judiciary on its appointment system, effectively allows them to be in the driving seat of the Constitution, unchecked. The Parliament then also allows Courts to make risky decisions that do not alienate its electorate. Finally, the public being the most valuable stakeholders must be the highest authorities on constitutionality. Although the Judiciary and the Parliament might always be in a tussle for power, the judicial activism of the Court has widened the gap between the citizenry and their understanding of the constitution, preventing meaningful further involvement.

The Proposition vehemently argues that since there is a question of constitutionality, it is well within the Court's domain to decide but the idea that only the courts can accurately apprehend constitutional values might be a little flawed.

Constitutional dialogue needs to happen at a popular stage. A large and persisting gap between professional and popular understandings of the constitution on questions that matter to the public can threaten the democratic legitimacy of the constitutional law. Homosexuality is a very polarising issue. A judgment based on progressive or liberal ideals is not going to change the people's calcified Victorian era opinions about sexuality. Further, the judgement guarantees no substantive protection. The LGBTQ+ community is still going to be harassed via social mechanisms. We need a competent parliament system and popular constitutionalism with an active electorate because today, we have a bench of liberal judges that read down Section 377. Tomorrow, we may not.

Ms. Sakshi Bhalla

When the question before the Supreme Court is about constitutional, fundamental and basic human rights, we no longer are talking about an egalitarian society or liberal ideas, and to that extent, I differ with André. Judicial activism is sometimes the term which people use to criticise the judgments of the Supreme Court, not because they disagree with it but because there is a technicality involved. Every time there is a violation of Fundamental Rights, the Supreme Court steps in to examine whether this violation is justified. This is a judicial 'act' and not judicial 'activism'.

In *Malpe Vishwanath Acharya & Ors v. State Of Maharashtra* the Supreme Court recognized that the moment a law fails to adapt with the society, it must go.

The law today, is no longer the same that it was in 1950. *Maneka Gandhi v. Union of India* ensured that the right to life includes a multitude of rights. With respect to Section 377, this includes four principles- right to companionship, right to choice of partner, right to privacy and the right to dignity. Section 377 talks about certain acts, it does not talk about consent. Where homosexual acts are consensual and the State exercises its power to criminalise Section 377, there is an infringement of rights. Injustice anywhere amounts to denial of justice everywhere and with Section 377 on force, the state today is free to invade the privacy of a person's bedroom. When there is absence of consent, Section 377 must stay to that limited extent; but to the extent it criminalises sexual acts between consenting adults, it is an infringement of fundamental rights. Therefore, the defence ought to be based on consent and not on conduct because it is fundamentally wrong for State to raid the privacy of an individual in his bedroom. The Supreme Court has so far stepped in, tried to protect the rights of individuals, and tried to raise the LGBTQ+ community from non-convicted felons to the status of equal citizens of this country. In doing so, it is well within its jurisdiction, well within the four corners of the Constitution, and well within the four corners of the rights to companionship, choice, individual's autonomy and privacy. This is not a case of overreach as the Supreme Court curtailed itself to the already recognised rights, against which Section 377 in its current form cannot stand and therefore ought to be struck down by the Courts.

Mr. Kunal Katariya:

Our topic for today is not to decide if the rights of the LGBTQ+ community have to be protected or not, but rather, to question in whose realm in this democracy, falls the duty to modify and abrogate Section 377. The Indian Penal Code came much before Indian independence. Article 372 was inserted into the Constitution to basically legitimise all Acts or Courts which existed before the date of the enactment of the Constitution. Now, unless a clear constitutional violation is proved, a Court is not empowered to slide down a law merely by the virtue of falling into its precise perception of the society, having changed in regards of the legitimacy and the purpose of its needs. It is the people directly elected to Parliament, who are entrusted with the responsibility of making laws, forcing future and actually coming to terms with what a society is. The United Kingdom decriminalised homosexuality in 1967 they took steps time and again to ensure that all laws criminalising homosexuality were repealed. All of these were done by Acts of Parliament and not by judicial activism. One major concern is the possibility of Section 377 being abused by the police or by the authorities. Recently, under Section 498A of the Indian Penal Code, the Supreme Court decided to lay down certain guidelines to be followed. The reason being that the Supreme Court at that point thought the law was being abused. Another petition set aside the judgment, as it was not within the Court's realm to actually legislate in such a manner. The mere possibility of a law being abused is no ground to say that law has to be held as unconstitutional. The Court is supposed to take the facts of the case in the context of the law that is existing at that point of time. If a particular law is challenged to be ultra vires the Constitution, the Court may adjudicate upon its constitutional validity. However, the Courts are required to do this only when called upon to do so, and only in cases where a positive action on the part of the State affects an individual's fundamental right. It is not just necessary to do the right thing—it is necessary to do the right thing in the right way.

Now, the bigger question before us is, it's already been years together and it may take any number of more years till the Parliament actually comes to life. Take it to the streets for demonstration. Take it to your parliamentarians. We owe it to our children, their children and their children that we set for them such institutions, that no matter what the situation is, the institution must never fail the system.

"When the question before the Supreme Court is about constitutional rights, fundamental rights and basic human rights, we no longer are talking about an egalitarian society or liberal ideas."

-Sakshi Bhalla

KNOCK

"Injustice anywhere amounts to denial of justice everywhere and with section 377 on force, the state today is free to invade the privacy in a person's bedroom."

–Sakshi Bhalla

"When a petition goes before it, that says fundamental rights are being infringed, it is the duty of the Supreme Court to assess the provisions of the Section against the cornerstone of the Constitution."

–Janak Panicker

"The Courts are required to adjudicate on the validity of a law, only when called upon to do so. It is not just necessary to do the right thing-- it is also necessary to do the right thing the right way."

–Kunal Katariya

"The court has essentially denied the ability for organic social change and has imposed a narrow negative right which will not go down well with an unaffected homophobic Indian majority."

–André Charan

KNOCKOUT!

displays some of the several audience questions, our speakers fielded in defending their respective arguments.

Rajshekhar Rao: Given the fact that the majority of Indian populus is anti-homosexuality, why is it okay for the Supreme Court to deviate from the morality theme in this judgment? Do you think that directing public morality is not under the ambit of Supreme Court?

Mr. André Charan: Understandably, the Judiciary must be aware of the value of the precedents it sets. So, in essence the Supreme Court has to judge if its judgments are enforceable—It should not create legislation on paper that does not effect the larger constraints of the population.

As a result, abrogating Section 377 would simply relegate it to an ideal which declares that discrimination should not occur or prosecution should not occur. This would not lead to any actual change.

Sheona Shenoy: Do you think that it is important for judicial activism to be upheld, as in several situations despite differences in judicial benches, there is some amount of change, for some amount of time?

"We owe it to our children that we set for them such institutions, that no matter what the situation is, the institution must never fail the system".

– Kunal Katariya

Mr. Kunal Katariya: You are suggesting that because the Government or the Executive or the Legislature is lax, why shouldn't judicial activism fill the gaps? This is not what judicial activism is. Once judicial decisions of such a nature are made permissible, they will be made permissible in all cases.

Secondly, if we find our parliamentarians to be inefficient today, then it is for people like us to question them about not raising the appropriate issues. The country will always be represented not by its intelligentsia, but by the most common man. When has anyone ever questioned their local parliamentarian on an issue that the Supreme Court ruled in? People do not believe in engaging in dialogue, and that is detrimental to the institution of democracy.

Vishwajeet Deshmukh: My question is addressed to the Proposition: there were repercussions for members of the LGBTQ+ community who opened up after the judgment of the Delhi High Court, only to have the Supreme Court uphold Section 377 again. The topic says 'Our Pride is in your Court', but for how long?

Ms. Sakshi Bhalla: To quote Justice Leela Seth, *'What makes life meaningful is love. The right that makes us human is the right to love. To criminalize the expression of that right is profoundly cruel and inhumane. To acquiesce in such criminalisation or, worse, to recriminalise it, is to display the very opposite of compassion.'* Striking down Section 377 is a judicial act of the Supreme Court. The Parliament is not disabled from legislating to this effect. The fact that it has not done so, does not stop the Supreme Court from acting in its capacity of judicial review to strike down a law to the extent it is unconstitutional.

Mr. Janak Panicker: There is considerable concern about the efficacy of judgments passed on the whims of a Supreme Court Bench today, which may comprise of different judges tomorrow. But let me put it this way: what if the Parliament had decriminalised homosexuality in 2009, but when the new Parliament was formed, homosexuality was criminalised again? Both institutions have their flaws.

The Constitution is changing, the interpretation of it is going to change. However, if the Parliament had then come out with a law which criminalised homosexuality, the Courts could have looked into it against the lens of constitutionality.

Part III

summarises the comments and observations of our esteemed Moderator, Ms. Flavia Agnes, over the course of the debate.

Ms. Flavia Agnes: We are in a state that legislature does everything except looking after governance and passing laws for the benefit of the people and hence, the Court is compelled to judicially overreach.

Essentially judicial activism exists because neither the Legislature nor the Executive is acting. We have a hundred different issues where the state has failed. What we have is a Judiciary that works and hence, we go to the Judiciary. The question of the debate is not to do with validity of Section 377, but rather in whose purview its abrogation lies.

It is also important to consider what is really affecting the LGBTQ+ community. Discrimination happens in the family, it happens in a neighbourhood, it happens in the educational institutes, it happens in the hostels, it happens at the workplace; it happens all around us. Now, these issues are far beyond the Supreme Court.

Striking down Section 377 is a pointer. This does not end the issue at all. For this, we need a law, and that law has to come with social change. Such a law can come only when our elected representatives have a mindset to accept diversity and to take away homophobia.

Of course, there is euphoria with this judgment. There is euphoria in everything. For instance, there was euphoria with the *Triple Talaq* case, but the judgment itself is not enough we need more criminalisation by passing an ordinance.

A considerable amount also depends on the judges themselves. Why did the *Suresh Kumar Koushal and Anr. v Naz Foundation* over turn the *Naz Foundation v. Govt. of NCT of Delhi* judgment? It is the thinking of those judges. And why did this bench strike down Section 377 unanimously – it is the composition of this bench.

For instance we say more women have come, more women will come, more women will change the composition and we have here for Sabarimala case four judges battling for women's rights and one judge dissenting and that is a woman judge. And this is what I always knew and I always believed in. Just because there is a woman judge there, it is not going to change the situation at all.

"We have a hundred different issues where the state has failed. What we have is a Judiciary that works and hence, we go to the Judiciary".

-Flavia Agnes

As a lawyer, I would definitely go to the Supreme Court over the Parliament. With the former I know I can get results, but in the latter, it is waiting in perpetuity.

We don't even know when such a law will be put in place. Going to the Parliament is an ideal situation and approaching the Court is a practical situation.

Intrestingly I would also like to add that this is a small section of a much larger issue for the LGBTQ+ community. The Supreme Court cannot go beyond striking down Section 377; and this does not solve the issues of the LGBTQ+ community.

Consider what difference this makes to lesbian women.

What affected them was the discrimination at home. Women were committing suicide because the parental pressure was too much. It was much more of a private oppression. In my experience, working with women who are lesbians and bisexuals, this segment by itself does not give anything much and the need for a broader thinking still persists. This judgment allows them freedom however there are so many other issues which still need to be addressed.

Let the Seller Beware holden!

- Anushka Merchant, V-IV

"Consumption is the sole end and purpose of all production; and the interest of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer."

– Adam Smith

India has witnessed widespread globalisation, which has led to an increase in trade, the emergence of new markets and methods of marketing that have provided the consumer with a great amount of ease and convenience. At the same time, it has made them vulnerable to new forms of unfair and unethical business practices. In light of this, a need was felt to bring about an amendment in the existing framework of consumer protection laws and a Consumer Protection Bill was introduced in 2015. This Bill was withdrawn after the introduction of a fresh Bill the 'Consumer Protection Bill 2018', (hereinafter **"Bill"**). The said bill is now pending approval of the Rajya Sabha. It seeks to repeal the existing Consumer Protection Act of 1986, (hereinafter **"Act"**).

Tackling the rapid emergence of global supply chains and the changing needs of the consumer head on, the said Bill seeks to revise the definition of a consumer to also cover online transactions through electronic means like teleshopping, multi-level marketing and direct selling. The said Bill has attempted to define 'e-commerce' and seeks to empower the Centre to make rules for safeguarding the interests of the Amazon, Flipkart frequenters who often find themselves exploited at the hands of the 'e-commerce giants'.

Taking into consideration consumer convenience and the burden imposed on the higher Commissions, the territorial jurisdictions of the three-tier Consumer Dispute Redressal Commissions have been revised to include the place of residence or business of the complainant in addition to that of the opposite party and the place of occurrence of the cause of action. The pecuniary jurisdictions have also been sufficiently widened to provide for the increasing value of products and current market realities.

The said Bill mandates attachment to the Commissions of a Consumer Mediation Cell', (hereinafter **"Commission"**), to be utilised when the parties have agreed to a settlement and also makes provisions for electronic filing and for hearing and examination through video conferencing. One major concern is the composition of and appointments to the said Commissions. The minimum judicial qualifications for the President and other members have not been specified, and the power of appointment is delegated to the Central Government. This is in contrast with the provisions of the existing act, which intended for the Commissions to be quasi-judicial bodies and may adversely affect the independent functioning of the Commissions in cases where the government is a party.

The establishment of the Central Consumer Protection Authority, (hereinafter **"CCPA"**) as a regulatory authority is one of the major amendments. The CCPA is to inquire or investigate either suo motu or on receipt of a complaint into cases of consumer rights violations by way of its investigation wing. Post investigation, it may pass an order for the recalling or withdrawal of goods or services, for the reimbursement of the prices or for the discontinuation of practices that are unfair and prejudicial to the consumers' interests. Additionally, it is

empowered to issue safety notices to consumers against dangerous or unsafe products. An appeal from an order of the said CCPA shall lie with the National Commission.

On a day-to-day basis, we come across instances of unfair contracts having asymmetrical rights and obligations such as a courier company that disclaims any responsibility for delivering a consignment wrongly; an airline that appropriates the entire ticket value as a penalty on cancellation or that refuses to take responsibility for lost baggage or a builder that demands a large forfeitable security deposit, etc. In cases like these, the consumer receives no remedy unless he pleads on the grounds of 'mental agony'. The said Bill identifies six types of unfair contracts that impose an unreasonable charge, obligation or condition to the disadvantage of the consumer and provides a procedure for obtaining remedies accordingly. A complaint against an unfair contract can be filed with the State or National Commissions.

To address the issue of false and misleading advertisements, the said Bill provides for prosecution of the manufacturer/service provider and the endorser. An endorser, however, may be absolved of all liability if he/she has exercised due diligence. However, there is no clarity as to what constitutes 'due diligence' and this may create a regulatory loophole.

Product Liability Action is another new concept that has been introduced in cases where the consumer claims compensation. The liability of the manufacturer arises if the product contains a manufacturing or design defect, deviates from specifications or express warranty, or does not contain adequate instructions for use. A service provider shall be liable if the service was faulty, imperfect, deficient or inadequate in quality, nature or manner of performance. A seller will be liable if he has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of such a product.

The proposed amendments clearly reveal that the legislature has only one intention that is the strictest enforcement of the maxim *caveat venditor*. A few issues have been raised concerning the use of unclear terms like 'misleading' and 'due diligence' and the role and powers of the Executive and Judiciary in the said Commissions. But aren't these concerns inferior to the benefits that may accrue on the passing of this Bill? Can't these issues be addressed or made clear by later amendments? Should the entire Bill fail on account of these minor issues?

Consumer Protection is an area of law, which directly affects all of us. Despite several attempts being made, amendments in this field have not seen the light of day since 1986. The Bill of 2018 had aimed at simplifying the consumer dispute adjudication processes and at increasing accountability and responsibility. If passed, it will have very effectively struck a balance between the need of protecting the consumer and that of addressing emerging market trends.

One would think that product manufacturers, sellers, service providers should fear such change and fear the momentum of the consumer protection movement but maybe they should not. Times are changing. It is no longer acceptable for a seller to disregard the rights of a consumer. In a world as competitive as ours, where profitability and business prosperity are directly proportional to consumer satisfaction, this would only be detrimental. Tomorrow we may live in a world where business is completely internet-driven. In preparation of what is to come, it would be in the sellers' best interests to get accustomed to and to appreciate this level of responsibility and accountability that they are being put up to.

As Jeff Bezos rightly said, *"If you make customers unhappy in the physical world, they might each tell six friends. If you make customers unhappy on the Internet, they can tell x thousand friends."*

20th D. M. Harish Memorial Government Law College Moot Court Competition, 2019

Started in the year 2000, today, the moot has acquired the distinct stature of being the most coveted International Moot Court Competition in the Country. This was amply reflected by the participation in the 20th edition of the competition that was held from in February 2019, which witnessed participants from University of Cape Town, Queen Mary University of London, National University of Singapore, Chinese University of Hong Kong, Kathmandu School of Law, Nepal, National Law College, Nepal and Sri Lanka Law College tallying up to 8 international teams and 18 of India's best law colleges. This year the case study of the competition was based on treatment of foreign prisoners and the concept of State Responsibility.

The Moot Court Association is indebted to and would like to extend its sincerest gratitude to the trustees of the D. M. Harish Foundation for their passionate curation of each aspect of a competition of such a large scale and stature.

The 'DMH Pride' includes our brilliant judges and one could easily notice that the entire Mumbai Legal fraternity is represented at the Competition. The semi-finals were judged by Senior Counsels like Mr. Janak Dwarkadas, Mr. Mustafa Doctor, Mr. Pradeep Sancheti, and Mr. Pankaj Sawant.

The topic for the Panel discussion this year was: Information and Accountability: The Pillars of Democracy. The discussion aimed at tackling the recent Right to Information amendment and its implications in the functioning of various professions and industries in India and the world. The Panel was moderated by Mr. Anil Harish, Trustee, D. M. Harish Foundation and it comprised of the following prolific individuals:

- Mr. Mahesh Jethmalani, Senior Advocate, Bombay High Court, Noted Supreme Court lawyer
- Mr. Shailesh Gandhi, Former Central Information Commissioner
- Dr. Mukund Rajan, Entrepreneur and Corporate Strategist
- Mr. Gurbir Singh, Consulting Editor, New Indian Express, President of the Mumbai Press Club
- Mr. Anand Pathwardhan, Filmmaker and Documentarian
- Mrs. Hema Sampat, RTI Scholar and Activist

The Final Round was conducted between National Academy of Legal Studies and Research (NALSAR), Hyderabad and School of Law, Christ University, Bangalore which was held at the KC Auditorium and was presided over by Hon'ble Mr. Justice Akil Kureshi, Hon'ble Mr. Justice K. R. Shriram, Hon'ble Mr. Justice B. P. Colabawalla of the Bombay High Court. NALSAR, Hyderabad won the Best Team Award.

One of the key reasons for DMH being received with the euphoria that it does, is the sincerity with which each and every member of the Moot Court Association dedicate himself/herself to the competition. The members work fervently all year round, with work-hours rapidly increasing as the day arrives. The MCA will always dedicate itself to the cause of raising the benchmark for India's most acclaimed event on International Law, continuing now with the next edition of the competition scheduled in February 2020.

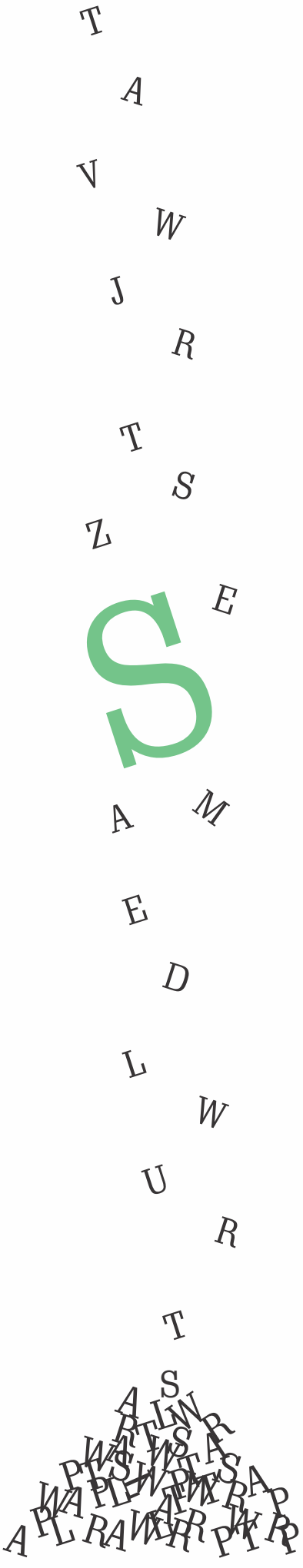
STALWARTS SPEAK

The law is dynamic in nature. It is ever changing and evolves over time to match the evolution of society. In this section we draw inspiration from prominent legal luminaries, and their commitment to the deliverance of justice. This year's edition of Stalwarts Speak has been specifically tailored to the theme of International Commercial Arbitration. With its rising popularity in India and internationally, it is only prudent to bring to you pieces from the finest minds engaged in the practice today. Each piece focuses on a separate and distinct aspect of International Commercial Arbitration, aimed at enriching the reader's knowledge.

The first piece is authored by Mr. Tom Valenti, a Chicago based conflict resolution specialist skilled in mediation, arbitration, and facilitation services. He is a member of the Chartered Institute of Arbitrators, an Arbitrator on the Public Panel at FINRA and is an approved Arbitrator and Mediator for several governmental and regulatory bodies. Mr. Valenti's piece gives us a fascinating insight into the workings of complex commercial arbitrations at an international scale.

The second piece is authored by Mr. Naresh Thacker, Partner in the Litigation, Arbitration and Dispute Resolution practice at Economic Laws Practice, Advocates & Solicitors. Mr. Thacker is part of the Law Society, UK; London Court of International Arbitration (LCIA); and the International Bar Association (IBA). He has authored the India Chapter for The Asia-Pacific Arbitration Review 2016 to 2018 published by Global Arbitration Review. His piece deals exclusively with the impact of the Arbitration and Conciliation (Amendment) Bill, 2018, on international commercial arbitrations seated in India.

The third piece is delivered by Mr. Gary Born who is arguably the world's most preeminent authority on international commercial arbitration. Mr. Born is a Partner at Wilmer Cutler Pickering Hale and Dorr, and heads the International Arbitration Group of the firm. He is the author of International Commercial Arbitration (Kluwer 2nd ed. 2014), the leading treatise in the field. Mr. Born is President of the Singapore International Arbitration Centre (SIAC) Court of Arbitration in addition to being a member of several notable arbitration institutions. His piece is centered around the operation of bilateral treaty agreements in international commercial arbitrations.



MR. THOMAS VALENTI

International Arbitration

I have advocated in arbitrations over the years and also acted as an arbitrator, but as a party appointed arbitrator and now, mostly as a neutral independent arbitrator.

With regard to arbitration, there were opportunities presented to me as a young lawyer in Chicago, to become trained and qualified as an arbitrator for smaller domestic cases here. I thought it was a good way to learn, since my law school experience did not give me that opportunity. So, I attended the training and became an arbitrator on a panel here. Later, as other arbitration schemes developed, I participated in those as well. Later on I became further trained by the Chartered Institute of Arbitrators, who offer rather thorough and rigorous trainings.

It is clear that arbitration will always be a viable and effective dispute resolution method for numerous types of disputes, and will always be preferred as the method in cross border claims. We hope, ultimately that mediation will be blended into that process. With the introduction of the Singapore Convention, this is about to take a huge step forward.

With regards to 'Mediators Beyond Borders International' those of us, who are graciously identified as 'Founders' of Mediators Beyond Borders International, are simply some of many who were involved from the outset, which was 2007. There were others who planted the seed that allowed many of us to continue the efforts to work in conflicted communities globally. As an organisation it is designed to build skills that promote peace.

The organisation has been able to find opportunities to assist those whose needs are within this vision. Multi-disciplinary volunteer teams design projects alongside local partners, who are usually the ones inviting help. MBBI has been active in Colombia, Ecuador, Israel, Greece, Kenya, Rwanda, South Sudan, Uganda, Sierra

Leone, Liberia, Ghana, Zimbabwe, Nepal, and the U.S. Conflict Resolution being a capacity building organization, the notion of being peace 'able' suggests that we can bring tools to communities, globally, where the trainings have not existed previously.

Trainings in conflict resolution can be beneficial to people from all walks of life, cultures, and places. And many would agree that introducing these skills to people could only serve to build a strong foundation for people to communicate their differences in a way that promotes resolution and understanding. We do not always seek resolution in these efforts. An example is the current Dialogue Initiative, where we seek to have people understand each other, get along better, communicate more constructively and listen better.

As one interested in Dialogue, I have been able to train facilitators in these skills, and be involved in Dialogue processes involving the refugee issues in Greece.

Now coming to India as being an Arbitration hub, I think it has to. Steps are being taken to achieve this, but much more needs to be done. It has been disregarded for some time, internationally, since its methodologies, and practices were not found to meet the standards required by global companies who had other choices for seating their disputes. So, India lost most of its international arbitrations to Singapore, Paris and London.

Recent changes in laws seek to retrofit the process to make it more attractive to these companies. However, it will take some time to see whether these legal changes are sufficient to attract the disputing companies to come to India. It will also take some reformation of the mindset of the arbitrators who must abide by global norms in the management of arbitrations, independence, management of the dispute, and reaching prompt decisions. The potential is there, but there needs to be evidence of reforms having a practical effect.

India has emerged as the fastest growing major economy in the world and is expected to be one of the top three economic powers of the world over the next 10-15 years. The institutions will come once the reforms have demonstrated to dispute managers, and their legal teams that India will give them a fair, prompt and enforceable decision in a timely manner that is cost efficient to the disputants.

The Indian government, it's legal communities, and law schools, must immediately provide resources to support the tremendous opportunities presented in dispute resolution which India will have as a result of this growth. This cannot be an ad-hoc scheme, locally based. Rather, this should be the result of some government funded broad scheme, perhaps a partnership, to seize the day.

MR NARESH THACKER

Reflecting on the Arbitration & Conciliation (Amendment) Bill, 2018

INTRODUCTION

In a significant step towards ameliorating the Indian arbitration landscape, the Arbitration and Conciliation (Amendment) Act, 2015 **("Amendment Act")** was introduced, which had brought about noteworthy changes to the Arbitration and Conciliation Act, 1996 **("the Act")** (the Act, as amended by the Amendment Act, will be referred to as the **"Amended Act"**). The Amendment Act reinforced India's efforts to align itself with globally recognised arbitration practices and endeavored to bolster India's image as an arbitration friendly jurisdiction in the international arena while simultaneously filling the lacunae in the Act. The Supreme Court of India and the various High Courts have played a remarkable role in implementing the Amended Act and elevating arbitration as the preferred mode of dispute resolution through the catena of pro-arbitration judgments passed in recent times.

To address the difficulties which arose in the implementation of the Amended Act and to usher in a prominent role for institutional arbitration in India, a High-Level Committee was constituted under the chairmanship of Hon'ble Justice B.N. Srikrishna (Retd.) (**'Committee'**) and the findings of the Committee were published in a Report dated 30 July 2017 ('Report'). On 7 March 2018, the Arbitration and Conciliation (Amendment) Bill, 2018 (**"Bill"**), which proposes to amend the Amended Act received the approval of the Union Cabinet, and on 10 August 2018, the Bill was approved by the Lok Sabha. The Bill is presently pending before the Rajya Sabha for consideration.

The Bill touches upon several aspects including, but not limited to the constitution of the tribunal, powers of the tribunal to grant interim measures, time limit for making an award, application to set aside an award, confidentiality of proceedings, protection of arbitrators, qualifications of arbitrators, and proposes the establishment of an Arbitration Council of India (**"Council"**). In this backdrop, we have delved into few of the amendments proposed in the Bill, particularly - the constitution of the arbitral tribunal, time limits for making an award, confidentiality of proceedings, and the viability of the proposed Council.

CONSTITUTION OF THE ARBITRAL TRIBUNAL

Courts to designate Arbitral Institutions to constitute the Arbitral Tribunal

To seek the court's assistance in constituting the arbitral tribunal, a party can request the Supreme Court (in an international commercial arbitration) or the High Court (in a domestic arbitration) to appoint an arbitrator under Section 11 of the Amended Act. In its effort to minimise the role of the court in the constitution of the arbitral tribunal, the Bill proposes to amend Section 11 of the Amended Act to empower designated arbitral institutions to appoint arbitrator(s). The Bill proposes that when a party seeks assistance of the court for the constitution of the tribunal, the Supreme Court or the High Courts (as the case may be) shall designate arbitral institutions, which have been graded by the Council for appointing arbitrators. Further, the Bill proposes that in the absence of a graded arbitral institute, the Chief Justice of the High Court shall maintain a panel of arbitrators for discharging

such functions of an arbitral institute.

Pertinently, the Report recommended that arbitral institutions should not be privately owned and instead should be incorporated as companies under Section 8 of the Companies Act, 2013, or as societies under the Societies Registration Act, 1860 / the applicable state legislation. However, in the Bill, the proposed definition of an 'arbitral institution' is 'an arbitral institution designated by the Supreme Court or a High Court under this Act'. Therefore, the Bill does not clarify whether arbitral institutions will be privately owned, or incorporated as companies, or as societies, or exist as an entity of any other kind.

Scope of the Arbitral Institutions and Courts

In the Amended Act, the Legislature had clarified that while considering an application for appointment of an arbitrator, the Supreme Court or High Court (as the case may be) shall confine itself to 'the examination of the existence of an arbitration agreement'. The Bill proposes the omission of this provision i.e. Section 11 (6-A) of the Amended Act. If the Bill is notified, since Section 11(6-A) of the Amended Act may cease to exist, when an arbitrator is to be appointed pursuant to Section 11 of the Amended Act it remains to be seen whether the appointing authority will examine the existence of an arbitration agreement before constituting the tribunal.

Given the absence of reasoning for the omission in the Bill, a party seeking to constitute the tribunal may even oppose examination of the arbitration agreement by contending that - the action of first inserting Section 11 (6-A) in the Amended Act and then omitting the same through the Bill clearly shows the intent of the legislature is to do away with any examination of an arbitration agreement at the early stage of constituting the tribunal. Nonetheless, it remains to be seen whether the intent of the legislature will surface through once the Bill is notified and the issues arise for determination before the courts.

The Bill also proposes the omission of Section 11 (7) of the Amended Act which provides that no appeal including letters patent appeal shall lie against an order passed by the Supreme Court or High Court (as the case may be) or institution designated by such court under Section 11 of the Amended Act and such decision is final. The Report noted that while the default procedure for constituting the arbitral tribunal in other jurisdictions does not require involvement of the courts, the Amended Act did not limit court interference entirely. Although the Bill has not expressly clarified or indicated the rationale for the omission of Section 11 (6-A) and Section 11 (7) of the Amended Act, seemingly the proposed amendment could be in furtherance of the legislature's intent to remove provisions which relate to the function of the court in the constitution of the tribunal since the courts will no longer appoint arbitrators (except in the absence of arbitral institutions).In any event, we hope that the Legislature's intent will come through once this amendment is interpreted by the judiciary. An issue which remains un-addressed in the Bill is whether the appointment of arbitrators is a judicial function or an administrative function, given that the omissions of Sections 11(6-A) and 11 (7) of the Amended Act indicates that we are headed towards the appointment of tribunals being an administrative and non-judicial function.

TIME LIMIT

Completion of Pleadings within 6 months

Section 23 (1) of the Amended Act provides that the statement of claim and defence shall be filed within the time period agreed upon by the parties or determined by the arbitral tribunal. Expressly restricting the time period for completion of pleadings, the Bill now proposes the insertion of sub-section (4) in Section 23 of the Amended Act which will provide that the pleadings under Section 23 shall be completed within a period of 6 months from the date the arbitrator(s) receives notice in writing of its appointment. This amendment will provide an impetus to completion of the pleadings and therefore compliment Section 29-A of the Amended Act which provides the time limit for making an award. Considering that the Bill has neither omitted nor aligned the existing Section 23(1) of the Amended Act with the proposed insertion of Section 23 (4), an initial conflict between the existing Section 23(1) and the proposed Section 23(4) is likely to be an issue for determination before the courts.

Imposition of time limits in the Amended Act

To address the prolonged delay in completing arbitrations in India, the legislature had introduced Section 29-A of the Amended Act, which provides a time limit of 12

months for making of an award, whereby the time-period of 12 months for completion of arbitral proceedings begins from the date on which the arbitral tribunal entered upon reference and can be extended by a further period of 6 months with the consent of both parties. However, if the award is not rendered within the said 12 months or within the additional 6 months thereafter, the mandate of the arbitrator(s) shall terminate unless the time period is extended by the court, on an application by either party, only for sufficient cause and on such terms and conditions as may be imposed by the court – prior to or after the expiry of the period so specified.

The imposition of a statutory time limit for completing an arbitration was initially criticised as being opposed to party autonomy, along with a perception that it will over-burden the existing diaries of the court. However, in practice, it has been noticed that arbitral tribunals are now conscious of the time limit and in fact drive parties to complete proceedings in a time bound manner- if not within the statutory time frame of 12 months, then within the further 6-month extension as provided under the Amended Act. Practical experience also shows that in those rare circumstances when the award has not been made within the time frame of 12 months or within the further 6 month extension under section 29-A of the Amended Act and parties have had to approach the court for a further extension, the courts have been wary while granting such further extension. Thus, the imposition of a time frame has proved beneficial for arbitrations in India.

Change to the time limit under section 29-A

Since most arbitrations have been spilling over the 12-month period in view of various factors including the administrative snags which affect an arbitration, the Bill has proposed to amend the time limit under section 29-A of the Amended Act such that the 12-month period will begin to run from the date of completion of pleadings in terms of the newly proposed Section 23(4) (i.e. pleadings shall be completed within 6 months from the date the tribunal enters upon reference). Therefore, if the Bill is notified, the time limit will no longer run from the date the tribunal enters upon reference but will start running only from the date of completion of pleadings under the newly proposed Section 23 (4). As a result, the time limit for making of an award will be enlarged by a further period depending on the date of completion of pleadings. However, since Section 29-A of the Amended Act has been effective in its implementation, the Legislature's proposal to enlarge the time period to the extent provided in the Bill appears premature.

International Commercial Arbitrations excluded from time limits to make an award

The Report elucidated that the strict timelines imposed by the Amended Act attracted criticism from arbitral institutions in the international diaspora as arbitral institutions often prescribe their own guidelines for the tribunal to set out the procedural time table or the rules itself may set timelines for the arbitration proceedings. Thus, the non-derogable nature of Section 29-A of the Amended Act encroached upon the power of arbitral institutions to govern the conduct of arbitrations, thereby projecting India as a less favorable seat of arbitration. To address this concern, the Bill proposes to exclude 'international commercial arbitrations' from the ambit of Section 29-A of the Amended Act. The proposed exclusion of 'international commercial arbitrations' from the ambit of Section 29-A of the Act will not just result in the exclusion of institutional arbitrations but also the exclusion of ad-hoc 'international commercial arbitrations' seated in India. While the Committee's intent was limited to excluding institutional arbitrations from statutory time limits since they already run on a tight schedule, the legislature has proposed to exclude ad-hoc international commercial arbitrations as well, thereby discriminating between ad-hoc domestic arbitrations (which will continue to be bound by the statutory time limit) and ad-hoc international commercial arbitrations.

Mandate of the arbitrator to continue pending disposal of an application for extension of time before the Court

The Bill proposes that pending disposal of an application before the court for an extension of time to make an award under Section 29-A (5) of the Amended Act, the arbitrator's mandate will continue and not terminate automatically, until the application is disposed of. The language of the proposed amendment clarifies that the arbitrator can continue with the arbitration during the pendency of the application before the court. This amendment will further the objective of saving time and

ensure that delays in disposal of the application before the court does not have a knock-on effect on the timeline of the arbitration proceedings.

CONFIDENTIALITY OF ARBITRATION PROCEEDINGS

Stemming from the findings in the Report vis-à-vis the confidentiality in arbitrations, the Bill proposes that the arbitrator, the arbitral institution, and the parties to the arbitration agreement shall keep confidentiality of all the arbitral proceedings, except the award which can be disclosed for the purpose of implementation and enforcement of the award. While the Report proposed an exclusion to the confidentiality obligations if disclosure of the arbitration proceedings is mandated by a legal duty or to protect or enforce a legal right, this exclusion has not been imported in the Bill. To ensure the confidentiality obligations are watertight, the provision of 'Confidentiality of Information' commences with the words *"Notwithstanding anything contained in any other law for the time being in force"*. In the circumstances, assuming the disclosure/production of the arbitral award or even the arbitration record is mandated under another statute, the question which will arise for consideration before the courts will be whether such statute over-rides the provision for confidentiality contained in the Act.

The language of the proposed provision does not clarify whether the duty of confidentiality is limited to arbitration proceedings only or whether it also extends to arbitration related court proceedings prior to the making of the award. There seems to be a disconnect in the Bill *vis-à-vis* the proposed provision for confidentiality and the proposed amendment to Section 34 of the Amended Act which provides for an application for setting side an arbitral award. The provision for confidentiality is restrictive and it allows an award to be disclosed for the purpose of implementation and enforcement of the award. At the same time, a change has been proposed in Section 34 of the Amended Act which will provide that the 'record of the arbitral tribunal' can be utilised in court for the purposes of establishing a party's case under Section 34 of the Amended Act. Therefore, clearly the provisions of the Bill seem to be at cross purposes. If the provisions as proposed in the Bill are to be literally interpreted, it would lead to anomalous situation i.e. while a party is granted the right to challenge an award, it will be deprived of the benefit of relying upon the records of the tribunal to substantiate its case on account of the restrictive provision on confidentiality.

However, when holistically read, one would have to agree that the clause on confidentiality cannot over-ride a statutory right granted to challenge the award. Therefore, it seems that bearing the foregoing in mind the legislature has consciously proposed the usage of the words 'record of the arbitral tribunal' in Section 34 of the Amended Act for the purposes of establishing the limited grounds of Section 34.

ARBITRATION COUNCIL OF INDIA

Recommendations in the Report

With the aim of promoting arbitral institutions in India and elevating India as preferred seat of arbitration, the Report recommended the constitution of an autonomous body styled as the 'Arbitration Promotion Council of India'. Broadly, the Report suggested the establishment of the Council inter alia to (i) accredit and grade arbitral institutions, and review such grading on a periodic basis; (ii) incentivise arbitral institutions to perform; (iii) recommend legislative changes to the government for promoting institutional arbitration in India; and (iv) to do anything which is necessary or The Bill proposes that the Council should frame policy to establish uniform professional standards in respect of all matters relating to arbitration for the purpose of promoting arbitration, mediation, conciliation or other ADR mechanisms; and amongst other things, the Council should be responsible for grading arbitral institutions, and for reviewing the grading of arbitral institutions and arbitrators. We hope that once the Bill becomes an Act, the legislature and/or the Council will introduce checks and balances in the grading of arbitral institutions, given the pivotal role that the institutions will have in the constitution of tribunal.

Eighth Schedule – Qualifications of an arbitrator

The Bill proposes the insertion of the Eighth Schedule (**"Schedule"**) in the Amended Act which will provide the prerequisites to qualify as an arbitrator i.e. 'Qualifications and Experience of an arbitrator' and 'General Norms applicable to Arbitrator'. Once the Council is formed, it is likely that it will publish guidelines for grading the arbitrators in consonance with the requirements

envisaged in the Schedule. The Schedule is ambiguous and anomalous in nature - For instance, an advocate can only qualify an arbitrator for the purposes of the Amended Act if he is registered under the Advocates Act, 1961. Pertinently, the Advocates Act, 1961 permits only an Indian citizen to register as an advocate. While the intent seems to be to preclude international legal practitioners from being arbitrators, it is yet possible that such practitioners may qualify under the other sub-provisions in the schedule. Amongst other norms, the Schedule provides that an arbitrator shall be familiar with the statutes listed therein including constitution of India, labour laws, and customary laws. However, while a person may qualify as an arbitrator under the Schedule in view of his/her expertise in a scientific or technical stream, such a person may not be familiar with the specified statutes. Therefore, it appears that the provisions within the Schedule are self-defeating. Further, while the Schedule chalks out the prerequisites to qualify as an arbitrator, it does so in a restrictive approach. For example, industrial and technical experts from streams which have not been enlisted in the Schedule may be ousted from being arbitrators.

Electronic Depository of Awards

With the objective of creating a depository of arbitral awards and records related thereto, the legislature has mandated that the Council shall maintain an 'electronic depository of all arbitral awards made in India and such other records related thereto in such manner as may be specified by the regulations'. Recognising the difficulty faced by courts in obtaining an authentic copy of an arbitral award made in ad- hoc arbitration during enforcement proceedings, the Report proposed the creation of a depository of arbitral awards, however, the Bill itself does not highlight the purpose for storing awards in the depository. Since the Bill is abstruse vis-à-vis the depository, we hope that the Council lends clarity to characteristics of the depository including (i) the purpose for storing awards in the depository; (ii) whether the storage of 'other records related thereto' in the depository encompasses the record of the arbitrator or the records of the entire arbitration proceeding; (iii) the circumstances under which the arbitral award and records filed in the depository can be accessed; and (iv) the measures taken to preserve the security of the electronic depository to reduce the risks of theft and data privacy breach.

CONCLUSION

While the perception within the arbitration community - both in the country and outside, was that the Amendment Act would address the sore points in the Act, some lacuna yet remains in the Amended Act. The Report intended the Bill to further the cause of arbitration by ironing out the creases in the Amended Act and with a view to make India a global hub of arbitration. However, we believe that the Bill misses the mark. As opined in this article, the Bill has more negatives than positives. Particularly, the creation of a regulatory body for the purpose of monitoring arbitral institutions, arbitrators, parties, and arbitration in general is a retrograde step.

The Bill is bare - some of the proposed amendments are ambiguous, anomalous, and devoid of relevant details, with too much being left open to the discretion of the Council. In this background, the powers and role of the Council will be vast, and as a regulatory body it is likely to yield tremendous power over arbitral institutions, arbitrators, parties, and the conduct of arbitration in India. The fear of the powers of the Council completely over-shadowing party autonomy, which is the hallmark and starting point of the law on arbitration, is real.

Party autonomy is the foundation of arbitration, and once the Bill is notified as an Act, arbitration law as it is understood in the international context will be completely overturned. While some of the amendments may be open to question, the development of law is a constant process, and nevertheless, for the first time, the legislature has given an impetus to arbitral institutions, provided for confidentiality of arbitral proceedings, and protection of arbitrators for actions taken in good faith.

Any change in law comes with its set of challenges, and if the Bill is notified, in the months immediately following the Bill, the interpretation of the Bill and the intent of its provisions may be put to test before the courts.

MR. GARY BORN

Bilateral Treaty Agreements

Bilateral and multilateral arbitration treaties (or hereinafter **"BATs"**) are a topic of increasing interest in legal and business communities. The current position of resolving cross-border disputes through national court litigation has not kept pace with 21st century commerce. Doing business globally therefore faces the risks and uncertainties of conflicting national laws; biased, inefficient, inexperienced, or otherwise unsuitable decision makers; inconsistent dispute resolution proceedings; and severe obstacles the enforcement of judgments.

Arbitration on the other hand, while certainly not perfect, has significant advantages and is the preferred choice of dispute resolution for international trade. Instead of fearing the potential bias of National Courts, parties can trust the neutral decision makers of their choice. Instead of being limited by the experience and resources of National Courts, parties can freely choose legal experts appropriate to their dispute.

Instead of having to conduct multiple proceedings, parties can focus multi-dimensional disputes into one arbitration. Instead of spending money on different national counsel and several appellate layers, arbitration provides a cost-efficient one-shot solution to quickly and efficiently resolve commercial disputes. Instead of a judgment that might be worthless wherever the losing party has assets, the Claimant will have a widely enforceable Arbitral Award potentially under the New York Convention, or similar instrument. A number of efforts have been taken to mitigate the legal risks and uncertainties of cross-border trade and investment, including the wide-spread ratification of internal commercial and investment arbitration treaties; the development of institutional arbitration and the negotiation of treaties for the recognition of foreign judgments. However, virtually all these efforts assume that parties will conclude agreements to resolve disagreements by arbitration. Where such an agreement is absent, the default cross-border dispute resolution remains litigation in often multiple national courts. BATs were conceived as an innovative way of mitigating these deficiencies that impede international trade and investment.

A BAT is a treaty between two States that provides for (i) international commercial disputes (ii) between commercial enterprises based in the two State parties to the treaty (iii) to be finally resolved by arbitration. Commercial parties would be free to opt-out of the BAT regime by (i) selecting another forum or forum for the dispute resolution (such as mediation or litigation) or (ii) modifying the arbitration procedure provided for under the BAT (including the applicable arbitration rules.)

In practice, if States A and B conclude a BAT, international commercial disputes between enterprises based in States A and B would be resolved by arbitration as provided for in the BAT, unless the commercial parties have agreed to a different mechanism. BATs therefore change the default system of cross-border commercial dispute resolution from National Court litigation to international arbitration.

States could negotiate the terms of their BATs on a bilateral basis, taking into account their particular needs and requirements of the relationship with the other treaty State. It would be expected that most States would choose to exclude some non-commercial disputes from the scope of their BAT, for example: consumer, employment, matrimonial, domestic and inherence matters. States could also exclude disputes involving certain environmental, quasi-criminal or bankruptcy related issues.

Although proposed in the form of a bilateral treaty, the concept of a BAT can be modified into a multilateral arbitration treaty (hereinafter **"MAT"**) between a number of States, for instance, in a geographic region. The dispute resolution provisions of a BAT or MAT could also form part of a larger free trade agreement (hereinafter **"FTA"**), much like the investment chapter of FTAs.

While the pitfalls of international dispute resolution today affect all market participants in international commerce, some players are better able to compensate for these inherent deficiencies than others. Larger States have more resources available to maintain an effective Judiciary. Large businesses have the knowledge and resources to avoid international litigation by individually tailoring Arbitration Agreements. In contrast, developing small States and Small and Medium Enterprises (hereinafter **"SMEs"**) are less equipped to address the pitfalls of the current default system, amplifying existing power-asymmetries by putting developing small States and SMEs at a disadvantage. A move from international litigation to BATs could significantly benefit small States. Currently, businesses operating out of or into developing small States might choose a neutral third-party country's Court to resolve their international disputes as an alternative to local courts. This is particularly unsatisfactory for developing small States and their businesses. For example, a judge in Singapore is unlikely to be familiar with the commercial realities of the fisheries business between Vanuatu and Fiji. Arbitrators on the other hand are chosen for their individual expertise. If arbitration was a default mechanism, more disputes would be handled by individuals hand-picked for their familiarity with the relevant region and business sector. Disputes would be handled at a reduced cost in a more expert and efficient fashion. BATs would also provide businesses with greater certainty in the enforceability of decisions under the New York Convention. Developing small States can therefore assure investors that they will see the fruits of their litigation which will not be rendered a mere paper victory.

Furthermore, from the perspective of the State, the expenses of maintaining the Judiciary will be reduced by relieving docket congestion. National Courts could focus on resolving domestic disputes and strengthening the local rule of law. They could also reduce the need to expend resources on resolving complex international disputes that involve the application of foreign law. At the same time, BATs would provide local lawyers, and indirectly Courts, with alternative models of dispute resolution, ultimately enhancing the quality and efficiency of local litigation. Finally, BATs could be used to enhance capacity building for the local legal community. The ability to select arbitrators is an essential component of arbitration that should not be restrained by BATs; indeed, one of the advantages of default arbitration will be that parties can source counsel and arbitrators globally. Nonetheless, States can consider crafting their BATs to provide for local arbitral institutions and/or local arbitrations (by setting the nationality of arbitrators to be appointed). Capacity building can occur on a regional basis, where small States with a common cultural and legal heritage can jointly develop a regional capacity for the enhanced resolution of commercial disputes.

In sum, BATs possess great potential to contribute to the growth of developing small States by making them a more attractive destination to do business. A

commitment to international arbitration would assure foreign businesses and investors that their disputes would be resolved fairly and efficiently, and any outcome will be enforceable.

Default arbitration under BATs could also alleviate many difficulties for SMEs and level the playing field between larger and smaller corporations. Large corporations typically have in-house legal counsel, in addition to engaging external law firms. These entities are therefore able to manage international commercial disputes that span multiple jurisdictions and have the financial resources to see such disputes through to the end. Furthermore, large corporations also have the resources to design, draft and negotiate tailor-made arbitration agreements. Nonetheless, given the nature of many commercial sectors, these resources are often not used by major corporations – which fail to include dispute resolution provisions (or valid dispute resolution provisions) in their international commercial contracts.

In contrast, SMEs typically lack internal legal teams and have limited resources to expend on external local counsel, let alone in multiple jurisdictions. With limited resources and legal staff, the cost of pursuing or defending claims in foreign courts is often prohibitively high for SMEs.

Furthermore, tailor-making dispute resolution clauses is impractical for most SMEs. Designing contracts takes time, knowledge, experience and resources. Designing effective arbitration agreements can be a failure-prone process. If a dispute over the validity of an arbitration agreement ensues, the dispute might end up in Court after all. It is also not uncommon for SMEs to conclude oral contracts instead of a formal document. Where written agreements exist, SMEs may be averse to use legalistic language that foreshadows potential disputes; personal relationships are often valued over the certainty of written terms.

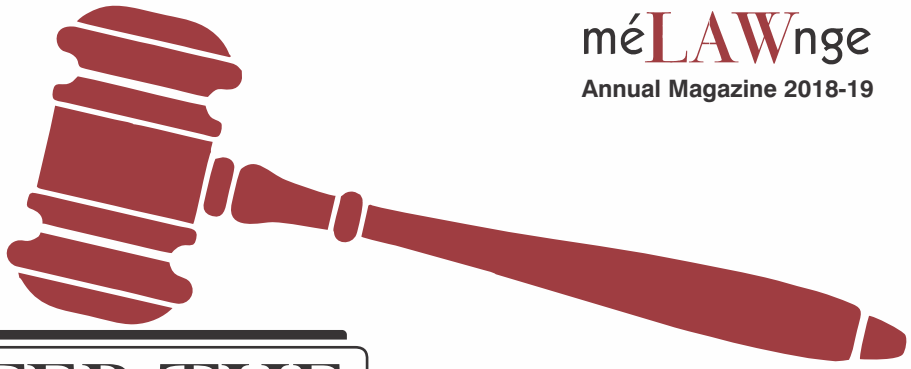
However, if arbitration was the default under a BAT, there would be no cost for SMEs in setting up a dispute resolution mechanism – neither for drafting an arbitration agreement nor as part of a bargain when attempting to include a favorable dispute resolution clause in an agreement. A BAT might also provide optional or mandatory means of alternative dispute resolution (e.g. negotiation, conciliation, mediation) prior to arbitration, giving SMEs the opportunity to solve their dispute informally.

In conclusion, the current default system of international commercial litigation does not meet the needs of contemporary cross-border trade and investment. BATs are a solution that would enable more efficient, expert, neutral, objective, and fair dispute resolution. BATs would make these benefits available to more market participants, including small States and States with developing economies, as well as SMEs, therefore enhancing international trade and investment, access to justice and the rule of law in international commercial settings.

Launch of méLAWnge

The 10th of March, 2018 witnessed the grand launch of *méLAWnge* 2017-18, at the Indian Merchants Chamber. The 88th edition of the magazine was inaugurated by Senior Counsels, Mr. Aspi Chinoy and Mr. Mustafa Doctor. The occasion was also graced by Mr. Shardul Thacker, Senior Partner of Mulla & Mulla & Craigie Blunt & Caroe and Mr. Vikram Trivedi, Managing Partner of Manilal Kher Ambalal & Co.

2017-18



AFTER THE JUDGMENT IS DELIVERED

- Drasti Gala, V-II

Since September 2018, the state of Kerala has been witnessing political and religious turmoil. This comes after the much-awaited judgment of the Supreme Court in the case of *Indian Lawyers' Association v. The State of Kerala*,[1] commonly known as the Sabarimala case. A five-judge bench declared that the ban on women between ages 10-50 from entering the temple was unconstitutional and only promoted gender discrimination.

While the liberal sphere of the nation accepted this judgment with open arms, at the grassroot level, the believers of this practice made it humanly impossible for it to be executed. Thereafter, women who tried to enter the shrine were met with innumerable obstacles making it impossible for them to actually complete the journey. The State Government tried to arrange for protection of these women but that could not stand the might of lakhs of violent, unruly and angry protestors. The following news of a woman successfully entering the temple did not make matters any better. While women formed long walls of solidarity to raise their voices and protest against the discrimination, people who were staunchly against this decision created havoc in the state to express their dismay. The temple was shut for 'purification purposes' and even today the State Government of Kerala is trying their best to obtain the correct balance between enforcing the judgment of the Supreme Court and maintaining peace, law and order.

However, this is not the first time that a Supreme Court judgment has evoked such strong sentiments from the citizens. Earlier in the month, the Supreme Court delivered a landmark judgment that decriminalised homosexuality by reading down Section 377 of the Indian Penal Code,1860.[2] Diametrically opposite to the Sabarimala judgment, this garnered tremendous praise for the Judiciary and was heralded as a step towards a more progressive and inclusive state. There was fervor and enthusiasm all over social media, with everyone expressing joy and pride for the nation that India was about to become. Amidst this feeling of happiness, activists and social workers could not help but draw a parallel to the famous judgment of *NALSA v. Union of India*,[3] that recognized transgender persons as equal citizens of our country.

It has been five months since the judgment against Section 377 was passed and almost five years since the NALSA judgment. On studying the surveys which aim to check the actual ground level changes that these judgments have brought about, the results have not been as positive as one expected. In June 2014,[4] reports revealed that a transgender person died because the doctors could not decide which ward (male or female) should the patient be admitted to. In February 2015, the *Telangana Hijra Transgender Samiti* reported 40 attacks on transgender people within a six-month period.[5] Laxmi Narayan Tripathi, a transgender activist and one of the original petitioners in the NALSA judgment said, *"There may be a pending issue of clarification in the Court, but I do not understand why that has to stop policy-level decisions. That is the excuse they are giving us at the state-level, which is obnoxious. It is sad that the Governments are*

waiting for petty things when the community has been facing discrimination and ostracisation for hundreds of years." [6] The LGBTQ+ community still faces rampant and overt discrimination. They are denied housing and work opportunities. Even after direct directives given by the Supreme Court to the Government there is a lack of sensitisation among students and teachers regarding the said community.

The reality on the ground often questions the rosy picture we paint on social media. While the Supreme Court is trying to take this nation into the 21st century, are we really following? After the Supreme Court declared Right to Privacy as a Fundamental Right, the fate of the Aadhaar card was in the hands of the Judiciary. The Supreme Court held that Aadhaar is mandatory for filing tax returns and for accessing welfare schemes, but bank accounts and phone numbers do not have to be linked to it.[7]

While it was marked by strong dissent by Justice Chandrachud, the others believed that for the good of the community there were some parts of the Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016, which should be mandatorily implemented. The Aadhaar judgment did stop private companies from making its linkage compulsory, but the damage was already done. Before the Aadhaar judgment, a lot of companies had already used the Aadhaar details for Know Your Client (KYC), and the judgment had no provision for recalling of this information.

So, what is stopping these landmark judgments from actually bringing about the change that they envisaged to bring about? There is a clear lack of coordination between the Judiciary and the Executive which delays the implementation of these judgments. The second reason is the clear distinction between the liberal sphere and the masses. There needs to be education, sensitisation and change in mindsets at the ground level to allow for inclusivity. Few thousand pieces of paper that the common man can barely read will not be able to completely eradicate discrimination unless the mindset of people change. We also have to stop the ruling Government from using polarising decisions to capitalise on vote banks for their political ambitions. The Government must support the decisions of the Judiciary, follow their direct directives and do their best to maintain law and order while implementing the same.

Lastly the onus lies on us, the educated section of society, who celebrate judgments on social media and post our outrage online. We must try to give to the less fortunate the access to information and should try to create dialogue and discussion that unites all sections. We have to keep the Government in check so that our Judiciary can flourish. Most importantly, our indignation today cannot be met with our indifference tomorrow and our joy and pride today cannot be met with complacency tomorrow. The Supreme Court is trying to lead us to the 21st century, all we have to do is follow their lead and take the nation along.

END NOTES

[1] Indian Lawyer's Association versus The State of Kerala, 2017 10 SCC 689
[2] Navtej Singh Johar v Union of India, 2018 10 SCC 1
[3] National Legal Services Authority v. Union of India, 2014 5 SCC 438
[4] Elizabeth Saumya, Indian Transgenders Healthcare problems, Al Jazeera (June 18, 2014), https://www.aljazeera.com/indepth/features/2014/06/healthcare-distant-india-transgenders-201461882414495902.html.
[5] Shreya Ila Anasuya, Over Two Years After Landmark Judgment, Transgender People Are Still Struggling The Wire, (May 15, 2016), https://thewire.in/gender/over-two-years-after-landmark-judgment-transgender-people-are-still-struggling
[6] Rashmi Patel, Being LBBTQ in India, Live Mint, (August 27, 2016), https://www.livemint.com/Sundayapp/sAYrieZdZKEybKzhP8FDbP/Being-LGBT-in-India-Some-home-truths.html
[7] Justice K. S. Puttaswamy (Retd.) & Anr. versus Union Of India & Ors, 2018 1 SCC 1642

MAG

Living in the 21st Cemetery

- Isha Prakash, V-II

India has for ages beautifully preserved a culture that had once been bestowed upon us by our 'forefathers' and well, mothers but really, who cares right? With each passing day, the world takes victorious strides, yet it grows smaller and smaller. Similarly, with each bout of progression that paves the path in front of us- does our thinking get narrower too?

It is a clear sham that even today, in the 21st Century, we, the so-called 'millennials' have turned out to be just like the 'millions' who came before us. If dowry, child marriage and female infanticide still persist in a futile environment where we no longer truly attempt to eradicate these fatalities- then I believe the past was truly more progressive than we would like to think, for they fought their entire lives for causes that mattered. Today, do we even believe in standing up (yes, you might have to put your *'Netflix & chill'*-ing on hold for a bit there) for anything anymore- or are we just nothing more than plain *'beliebers'* now? For if something as fundamental as gender equality cannot be ensured or even accepted for that matter, then I am not sure if this society is really as progressive as it claims to be. What I am sure of, however, is that this will most definitely make every martyr named in the pages of history to turn in 'his' grave and say, "Definitely want my life back, please."

"Well, gladly, Sir! Unless you're a lady of course, geez."

VISION 2020

- Nimrat Dhillon, III-I

It is a weird world to live in if your daily source of entertainment is also your President, but that is the bizarre reality The United States of America is in right now, so might as well move forward and accept the ludicrous, nonsensical Donald Trump for who he is – a ludicrous, nonsensical human-orange. His presidency is something that…happened. He truly believes that there is no such thing as global warming, is adamant on building a wall at the US-Mexico borders and does not give two hoots before making extremely despicable statements. Trump supporters blend his brand with apparent success and that is juxtaposing to a whole new level.

Call it over-enthusiasm or simply a, "Let's get this over with as soon as possible, PLEASE" attitude, but so many names have already started popping up for the 2020 election. It is a side effect of what I like to call, "If Grandpa Orange can do it, then so can I". The first candidate is obviously dearest Donald himself who already set his mind on re-election, months after his first one. That statement is not false. It is repurposed bovine waste. (Thank you John Oliver for this beautiful phrase). The Democratic party is overflowing with candidate nominations such as Senator Elizabeth Warren of Massachusetts, Former Secretary of Housing and Urban Development Julian Castro, Senator Kamala Harris of California among others and the rest that will follow as well. Hopefully, 2020 is the year to Make America Stable Again. (And let us have some saner sources of entertainment while we are there, like YouTube videos of tiny hamsters eating tiny burritos or entire The Office episodes, but in vines.)

Mental Health in India

- Rebecca Koshy, V-I

According to a recent WHO report, India is now leading in mental illness cases, leaving China and the United States behind in the dust, but still waiting to kick start the conversation on mental health and its effects. The average rate of suicide is 10.3%, per 100,000 people. Yet, until a few years ago, attempted suicide was either punishable with a year in jail, or a fine, and if you were having a streak of luck, both. That made it the only crime where just the attempt was punishable.So if one was to succeed the first time around, they would be left alone. Not that pursuing them after that point is really much of an option. It could not be clearer: you will be punished for not seeing things through, so aim for the sky.

Now, although the Mental Healthcare Act of 2017 changed that by providing the presumption of mental illness and offering care, treatment and rehabilitation instead of some good old jail time, we still have a long way to go as a society. So encourage your loved ones to seek the help they need and deserve. Gently prod your struggling friend, talk to your stressed family member, and make sure they know that you are there for them. And if it is you, who could use some guidance, remember that the ratio of mental health professionals to patients is poor, so get help while stocks last. Because the only shame involved here is how many people we lose to mental illness every day.

REVIEW

Sabrimala Purity Protection

- Simran Grover, III-I

Nestled in the heart of the Periyar tiger reserve, lies a holy place of worship which is devoted to Lord Ayyappa. The patrons came up with an absolutely mind blowing idea to preserve the sacred purity of the temple: banish the most impure thing in the world from the temple and therefore, automatically assure purity. What is the most impure thing, you ask? Women, of course.

Back in 1991, the Kerala High Court gave women over 50, the great privilege of entering the temple and the whole of Kerala was convinced that justice was served and deserved a nice pat on the back for being so tolerant and open minded. But some overambitious women were unsatisfied; there was ridiculous conjecture that menstruation is not impure, that it was the essence of life, that women were pure and holy for giving birth. Such absurdity was overwhelming. After all everyone knows that the only mother figure to be worshipped is the cow. Who cares about actual mothers, the weaker counterpart in this society?

However, it was only in 2018, that the dark ages befell Sabarimala. The Supreme Court overruled the previous decision, claiming entry for all on the grounds of equality. While it is still not evident what agenda it had in passing such an unfair judgment, many brave activists today are still fighting for our cause. With protests and threats of violence, these brave people will do anything to help protect Sabarimala, its purity and of course, Lord Ayyappa's celibacy.

INCENTIVISING TAX COMPLIANCE: A PAROCHIAL APPROACH

- *Kajol Punjabi, V-V*

Tax is an unwelcome baby, whose burden, everybody likes to be transferred or shifted.[1]

I. INTRODUCTION

The imposition of taxes is a sovereign function which brings revenue to the Government treasury and is utilised for public spending. As public spending is indispensable for a welfare State, the source of the funds needs to be steady and stable. However, if viewed from a taxpayer's perspective, taxes seem nothing less than a burden, which can neither be shifted[2] nor ignored.

II. PAROCHIAL APPROACH

In a case before the Supreme Court,[3] where the constitutional validity of expenditure tax was challenged, the Court observed: *'Every cause, it is said, has its martyrs. Then again, the mere excessiveness of a tax or even the circumstances that its imposition might tend towards the diminution of the earnings or profits of the persons of incidence does not, per se, and without more, constitute violation of the rights under Article 19(1)(g).'*[4]

Taxes reduce the income of individuals.[5] Thus, generally, both the ability to work, and the ability to save and invest are adversely affected by taxation.[6]

Due to the nature of taxes, every taxpayer tries his best to pay as little tax as possible, and many others do not pay any at all. Some of the professionals today work just to figure out how they can save their client's taxes and charge high fees for rendering such services.

The principle of *salus populi suprema lex esto* legitimises imposing taxes in spite of its microscopic shortcomings. Thus, when the populace adopts various artifices to evade taxes, it becomes incumbent on the State to not only abort such swindles but also to maintain the confidence of the masses in the State. Thus, the State adopts various policies to achieve this objective.

Traditional tax compliance policy is based on a deterrent approach, whereby compliance is achieved by a tax authority's levy of penalties and audits. This policy is premised on Allingham & Sandmo's standard model of tax evasion, which postulates that an increase in the probability of detection and punishment will, *ceteris paribus*, lead to an increase in compliance.[7]

When deterrence-based policies fail and the taxpayers do not fear any action taken by tax authorities, it becomes imperative to implement effective policies. For this reason, in recent years, governments all over the world are formulating various policies based on different approaches to collect taxes. One such approach is to incentivise the taxpayer with monetary or non-monetary incentives to encourage him to pay taxes.

III. REWARDING

Based on the said approach, the Samman Scheme was introduced in 1999 which honoured deserving taxpayers,[8] with the objective of displaying the Government's appreciation towards honest taxpayers.[9] As per several news reports, the Government is looking to put in place an incentive programme to reward and recognise honest taxpayers to encourage a culture of compliance.[10] The Central Board of Direct Taxes has constituted a committee to formulate a scheme for rewarding honest taxpayers in India. Goods and Service Tax compliance rating is counterpart within the indirect tax regime. As a part of the larger plan, it is proposed that honest taxpayers are empowered to get 'priority service' while using public services at airports, railways stations and at tolls on highways.

Similar incentives are already in place in several countries. For instance, in South Korea, honest taxpayers, reportedly, receive certificates and get access to airport VIP rooms and free parking.[11] Bangladesh uses social recognition to incentivise payment of tax-giving recognition to honest taxpayers.[12] The concept of

rewarding taxpayers is based on an illusory and psychological tax contract between the taxpayers and the Government. Income tax informant reward scheme[13] may be viable because informing the Government about one's neighbour's tax evasion is not one's duty that is legally or morally enforceable, per contra, a scheme to reward for payment of taxes whilst fulfilling one's legal duty is thoroughly flawed.

IV. COMPLIANCE - VOLUNTARY OR INCENTIVISED?

Human nature is inclined to make financial decisions by comparing costs and benefits. Their behaviour may change when the costs or benefits change. People respond to incentives. Behavioural economics has gained prominence and governments are all set to use it to its advantage. Kastlunger et al. provides insight into the effect that rewards have on the decision strategies of taxpayers, by categorising them as: being (i) completely honest, or (ii) completely dishonest, or (iii) a mild evader. It was hypothesised that, although the first and second group's strategy was unlikely to be altered by the introduction of a reward, the mild evaders may be encouraged to become fully compliant to receive the reward.[14]

Though some studies[15] suggest that such reward-based systems would actually increase tax compliance, in the author's opinion, an Indian taxpayer's tax liability is far higher than the proposed incentives for the liability to get compensated, such as a cup of tea with the State Governor, or priority check-ins at the airport, or other proposed non-monetary rewards.

Therefore, this scheme would blatantly fail in achieving its objective. There are innumerable examples of taxpayers, especially Multi National Companies being harassed with unreasonable demands or delayed or no refund of taxes. Instead of trying to persuade taxpayers to pay taxes by giving them incentives, it would be rational to tax fairly and gain their confidence and enable them to pay taxes. In the words of Mr. Nani Palkiwala,

To tax and to please is not given to men; but to tax and be fair is.[16]

END NOTES

[1]Janak Raj Gupta, Public Economics in India-theory and Practice 243 (2d ed. 2014).

[2]The reference is to Income Tax, as the burden of indirect tax may be shifted.

[3]Federation of Hotel & Restaurant Association of India v. Union of India, 178 ITR 97 (SC).

[4]Id. at 24.

[5]GUPTA, supra note 1, at 236.

[6]GUPTA, supra note 1.

[7]Michael G. ALLINGHAM and Agnar Sandmo, Income Tax Evasion: A Theoretical Analysis, 1 J. PUBLIC ECON. 1 (1972) 323-338.

[8]History of Taxation Pre – 1922, https://www.incometaxindia.gov.in/pages/about-us/history-of-direct-taxation.aspx (last visited 20 January 2019).

[9]In Budget 1998-99, former finance minister, Yashwant Sinha, had introduced a scheme called Samman "to demonstrate the society's recognition of honest taxpayers' important contribution to the national cause".

[10]See, Deepshikha Sikarwar, Pay tax, get rewards from the government, ECONOMIC TIMES, October 9, 2018.

[11]Rebecca Quin, Thank you for paying your taxes! Incentive scheme rewards foreign taxpayers with gifts, JAPAN TODAY, December 14, 2017, https://japantoday.com/category/special-promotion/thank-you-for-paying-your-taxes!-incentive-scheme-rewards-foreign-taxpayers-with-gifts(last visited 20 January 2019).

[12]Nasiruddin Ahmed, Raj Chetty, Mushfiq Mobarak, Aminur Rahman and Monica Singhal, Social Incentives and Tax Compliance in Bangladesh, J-PAL, https://www.theigc.org/project/taxpayer-recognition-program/(last visited 20 January 2019).

[13]INCOME TAX INFORMANTS REWARD SCHEME,2018 regulates the grant and payment of reward to informants where information is given to specified Tax Officer by informant that leads to detection of substantial tax evasion under the provisions of Income Tax Act, 1961 and/or the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015.

[14]Barbara Kastlunger, Stephan Muehlbacher, Erich Kirchler and Luigi Mittone, What Goes Around Comes Around? Experimental Evidence of the Effect of Rewards on Tax Compliance, PUBLIC FINANCE REV., July 29, 2010.

[15]See, Raj Chetty, Mushfiq Mobarak & Monica Singhal, Increasing Tax Compliance through Social Recognition, INTERNATIONAL GROWTH CENTRE, https://www.theigc.org/publication/increasing-tax-compliance-through-social-recognition-policy-brief/ (last visited 20 January 2019).

[16]M V Kamath, Nani A. Palkivala: A Life (2007).

The Past Revisited

In this section, the reader is taken down the hallowed annals of Government Law College's rich history, through the eyes of a legal luminary who began their legal careers at GLC as students. This year's piece is from Mr. Goolam E. Vahanvati, who graduated from GLC in 1972, but returned to write for the magazine in 2000.

Mr. Goolam E. Vahanvati obtained his LLB. degree from Government Law College, Bombay, and enrolled as an advocate of the Bombay High Court in 1972. Besides being a lecturer at St. Xavier's College and Sophia College, Mumbai, he also taught at his alma mater from 1972 to 1976 on the Law of Torts and Administrative Law. He was enrolled by special dispensation to the Bar in UK. His areas of practice included Constitutional Law, Adminstrative Banking, Insurance Import Policy, customs and excise matters and Company Law. He was designated as Senior Advocate in 1990. He was appointed as the Advocate General of Maharashtra in 1999 which he served until his elevation to the Solicitor General of India in 2004. Mr. Vahanvati also served as the13th Attorney General of India for a period of three years, beginning in 2009.

Mr. Vahanvati appeared in several prominent matters throughout the course of his career: in the hearing of Kuldip Nayar's challenge to the amendment to the Representation of the People's Act with regard to the Rajya Sabha, the *Tainted Ministers case*, and in all matters pertaining to the sealing and the challenge to the Delhi Laws Special Provisions Act, 2007. He represented the state of Maharashtra in the public interest litigation petition filed in the Fake Stamp Paper Scam. He successfully defended the challenge to the reservation for OBCs in higher education.

Above and beyond the professional milestones he achieved, Mr. Vahanvati was a powerful proponent of effective legal writing. In this respect, the article reproduced below is a piece written by Mr. Vahanvati, when he was the Advocate General of Maharashtra, for the 2000-01 edition of méLAWnge.

Legal Drafting: Declining Standards

– by Mr. Goolam E. Vahanvati, Advocate-General State of Maharashtra

Lord Denning in "The Discipline of Law", the first of the many outstanding books he wrote, started the series with the chapter "Command of Language" and "The Tools of Trade." He wrote:

"To succeed the profession of law, you must seek to cultivate command of language. Words are the lawyer's tools of trade. When you are called upon to address the judge, it is your words, which count most. It is by them you will hope to persuade rite judge of the rightness of your cause."

"The reason words are so important is because words are the vehicle of thought. When you are working problem on your own — your desk or walking home — you think in words, not in symbols or words. When you are advising your

client — in writing or by word or mouth — you must use words. There is no other means available. To do it convincingly, do it simply and clearly."

The essence of law is legal drafting. The essence of legal drafting is precision; precision in order to communicate, to make yourself understood, to get the point across. This is such a basic principle but it is almost completely lost. Nobody teaches this; and no law student is ever told of its importance. I have come across juniors today who have not heard of 'precis' writing. The name of the game today is 'be verbose'. The more the words, the more you can confuse. The greater the weight of papers, the greater the impression of learning. And, of course you charge much more for a long 100-page plaint than a simple 10-page document.

In a lighter vein, I came across this delightful legal piece on legal writing in the book Trials end Tribulations, edited by Daniel White. It comes from America, where lawyers have made confusion and obscurity in legal documentation a fine art.

Principles of Legal Writing:

1. Never use one word when ten will do.

2. Never use a small word where a big one will suffice.

3. Never use a simple statement where it appears that one of substantially greater complexity achieve comparable goals.

4. Never use English where Latin, mutatis mutandis will do.

5. Qualify virtually everything.

6. Do not be embarrassed about repeating yourself. Do not be embarrassed about repeating.

7. Worry about the difference between "which" and "that."
8. In pleadings and briefs, that which is defensible should be stated. That which is indefensible, but which you wish were true, should be merely suggested.

9. Never refer to your opponent's "arguments," he only makes "assertions," and his assertions are always "bald."

10. If a layperson can read from beginning to end without falling asleep, it needs work.

This is good reason why brevity is no longer favoured. Brevity requires hardwork. It requires assimilation of facts and law, organisation of thought and sifting the grain from the chaff. All this requires time. Today, the draftsman opens the brief and starts reproducing letter after letter. Today the lawyer gets up in Court and then starts thinking of what to say. We have truly reached a sorry phase.



The Cinematograph (Amendment) Bill, 2018 : Is There Sense in Censorship?

Dr. Shashi Tharoor proposed the Cinematograph (Amendment) Bill, 2018, to strengthen the freedom of expression provided to artists in India by taking away the power of the Indian Government to allow or disallow films from screening. The need for the bill arose out of the state-specific responses to Sanjay Leela Bhansali's film *Padmaavat*. Therefore, it would be reasonable to dissect the Bill's capabilities in relation to how *Padmaavat* would have been treated, if the Bill had passed before the film's release.

The primary aim of the Bill is to take away the Government's power to ban films. In that regard, it becomes pertinent to understand the reasoning given behind the banning of the film . In January 2017, the right-wing Karni Sena destroyed the sets of the film, which traces the story of apparent Rajput queen Rani Padmini, in addition to physically assaulting its Director, Sanjay Leela Bhansali. States like Rajasthan, Haryana and Gujarat chose to ban the film. Interestingly, the most serious instances of retaliation by the Karni Sena happened primarily in the states that chose to ban the film. Dr. Tharoor claims that films should only be banned as a *"last resort to maintain public order"*. However, that is precisely what these states did. It is reasonable to assume that the violence would only have increased, if the film were allowed to be screened. India, as a people is fundamentally diverse and where there is such diversity even the smallest act that can be construed to be retaliation against a community's values, is usually considered one. Such a democracy cannot sustain itself, the point at which the Government loses the only way it has to make such acts disappear.

-Altamash Kaltoo Kadir, V-III

The Bill has been introduced with the express objective to protect and preserve the right of a filmmaker to expression of his thoughts through his medium of choice. The bill broadly relies on two pillars,

Contextualisation: The bill urges the certification body to look at any specific scene, or any objectionable content in context and to consider the work of art per its original date of production- irrespective of whether the film is a period drama, or it is based on drug use. Such films or scenes do not deserve to be cut but rather only viewed by suitable audiences. A prime example would be the *jauhar* scene from the film *Padmaavat*. Although giving one's life at a pyre might not qualify as brave, contextualising the scene with all its political undertones as the movie does gives us a different understanding. It portrays a practice (no matter how controversial) where the Rajput women assertively volunteered to committing *jauhar*, as opposed to submitting to the villain, Alhauddin Khilji.

Certification and Not Censorship: The second aspect of the Bill focuses on the modification of various films or rather, the lack thereof. The argument here is that once the Bill is passed in its entirety, the certification of films will be socially or morally acceptable and content will be regulated according to the audience the film is targeted towards. This render the modification of films redundant. Films with adult themes will have adult certification. Going in with the assumption of strict enforcement, no edits will be necessary to such original pieces. Content regulation has and will be contentious. But the answer surely is regulating consumption of the end user and not production of content.

-Aditya Deshingkar, V-II

Cinema has been an integral part of Indian culture for a very long time. The Central Board of Film Certification (CBFC) is less of a certifying authority and serves more as an arbitrary authority of what is 'acceptable' in films across the country. India has had a patchy history with freedom of expression and governments since independence, have engaged in some form of censorship. Banning books and movies has been a way to assuage the feelings of different sections of society for either votes or for preventing the sorry state of law and order from getting out of hand.

The Cinematograph (Amendment) Bill, 2018, is a step in the right direction but it does not wholly and unequivocally supporting artistic freedom and freedom of expression. Dr. Tharoor's Bill aims to give our filmmakers the freedom to showcase their art with minimal government interference. This Bill greatly curbs the government's ability to ban or exercise discretion in movies. It still provides for an exception where the CBFC and not the government is allowed to deny the certification to certain movies. Further, a more stringent requirement for banning of a particular film in case of breach of public order has been given.

This Bill attempts to remove the more paternalistic features of the Cinematograph Act, 1952, while the control of the government over release of films in case of some dire instances are maintained. Free speech is an issue that goes beyond the legal realm and the only way to ensure that film-makers voices are not silenced is by a collective change in mindset and unequivocal endorsement of the idea of free speech.

-Aditya Bharadwaj V-II

The highlights to the Cinematograph (Amendment) Bill 2018 include: the definition of the 'pirated' content, the quantum of punishment, and provisions concerning those excluded from punishment.

Under the proposed amendment, three conditions need to be satisfied: firstly, the producers of the film would have to obtain a copyright to the film. Secondly, the film would have to be certified by the CBFC. Thirdly, the recording of the audio-visual content by the offender and his aides and abettors has to be conducted when the film is being screened in an exhibition facility.

This creates numerous loopholes for the bulk of offenders because in many cases, the 'pirated' version is released before the release of the film, and such a film may not have been copyrighted or obtained a certification yet. Indian films like *Udta Punjab* and *Black Friday* are prominent examples of the same. Further, a lot of pirated content is available, where the recording of the film has not been taken from an exhibition facility. The punishment accorded is that of a maximum fine of INR10 lakh or 3 years imprisonment or both, which is notably the greatest penalty yet, under the act. As for those who are excluded from the ambit of the offenders are the distributors and consumers of the 'pirated' content.

While it is puzzling why distributors have not been included, the non-inclusion of consumers is a fresh breath of jurisprudence. A possible question to be posed would be on the insistence of the copyright owner's written consent for recording of audio-visual content. To sum up, it looks like a well-intentioned path, laden with potholes, which would need to be filled, to curb piracy and enable a flourishing industry.

-Agastya Sreenivasan, V-III

The Cinematograph Act 1952 needs to be replaced with something much more meaningful like the Cinematograph (Amendment) Bill, 2018. What we need is a progressive censor board rather than a board which runs on prescribed guidelines. A body of well-educated people with rational minds who would assess every movie and TV show broadcasted from the perspective of the targeted audience rather than their own would be appreciated.

A meaningful Bill must ensure that freedom of expression is not curtailed. No one can hide the fact that few people have created unnecessary disturbance in our society on petty matters which need no mention leading to censorship on a particular movie or TV show but on a larger scale, the upcoming generation demands a new form of art which requires certification rather than censorship. Censorship in the U.S.A. involves the suppression of speech or public communication and raises issues of freedom of speech, which is protected by the First Amendment to the Constitution of the U.S.A. However, we cannot really compare the quality of movies and TV shows broadcasted in U.S.A. and India; a bitter truth that our standards are deteriorating day by day.

Certification might empower the writers and director to protect their ideas and content. It will also enable free expression in our democracy. Each has its pros and cons, each has a for and against, strength and weakness which vary from region to region and audience to audience. On a personal note, I would prefer certifications but my grand-parents might prefer censorship. Just a reminder, the word might still float around.

-Kushan Kode, V-II

The Cinematograph (Amendment) Bill, 2018 by Dr. Shashi Tharoor has ushered new hope to film makers and cinema viewers in India. The Bill does away with the restricting provisions of the Cinematograph Act, 1952, ('Act') which gives enormous powers to the governmental in restricting the exhibition of a film for such period as it deems fit and directing penalties if contravened. The Act prevents the Central Government from exercising whimsical control over the CBFC.

The Bill seeks to do away with the concept of moral policing by self-certified vigilante groups who contribute to chaos while releasing of films involving socio-cultural, socio-economical, socio-political genres. Currently, CBFC has rating systems as U, A, U / A, S. The CBFC can also completely refuse to certify thus making the movie unavailable for theatres to screen. The Bill introduces new certificates of rating systems as U , U/A12+ ,U/A15+, A, S, C(A with caution). These rating criteria help viewers make a conscious decision regarding the viewing of a film empowering parental control over their children's viewing standards. This is a very laudable criterion keeping in mind 21st century adolescents.

According to a PTI report, the CBFC denied certificates to 77 films in 2015-2016 and 125 films in 2016-2017 thus restricting the audience to view content driven films. This also violates Article 19(1)(a) of the Constitution of India. The pre-censorship powers of the CBFC and the revisional powers of the Central Government constitute a paternalistic policy, which is incompatible with the polity of a mature democracy. As a vigilant viewer of content driven cinema, I cordially welcome this change as it will introduce the Indian viewers of Hindi cinema to better and varied genre of movies unlike the same age old Bollywood spice.

-Anwesha Maitra, V-III

Minimum Income Policy For The Poor: Rational Or Irrational

The implementation of a Minimum Income Policy would be irrational for the following reasons. The consequences would be similar to what would happen in Milton Friedman's theory of 'Helicopter Drop' of money, which is a monetary policy tool of creating surplus currency and distributing it to public. This tool is avoided by central banks because it is infamous for creating inflation in the market. By analogy, the same situation may occur if a Minimum Income Policy is implemented.

The implementation of such a policy will have a combined effect on production, consumption and the fiscal deficit. The government in order to maintain Minimum Income, will have to partake in expenditure in excess of what it is accustomed to spending on welfare schemes which will add stress to a budget which is already immobilized. The fissure between the actual fiscal deficit and the level it aims to achieve, will widen to unmanageable proportions, if the government is required to broaden social infrastructure in the country. Privatising utilities is not practical because it will raise costs and even a Minimum Income will not be able to cover exorbitant costs of private facilities. Therefore, there will be no increase in standard of living for people living in poverty. Minimum Income will increase consumption in a market unable to create sufficient supply to maintain price equilibrium.

Minimum Income will disincentivise hard work, which forms the underlying principle in Taylor's theory of Differential Piece Wage System which is the backbone of industrial production. Thus, Minimum Income would not be able to sustain current levels of production. With workers in a better position to demand higher wages it would increase cost of production. Thus, consumers will have to face dual-inflation in the market. It would be advisable to pay a higher minimum wage by law along with investing in creating affordable and robust social infrastructure. Alternatively, a program of selective minimum could be implemented to achieve the objectives of stimulating the poorer sections of society, although even a selective program may not be fiscally feasible.

-Viraj Vaidya, V-II

The Minimum Income Policy is a form of social security assuring the poorer, economically weaker sections of the society, a Guaranteed Minimum Income by the Government. Many nations have followed it. If it is executed in India, it would ensure lesser chances of people dying due to hunger would be less, because India is one of the countries having serious level of hunger. If the Guaranteed Minimum Income could be able to provide the necessities like food and education, it would prove to be a rational scheme covering the last deprived person of the society. The needs of poor will be served. The Minimum Income Policy will strengthen the nation's image globally by lowering the Hunger Index and tackling issues like malnourishment and poverty. Education is meant to reach the masses which they were deprived due to poverty by utilising the Guaranteed Minimum Income's amount they would be able to migrate for further studies to the nearby town or cities as majority of the poor resides in a village where there is less facilities of education.

All the existing government schemes for poverty alleviation can be merged and brought under one roof i.e. Guaranteed Minimum Income. This will better the implementation of the policy and ensure that specific focus can be laid on hunger, education and upliftment of poor. Hence by reducing government time and increasing the coverage for poor this scheme will be a rational approach adapted to headway nation's progress.

-Aniket Jadhav, V-III

Rahul Gandhi recently promised the introduction of Minimum Income Guarantee (MIG) if the Indian National Congress is voted to power. The Congress President's proposal is not a full Universal Basic Income (UBI) but is targeted only at low income households. The UBI debate took the center stage when Mr. Arvind Subramaniam, the former Chief Economic Adviser to the Prime Minister, issued a report as part of the National Survey suggesting adoption of UBI replacing various subsidy and job guarantee programs. According to this report, spending a mere 2% of GDP on a UBI of INR 200 per month could cut the extreme poverty rate from 22% to 7% whereas a benefit of INR 400 per person per month could cut the rate to below 1%. This raises a series of questions. These relate to how such households will be identified, how the resources to implement such a policy will be raised and if the government's mechanism will be an iron clad defence against poverty. A similar policy, implemented in Finland a couple of years ago, aimed at seeing how a basic unconditional income would affect unemployed people. Results showed increased well-being and happiness but no significant growth in employment. As such this is neither an effective nor a sustainable method to catapult economy.

Referring to Jeremy Bentham's concept of utilitarianism, MIG promises increased happiness for a select few for a short period of time. It is ineffective because it does not show a significant improvement in the utility of the masses. Unless there are adequate resources for proper implementation, the focus should be on quality education and skill development programs. Outstanding policy making and implementation could help boost economy exponentially and tackle the poverty issue effectively.

-Vivek Mani, V-II

With the flavor of the season being the 'Minimum Income Policy' (MIP) or the 'Universal Basic Income', the Government in the 2019 Budget Speech announced Direct Benefit Transfer of INR 6,000 per year to augment the income of small and marginal farmers. The pertinent question however, is whether India is ready for an economy-wide extension of this recently announced partial MIP, to help elevate the poorer section of the economy out of poverty? The supporters of the policy claim that MIP will be an effective antidote to India's leaky, underperforming and poorly implemented welfare schemes. The critics conversely believe that such a scheme will discourage labour force and promote reckless spending. The Chief Economic Advisor Mr. Arvind Subramanian, the key author of the idea, himself is not sure of the scheme and whether it would kill the incentive to work. It also remains to be seen if India has the fiscal capacity to implement this as it is already crossing its fiscal deficit. Further, there is a possibility of MIP becoming an add-on to, rather than a replacement of the current anti-poverty and social programmes, making it even more economically unviable. So far, the only elaborate Government discourse on MIP has been the Ministry of Finance's Economic Survey 2016-17.

Even though the survey has provided for the most exhaustive MIP implementation mechanism, it has discouraged immediate execution due to, inter alia, political and administrative concerns. According to a Carnegie India report, titled *'India's Universal Basic Income: Bedeviled by the Details'* the uncertainty about the design choices (which go beyond targeting to include the duration and frequency of transfers) and the political feasibility of an MIP, emphasises the need for an Indian MIP pilot of sufficient length to test the impact of introducing regular, unconditional and universal cash transfers, on the economy and the intended beneficiaries. Consequently, it is tricky to choose any extreme side *vis-à-vis* the MIP, as there is no black and white. Therefore, in resonance with the Economic Survey 2016-17, MIP is a powerful idea that may not be ripe for present implementation, but is ripe for serious discussion.

-Khyati Goel, V-V

There have been a lot of subsidiary schemes of government to eliminate poverty by eliminating some other disability. Minimum Income Policy has a direct approach to eliminate poverty as opposed to some indirect schemes. Minimum Income Policy has been advocated by many economists and world leaders. Martin Luther King Jr. wrote in his book, *Where Do We Go From Here: Chaos or Community? - "The solution to poverty is to abolish it directly by a now widely discussed measure: the guaranteed income."*

Minimum income guarantees a basic income to citizens provided they meet certain condition. As the unit of beneficiary is individual and not the household, it is more effective in ensuring better standard of living for all especially those living below the extreme poverty line (USD 1.90 per day). Minimum income will not reduce labour supply as evident by Henry George's anticipation in *Progress and Poverty* where he wrote- *"It is the work of men who perform it for their own sake. In a state of society where want is abolished, work of this sort could be enormously increased."* According to Economic Survey 2016-17, for successful implementation of Universal Basic Income (UBI), functional JAM (Jan Dhan, Aadhar and Mobile) and Centre-State negotiations on cost sharing is important. It can be implemented by adopting gradualism, direct transfer through DBT and withdrawing some subsidy related schemes and putting it under UBI. According to this survey, fiscal space exists if UBI replaces all existing central government schemes. Guaranteed Minimum Income (MIG) has to be dynamic and it has to be determined by inflation in the economy. Welfare scheme cannot substitute productive employment but it gives a foundation to live with dignity. Weakness of existing welfare schemes such as mis-allocation, leakages and exclusion of poor can be eliminated by guaranteed minimum income. MIG for poor is rational and its implementation should be seriously considered for serious discussion regarding proper time for implementation.

-Richa Khare V-V

In a country loaded heavily with problems like farm loans, poor standard of living, low per capita income, inadequate funds in investment-banking, crippled infrastructure and inefficient bureaucracy, a few kind-hearted people talk about minimum wage policy. First proposed by Sir Thomas Moore in *Utopia*, it has been around since the 16th century. In India, where loan defaulters are the new villains, corruption is the new trend, and being selfish seems reasonable; can we really have a policy for those who will be categorised as poor? Assuming a scenario where our economists manage to pull this off, the Bill is passed without any challenges in court, it will indeed be great to see the incapacitated receive a resourceful life. All said and done, it is hard to say if the capital invested will be recovered in a timely manner. It is distressing that we can't even provide the minimum support price for farmers and yet we talk of another 'poor-oriented' policy.

So before execution, we need to ask those who propose this: is this calculated or just a mere gamble for personal gain which can paralyze the economy? Such a policy can work provided only we give it a strong foundation, potent machinery and good intent with people's welfare at heart. We have to rework our subsidiaries, budget allocation, lending, borrowing, and other aspects which count in such scenarios. Certainly this is a rational idea but its proposal by irrational minds makes its implementation very dubious. That's the hard truth we have to accept and wait a bit longer for our country's *Acche Din!*

-Kushan Kode, V-II

THE LEXCRYPTIC WORD 9

SOLUTION TO THE CROSSWORD

by Prof. K. Daswani

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For the crossword, turn to page 14

after GLC

Government Law College has not only nurtured some of the brightest professionals in the legal fraternity, but also inspired many to diversify their vocations into professions. 'After GLC' showcases some of the rich talent that GLC as an institution hones. It is through this section, that students of the institution are encouraged to broaden their horizons, and persist in achieveing their goals.

This year's edition of After GLC brings to you the story of two ex-students of Government Law College; Ms. Vandita Morarka, who founded her own not-profit organisation centred around social justice and building compassionate youth leadership, and Mr. Amal Sethi, who is a Doctoral Candidate in Law and a Legal Writing Fellow at the University of Pennsylvania.

Ms. Morarka begins her journey with her long-seated inclination towards becoming a lawyer and traces her path to show us how her legal education at GLC specifically enabled her to use law to further policy-legal changes in India and globally. She goes on to elaborate how her time at GLC allowed her to work with philanthropists, government bodies, not for profits, politicians and celebrities. This led to her founding her own not for profit organisation, One Future Collective, with a vision of transforming India's social fabric through building compassionate youth leadership and an ecosystem that fosters this change.

Mr. Sethi, on the other hand has traversed into academia and shares his experiences through his time at GLC and the course he chartered for himself after graduating. Mr. Sethi begins his article as a nervous freshman in his intial years at GLC, to the academician he is now. Mr. Sethi has worked with a number of agencies such as UNSAID, UNDP, UN Women, UNESCO, UNICEF, The SDG Fund and the US Department of Commerce.

His piece focuses on how sheer hard work, and building knowledge and skill, has guided him throughout his academic and professional endeavours. Mr. Sethi's doctoral dissertation focuses on the theoretical exposition of constiutional courts in developing democracies.

PER ASPERA AD ASTRA

MS. VANDITA MORARKA

As far back as I can remember, I have wanted to be a lawyer. And as far back as I can remember, I have wanted to be a lawyer from GLC.

I never gave the CLAT entrance because I always just wanted to study at GLC, though I did later make the choice to first pursue a B.A. in Political Science and Economics and then take up the Three-Year Law Course at GLC. This choice changed how I viewed law, from merely a field of professional interest; it became a tool I could use for social change. In the second year of my undergraduate studies, I co-founded Students for Social Reform Initiative (SSRI) at Sophia College for Women, Mumbai. In retrospect, experiences in the communities we worked with under SSRI shaped my legal education and career in ways that I can only connect now.

On one seemingly normal day in the community, I asked the kids we worked with to keep aside their books and to tell me what they wanted to be when they grew up. One by one, with a huge grin on their faces, the kids told me of their biggest, most passionate dreams; till one young boy, about 10 years old, stood up and asked me what the point of this exercise was when in his community, just finishing the 12th grade was a cause for celebration, and that even with an education the best he could hope for was to hold a low paying blue collar job then why should he dream of anything else? I had answers, yes, the ones that we pump into ourselves when we work with underserved communities - answers meant to make our work seem more meaningful, but I still walked away from class that day with more unresolved questions than answers, feeling powerless in the face of such reality. I realised that day that for social action to have impact, it needs to be translated into policy-legal change, and that is what a legal education could equip me to do.

I share this here because these experiences changed the meaning behind my pursuit of a legal education, strongly shaping my career 'After GLC'. I entered law school knowing that I wanted to pursue human rights based law and that I wanted to use it to further policy-legal changes in India and globally.

GLC had come as a shock to my system, it pushed me to apply myself harder to further my own education and to be an active member of my educational institution. With this, it gave me the bandwidth to pursue professional opportunities that I would not have been able to avail of while studying elsewhere; and even work alongside for a full time M.A. Honours degree in Public Policy - where I went on to top the University of Mumbai. Overnight, GLC had managed to make me take complete onus of my educational and professional career in a way that I had not done before. Quietly though, GLC continued to offer support systems: it's brilliant student body and their drive to continue to maintain the excellent standards of GLC through various committees, events, and other efforts being one such key force that shaped my experience at GLC helping me evolve through research, writing and conversations. GLC also taught me to accept failure and learn that it is not the end of the world.

While I was at GLC, I started working with philanthropists, government bodies, not for profits, politicians, and celebrities, towards building large scale development based action plans, several of which have later been implemented in different states of India. I also started training the next generation towards scaling this impact: since then to now I have trained 800+ young individuals in social leadership and 25,000+ persons on issues related to gender sensitisation, access to justice, mental health, and the law, indirectly having reached over 1,50,000 persons.

I was continuously hungry to learn more and I followed through on this by interning with law firms like Human

Rights Law Network, research institutions like Vidhi Centre for Legal Policy, and advocates and other organisations; and working with organisations like *Rann Neeti*, UNDP, Google, She The People TV, and others.

I also worked as the Policy, Legal and United Nations Liaison Officer, at Safecity (Red Dot Foundation) during my time at law school, where I headed its policy and legal work for India, during which time I served as a member of the Policy and Strategy Group, World We Want 2030, UNDP, and the Working Group on Gender Equality and Youth, Interagency Network for Youth Development, UN Women. My policy recommendations have been referred for action by the Union Railway Ministry in India, and are also being worked upon by the World Bank. Additionally, I worked as a Legal Researcher at Strategic Advocacy for Human Rights and at Red Elephant Foundation: towards expanding the knowledge base and discourse on legal rights of women and marginalised groups in India. I gained scholarship opportunities during this time to get trained in international human rights practices and diversity and inclusion with international organisation like Equitas and CIVICUS as well.

GLC helped me realise my career trajectory and focus it towards policy-legal work with a strong bent on education, activism, and advocacy. The history of this institution showed me the immense power of young people demanding change.

Towards the end of my formal period at GLC, I started a not for profit organisation, One Future Collective, with a vision of transforming India's social fabric through building compassionate youth leadership and an ecosystem that fosters this change. One Future Collective, amongst its various focuses, is very strongly geared towards using law and policy as a tool for change; one of our core areas of work is that of feminist justice, including: training, building feminist lawyering practices, improving access to justice, and providing legal aid, while advocating and consulting for policy-legal changes with government bodies and corporates.

In the inaugural year of One Future Collective's functioning we have worked with 2,500+ unique persons, with multiple interventions with 2,200+ persons, indirectly reaching more than 30,000 persons.

Currently I am also a Local Pathways Fellow, with the United Nations Sustainable Solutions Development Network 2018-19 and I serve on the Board of Studies for Political Science at Sophia College for Women, Mumbai, alongwith serving on the boards of several not for profits.

My only advice to any person, young or old, is that do what makes you want to get to work on a Monday morning, everything else has a way of falling into place.

BEING 'BAWSE'

AMAL SETHI

Writing this piece was incredibly therapeutic. Perhaps for the first time, I paused and gave a thought to what a crazy journey life has been. The last few years, I have travelled the length and breadth of comparative and international law (and the world) and have been awarded numerous fancy sounding fellowships, worked on the drafting of new constitutions, been a special rapporteur for a United Nations forum, advised a country at the International Court of Justice, worked with a plethora of governmental and inter-governmental agencies ranging from USAID and the US Department of Commerce to UNICEF, UNESCO, UNDP, UN Women and The SDG Fund, lectured at several universities, sat on college admission committees, contributed to multiple Op-Ed columns and even dabbled as a cryptocurrency investor and consultant. As I write this piece, I am awaiting comments from my advisors at The University of Pennsylvania ("Penn") on the final draft of my doctoral dissertation. In a few months, I would hopefully be able to add the prefix 'Dr.' in front of my name.

If someone told me on the first day of law school that I would have done all this within four years 'After GLC,' I would have absolutely laughed. Having no legal links and having never prepared for any of the law entrance exams, I was completely clueless about law school. My initial months in law school were a nightmare. I was a nervous hippie kid who did not make it past the preliminary round of the fresher moot court competition and was even rejected by college committees. My range of expertise at the time was punk music, superhero comics, and sports - nothing too useful in law school. Unlike most freshmen, I was not on my heels doing all kinds of things. Secretly, I was scared and full of self-doubt. Seeing all my contemporaries strides ahead of me, I wanted to be able to leave my mark somewhere.

Around that time, I saw an announcement for the International Law Grand Moot Court Competition on the second-floor college notice board. Not knowing what it even was, I decided to register for it. Some of my friends and seniors even advised (and/or mocked) me on how big international law moots are not the place for a freshman to start; particularly someone who did not clear the preliminary round of the fresher's moot. As there was not too much to lose by doing it, I decided to go ahead with it. The problem, however, was that having absolutely no clue about moot courts or research coupled with the internet not being very helpful back in days, I did not know where to start. This was where I decided to do something absurd. The competition case-study that year comprised a private international law dispute at the International Court of Justice. So, for the next two weeks, I locked myself in a room and for sixteen hours a day read two textbooks each cover to cover, on legal research, moot court competitions, public international law, and private international law. Based on my reading I then proceeded to do whatever I thought I should be doing. Surprisingly, that was enough to do better than most people who took part. I got a great rank and a great moot. Here I learned two of my life's major lessons. First, hardwork, hardwork, hardwork: Life Has No Escalators Only Stairs. Second, there is no substitute for knowledge and skill: Go Seize Them. These lessons set the tone for the rest of my professional life. I have proceeded with everything I have done in the same way – tried to work extremely hard and tried to build as much knowledge and skill as possible. Moreover, I tried (it was painfully hard) to not get bogged down by failures, peer pressure and resume building; and always prioritized quality over quantity in every endeavor I undertook.

In my subsequent years at GLC, I did three substantial moot courts – Manfred Lachs, DM Harish, and Jessup. On the work front, I found gigs which I stuck to for a long time. I researched for two years for a retired Chief Justice and worked for another two years on the Gujarat riot litigations. I was also involved for a bulk of my law school years with teaching at a government school and

the legal work of a non-profit that helped rehabilitate convicted prisoners. I spent some time with the committees that took me – SPIL, Law Review, Student Council, and Legal Aid. Reviving the defunct DebLitSoc was something that I had a lot of fun doing. I also made a conscious effort to write and get published. Writing was not something I had ever given a shot before law school, so initially, I did feel like a fish out of water. Over time, I like to believe I have gotten much better at it (coincidentally I have taught legal writing at Penn during my doctorate years). In my spare time, I did a lot of online courses. Seldom, these courses were not related to law and were on subjects like microbiology, astro-physics, psychology, and mathematics. I often credit this habit to helping me develop analytical and reasoning skills. Today, a lot of my research draws from what I learned in other disciplines. GLC ended on a high note as I was awarded the Nivedita Nathany Award for Academics and Leadership.

I never wanted GLC to be the end of my formalistic education. Therefore, a Master's Program was always on the cards. Straight out of law school, I headed to Penn for my L.L.M where I continued the grind. Here I was lucky enough to be the only student from my L.L.M cohort to be admitted to the doctoral program. My doctoral dissertation ended up being a theoretical exposition of Constitutional Courts in developing democracies.

Nowadays, my typical day is spent reading or writing about things under the broad umbrella of comparative and international law. I often mix it up with short breaks wherein I work-out, meditate, cook or watch sports. The other roles that I mentioned in the introductory paragraph provide the bouts of variability that I need in my professional life which is otherwise a lot of isolated research. Interestingly, most things that go on my resume today, I have never planned for them. Opportunities presented themselves along the way, often by kind mentors who put faith in me.

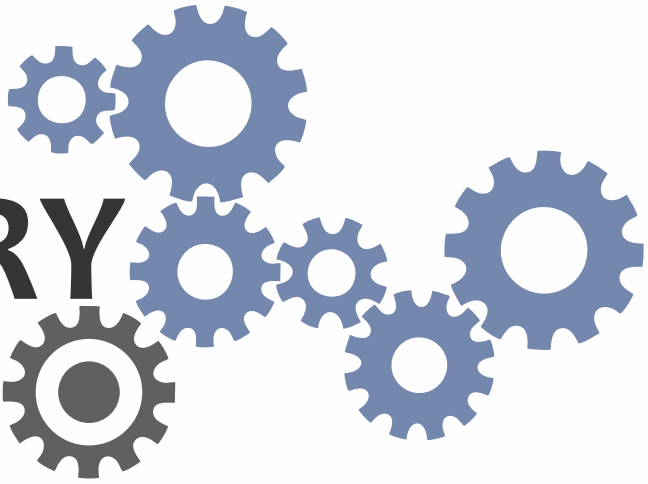
In turn, having been helped at every step, I feel a sense of duty to give back. Consequently, I keep aside a bit of my time for volunteer endeavors.

In recent years, I have volunteered with organisations working with refugees, prisoners and women. I also try to make myself available to students and help them out in whatever way I can.

My short-term goal is wrapping up my doctoral dissertation. Long-term, I do not have much planned other than working on my Spanish and Russian.

The beauty of life is that it is unpredictable, uncertain and scary; that's what makes it so exciting. With this excitement, I look forward to life, one day at a time. As for this piece, I shall close by saying that despite the countless failures and mistakes, I am a lot more confident about myself than the scrawny teenager from a decade ago. In fact, just like ||Superwoman||, in some ways, I think I am a "BAWSE."

INDUSTRY 4.0



- Sourabh Jain, V-V

Introduction

The fourth industrial revolution sometimes referred to as 'Industry 4.0', is a series of social, political, cultural and economic upheavals that will unfold over the period of 21st century.

Human history has been one big roller coaster ride. First, we discovered fire, then agriculture and wheels, factories and trading followed by steam power, electricity and mass production. Then came the age of computers, the internet, genetic-editing, blockchain, self-driving vehicles, Artificial Intelligence (AI) and neuro-technological enhancement. The evidence of dramatic change is all around us and it is occurring at an exponential speed.

The industrial revolution began somewhere around the 1760s and went on till about the 1940s. This period includes both the so-called phases of the first and second industrial revolutions. These industrial revolutions liberated humankind from animal power, made mass production possible and brought digital capabilities to billions of people. The third industrial revolution used electronics and information technology (IT) to automate production. Internet technology and renewable technology merged and created new infrastructure for the third industrial revolution. The third industrial revolution created the foundational infrastructure for an emerging collaborative age.

The fourth industrial revolution is built on the third. It is the digital revolution that has been occurring since the middle of the last century. It is characterised by the fusion of technologies which is blurring the lines between the physical, digital and biological spheres. It is meant to impact all disciplines of economy and industry. According to Professor Klaus Schwab, Founder and Executive Chairman of the World Economic Forum and author of *The Fourth Industrial Revolution*, *"...the new age is differentiated by the speed of technological breakthroughs the pervasiveness and the tremendous scope of the new system..."*.

Opportunities & Challenges

Industry 4.0 offers a vast breadth of opportunities in different fields. The advancement of technology in the field of education and biomedical science is improving the lives of billions of people around the world, including those in under-developed countries.

Growth in the field of robotics has caused robots to become more widespread across various industries ranging from manufacturing to health care. The benefits of this seem to be most noticeable in productivity, safety, time-saving and money. Digital technology can liberate workers from auto-matable tasks. It can provide workers with radically new tools and insights to design more creative solutions to previously insurmountable problems.

E-commerce is redefining convenience and the retail experience. The ease of delivery can transform communities, even in remote places, and jump-start the economies of small or rural areas.

However, adopting Industry 4.0 does not always bring a favourable outcome, the challenges and disadvantages are inevitable. The shrinking job markets indicate how machines have become more accessible and have started to replace humans not only in high risk, dangerous tasks but also in daily use tasks with high reliability. The pitfalls of having hyper connected systems leave an entire industry even more vulnerable to cyber-attacks than the traditional enterprise system design. Incidents in the United Kingdom where more than eighty manufacturing plants were hit by cyber-attacks in spite of stringent cyber-security measures, provide concrete proof for the same. Threats posed by robots also demand

attention as robots seem to have been involved in several workplace accidents. As systems get more complex there is always a risk that they will malfunction in unpredictable ways, possibly putting one's own forces at risk. It is undeniable that the continuing automation and digitisation of our world and our workplace is a seismic shift.

Industry 4.0 & India

Prime Minister Shri Narendra Modi observed on the occasion of inauguration of The World Economic Forum's new centre for the Fourth Industrial Revolution at Mumbai, that, *"India was not independent when the first and second industrial revolutions happened. When the third industrial revolution happened, India was struggling with challenges of just attained independence but country's contribution to the next Industrial Revolution would be astonishing"* ; makes it evident that India is looking to play a big role in the this revolution.

There are lots of opportunities for India, being the sixth-largest and fastest-growing economy in the world. It has the potential to lead the manufacturing and service sector with its huge stock of raw material and wide range of young talent. The Global Manufacturing Competitiveness Index 2016, compiled by Deloitte and the US Council on Competitiveness, ranks India 11th out of 40 countries on its manufacturing competitiveness. The report projects that by 2020, India will assume the 5th spot globally.

By a series of initiatives, such as Start-Up India, Skill India and structural reforms in areas from tax to Intellectual Property Rights, we can now infer that India is all set to start its new innings as these policies have sparked global optimism about the Indian manufacturing sector and improved investor's confidence. In the World Bank's 'Ease of Doing Business Index' of 2018, India moved up in the ranking by 30 places.

Conclusion

The first three revolutions raised the standard of living for many people, particularly for the middle and upper classes. However, life for the poor and working classes continued to be filled with challenges. As far as the fourth revolution is concerned only time will tell whether it raises the standard of living or destroys the very nature of being human. The fourth industrial revolution is marked by emerging technological breakthroughs in number of fields including robotics, AI, blockchain, nanotechnology, quantum technology, computing, bio-technology, the Internet of Things (IoT), 3-D printings and autonomous vehicles, etc.

Industry 4.0 refers to a software revision meant to indicate the overall shift towards digital platforms. Modern digital technology and its application transforms nearly every field and industry including medicine, energy, manufacturing and retail. As these fundamental transformations are underway it is in our hand to proactively shape the fourth industrial revolution. The fourth revolution can be moulded into an era of inclusion centered around human participation.

Industry 4.0 has the potential to improve the lives of billions of people if moved in a guided way. Unbridled use of robotics' and smart factories or AI could adversely affect humans as well as nature. Quoting the words of late Mahatma Gandhi, *"What I object to, is the 'craze' for machinery, not machines as such... The supreme consideration is man. The machine should not tend to make atrophied the limbs of man"*.

Mr. Erik Brynjolfsson, Director at the MIT Initiative on the Digital Economy said that, *"The future is not preordained by machines. It is created by humans"*, this means the fourth industrial revolution is therefore not a prediction of the future but a call to action. It should be looked as an opportunity to unite global communities and to build sustainable economies.

END NOTES

[1]Jillian Ambrose, Half of UK manufacturers fall victim to cyber attacks, The Telegraph, (APRIL 23, 2018, 12:04AM),https://www.telegraph.co.uk/business/2018/04/22/half-uk-manufacturers-fall-victim-cyber-attacks/

[2]Justin Huggler, Berlin, Robot kills man at Volkswagen plant in Germany, The Telegraph, (Jul.2, 2015, 1:56PM BST), https://www.telegraph.co.uk/news/worldnews/europe/germany/11712513/Robot-kills-man-at-Volkswagen-plant-in-Germany.html

[3]HTCorrespondent, Industry 4.0 will change nature of jobs, says Narendra Modi, The Hindustan Times (Oct. 12, 2018, 00:08 IST), https://www.hindustantimes.com/india-news/industry-4-0-will-change-nature-of-jobs-says-narendra-modi/story-fUdZNv4qQRe4uQ3cjpxJRJ.html

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A YEAR IN GLC

Paper bag making workshop

2nd Intra Judgment Deliberation Competition

Karegaon (Camp Site) Survey

Human Rights Rally organised by Men Against Violence & Abuse (MAVA)

GLC MUN 2018- Delegation

Lecture by Mr. Raunak Shah on Law and M.B.A.

4th Mumbai Judgment Deliberation Competition

GLC MUN 2018

Lecture by Ms. Chinmayee Pendse on Independence of an Arbitrator

GLC MUN 2018-Closing Panel

Delhi Study Tour 2018
Attorney General of India, Mr. K. K. Venugopal

Delhi Study Tour 2018
Chief of Indian Army General Bipin Rawat

Lecture by Mr. Kishore Mandhyan

Delhi Study Tour 2018
Former Chief Justice of India, Mr Dipak Misra

Convocation for the batch of 2018

Intra MUN 2018

"*Laws of War*" - Lecture by Prof. Kishu Daswani

Knock-Out! 2018

Legal Aid Presentation Competition 2018

6th Nivedita Nathany Award
Winner - Shreyansh Jain

GLC British Parliamentary Debate 2018

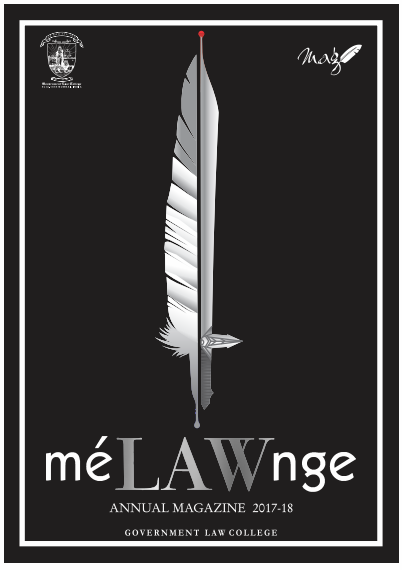
GLC MUN 2018 Opening Panel

Session on *"Introduction to Debating"*
Karmaveer Bhaurao Patil English School

Session on *"Fundamental Rights"*
GLC - Teach for India Society

Convocation for the batch of 2018

SHIKHAR 2018



Launch of the 88th Edition of Annual College Magazine - *méLAWnge*

Pre-placement talk conducted by the renowned law firm - Mehta & Padamsey

Lok Adalat Visit - Bombay High Court

The Policy Debate 2018, *Crack in the Pillars: Will the Indian Democracy sustain?*

Pre-placement talk conducted by the renowned law firm - Veritas Legal

Gandhi Jayanti Celebration
Extension Committee

Visit to Drona Foundation
Extension Committee

Mulla & Mulla & Craigie Blunt & Caroe's

Sir Dinshah Mulla Legal Essay Writing Competition

Sir Dinshah Mulla
Front Lawns,
Bombay High Court

The Magazine Committee of Government Law College is proud to present its intra-college legal essay writing competition : Sir Dinshah Mulla Legal Essay Writing Competition. This competition has been an age old tradition and saw its 40th edition this year. The Mulla and Mulla Trust, our sponsor for this event, wishes to encourage through this Competition, maximum participation from the students of this college, allowing them to express their views on contemporary legal issues. The Competition gives a tremendous boost to young talent and increases their knowledge about legal topics and issues, while also boosting their confidence in writing and publishing articles.

Topics

- What is the bearing on related party transactions in light of the changes in company law and implications under the current tax regime?
- Evaluate the data protection laws having regard to the report of the Expert Committee chaired by retired Justice B. N. Srikrishna and Information Commissioner Professor Sridhar Acharyulu's objections to the amendments proposed by the report. Do the proposed data protection laws in India sufficiently meet the needs of the present global landscape particularly in light of the impact of laws such as the EU General Data Protection Regulation?
- Artificial Intelligence: Where is the market currently and where is it going? Comment upon the necessary precautionary measures a company and consumer should take.
- A study on laws governing living wills, organ donations and the laws of euthanasia in light of the decision in *Common Cause (A Registered Society) v. Union of India and Another.*
- The Parliament of India has recently passed The Specific Relief (Amendment) Bill, 2018 which makes significant changes to the existing legislation. Comment on the significance of this move and its relevance to litigants.

1st Prize: ₹ 20,000/-	2nd Prize: ₹ 15,000/-	3rd Prize: ₹ 10,000/-
Masira Shaikh , V-IV Vedika Shah, V-IV	Kaumudi Srivastava, V-IV	Riti Gada, V-I

SPECIFIC RELIEF (AMENDMENT) ACT, 2018: RELIEVING THE LEGISLATURE, BURDENING THE JUDICIARY

Masira Shaikh, V-IV & By Vedika Shah, V-IV

INTRODUCTION:

The Specific Relief (Amendment) Act, 2018 (**"Amendment"**) received the President's assent on August 1, 2018. The fifty four year old Specific Relief Act, 1963 (**"Act"**) has failed to keep pace with the changing economic and commercial scenario in the country. In the backdrop of India's dismal performance in enforcing contracts and ease of doing business coupled with the need to augment foreign direct investment into the country, the Government felt the need for extensive reforms in the laws related to enforcement of contracts and settlement of disputes. In view thereof, an Expert Committee was set up by the government in January 2016, consisting of legal practitioners and academicians to recommend amendments to the Act. The Expert Committee Report (**"Report"**) was submitted to the Government in May 2016, and the Amendment came into force on October 1, 2018.

BRIEF OVERVIEW OF THE MAJOR CHANGES BROUGHT ABOUT BY THE AMENDMENT:

Applicability of the Amendment:

The Amendment is ambiguous when it comes to the matter of applicability. The Legislature has passed the Amendment without a specified "saving clause" that has led to an uncertainty in the statute's operation.

The operation of an amendment can either be prospective or retrospective in nature.[1] When the legislation is absolutely procedural, it can ordinarily be construed to be retrospective. On the other hand, legislations which modify accrued rights, or which impose new obligations, duties or disabilities on the parties are generally treated as prospective. An enactment, though prospective, may be considered to be retrospective, where the legislative intent is clearly to give the enactment a retrospective effect; or where the enactment has been enacted solely for the purpose of clarifying an obvious omission in the former legislation.[2]

Based on the aforementioned, the Amendment can be interpreted to be prospective for two reasons. First, the Amendment has brought about substantive changes in many aspects, including, inter alia, by making specific performance the norm, adding a new remedy in the form of substituted performance and making the remedy of specific performance available even against a Limited Liability Partnership (**"LLP"**). Second, the general assumption of the Amendment's operation will be prospective, as there is no contrary intention that has been expressly made out in the Amendment.

The Legislature has failed to provide any clarifications as to the applicability of the Amendment, and the manner in which these provisions will affect ongoing litigations. It is now the burden of the Judiciary to adjudicate on these questions and to provide answers to multiple issues with regard to the operation and implementation of the Amendment.

Discretionary Powers of the Court:

Section 20 of the Act provided that the grant of specific performance lay at the discretion of the court and was to be exercised only on the basis of sound judicial principles. Thus, the courts could refuse to grant specific performance in situations when the terms of the contract would give the Plaintiff an unfair advantage, or where the Defendant would have to face unforeseeable hardship.[3] These grounds ensured fairness and justice between parties and enabled the court to balance the interests of all the litigants before the court.

However, the aforementioned grounds have now been done away with in the Amendment. The Amendment provides that specific performance of a contract can now be refused only on the limited grounds which are contained in Sections 14, 16 and 11(1) of the Act which, inter alia, include situations where a party has obtained substituted performance, or where the contract involves such performance which the court cannot supervise, or where a contract depends on the personal volition of the parties. This deletion from the Amendment is viewed by many stakeholders as unfair and unjust.[4]

Though specific performance has been made the rule, the circumstances surrounding the contract or the conduct of the parties or the consequences of enforcing specific performance may be such that may make it unreasonable, unfair and unjust to grant a decree of specific performance.[5] For instance, in the case of *Nanjappan v. Ramasamy*,[6] which involved the sale of an immovable property, the Supreme Court refused to grant specific performance even though the respondents were ready and willing to perform their part of the contract. The Court was of the view that facts such as escalation in the price of property, the suit property being the only property of the Appellant, significant hardship already being suffered by the Petitioner were facts that made it inappropriate to grant a decree of specific performance. This view propounded by the Court is prudent and most equitably balances the letter of the law while also taking into consideration the practical complications that are faced by the litigants.

However, if the same case was to be decided after the enactment of the Amendment, it would lead to an incongruous situation, where despite the same compelling circumstances, the Court would be forced to grant specific performance even though it may be grossly inequitable and unjustified to pass such a decree.

Placing such fetters on the powers of the court can lead to adverse consequences in the future. For instance, before the Amendment, in cases where a decree for specific performance would lead to further litigation without conferring any benefit on the Plaintiff[7] or where the enforcement of the relief would prejudice third parties,[8] the courts would have necessarily considered mitigating factors before granting specific performance. Further, in cases where the seller has entered into the contract on account of illiteracy and want of sound advice[9] or where the Plaintiff approaches the court with unclean hands,[10] the courts would have in the exercise of just and sound judicial principles refused to grant specific performance. However, the same would no longer be the case unless the court manages to fit these cases in the limited exceptional grounds provided under Sections 14 and 16, which is highly improbable.

Further, it is also important to bear in mind that several jurisdictions around the world, which recognise specific performance as the rule, having extremely narrow grounds for denial of specific performance, have also recognised these equitable principles as a ground for refusing specific performance.[11]

Another noteworthy feature is that the Report itself acknowledges the fact that such kind of discretion at the hands of the court in granting specific performance is imperative and cannot be taken away. The proposed amendment to Section 14 recommended by the Report recognised the significance of the discretionary powers of the court to refuse specific performance and injunction on stated grounds including, inter alia, on the grounds of equity.[12] However, these equitable grounds were completely removed from the Amendment, without any rationale or justification.

Thus, it can be concluded that the unrestrained grant of specific performance as envisaged by the Amendment, without any consideration of the abovementioned mitigating factors, will prove to be detrimental to public interest and would cause irreparable injury to a wary litigant who will be the ultimate sufferer.

Specific Performance as A Rule:

The Amendment has brought about a paramount shift in the focus of the Act; from specific performance being an exception to now becoming the rule. The earlier approach of specific performance being an exception suffered from various drawbacks.

First, the earlier approach failed to take into account the fact that damages may not always serve as an adequate remedy and often fails to compensate the Plaintiff fully.[13] Many a times, a Plaintiff might encounter difficulty in precisely estimating, quantifying and proving all the damages incurred by him. Further, the compensation granted by the court is guided by the principles of Section 73 of the Indian Contract Act, 1872 (**"Contract Act"**) that takes into account the doctrines of causation and remoteness, foreseeability, and mitigation, which often results in the Plaintiff receiving a compensation that is significantly inadequate to the actual losses suffered by him.

Second, this kind of a system indirectly provides an incentive to either party to break the contract rather than performing it, when the former appears to be more beneficial to the party.[14] For instance, a party will be encouraged to breach the contract, if the defaulting party can make a profit by contracting with some third party, or if the performance of such obligations has become expensive

Further, in this kind of a system, the grant of specific performance was extremely uncertain, and often depended on the inference and individual perception of a judge. Thus, even though the case of the Plaintiff successfully fulfilled the criteria as mentioned under Section 10 of the Act, the Plaintiff could not be certain about getting his desired remedy of specific performance.

Therefore, this change in approach, as proposed by the Amendment will provide an effective solution to all these difficulties posed by the earlier system. This system will mark a significant change of approach from a promisor-centered approach to a promisee-centered approach. In the larger scheme, this will help to bring about the effective enforcement of contracts in the country, as parties will now not be able to wriggle out of a contract just because it is profitable for them to do so. It is only fair that a party that has contracted to do something with full consciousness and awareness be made to adhere to their promise. This will help maintain the sanctity of a contract.

Further, with this change in approach, private equity investors will now be more confident to invest in Indian companies, as they can be certain that in case of a breach, rights such as the drag along rights or the put option rights that they have contracted to in their Share Purchase Agreement or Shareholder and Share Subscription Agreement, will see the light of the day.[15] Investors will now be able to secure what they had specifically contracted for, unlike the earlier regime where these rights of the investors were often dependent on the discretion and inference of judges. This robust contract enforcement mechanism will indeed provide a thrust to foreign direct investment in the country.

Thus, this system will help bring about an atmosphere of certainty of contracts and greater protection of contractual expectation by ensuring that a non-defaulting party can obtain the performance he has bargained for.

Substituted Performance:

The remedy of substituted performance essentially provides that where a contract is breached by one party, the other party has the right to complete the performance of the contract through a third-party agency or through himself, and to recover from the defaulting party, the expenses and charges, incurred by him for obtaining the substituted performance. Previously, such a remedy was recognised under Section 73 of the Contract Act and is referred to as the 'cost of cure', but such a remedy under Section 73 was subject to the principle of mitigation and foreseeability which often resulted in a party receiving damages which were not commensurate to the actual costs incurred. Further, such remedy was also enforced by the court in cases where the contract entered into between the parties provided for substituted performance in the event one of the parties failed to perform the contract.[16] However, now this remedy has been provided to litigants as a substantive right which is not bound by the principles of foreseeability or mitigation and they can claim substituted performance irrespective of whether or not such a remedy is contractually agreed upon.

The inclusion of the concept of substituted performance as a substantive remedy will provide extensive relief to litigants, as the process of approaching the court is viewed as an arduous and cumbersome task. This remedy attempts at achieving a result similar to actual specific performance, in half the time that would be involved in approaching the court in obtaining a decree of specific performance. In commercial contracts, especially where time is usually the essence of the contract, this remedy provides the non-defaulting party with an opportunity to have the benefit of his contract very close to the time fixed for performance in the original contract.[17]

Further, the enactment of the 'notice period' provision which makes it mandatory for a non-defaulting party to send a written notice of not less than 30 days to the defaulting party to perform the contract before substituted performance can be undertaken, is extremely beneficial. First, it protects the interest of the defaulting party by making certain that the non-defaulting party does not go ahead and obtain substituted performance despite the other party being ready and willing to perform the contract. Second, if the notice is given and is unanswered, it makes the non- defaulting party even more certain and confident that he will be able to recover his costs of substituted performance from the defaulting party without having to go through the mechanism provided under Section 73 of the Contract Act. Lastly, it will in many circumstances compel parties to renegotiate the terms of their contract and to achieve what they had initially bargained for.

However, no mechanism has been provided under the Amendment to control the value and type of expenses that

may be claimed by the non-defaulting party. Even though the expenses claimed may not be subject to the principles of mitigation and foreseeability as rigidly as provided under Section 73 of the Contract Act, there needs to be a check on the expenses claimed by the non-defaulting party. In the absence of such a safety net, there can be a potential abuse of this right by the non-defaulting party. The Report itself had proposed certain safeguards in this regard, suggesting that it be the Plaintiff's burden to prove that the cost and expenses incurred and claimed by him were reasonable,[18] but unfortunately the Amendment does not reflect these safeguards.

Thus, it can be said that the remedy of substituted performance is extremely beneficial and effective but there remains a need for a clear and workable mechanism to operate the remedy.

Infrastructure Projects:
Recognising the inherent public interest involved in public utility contracts and the need for minimal interference by the court in matters affecting public work,[19] the Amendment has inserted Sections 20A and 41(ha), which restrict the power of the court to grant an injunction in contracts relating to infrastructure projects which would cause an impediment or delay in the completion of such a project.

There have often been circumstances where injunctions by courts have led to inordinate delay in the completion of public works projects which has caused severe hardship to residents.[20] For example, in the case of *UHBVNL & Anr. v. CERC & Ors*[21] a Power Purchase Agreement (**"PPA"**) was signed between Adani Group and Gujarat Urja Vikas Limited (**"GUVL"**) in February 2007, for the supply of electricity. As a condition subsequent to the PPA, a fuel supply agreement was required to be executed between Adani Group, GUVL and Gujarat Mineral Development Corporation. However, the same could not be executed due to persistent differences between Adani Group and GUVL. In 2009, Adani Group sought termination of the PPA. GUVL filed a petition before the Gujarat Commission challenging the said termination. After several rounds of litigations and injunctions, the Central Electricity Regulatory Commission refused the plea of termination by Adani Group and directed it to specifically perform the contract. All of this took about a decade, during which period the whole project of supply of electricity to the consumer at reasonable rates was at a standstill. It was the residents of Gujarat who suffered the most amidst this tussle.

Further, the Supreme Court itself has in various judgments[22] observed that public revenue and public projects have often been jeopardised on account of interim orders passed by the Court without any regard to the test of balance of convenience, public interest and irreparable injury to the public. It was also observed how orders of the Court had often led to the stalling of land reform and important welfare projects in several states, which besides having a deleterious impact on the already mounting pile of non-performing assets contributable to the infrastructure sector, also shook investor and depositor confidence in this sector. Therefore, the Court has time and again reiterated the need for courts to grant injunction sparingly.[23]

This Amendment has rightly redressed these lacunae by greatly watering down the power of courts to grant injunctions in the case of infrastructure projects unless absolutely necessary. This would bolster the implementation of the infrastructure projects and remove unnecessary impediments obstructing the project. Further, this Amendment would prove to be extremely advantageous to litigants, as public work projects will now be implemented at a much faster pace without any sort of hindrance. This will greatly reduce the suffering and misery of the common man who will now be able to reap the benefits of the welfare legislations and projects without any undue delay.

By crystallising the law relating to public utility and infrastructure projects, the Amendment will not only sub serve public good, but will also provide certainty in the implementation of infrastructure and public works contracts, which in turn will greatly boost funding in this sector.

To aid in the implementation of speedy redressal of such projects, the Amendment has also provided for expeditious disposal of suits relating to specific performance. The Amendment has set a timeline of twelve months from the date of service of summons to the defendant for disposal of such suits. Thus, making it incumbent on courts to deliver justice in a time bound manner will prevent any kind of laxity on the part of the courts and will deliver justice to the litigants at the earliest.

CONCLUSION:

Despite a few anomalies and certain clarifications that are required, the Amendment in its intent and purpose is truly a step in the right direction. Besides the aforementioned substantive changes, smaller and finer aspects of the Act have also been given attention to and have been rectified which will be of great aid to litigants. For instance, the requirement of the Plaintiff to make a specific averment in his plaint reflecting his readiness and willingness to enforce the contract has been done away with, as it was realised that it often led to a pedantic reading by the courts, which worked to the detriment of the litigants. Further, keeping in mind the increasing role played by LLPs on the economic front, the Amendment has enabled the litigants to sue LLPs for specific performance.

Most importantly, the Amendment has given parties the freedom to choose a remedy best suited for their contract. A party will now have the right to choose compensation where he is aware that he can easily obtain a similar product from the market at the same cost, without involving himself in court proceedings. Or in a case where the party requires the contract to be performed at the earliest, the party will be able to get the contract performed by a third party and choose to get compensated thereafter. Similarly, if the party is aware that the subject matter of the contract is of such special value that he can afford to wait for the relief of the court, he can approach the court for a decree of specific performance. This kind of flexibility provided to the litigants will greatly aid parties in obtaining a remedy which will put them in nearly the same position as they would have been if the contract would have been performed to the furthest possible extent.

This change in contract enforcement brought about by the Amendment will instill investor confidence in the country and will also greatly ameliorate the situation of the litigants in the long run, which in turn will restore the confidence presently deficit in commercial litigation. However, like any other statute, the success of this statue will be greatly dependent on its successful implementation. Thus, it remains to be seen how the judiciary and the legislature grapple with the practical difficulties that arise before them and ensure a smooth transition from the present clout of uncertainty to a system of greater credibility and surety.

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[11] *U.C.C § 2.302 (2002), UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS, art. 7.2.2 (2010).*

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[13] *Charlie Webb, Performance and Compensation: An Analysis of Contract Damages and Contractual Obligation, 26 OJLS 41, 46 (2006).*

[14] *Joseph G LoPresti, The Evolution of Specific Performance: A Discussion of Specific Performance and Equitable Damages Before and After Semelhago v Paramadevan , 49 RPR (3d) 88 (2002).*

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[17] *JEFFREY BERRYMAN, VAUGHAN BLACK, JAMIE CASSELS, MICHAEL PRATT, KENT ROACH & STEPHEN WADDAMS, REMEDIES: CASES AND MATERIALS 693 (Emond Montgomery Publication eds., 5th ed. 2006).*

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[20] *Mahadeo Savlaram Shekle & Ors. v. Pune Muncipal Corporation and Anr., (1999) 3 SCC 3, Sanjay Kumar Shukla v. Bharat Petroleum Corporation Ltd & Ors., (2014) 3 SCC 493.*

[21] *Appeal No. 100 of 2013 & I.A. No. 116 of 2013.*

[22] *Assistant Collector of Central Excise, West Bengal v. Dunlop India & Ors., (1985) 1SCC 260, Rishi Kiran Logistics (P) Ltd v. Kandla Port Trust, (2014) 13 SCC 233, Siliguri Municpality v. Amalendu Das, (1984) 2 SCC 436.*

[23] *Keshavlal Khemchand & Sons (P) Ltd. v. Union of India, (2015) 13 SCC 233, Daulatshinhji Savanthsinhji Solanki & Ors. v. Executive Engineer, Himatnagar & Ors., AIR 1997 Guj 64.*

18th DINESH VYAS

Memorial Government Law College National Legal Essay Competition

A good lawyer has to have a way with words, making it one of the main weapons in his arsenal. The right words can be the difference between life and death, in some cases. Further, it is not just the spoken word that matters, being able to succinctly put one's thoughts down on paper also counts. For the last 17 years the Late Mr. Dinesh Vyas had been helping the Magazine Committee organise the Vyas Government Law College National Legal Essay Competition, with unwavering enthusiasm. However, after his unfortunate demise his daughter, Mrs. Kunti Vyas Jhaveri has continued the tradition. This competition is awaited by law students from all over the country as it allows them to exhibit their writing abilities.

TOPICS

- Comment upon the Criminal Law Amendment Bill, 2018 which provides for a death penalty for rapists of girls below age twelve.
- Discuss the necessity and scope of legal provisions for the supervision and regulation of virtual crypto currency platforms.
- Elucidate on the need to protect the identity of victims of sexual abuse with reference to the judgment in *Sampurna Behrua v Union of India.*
- With reference to the PIL moved by the Sardar Patel Sevadal before the High Court of Gujarat, comment on the consequences of a permanent State Backwards Classes Commission.
- Comment on the retrospective amendment made by the Finance Bill 2018 to the Foreign Contributions (Regulation) Act, 2010 which exempts political parties from scrutiny of foreign funds.

The preliminary rounds of the competition were judged by Ms. Amanda Rebello & Ms. Helina Desai. The final round of the competition was judged by Hon'ble Shri. Justice Mr. S. J. Kathawalla of the High Court of Bombay.

1st Prize
Shyamolie Parikh
K.C. Law College, Mumbai
₹ 12,000/-

2nd Prize
Tarun Sharma
School of Law, UPES, Dehradun
₹ 9,000/-

3rd Prize
Mohit Soni
NUSRL, Ranchi
₹ 7,000/-

The following pages contain the essay that was awarded first prize. Due to paucity of space, the edited version of the following entry has been published.

The Death Penalty under the Criminal Law (Amendment) Act, 2018: Does it Solve Anything?"

by Shyamolie Parikh, K.C. Law College, Mumbai

Introduction

The *Kathua* and *Unnao* rape cases cannot be recounted in this essay in a manner sufficient enough to detail the exact horror inflicted on the victims or to express the abhorrence that society felt. The Criminal Law Amendment Act, 2018 **("CLAA")**, which was initially promulgated by the President as an ordinance in April, is the Centre's rebuttal to these gory incidents that depressed the conscience of the nation. The amendments, being short sighted at their core, have taken India back a few steps and bring little to no positive change in the jurisprudence surrounding sexual violence. The government has, to its advantage, and backed by the outrage of millions, brought about an illusionistic change in our country's laws tackling sexual violence. Where judicial advancements should ideally precede social change, the CLAA is testimony to the reverse. It is pertinent to note that while the crux of the two incidents is child sexual abuse, one cannot turn a blind eye to the elements of intersectionality deeply embedded therein. The communal nature of the crimes makes it a specific sexual act over some bodies, where it is not only the race and class of the victim that becomes important but also that of the perpetrator.[1] A penal code reflects the amalgamation of varied social purposes. By virtue of it's authority in furthering justice, it cannot promote a particular social purpose unqualifiedly over another social purpose.[2] Scrutinising each of these purposes will lead to the conclusion that deterrence can never be the ultimate end. While the death penalty may have support, what seeks to be determined is whether a rapist who did not intend for the rape to result in the death of the victim, can be punished by death. In furtherance of which, we must further deliberate over whether child rapists rank as the worst offenders. Not only does the CLAA have inherent flaws as a result of the form of punishment it implements, it has negative consequences to victims and is inadequate to deal with the real problems of child rape.

Theories of Sexual Abuse

Academically and theoretically our laws have evolved and have come to understand the different nuances that comprise crimes of passion. From being coined a property crime, where the intent was to cause economic loss to the male authority, theories of rape are ever dynamic, emanating from a strong sense of patriarchy. The medicalisation of rape shifted the focus from the criminal, as a breaker of law who must be penalised, and instead pathologised him and got him under surveillance, to be cured and normalised.[3] While rape is a sexually specific act, putting it on the same continuum as other forms of assault nullifies the sexual nature of the crime, increasing focus on the violence component of the assault.[4] This theory would require courts and legislatures to treat rape the same way as other crimes, reducing the complexities and narrowing the motive to a singular goal. A study of convicted rapists in prison bought to the forefront revelations that "rape is a violent act, but it is also a sexual act, and it is this fact that differentiates it from other crimes".

Defining Rape

Rape can be broadly categorised into stranger rape and fiduciary (known person) rape. The CLAA discerns the tendencies of those in positions of power to react only on the face of visible violence, investing and intervening in short term programmes catering to an easily identifiable group (the former category). Crimes against a class of society deserving special protection needs to be legitimized and given protection.

The CLAA: An Assessment

Under 12 and Over 12: At the outset, the CLAA makes an arbitrary distinction between rape of a girl below the age of 12 years and the same act perpetrated on a girl below 16 years and 18 years of age. The genesis of this distinction is unknown and is inherently problematic. This departmentalization propagates the notion that girls over the age of 12 are more likely to file 'false cases'.[5] The NCRB data for 2016 shows that the 15.6% of the victims fall in the 12-16 years category and 22.2% of the victims fall in the 16-18 years category. If the imposition of the death penalty is in fact a solution to the core concerns posed by the increasing number of child sexual abuse, then logic would dictate that the same be imposed uniformly across all age groups.

Inherent problems with the Death Penalty

(i) Theories of Punishment: The fundamental premise is that everyone, no matter their deeds, is entitled to his right

to life.[6] However, the purpose of criminal law is to ensure that those who unlawfully infringe on the very same rights guaranteed to others, must be held responsible. The justification of a punishment is attributed to rehabilitation, deterrence and retribution. There is a very fine line between retribution and deterrence. Retribution seeks to avenge the heinous crime, whereas deterrence acts as a preventive factor. As a theory of punishment, retribution is the most contradictory to the precept of justice. By awarding the death sentence, the CLAA crosses the line and opens itself to introspection, descends into brutality and contradicts constitutional commitments. However, the CLAA, a kneejerk reaction of the government to societies loudest demand, is at best a quick-fix to an epidemic. In reality, the CLAA has misdiagnosed the true issues that need to be dealt with, *vis a vis*, implementation of the existing legal framework. Moreover, causes of rape are subjective and variable. By imposing the death penalty, the CLAA seems to suggest that paedophillia is in a class of felonies where the reformation of the criminal is impossible and must therefore be met with the harshest 'treatment'. In situations where the act is pathologised, does the imposition of death penalty actually fit the crime? Just as the fear of a death sentence does not deter a suicide bomber due to his deeply rooted psychology, the death penalty would do little to deter a child rapist.

The Verma Committee had also proclaimed that the deterrence effect of the death penalty to be a myth and had instead suggested a clarificatory amendment to the effect that life imprisonment should in all cases mean for the 'entire natural life of the convict'. Since the deterrent effect of the death penalty is questionable, and as it clearly possesses no rehabilitative effect, the only function served by it is that of retribution. There may be a case to be to sentence a criminal to death for murder, based on various ethical ideologies, be it utilitarian or virtue-ethics. However, the distinction between rape and murder is the intent to kill, i.e., rape is a non-homicidal offence. One cannot deny the irrevocability of murder over rape. In order to ascertain whether the death penalty has served its purpose, it is important to determine whether the wrong committed has been balanced out in non-homicidal cases, where a life for a life no longer stands. A retributive form of punishment for murder may not offend the conscience of society, as the life which has been lost cannot be regained. In contrast, with due respect to victims of rape, the sense of finality of homicide is not present. As observed in Coker v. Georgia, in the opinion of the majority "Life is over for the victim of the murderer; for the rape victim, life may not be nearly so happy as it was, but it is not over and normally is not beyond repair".[7]

(ii) Rarest of Rare and International Obligations: The doctrine promulgated in the seminal case of *Bachan Singh v State of Punjab*[8] needs no introduction. It does, however, significantly impact the relevance of a statutory power to award the death penalty. This judicial doctrine provides a fine balance that promotes the interests of justice by giving the judiciary the power to award a death sentence, but balances it by setting a stringent test. A statutory death penalty under the CLAA is heavily skewed against fairness as it would enable a judge to go through a basic test, as opposed to the Bachan Singh test. The CLAA at best, formalizes the already existing powers embedded in the Courts, i.e., to award the death penalty where the rarest of rare thresholds are met, as was done in the Nirbhaya case. Post the CLAA, India's legal framework prescribing the punishment of rapists is substantially similar to China, North Korea, Egypt and some states of the USA, etc.[9] insomuch that they all promote the capitalisation of rape. The abolishment of capital punishment has been an ardently debated topic, with several members of the international community making commitments to abolish its practice or place a moratorium on its imposition. Furthermore, Article 6 of the International Covenant on Civil and Political Rights, to which India is a signatory, provides that countries which have not yet abolished the death penalty must only use it sparingly. The Verma Committee 2013[10] noted that "in the larger interests of society, and having regard to the current thinking in favour of abolition of the death penalty, and also to avoid the argument of any sentencing arbitrariness, we are not inclined to recommend the death penalty". Despite this, the Criminal Law Amendment Act, 2013 (based on the recommendations of the Verma Committee) and the present CLAA have both introduced several provisions that impose this punishment.

Consequences of the Death Penalty

(i) Non-reporting : One of the biggest issues surrounding rapes is the lack of reporting.[11] The death penalty provides no incentive to victims or their families to report a crime as heinous as rape for two main reasons: financial, and social. Moving away from the popular opinion that rape is closeted to incidents that ensue in dark alleys, it's primacy in the intimate realms of a caring and nurturing home shatters that fable. Official statistics show that a majority of the child sexual abuse that occurs in our country is perpetrated by persons who are known to the victim, and therefore, are privy to take advantage of the trust based relationship. The CLAA fails to acknowledge such privity by the imposition of the most extreme form of punishment.

Most victims of rape suffer from vulnerabilities and social

disadvantages including poverty, illiteracy, homelessness, domestic violence, neglect. Given India's deep rooted patriarchy, rape is considered to be a 'state worse than death'. Save for the requirements of mandatory reporting, cases of abuse are generally turned a blind eye to as a result of inter alia, familial pressure, humiliation, lack of support and understanding, sheltering inabilities. The economics of crime and punishment draws a correlation between the severity and certainty of punishment.[12] Given the demographics of the victim and the accused as explained above, the likelihood of the victim turning hostile when faced with pressure from various social constructs and the dilemma of pursuing this thing called justice or sending a "known person" and in some cases the 'sole provider' for the family behind bars. Where the victim has turned hostile, the certainty of punishment dips. Though the Cr.PC provides some cushion in the form of a statement under Section 164, whereby the prosecutor can prove the offence despite retraction at the trial stage, convictions based on these statements are negligible. Adding the death penalty as a discretionary punishment would further increase the pressures as not only would the child be testifying against a family or community member but would also face the social pressure of being 'responsible' for their death.

(ii) Murder of the victim: The graduation of rape to a capital offence would inflict a change upon the accused's intention, perversely increasing the possibility of destroying the often solitary evidence, i.e., killing the victim, at no incremental cost. This has the inadvertent consequence of potentially increasing the number of murders, without actually curbing the commission of rape. The penalty in some respects reduces the protection afforded to the victim.[13]

Inadequacy of the Death Penalty

Legal jurisprudence dealing with children essentially must cater to the best interest of the child. Thus, it would follow that rape laws must do the same. However, the CLAA actually debilitates this crucial object and ignores concrete errs. Another common leitmotif is the systemic resistance victims face by stakeholders.[14] Analysing the role of each stakeholder and the experiences the victims face at their hands, the following is noteworthy:

Police: Post the, often hesitant, recording of the first information report, the police begin their process of investigation in order to ultimately file the charge-sheet. POCSO initially provided a 90 day window to file the charge-sheet, the CLAA has reduced this to 60 days. While a speedy trial is the cornerstone to ensure that justice delayed is not justice denied, due process must not be compromised with. Trial Courts: The sacrosanct space of Trial Courts is infamous for not adhering to procedures mandated by POCSO. In 2016 alone, the pendency rate for child rape cases was 89.6%. While the law lays down an elaborate process that needs to be followed, often times the Trial Court judges turn a blind eye to the probing questions of the defence. Given the finality in its nature, the threshold of 'beyond reasonable doubt' catapults and further creates apprehension in the minds of the Judge to decree an order of punishment. Moreover, where the question of death penalty arises, there is a correlative increase in the commitment required by those testifying against the accused – given the way the insensitive and recusant nature Indian court, this would mean more victim shaming, increasing the chances of hostility.

Prosecutors: Special public prosecutors are required to be appointed by the Government to exclusively try cases under POCSO. They are armed with the responsibility of putting forth the case on behalf of the state are over burdened with work and rarely meet the victim before the court dates. They have no time to accustom the victim with the surroundings of the overwhelming archaic court structures, leaving the victim terrified and timid. Objections to flouting the Sakshi Guidelines[15] which require the defence to submit their questions in writing to the Judge are rarely adhered, if at all. The critical remarks made by the Apex Court in *State of Gujarat v. Kishanbhai & ors.*[16] reveals the manner in which the prosecution agencies flout the law instead of flaunting it. The Court was strained to acquit the accused who had been sentenced to death by the Trial Court as a result of the failure of the police in handling the investigation of the horrendous crime. The Court observed, *"He (accused) may be truly innocent or he may have succeeded because of the lapses committed by the investigating/ prosecuting teams. The investigating officials and the prosecutors involved in presenting this case, have miserably failed in discharging their duties. They have been instrumental in denying to serve the cause of justice".*[17] The abysmally low conviction rates are not a result of poor reporting or insufficient punishment. It is an indicator of an inefficient system. If the punishment were to have a deterrent effect, it follows that the likelihood of the crime would decrease. However, considering that most cases go unreported, it is likely that a potential offender or a recidivist knows that punishments are meted out sparingly. Here, what may actually be a deterrent is increasing the conviction rates and not the maximum punishment related to the crime. The CLAA in fact increases the burden on these various stakeholders by prescribing a shorter time frame for filing the charge-sheet and for completing the trial.

Conclusion

Whether death penalty is the appropriate, adequate and just response has always been a tricky question to deliberate over. In most jurisdictions, death penalty is awarded for homicidal crimes alone, whereby the rule that it would be a disproportionate punishment for a crime that did not by itself, or where the mens rea was not to, result in the death of the victim. The permanent, irreversible and devastating impact that rape develops over a child suggests that the only precept of justice would be making it a capital offence, even though the crime did not result in the death of the victim. Progressing principles of decency dictate that capital punishment must have limited value, for a constricted classification of grave felonies, where the culpability would make the accused deserving of such a fate.

While there is no denying that the incidence of child sexual abuse poses a serious problem in India, and is, in fact, on the rise, but whether making rape of a girl child below the age of 12 years a capital offence, will curb this problem, is debatable. Societies demand to crucify the accused in cases of child rape requires a commitment from the child to assist this desire over the course of years. This also requires the child to make a moral choice, which choice it is not equipped to make. As to the consequences of making rape a capital offence, it may not lead to greater enforcement but may instead result in non-reporting of a crime out of fear of negative consequences, more so if the perpetrator is a family member. While the propositions discussed above may not independently establish the arbitrary nature of the amendment, however, taken together, they showcase the dire consequences of it's imposition. There are a multitude of workable alternatives to the death penalty. Rehabilitation of offenders, incapacitating potential offenders and recidivists from breaking the law, whetting the community's ability to separate white from grey, and reducing the vociferous need for retribution are just a few. These are long term solutions, as opposed to quick fix solutions to satiate the public.

The sanctity of India's democracy lies in the separation of its three pillars: legislature, executive, and judiciary. However, recent times have been testament to the blur in this distinction. The law has been swayed by public and political pressure; changes are no longer in the spirit of betterment, but a ploy to gather votes from the masses.

The CLAA seems to be politically motivated and a hasty response to societies cry for justice. The need of the hour is to focus on bettering enactment strategies. Where our laws tend to be adequate, our stakeholders inadequate. The impression created by the CLAA is that the only deterrent for a crime so heinous, would be an increase in the quantum of punishment, when in fact, it is merely a distraction from the actual cause, being the indolent implementation of sufficient laws. This would not only require strict implementation of the procedural guidelines mandated by POCSO, but also influencing the masses to adopt a progressive mindset about sexual assault. The hope is that these tragedies will ensue better governance on part of the executive and provide for a safe and dignified environment for our children.

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[8]Shalini Nair, Why death penalty for child rape, or why not, The Indian Express (accessed on October 1, 2018) https://indianexpress.com/article/explained/why-death-penalty-for-child-rape-or-why-not-kathua-minor-murder-rape-5156458/.

[9]Justice J. S. Verma et al., Report of the Committee on Amendments to Criminal Law, 245 (2013).

[10]In a US survey it was found that about 88% of female rape victims under the age of 18 did not disclose their abuse to authorities. (Hanson, Resnick, Saunders, Kilpatrick, & Best, Factors Related to the Reporting of Childhood Rape, 23 Child Abuse & Neglect 559, 564 (1999)).

[11]Richard A. Posner, "An Economic Theory of the Criminal Law," 85 Columbia Law Review 1193 (1985).

[12]Rayburn, Better Dead Than R(ap)ed?: The Patriarchal Rhetoric Driving Capital Rape Statutes, 78 St. John's L. Rev. 1119, 1159–1160 (2004).

[13]Stakeholders include the police, medical professionals, special public prosecutors, courts, etc.

[14] Sakshi v Union of India AIR (2004) SC 3566.

[15](2014) 5 SCC 108.

[16] (2014) 5 SCC 108, [17].

[17] Kennedy v Louisiana 554 U.S. 407 (2008), 34.

BELLES-LETTRES

J. E. Dastur Memorial Government Law College Short Fiction Essay Writing Competition 2018-19

The Magazine Committee chose creativity as its mascot as it first heralded Belles-Lettres J. E. Dastur Memorial Government Law College Short Fiction Essay Writing Competition. With every passing year, we have been devoted to our muse, creativity, with increased vigour. The specialty of this Competition is that it aims at providing a platform for students from all faculties, both legal and non-legal, to let their creative juices flow. With such an array of appealing topics to write on, it is no surprise that students from across the country participated enthusiastically in this year's Competition. The topics were as follows:

Conclude your story with the following sentence:
"In the end, sin(s)-cereity runs in our blood."

(OR)

Build your story around the following characters in the given situation:

Pope Francis, Saddam Hussein and Frida Kahlo are all part of the same secret society.

(OR)

Incorporate all the following objects in your story:
Dartboard | Jukebox | Caravan

(OR)

Build a story revolving around the following image:

1st Prize: ₹ 8,000/-

Pallavi Baraya
Lady Shri Ram College for Women, Delhi

2nd Prize: ₹ 6,000/-

Anam Danish
Jamia Millia Islamia, Faculty of Law Delhi

3rd Prize: ₹ 4,000/-

Aditya Bharadwaj
Government Law College, Mumbai

The preliminary round of the competition was judged by Mr. Sidin Vadukut. The final round of the competition was judged by well-known Mumbai columnist, freelance writer and independent publisher, Mrs. Rashmi Palkhivala.

The following pages contain the essay that was awarded first prize.

THE INTERLOPERS

Pallavi Baraya, Lady Shri Ram College for Women, Delhi

Rats, I thought in frustration. Dirty, filthy, creatures that had somehow wormed their way into my house, polluting it with their disgusting little feet. Not for long, I thought with a triumphant smile, as I placed the bottle of rat poison on the kitchen counter with a relish, cackling to myself. I'd get them today, I'd get them all.

I quickly looked around the kitchen, sobering immediately at the thought that someone should have seen my murderous bout of insanity. Of course, there was no one there- I didn't have to glance at the clock to know it was a quarter to three, exactly two and a half hours before anyone came down for tea. Sighing, I wiped my sticky forehead with the edge of my dupatta, walking over to the sink to get a start on today's dishes- they wouldn't wash themselves and I didn't have the time to stand around and waste. As I picked up a greasy plate and began soaping it, my mind wandered to my first encounter with rats.

My father's home had got rats when I was a little over three. You could hear them scurrying around the house at night, disturbing your sleep, as they picked at the leftovers. My grandmother was convinced it was a bad omen brought on by my birth. A first born daughter was worse than no child at all, and the Gods are showing their displeasure by sending these creatures to us, she'd whispered in my ear, conspiratorially. When my mother was taking an afternoon siesta and my father was out at work, she'd wail for hours, beating her chest, sticking her plump fingers in my hair as she yanked my head close to a rat she'd killed. Look she'd say sticking my face close to the breathless animal look what you did!

I chuckled mirthlessly, trying to ignore the discomfort of the salwar kameez sticking to my sweat soaked body. The drawing room where everyone would come out for their tea was air conditioned, as were my children and in-laws' rooms. But the kitchen didn't even have a fan and I knew better than to ask for one- my husband wouldn't deny me, but he'd grate on for hours about how much it would cost, and how it was only a matter of few hours in the kitchen for me every day, but days of hassle for him to get it installed. Plus, I had been taught better. I was always told that as a woman it was my duty not to complain and I stuck by that hard and fast rule. My thoughts filtered back to my grandmother as I mechanically proceeded with the dishes.

She had been quite a character, and till date I didn't know whether I had loved or hated her. Maybe it was best to leave that question an unanswered mystery. We would waste hours in each other's company while I was growing up, and most of what I had learnt had come from her. She had vociferously objected when my parents had sent me to school- there's no need to educate a mere girl!- but my father's calm insistence had ensured I was a twelfth standard pass. My mother was always pottering around the house in my youth, but a distance that had less to do with physical proximity had always alienated us from each other. She was a simple housewife like me, but tradition had dictated that she refrain from taking care of her child, a job left to the elders of the house. She was affectionate, even if she was reserved in displaying it- something which hadn't changed till date- but my father had always been remote. Occasional clasps on the back and a sentence in a day was the extent of the relationship we'd had till his death a few years ago. Dadi, as I used to call my grandmother, had helped me differentiate right from wrong- she had shaped my conventions of what it meant to be a proper daughter, woman and wife. Sure, she'd been strict and unkind in her contempt of me and my gender, but she had been honest- Look Shantha, look at how my son turns away from you, he is ashamed that his marriage produced only you! To a certain degree, I'd always known that her lack of generosity was borne from

a deep loneliness that activated a strong fear that once I grew up, I would stop depending on her.

My mother and she had never hit it off- she was too afraid of dadi for that. So my grandmother found a softer target in me that she could groom and shape into the perfect little girl. Nowadays when I met my mother, she would smile and tell me how willful I had been as a child and how many beatings dadi had had to give me to ingrain some sense into me. By the time dadi had passed away, I had barely been thirteen, but she'd imbued her legacy in my veins, leaving a caricature of her where I used to be.

At fifteen, I was doing all the cooking in the household and my mother took immense pride in the fact. Being the eldest woman in the house now, she could sit back and relax as I took over the reins of the household, bit by bit. I had given up on wearing skirts entirely and my salwar kameez's had turned to duller shades- I wasn't the type of girl that wore bright colours and looked for uninvited attention. The house was always kept in pristine condition- scrubbed floors and polished windows took their revenge on my peeling hands. I kept a watchful eye on the drains as well- my grandmother's antipathy for rats had made a home in me. I had to be careful about these things; it was my responsibility to ensure that none of those grimy creatures learned the route to my parents' home. Clean house, pure girl and no rats- that was the mantra.

We'd only got rats twice in my natal home since I had completely taken over the caretaking. Once, when I was sixteen or so, I had seen one little rat peeking at me from behind the flour bin. My wide eyes had traced its scampering footsteps as it sought to evade my scrutiny, sliming back through the hole it had created for itself. I had been so surprised, and so sickly fascinated by the creature, that I had done nothing for a few days, till my mother noticed there were some uninvited guests in the house. She had been unperturbed and that had made me afraid- didn't she know they were a bad omen, that if one rat comes in they would soon multiply into a hoard? My mother's calm acceptance had shaken me out of my complacency. That evening, I walked out of the house to the grocery shop close by, resolving to buy some rat poison and nip the problem in the bud. I had felt quite proud making the purchase, though I was uncomfortable going out of the house unaccompanied, grim satisfaction gripping me at the thought of the fate of the rats. As I had turned into an alley, taking a shortcut, I had run into a gang of colony boys, a few years older than I was. I had looked a little too long instead of averting my gaze and hurrying along as dadi had taught me, the same sick fascination arresting me as when I had seen the rat up close. It broke soon though, as one of the boys came over, chucking while the rest of them cat called me, egging him on as he grabbed my dupatta. I had tried to walk past him, but just as that rat had soon become one of many- his friends had swarmed around us, preventing any escape.

Afterwards, I had run home, careful of fixing my disheveled appearance before I walked into my parents' home. Even as I had walked into the threshold, I had felt hunted and stalked, as if a million eyes were following me. A long bath alone with my thoughts had given me some clarity- no one knew and I had to keep it that way- it was my own fault for advertizing myself that way and getting that attention. I felt dirty, cheap and unclean, but as long as I kept it to myself, at least others wouldn't know that my sins were greater than simply that of my sex. I relished in using the poison that first time, fishing out the bodies from around the house, tailing their scent
to find their hiding spots, just as my grandmother had taught me to do.

The second time we'd got rats was just after my twelfth grade exams. Most of my classmates were going on to pursue higher education and my father had made a stilted offer of the same to me. I had turned him down, saying I would prefer to stay home and help my mother and his satisfied smile had said it all. Despite the fact that I had refused his offer, my mind was littered with thoughts of what it would be like if I had accepted. I

had no friend in my class, I usually spent time with my mother and her friends as was appropriate, but I couldn't help imagining what it would be like if I were to go out with my friends and study instead of staying in the house all day. I was so preoccupied with my thoughts, that I hadn't noticed the new swarm of rats till they had become brazen enough to eat droppings of food in front of our noses. My mother wrinkled her nose in disgust and I armed myself with some more rat poison. She had walked in the next day, as I was disposing of the dead bodies, recoiling in disgust, and rushing out of the drawing room before she got violently ill in the bathroom. She had refused to let me do any housework for the next week, cooking the food herself and carefully avoiding my touch, choosing to do the household chores entirely on her own. She never openly mentioned the reason, but it wasn't hard to guess it was because she thought I was somehow dirty too because of my part in getting rid of the rats. Her temporary takeover had hurt me more than I cared to admit at the time. This is my job! I wanted to scream, as I helplessly watched her dry clothes on the line. By doing the work herself, it was almost as if she had yelled out how unwanted I was on the streets. I felt like she'd wrenched my identity from me, leaving me as unbalanced as a rudderless boat in a stormy sea. If I hadn't had all those depraved thoughts of continuing my education, maybe I would have still felt welcome in my own home. I couldn't help but feel that somehow my mother had known of my secret desires and that she was punishing me in the way she knew best. This is what you get for curiosity Shanta I snapped at myself angrily it's your own fault.

The sound of water hitting the sink pulled me out of my reverie and with a start I realised I had subconsciously finished washing the dishes. I turned off the running water and blinked trying to clear the disorientation in my mind. For the first time in the years since I had got married, I felt the need to look at the clock to see what time it was. One glance told me I was running late, daydreams of my childhood and the rats had deprived me of any buffer time to get the tea ready.
I quickly poured some water into a pot and set it on to boil. As I got the snacks together on the tray for my children, I prayed that today my daughter would be wearing jeans instead of those dreaded shorts. Kalindi had taken to wearing shorts all the time now, and no matter how much I told her that it was improper garb for an eighteen year old, she stubbornly persisted. She rarely wore a salwar kameez and the sun would rise in the west before she would ever set foot in the kitchen to learn how to cook. I had given up on talking to her about
these things as her hostility had become more and more palpable. No matter how I had tried to convince my second born that she had certain duties as a girl; she would obstinately refuse to listen. Even more confusingly, her father indulged her in all her whims- Let the girl be, Shantha he would say, charitably patting her head as she beamed at him. It had confused me at first- he had yelled at me till he was blue in the face when I had hesitatingly asked if we could go buy me some skirts to wear around the house- all the other women were wearing them nowadays so I thought that it wouldn't be a problem. But I had learnt my lesson with the earful I had got and I had deserved it- those other women had no morals wearing clothes like that, and I had actually dared to ask my husband, who had never mistreated or hit me, if I could go tarnish his name with my stupidity.

All this stupid thinking had begun with those rats and I vowed I'd use the poison on them tonight. It was too early yet for any of the others to notice they were around. If I could just get them all before anyone realised no feathers would be ruffled. None of them, not even my husband, liked to deal with rats- I knew they would vocally protest if I even brought it up, berating me instead for letting our house get infested in the first place. It was simpler to get the matter done and dusted on my own-all of them found it too dirty to do, and shirking the responsibility from one person to the other would only cause me trouble when the matter remained unresolved. They approved of the fact that I got rid of the pests in the house before one of them had to bring it to my notice and it was all a part of my duties, so I didn't really mind either. I switched the tea off and grabbed some wet cups to dry them before pouring the tea in. I

was feeling resentful for some reason and that feeling sat uncomfortably in the pit of my stomach. I had no right to think these hateful thoughts- I was incredibly blessed. Two children and a house to run- it was more than many could ever hope for. I caught sight of my reflection in the drying teacup and I hastily put it down, afraid my hand would leave smudges on the shiny steel. I placed the full cups of tea of the tray, right next to my son's glass of ice tea. Daksh had become a real looker- numerous proposals were sure to come his way in a few years. With a pang, I realised how little I knew him. He was aloof and steadfastly maintained his distance from me- his condescending attitude towards me was to be expected given that he was soon going to be the man of the house. Maybe that's why I had to kill the rats. Maybe they had broken God's law and forsaken the hierarchy that must be maintained in all relations. Now they were being punished for their folly at my hands while I was preempting some evil by getting rid of them- God's plan really worked in funny ways, I thought with a laugh. So why did I feel this heaviness in my chest?

I quickly picked up the tray and walked into the drawing room, where everyone had already settled. My cheeks flushed with embarrassment and I could feel my mother in law's disapproval though she never looked at me- I was late in bringing them their tea. I carefully walked around the sofas, moving to offer everybody their preferred drink, careful not to upturn their playing cards. Maa ji didn't look at me as she took her cup and neither did my father in law, choosing instead to smile at my son, who was struggling with his next move. As I offered my son his drink, he clucked his tongue in annoyance because I had interrupted his game, grabbing the glass off the tray before peering at the stack of cards on the center table and then back at this hand again. I kept my gaze downwards as I offered Kalindi her glass, but I didn't miss her rolling her eyes as I stared at her bare legs. I carefully placed the tray down, laden with snacks and a teacup for my husband, who would be home any moment, before turning on my heel and exiting the room. I didn't breathe till I had left the drawing room and was walking towards the kitchen again. When had I started to feel like an intruder in my own home, just like those rats?

I entered the kitchen again, feeling strangely lost, anxiety gripping me at the discomfort I felt in my safe space in the house. I kept looking back and forth, from one item to another in the kitchen, hoping for something that would calm me down. My eyes finally skidded to the rat poison and I could feel myself tumbling further down and down the rabbit hole, trying to grasp the slippery edges to keep from falling. The feeling was so real, I actually glanced at the ground to see if it was still there before a magnetic impulse pulled my gaze back towards the little vial again. I gave myself a little shake- I didn't know what had come over me for those few seconds, I needed to get a move on and finish my pending chores. I chanced a look at the clock again and let out a wary sigh because I should have started chopping vegetables by now for dinner. I trudged towards the fridge, pulling out some ladyfinger to chop up for the evening meal. I eyed my share of tea, still sitting in the pan waiting for me to filter it out and drink it in the kitchen as usual. It was probably over-brewed by now, but I had an impulsive thought to improve the taste.

I grabbed the cheap bottle off the counter, upending the contents into my tea and mixing it. The strong smell that hit my nostrils was like a balm to my frayed nerves and I felt a curious calmness as I strained my tea into my dented cup. I downed it one go, the acrid taste soothing my parched mouth. Then I carefully rinsed the ladyfinger I'd pulled out, thinking of my grandmother for the hundredth time today. I wasn't sure if she'd be proud or not, but even the calculus with which I had always measured myself began to recede to nothingness as I felt a sense of control over myself, so intoxicating it made my skin clammy with sheer joy. I allowed myself one moment of satisfaction before I resigned myself to chopping up the vegetables. In the end, sin(s)-cereity runs in our blood.

Annual Committee

PROFESSORS

Sitting (L-R) : *Prof. Mr. Lam, Prof. Ms. S. Masani, Prof. Mr. K. L. Daswani, Prof. Mr. H. D. Pithawalla, Prof. Dr. R. S. Ratho, Principal Judge Smt. Suvarna K. Keole, Prof. Ms. S. H. Chuganee, Prof. Ms. S. Bharvani, Prof. Ms. P. Mehta, Prof. Ms. R. Chabbria.*

Standing 1st Row (L-R) : *Prof. Mr. S. Gaddapawar, Prof. Dr. U. S. Aswar, Prof. Mr. P. B. Daphal, Prof. Dr. S. A. Panchabhai, Prof. Mr. Tiwari, Prof. Mr. M. A. Zyangoji, Prof. Ms. M. A. Sakpal, Prof. Ms. A. B. Desale, Prof. Ms. N. Shaikh, Prof. Ms. K. Hedaoo, Prof. Ms. S. Shaikh.*

Standing 2nd Row (L-R) : *Prof. Mr. H. Shah, Prof. Mr. V. Shetty, Prof. Mr. A. Jadhav, Prof. Ms. U. Srinivasan, Prof. Ms. M. Devendra, Prof. Ms. S. Puri, Prof. Ms. Nidhi, Prof. Ms. Divya, Prof. Ms. L. Shah, Prof. Mr. S. Punjabi.*

PERMANENT PROFESSORS

Sitting (L-R) : *Prof. Ms. N. Shaikh, Prof. Ms. A. B. Desale, Prof. Ms. K. Hedaoo, Prof. Dr. R. S. Ratho, Principal Judge Smt. Suvarna K. Keole, Prof. Mr. S.A. Panchabhai, Prof. Dr. U. S. Aswar, Prof. Mr. S. Dhule, Prof. Mr. P. B. Daphal, Prof. Mr. S. Gaddapwar*

Reports 2018-19

WOMEN'S CELL

Sitting (L-R) : *Prof. Ms. A. B. Desale, Prof. Ms. S. H. Chuganee, Principal Judge Smt. Suvarna K. Keole, Prof. Dr. R. S. Ratho, Prof. Dr. U. S. Aswar*

NON-TEACHING STAFF

Sitting (L-R) : *Mr. S. Singh, Ms. T. Khair, Ms. P. Nikam, Ms. B. Kolta, Ms. Deshpande, Principal Judge Smt. Suvarna K. Keole, Ms. S. Gole, Ms. P. More, Ms. A. Khair, Mr. S. Prajapati*

Standing 1st Row (L-R) : *Mr. Gupta, Mr. Dimble, Mr. S. Kharat, Mr. S. Mulik, Mr. P. Jhadav, Mr. S. Pawar, Mr. Praful B., Mr. G. Marathe, Mr. A. Khair.*

ALTERNATIVE DISPUTE RESOLUTION CELL

Sitting (L-R) : *Viraj Vaidya, Janak Panicker, Shraddha Sethia, Prof. Ms. S. Masani, Principal Judge Smt. Suvarna K. Keole, Prof. Mr. K. L. Daswani, Arushi Dua, Ketayun Mistry, Burjis Doctor*

Standing 1st Row (L-R) : *Rohan Singhal, Devansh Gadda, Aditya Deshingkar, Snigdha Mazumdar, Ayushi Tripathi, Dhruv Kapadia, Rehaan Engineer.*

Inset : *Jayati Arora, Pranav Nair, Ameesha Tripathi*

The Alternative Dispute Resolution (ADR) Cell was founded in 2016 with a vision to promote the understanding of non-adversarial forms of dispute resolution and familiarising the students with the intricacies of ADR. Prof. Ms. S. Masani and Prof. Mr. K. L. Daswani are the faculty advisors of the ADR Cell. The ADR Cell strives to foster an ADR culture amongst law students, believing that the emergence of ADR practices will reduce the burden on the Judiciary. The ADR Cell publishes a bi-monthly e-newsletter containing news, articles and interviews elucidating expert views and advice for students wishing to pursue their careers in this field.

The Cell proactively promotes ADR practices amongst the students by organising lectures and workshops conducted by experts. This year we have had the honour of hosting Mr. Rahul Donde, Senior Associate, Levy Kauffman-Kohler who delivered a lecture on *'Bilateral Investment Treaty Arbitration'*; Ms. Chinmayee Pendse, Member of Chartered Institute of Arbitrators and Junior Counsel at the Chambers of Karishma Vora, delivered a lecture on *'Independence of Arbitrators and Third-Party Funding'*. The Cell also successfully organised an orientation with Mr. Sameer Shah, Program Director of the Indian Branch of the Chartered Institute of Arbitrators (London), who educated the students on the CIArb Student Membership scheme.

The ADR Weekend 2019 started with an orientation on *'Basics of Arbitration'* by Mr. Naresh Thacker. A panel discussion was moderated by Prof. Kishu Daswani and the panellists included Mr. Sidharth Srivastava, Mr. Naresh Thacker, Ms. Mayuri Tiwari and Ms. Ria Dalwani. Mr. Anish Wadia delivered a lecture on *'Institutional Arbitration, its features and best practices'* and conducted a session along with Mr. Rahul Kamerkar on *'Independence of Arbitrators and Third-party Funding'*. Mr. Biswajit Dubey delivered a lecture on *'Enforcement of Arbitral Awards'*. A workshop on Meditaion was conducted by Prof. Ms. Sunita Masani and Mr. Ajay Mehta.

It has been a successful year for this relatively new committee of Government Law College. With constant support from our faculty advisors and members we hope to cultivate a keen interest for ADR among students. We look forward to organizing more such informative and interactive sessions to benefit our students, and delve deeper into the world of ADR.

Shraddha Sethia
General Secretary

Arushi Dua
General Secretary

ALUMNI ASSOCIATION PARENT BODY

Sitting (L-R) : *Adv. Ms. R. Panjwani, Adv. Mr. D. Kirtane, Adv. Mr. A. Shingare, Adv. Mr. A. Harish, Adv. Mr. S. Thacker, Principal Judge Smt. Suvarna K. Keole, Senior Counsel Mr. R. Dada, Adv. Mr. S. Ingle, Adv. Mr. V. Shroff, Adv. Mr. Z. Dada, Adv. Mrs. M. Deshmukh.*
Inset : *Adv. Mr. K. Purohit, Adv. Mr. D. K. Shetty*

DELHI STUDY TOUR 2018

Sitting (L-R) : *Prof. Ms. S. Masani, Principal Judge Smt. Suvarna K. Keole*
Standing 1st Row (L-R) : *Pankaj Shamkuwar, Soumyodeep Halder, Isha Prakash, Priyanka Chumbhale, Rhea Rao, Mallika Dandekar, Pranjali Khemnar, Bhakti Mehta, Anoushka Shetty, Meghan Carvalho, Lakshay Arora*

ALUMNI ASSOCIATION (STUDENTS' WING)

Sitting (L-R) : *Lakshay Arora, Prof Ms. S. Masani, Principal Judge Smt. Suvarna K. Keole, Pankaj Shamkuwar*
Standing (L-R) : *Abhishek Rai, Tanishq Mohta, Megan Carvalho, Priyanka Chauhan, Nidhi Thakur, Siddhi Kasekar, Pranjali Khemnar, Saanchi Dhulla, Anushka Bhosale, Kaushal Patel, Vedant Bajaj.*

The Alumni Association (Students' Wing) of Government Law College plays the critical role of being the link between the college alumni and the current students and faculty. The Association plans and hosts events, such as workshops and lectures, that enables the Alumni to interact closely with college and its students. Furthermore, to encourage and guide students Alumni Association also felicitates students with Nivedita Nathany scholarship and organises Delhi Study Tour.

The Association every year conducts its most sparkling project of Delhi Study Tour through which the selected contingent from GLC get the opportunity to meet the apex legal and political dignitaries of the country. In March, 2018 the contingent met, inter alia, Hon'ble Chief Justice of India Mr. Deepak Misra, Attorney General of India Mr. K. K. Venugopal, Hon'ble Justice D.Y. Chandrachud, Chief of Indian Army General Bipin Rawat, Hon'ble Member of Parliament Mr. Subramanian Swamy, Senior Counsel like Mr. Ram Jethmalani, Salman Khurshid, Mr. Vivek Tankha. The contingent also observed the live sessions of Rajya Sabha and Lok Sabha as well as observed proceedings of Supreme Court of India.

The Association on the occasion of Youth Day started its very ambitious lecture series 'Young Achievers Lecture Series' having the motive to guide the students of GLC with examples of its alumni that a lot can be achieved in young age also, in the profession of law. The year began with a talk by Mr. Raunak Shah on the topic MBA post LLB.

6th Nivedita Nathany Memorial Award was conducted on 30th August 2018. This year Mr. Shreyansh Jain was selected as the deserving candidate.

The Association in collaboration with Students For Liberty South Asia wing conducted a colloquium on 13th October 2018 on the topic of Uberisation of the World. On December 10th 2018, the Association organised a guest lecture by His Excellency Mr. Kishore Mandhyan, Former United Nations Peacekeeping, Human rights and Humanitarian Affairs Director on the topic *'Rule of Law in Conflict Zones: Takeaways for India During External Threats, Insurgencies and Identity Conflicts'*.

Lastly, to build the bond between Alumni and the students of GLC, various activities will be conducted this academic year ranging from cricket match, between present students and Alumni, to annual dinner and panel discussions.

Lakshay Arora
General Secretary

CULTURAL COMMITTEE

Sitting (L-R) : *Eshita Kasar, Drishti Vanvari, Ambareen Khatri, Prof. Ms. N. Shaikh, Principal Judge Smt. Suvarna K. Keole, Prof. Ms. A. B. Desale, Prof. Mr. S. Gaddapawar, Srishti Dugar, Shubham Mehta.*

Standing 1st Row (L-R) : *Rushikesh Kekane, Jagrut Patil, Hetvi Gandhi, Aishwarya Tandekar, Isha Gajjar, Tamanna Meghrajani, Hitesha Sonawane, Soumyodeep Halder, Kartik Shah.*

Standing 2nd Row (L-R) : *Rohan Singhal, Darshan Aware, Yesha Badani, Drasti Jain, Rebecca Koshy, Prapti Purohit, Vishaka Bhagwat, Siddhi Ghorpade, Mannshree Sikchi, Soni Satti, Diksha Talpade, Omna Shinde, Parul Nayak, Ira Gosavi, Isha Shah, Siddhi Kasekar, Disha Sampat, Shreya Bandekar, Nidhi Patel, Vidyashree Perla, Aanchal Jain, Rakshita Singh, Sejal Loya, Akanksha Sharma, Isha Sawant, Utkarsha Sonavane, Shruti Maheshwari, Suraj Parit, Bhawish Khageja, Sakshee Mirkar.*

Floor(L-R) : *Tushar Pancholi, Siddharth Yadav, Manav Asrani, Govind Binzani, Atharva Khadilkar, Kaushal Patel, Nikita Chavan, Sharvari Bukane, Arya Shinde, Tanvi Gharat, Aditya Hule, Zeb Burk, Hrishikesh Tajane, Aditya Parmar, Durgesh Desai, Kevin Santhosh.*

The Cultural Committee shares the vision that a college should have an equal share of fun and frolic along with case studies and moots. We provide a platform for all students to enhance their hidden talents along with their overall personality.

We organised a plethora of events in the past year like the Ambedkar Jayanti, Teachers Day, Garba Night, Republic Day and many more such events. We also organised the Traditional Day in collaboration with the Marathi Mandal as an attempt to celebrate India and its beautiful amalgamation of religions and cultures.

Government Law College is an historic institute which has blessed the nation with scholars in law who have made the nation proud. The Cultural Committee in collaboration with NSS celebrated such a Nation's freedom and prosperity on 15th August as we bowed our heads in respect for the National Flag.

Our flagship event *'Zankaar'* has grown bigger and bigger every year with participation from colleges over Mumbai. We host students showcasing their talents in a wide range of events such as Dance, MonoActing, Doodling, Fashion Show and QuizMaster.

The contingents from GLC have also participated other inter-college cultural festivals like Enigma, Kshitij and Nandi. as well. We have been awarded as the Second Runner Up in *Enigma' 2018* and have also won the Best Contingent Leader award in *Kshitij' 2018.*

The Committee could not have successfully carried out all of its activities without the guidance and constant support of our Principal and Professors-In-Charge, Prof. Ms. A. B. Desale, Prof. Mr. S. Gaddapawar and Prof. Ms. N. Shaikh. The committee would like to thank all its core members and the rest of the team for their hard work and perseverance for making this year a great success.

Srishti Dugar
General Secretary

DEBATING AND LITERARY SOCIETY

Sitting (L-R) : *Dilasha Bajpai, Mahesh Dube, Prof. Mr. P. B. Daphal, Principal Judge Smt. Suvarna K. Keole, Prof. Ms. R. Chhabria, Prof. Dr. R. S. Ratho, Hina Tolani*

Standing 1st Row (L-R) : *Sagar Jaikumar, Shvabh Chakarwarti, Aditya Bharadwaj, Annapoorani Ramu, Anjali Kumari, Mallika Dandekar, Aparna Menon, Ketayun Mistry, Abhyarthana Singh, Jenson Francis, Aditya Agarwal, Tushar Nagar, Altamash Kadir*

Standing 2nd Row (L-R) : *Kaustubh Kapote, Ameya Khot, Rishikesh Ghadge, Mishhah Fazalbhoy, Riya Hotchandani, Vyoma Joshi, Priyanka Chauhan, Apurva Jadhav, Soni Sathi, Tanya Goel, Snigdha Mazumdar, Ira Gosavi, Akshita Tiwary, Ruchi Wagaralkar, Juilee Naik, Souparnika Seshadrinathan, Anushka Bhosale, Drasti Jain, Arya Madhani, Kevin Santhosh, Tushar Pancholi, Sushant Dhakane.*

Floor(L-R) : *Ameya Vombathkene, Devavrat Nimbalkar, Vedant Bajaj, Bhalachandra Jadhav, Karan Agrawal, Giridhar Bhansali, Vishwajeet Dhakane, Tanishq Mohta, Prajak Waghmare, Ashray Vinayaka.*

The Debating and Literary Society, fondly referred to as the "DebSoc", provides a platform for inculcating the most valuable asset a lawyer can have; that of a cogent way of thinking. It has helped students to improve their skills in the art of oral advocacy and public speaking.

Held in the month of March 2018, the GLC British Parliamentary Debate witnessed participation from colleges across India from diverse disciplines and had a stellar Adjudication Core comprising of Mr. Vibhor Mathur, Mr. Vipul Nanda and Mr. Virat Chopra, all of whom have represented their institutions Parliamentary Debates domestically and internationally. The primary intent of hosting such an event is to allow students to analyse situations that shape the world around them and to formulate a reasoned and balanced opinion about the same. In the age of click-bait journalism and divisive rhetoric, it is essential that one develops the art of filtering out the biases and objectively responding to the dynamic nature of the world.

The Policy Debate, our annual event which had initially started on the steps of the Asiatic Library, was an outstanding success this year with the theme as *'Crack in The Pillars: Will the Indian Democracy Sustain?'* There was a stellar panel comprising Mr. Abhijit Iyer Mitra, Mr. Milind Khandekar, Mr. Meghnad Saha, Mr. Shyam Divan and Mr. Kanchan Gupta. The discussion was moderated by Prof. Mr. K. L. Daswani.

As an addendum to the Policy Debate, there was also the Policy Review on the same issue, which called for papers and received over 200 entries from across the country.

DebSoc also organised a Freshers' Debate in order to ensure that the law students fresh to law school have an insight into the concept of debating. Additionally, DebSoc also holds trials for students wishing to participate in National tournaments across the country.

The Round Up team strives to organise weekly roundups which essentially are brainstorming sessions on both current topics as well as academic concepts. Out of the many sessions held this year, one was conducted by Mr. Arvind Ravindranath on Cryptocurrencies, a GNLU graduate currently working at Nishith Desai Associates which witnessed massive attendance from students of all courses.

All this could not have been possible without the constant guidance and support from our esteemed Professor-in-Charge Prof. Ms. R. Chhabria. We are also indebted to all the senior members for their valuable contributions throughout the year to the committee and its activities.

Mahesh Dube
Convenor

ENTREPRENEURSHIP AND LEADERSHIP COMMITTEE

Sitting (L-R) : *Gaurav Gharat, Prof. Ms. R. Chhabria, Prof. Mr. S. Gaddapawar, Principal Judge Smt. Suvarna K. Keole, Prof. Dr. S. A. Panchabhai, Vedang Tarare, Pranav Sahni.*

Standing 1st Row (L-R) : *Yash Raheja, Nimrat Dhillon, Nikita Bhosle, Pooja Shibire, Samyak Raghuvansh.*

The Entrepreneurship and Leadership Committee aims to inspire, connect and develop would-be entrepreneurs in the college. Our committee is about the pursuit of values and the spirit required for entrepreneurship and leadership – of pushing boundaries, of grit, sacrifice, ambition, and passion, of creating something bigger than oneself, on leaving *'footprints on the sands of time'*.

The primary goals of ELC are to create an ecosystem to:

- Help entrepreneurs build new ventures
- Inculcate confidence and a can-do attitude
- Foster entrepreneurial skills
- Provide a platform and network
- Help find assistance

In this spirit, we organised our inaugural Start-up Fest in March, 2018, which brought together founders, mentors, and start-up lawyers. The all-day fest featured five topics, and concluded with an elevator pitch competition. The schedule covered the following topics:

- *'An Entrepreneur's journey,'*– a lecture delivered by Mr. Kiran Reddy, Founder of Helm of Eight and Risevertise Media.
- *'Actualising an idea,'*– a talk on translating ideas into reality was delivered by Mr. Smeet Gala, Founder of WorkAmp spaces.
- *'What investors look for'*– Vinayak Burman, Managing Partner at Vertices Partners, and Neeraj Churi, Mentor, SVP Asia, CSCIS discussed what constitutes a good business idea, a sound team, and the pre-requisites that start-up founders must meet to raise funds.
- *'Lawyers and start-ups'*– a symbiotic relationship covered the importance of lawyers for start-ups and MSMEs and opportunities in this underserved sector.
- *'Law and beyond'*– a panel discussion by law graduates who have made careers in different fields.
- *'Elevator Pitch Competition'*– was judged by Ms. Bhavna Pandya, Director at BioRiidl, KJ Somaiya.

The 2019 start-up fest is scheduled for March, and will tentatively consist of a hands-on workshop in addition to sessions on entrepreneurship, as well as sessions on leadership, and will conclude with a competition.

In the coming year, ELC will be organising lectures, seminars, business strategy competitions and workshops. The details of the proposed activities will be announced on the college notice board.

Do join us in our journey to inspire and be inspired!

Gaurav Gharat
General Secretary

EXTENSION COMMITTEE

Sitting (L-R) : *Prof. Dr. U. S. Aswar, Prof. Mr. S. Gaddapawar, Prof. Mr. P. B. Daphal, Principal Judge Smt. Suvarna K. Keole, Prof. Ms. N. Shaikh, Anwesha Maitra*

Standing (L-R) : *Lakshay Arora, Vasudeva Kashyap, Akanksha Sharma, Om Marathe, Rishabh Murali*

Government Law College – Extension Committee has been under the active tutelage of Department of Life Long Learning & Extension (Mumbai University) since 2014 providing a platform for the students to connect with the society by conducting programmes/activities at both college and community level. Students in exchange for their participation in 'extension project' are awarded with ten marks in their academic results at the end of their successful completion of the project.

This year too like yester years, we have successfully conducted programmes/activities such as The First and Second Term Orientation for the enrolled students wherein the students were explained the projects undertaken by GLC which are SWS & IOP. The enrolled students attended seminar and Bhajan Sandhya on the auspicious occasion of Gandhi Jayanti organised by the DLLE Dept. at Patrakar Bhavan, Mani Bhavan and Nehru Centre. School visits in slum areas are organised in which the students teach middle & high school pupils basics of our Constitution, Fundamental Rights, Fundamental Duties and The Protection of Children from Sexual Offences Act (POCSO Act) 2012. Additionally, we regularly organise Guest Lectures on women centric issues. We had the pleasure of having with us Asst. Prof Amitabh Gawale from Amity University who delivered the lecture on *'Status of Women in Contemporary India'*. We also had Solicitor and Partner of V Law Partners Mr. Vivek Daswaney who spoke on *'The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013'*. GLC actively takes part in *'Udaan-the flight of Extension'*, which is one of the flagship events of DLLE, in which our students perform skits and make theme-based posters. This year's theme was *'Atrocities against women'* for skit & *'Gender Equality'* for poster making. We organised an Exhibition cum poster display in our college wherein the students prepared posters and wrote essays themed on *'Equality of all Genders'* & made meaningful goodies out of junk under *'The Best out of Waste'* category. On the occasion of International Women's Day on 8th March, a Walkathon will be conducted to raise awareness about the need for Gender Equality.

We are extremely grateful to our Principal Judge Smt. Suvarna Keole and Professor-in-charges Prof. Ms. N. Shaikh, Prof. Dr. U. S. Aswar, Prof. Mr. P. B. Daphal and Prof. Mr. S. Gaddapwar for their constant guidance and support. Lastly, the committee's objective would not have been fulfilled without the noteworthy contribution and diligence of all the Student Managers.

Ms Anwesha Maitra
Head Student Manager
GLC-Extension

LAW REVIEW COMMITTEE

Sitting (L-R) : *Kavita Mohanty, Prof. Mr. K. L. Daswani, Principal Judge Smt. Suvarna K. Keole, Prof. Dr. U. S. Aswar, Shivani Chimnani*
Standing (L-R) : *Avirup Mandal, Aditya Thakore, Prakriti Bhatt, Sheona Shenoy, Kajol Punjabi, Sanaya Patel, King Dungerwal*
Inset : *Vidhi Shah, Ridhima Kedia*

The Law Review Committee of Government Law College is currently in the process of publishing the 10th edition of the Law Review. For over a decade now, the GLC Law Review has fostered and sharpened the skills of legal research and writing among students of the college.

Articles in the upcoming Volume 10 of the GLC Law Review seek to combine legal, policy, philosophical and other insight as academic critique from topics as varied as feminist perspectives on the Right to Privacy, cultural property rights, the concept of disgorgement in securities law, corporate rescue and whistleblower protection laws in India. The publication of these articles entailed extensive reading, research, revision and writing done many times over to produce articles with relevant, cutting edge insight into the topics delved into. The articles have been shaped by Committee members under the guidance of their faculty advisor, Prof. Mr. K. L. Daswani, over months of rigorous ideation, scrutiny, and drafting to produce legally sound and well-researched academic works. Along with the feedback of the Committee members, each of the articles has been reviewed by the Editorial Board of the GLC Law Review, comprising of Mr. Aspi Chinoy, Mr. Bahram Vakil, Mr. Shyam Divan, Mr. Shiraz Rustomjee, Dr. Menaka Guruswamy, and Mr. Sumit Agrawal. The Committee is truly grateful to the Editorial Board for their time and willingness to support the literary endeavours of the student authors.

We are happy to announce that each volume of the Law Review is now available on our college website as well as catalogued on SCC Online, India's premier legal research software.

We are honoured to have Hon'ble Justice Dr. D. Y. Chandrachud of the Supreme Court of India as our Editor-in-Chief, for his consistent and unending support, guidance and encouragement. The Committee extends its gratitude to its patrons and well-wishers in the legal community for their generous and continuing contribution over the years, and to the administrative staff and faculty of Government Law College, Mumbai for their constant support. The Law Review is a culmination of the commitment of its committee members, student authors and the Editorial Board. In this upcoming edition, we hope to build on the progress that we have made since our inception and continue to support the students of Government Law College in their aspiration to publish sharp legal research articles.

LEGAL AID COMMITTEE

Sitting (L-R) : *Ankit Tiwari, Rashmita Musalgi, Preeti Agarwal, Siddhi Bhandekar, Principal Judge Smt. Suvarna K. Keole, Prof. Ms. S. H. Chuganee, Poushali Roychoudhury, Manisha Singh, Riktanjali Pradhan, Ashwin Sasikumar,*

Standing 1st Row (L-R) : *Sushant Dhakane, Ameya Khot, Saharsh Sakhare, Ashray Vinayaka, Krishnapingaksha Gaikwad, Kaushal Patel, Tushar Lahange, Jitesh Shibire, Madhusudan Agrawal, Payod Chikate, Shubham Tiwary, Panjak Dalmia, Suraj Parit, Advait Gokhale*

Standing 2nd Row (L-R) : *Sanya Sud, Arya Shinde, Riya Hotchandani, Prashali Kale, Vyoma Joshi, Mansi Ramkul, Prapti Karkera, Aadya Jain, Nidhi Thakur, Rajvii Gandhi, Snigdha Mazumdar, Pooja Shibire, Saanchi Dhulla, Anjali Ojha, Soni Satti, Shreya Dubey, Aayushi Tripathi, Aishwarya Tandekar, Juilee Naik, Pallavi Valvi*

The Legal Aid Committee conducts activities ranging from providing Pro Bono Legal help to the needy, spreading awareness on current socio-legal issues, teaching juvenile delinquents to preparing bail applications for Under Trial Prisoners. We have 4 avenues namely the Legal Aid Cell, Legal Awareness Cell, Juvenile Home Visit Cell and the Jail Visit Cell.

The committee organised the *'Intra Committee Presentation Competition'* for the freshers on socio-legal topics. Our Pro Bono cases are related to different areas of law such as family law, property law, labour law and even criminal law. We also collaborate with organizations like Human Rights Law Network, Justice and Care and Vanashakti India to provide internship opportunities for the members. The committee takes its members for Lok Adalat Sessions in the Bombay High Court.

The Legal Awareness Cell collaborates with NGOs to conduct workshops in college and spread awareness through street plays on various social topics. One of our recent endeavors is the Village Visit Program, where the rural children were sensitised through talks and a street play on *'Maternal Health and Child Protection'*. We conducted '*Envision*', an Inter- College Competition, in collaboration with New India Insurance, on women centric issues. Saturday Schooling in the slums of Dharavi, is an initiative of the committee to teach moral values to the children. In a bid to encourage students to 'think before they trash', few workshops were conducted in schools by the students.

The essence of the Juvenile Justice Act is restorative justice, and we endeavor to achieve this through dynamic educational workshops and sessions at the remand home. We celebrate annual functions like Republic Day and conduct workshops like Mobile Repairing in the Juvenile Homes. The Jail Visit project is conducted in furtherance of our goal of providing legal aid to the inmates at the Prisons and final year students visit the jail and prepare bail applications. We also organize workshops on 'Criminal Trial and Bail Application'. Additionally, the committee conducted the Legal Aid Quiz, an intra-college event hosted by Prof. Mr. Daswani.

Our projects would not have been successful without the inputs and support of our Chairperson Prof. Ms. S. H. Chuganee. We express and applaud the consistent performance of each member to make this year a success.

Poushali Roychoudhary
General Secretary

Siddhi Bhandekar
Joint General Secretary

LIBRARY COMMITTEE

Sitting (L-R) : *Prof. Mr. P. B. Daphal, Prof. Dr. U. S. Aswar, Principal Judge Smt. Suvarna K. Keole, Prof. Mr. S. Dhule, Prof. Dr. R. S. Ratho*

MARATHI MOOT COURT ASSOCIATION

Sitting (L-R) : *Saharsh Sakhare, Bhaktee Bhopatrao, Jagrut Patil, Prof Dr. S. A. Panchabhai, Principal Judge Smt. Suvarna K. Keole, Prof. Mr. S. Gaddapawar, Guru Birajdar, Sanika Shirsat, Sarvesh Bhagat, Rohini Kalyankar*

Standing Row (L-R) : *Tanuj Rasal, Jitesh Shibire, Ashwini Borse, Shweta Patil, Dnyaneshwari Esave, Arya Shinde, Hrishikesh Tajane, Advait Gokhale.*

Standing Row 2 (L-R) : *Suraj Parit, Sachin Pawar, Krishnapingaksha Gaikwad, Ritesh Patil, Vishal Sonkamble, Nikita Chavan, Prashali Kale, Anushka Bhosale, Vidyashree Perla, Sakshee Mairkar, Nidhi Patel, Siddhi Mandake, Mansi Rankul, Tushar Lahange, Hrishikesh Gayakwad, Bhalachandra Jadhav, Ameya Khot.*

MODEL UNITED NATIONS SOCIETY

Sitting (L-R) : *Sarthak Sharma, Apurva Singha, Prof. Mr. P. B. Daphal, Prof. Ms. R. Chhabria, Principal Judge Smt. Suvarna K. Keole, Abhijit Bhandarkar, Shreya Gokhale*

Standing 1st Row (L-R) : *Aayush Agarwal, Yash Bhatt, Megan Carvalho, Pranjali Khemnar, Ritika Neogi, Neha Pethkar, Prateek Gupta, Nikhil Jalan.*

Standing 2nd Row (L-R) : *Priyanka Chauhan, Rebecca Koshy, Vishaka Bhagwat, Suchita Rankhambe, Meghna Somani, Riya Punamiya, Lajja Mehta, Nidhi Patel, Nidhi Thakur, Isha Shah, Siddhi Kasekar, Rajvii Gandhi, Tanya Goel, Ira Gosavi, Diksha Talpade, Saanchi Dhulla, Prajakta Bharsakade, Shivani Tanna, Mannshree Sikchi, Siddhi Mandake, Anushka Bhosale, Aanchal Jain, Ruchi Wagaralkar.*

Floor (L-R) : *Tushar Pancholi, Hrishikesh Gayakwad, Bhalchandra Jadhav, Atharva Khadilkar, Zeb Burk, Drasti Jain, Yesha Badani, Souparnika Seshadrinathan, Shruti Maheshwari, Sarvesh Bhagat, Hrishikesh Tajane, Samihan Vinchurkar, Kevin Santhosh, Ameya Khot.*

Inset : *Bhavya Banerjee*

The GLC MUN Society's inception was eleven years ago with the goal of inculcating the skills of diplomacy, public speaking, creating discourse about global issues and United Nations in GLC. This aim is very well reflected in our motto: *Discuss, Debate and Deliberate*.

The MUN Society has successfully conducted ten editions of the GLC MUN and is keen on its 11th Edition in March 2019. The GLC MUN is ranked among the top ten MUN's in India. The events of the MUN Society in Academic Year 2018-2019 are:

GLC Intra MUN 2018 was conducted in September 2018. The agenda *'To deliberate upon the issue of Female Genital Mutilation in South-east Asia'* intertwined women's rights and the sensitivity and sanctity of religious beliefs and reaching equilibrium between the same. The students were provided with a study guide and a 'Rules of Procedure' session was conducted to acquaint the students with the procedural aspect of the competition. The students displayed great qualities of leadership, perseverance, enthusiasm and fervour while putting across new ideas and agendas. The event paved the way for future diplomats.

GLC Intra Youth Parliament 2018, organized in December 2018 aimed at enabling the students to be cognizant of national issues and the way the national political scene coheres. The students were acquainted with the Rules of Procedure of the Lok Sabha. The agenda of the Intra Youth Parliament was: *'Review of the NDA government'* and saw active participation from the students. The students employed the prowess of wit and in-depth analysis to subjugate their opponents. They were bestowed with a sense of responsibility and very well adapted to the same.

GLCMUN' 18 was the 10th edition of our flagship event, one of the most prestigious MUN conferences in the country, and it witnessed delegate participation from all over the country and abroad, honing their skills of diplomacy and debate. The theme of the 10th edition GLCMUN was *'Road to Unity'*. The conference was held in collaboration with the Teach for India Foundation and UN Women's HeForShe campaign. The delegates discussed, deliberated and debated with each other the issues put forth in the agenda for three days, all the while, being guided, and judged, by their impressive and erudite Executive Board.

The Opening Ceremony saw the Consulate Generals of Canada and Germany, UNICEF Chief Field Officer Rajeshwari Chandrashekar. The Closing Ceremony was honoured by chief guests and key-note speakers such as Former Supreme Court Judge, Justice Gyan Sudha Misra, Founder of Gateway House and former IFS officer, Mrs. Neelam Deo, Consulate General of Iran, Mr. Ahmad Sadeghi, the Consulate General of South Africa, ML Ramokgopa, and the National Spokesperson of AAP, Mr. Raghav Chadda.

Abhijit Bhandarkar
General Secretary

MOOT COURT COMMITTEE

Sitting (L-R) : *Aditya Deshingkar, Sharnam Vaswani, Neel Mehta, Anjali Karan, Principal Judge Smt. Suvarna K. Keole, Prof. Dr. U. S. Aswar, Yash Shiralkar, Akilesh Menezes, Bharat Mirchandani, Eden De Horta Ribeiro, Devansh Parekh.*

Standing 1st Row (L-R) : *Rehaan Engineer, Tushar Pancholi, Devavrat Nimbalkar, Atharva Khadilkar, Madhusudan Agrawal, Zeb Burk, Hrishikesh Gayakwad, Bhalachandra Jadhav, Kevin Santhosh, Ameya Khot, Sushant Dhakane.*

Standing 2nd Row (L-R) : *Souparnika Seshadrinathan, Ruchi Wagaralkar, Priyanka Chauhan, Rakshita Singh, Meghna Somani, Shivani Tanna, Saanchi Dhullani, Lajja Mehta, Tanya Goel, Snigdha Mazumdar, Rajvii Gandhi, Ira Gosavi, Nidhi Thakur, Riya Punamiya, Mannshree Sikchi, Chandni Shah, Aanchal Jain, Juilee Naik, Vishaka Bhagwat, Rebecca Koshy, Sejal Loya, Anushka Bhosale, Shruti Maheshwari.*

Inset : *Mr. Rishabh Jogani, Prof. Ms. S. Mathur, Prof. Ms. M. Devendra, Janay Jain, Urshila Samant*

The Moot Court Committee (MCC) is a vibrant body of students who work throughout the year to promote and encourage mooting as a co-curricular activity and organise some of arguably India's best moot court competitions. The following is a brief account of the activities and events conducted by the MCA through the academic year 2018-2019.

INTRA – COLLEGE ACTIVITIES

Demonstration Moot, Mock Freshers' Moot & Mooting Workshops

The MCA organized a mooting workshop headed by Mr. Raunak Shah to acquaint the Freshers' with the different aspects of mooting. A Demonstration Moot followed, where senior mooters like Mr. Bhanu Chopra and Mr. Mohit Khanna argued before a bench of ex-students like Mr. Harshit Jaiswal, Ms. Anushka Shah and Mr. Shanay Bafna, to familiarise the first-year students with the style, etiquette and manner of mooting. Further, a one-on-one session was conducted by seasoned final year student mooters wherein they addressed individual queries related to the Moot Proposition of the Freshers' Moot Court Competition, 2018.

Freshers' Moot Court Competition 2018-19

The Competition conducted in December 2018 was the first step that first-year law students took into the arena of mooting. The case study for the same was based on the Law of the Constitution.

International Law Grand Moot Court Competition, 2018

Following the tradition that began in 2010, the International Law Grand Moot Court Competition was organized in July 2018 and students were selected for moots based exclusively of international law. Ms. Naira Jeejeebhuoy and Prof. K. L. Daswani judged the Final Round of the competition.

International Arbitration Grand Moot Court Competition, 2018

International Arbitration Grand Moot Court Competition was started in 2016 and was organized July 2018 and the students were selected for the most prestigious Moot Court Competition based exclusively on international arbitration law in the country and abroad. Prof. Ms. S. Mathur, Mr. Rahul Chitnis, Mr. Advait Sethna judged the Final Round of the competition.

Grand Moot Court Competition, 2018

Since 1956, the Grand Moot Court Competition has been the most prestigious intra-college moot court competition at GLC serving as a selection round for some of the most prestigious national Moot Court Competitions. Ms. Sneha Phene and Mr. Mayur Khandeparkar judged the Final Round of the competition.

Common Eliminations

GLC conducts elimination rounds at frequent intervals around the year, for several city, state, national and international moot court competition. This ensures that students get ample opportunities to participate in moot court competitions around the country and

provides exposure to students to different styles of mooting thus enabling them to develop a distinct technique of their own.

Moot Mentorship Programme

Under the Moot Mentorship Programme, the Moot Court Association appoints a Moot Mentor, who is a practising lawyer and who excels in that particular field of law, to the teams representing GLC in various Moot Court Competitions.

INTER-COLLEGE MOOTS HOSTED BY MCA, GLC

45th Sir Jamshedji Kanga Memorial and Dr. Y.P. Trivedi Government Law College Moot Court Competition (6th to 8th April, 2018)

This year the problem was based on blockchain currency specifically relating to bitcoin and taxation of such transactions and how the Governments can deal with it. The preliminary rounds of the competition were held at the Income Tax Appellate Tribunal and the Final Round was held at the Indian Merchants' Chambers which was presided over by Hon'ble Mr. Justice K. R. Shriram, Judge, Bombay High Court.

25th M.C. Chagla Memorial Government Law College National Moot Court Competition, 2018 (22nd to 23rd September, 2018)

The Chief Justice M. C. Chagla Memorial GLC National Moot Court Competition was instituted in the memory of the late Mr. M. C. Chagla, the first Indian Chief Justice of the Bombay High Court. The case study of the competition is based on Constitutional Law. The final rounds were judged by the Hon'ble Mr. Justice S. S. Shinde, Hon'ble Mr. Justice R. D. Dhanukha, and Hon'ble Mr. Justice S.V. Kotwal, the Sitting Judges of the Bombay High Court.

20th D. M. Harish Memorial Government Law College International Moot Court Competition, 2018, (8th to 10th February, 2019)

The competition is the only Indian Moot Court Competition to be included in 'Tier 2' of the Mooting Premier League (Legally India) amongst some of the most prestigious International Moots. The 20th edition witnessed a participation of numerous International Law Schools and Universities. The Competition also saw a thought-provoking Panel Discussion, which was based on *'Information and Accountability: The Pillars of Democracy'.* The eminent panellists were Mr. Mahesh Jethmalani, Mr. Shailesh Gandhi, Dr. Mukund Rajan, Mr. Gurbir Singh, Mr. Anand Pathwardhan, and Mrs. Hema Sampat.

The success of the MCA 2018 - 2019 is attributed to the consistent efforts and support of Mr. Dilip Shinde and Mr. Sanjay Kadam, erstwhile Chairpersons of the Association; Prof. Dr. U. S. Aswar, Professor-In-Charge of the Mooting Committee, Prof. Ms. S. Mathur, Prof. Mr. R. Jogani and Prof. Ms. M. Devendra, the Vice - Chairpersons of the Committee. The committee is very grateful to all the office bearers, the advisory board and the members of the association. Their camaraderie, perseverance and devotion to the Association have been instrumental to the success of every endeavour of the Association.

Yash Shiralkar
Student-In-Charge

Anjali Karunakaran
Student-In-Charge

NATIONAL SERVICE SCHEME

Sitting (L-R) : *Kumar Ashutosh, Prof. Ms. A. B. Desale, Principal Judge Smt. Suvarna K. Keole, Prof. Ms. K. Hedaoo, Kaustubh Rangari, Shrutika Barabde*
Standing 1st Row (L-R) : *Ashutosh Srivastava, Neha Hardikar, Aparna Amnerkar, Nidhi Raj, Vaishnavi Palkar*
Standing 2nd Row (L-R) : *Manav Asrani, Aditya Seetharaman, Isha Sawant, Vishaka Bhagwat, Prapti Karkera, Mansi Pimparkar, Shreya Dubey, Siddhi Kasekar, Kaumudi Tiwarkar, Juilee Naik, Manpreet Kaur Malhari, Pooja Shibire, Bhavana Kongre, Madhusudan Agrawal, Vishal Sonkamble, Ashish Nagare.*

The NSS Unit was established in 2010 with the support and guidance of Prof. Mr. P. B. Daphal, Prof. Ms. A. B. Desale, and Prof. Ms. K. Hedaoo (current Programming Officer) who have unwaveringly helped the unit to prosper and explore its potential. The GLC NSS Unit upholds the motto of 'Not Me but You' and welcomes everyone to make a difference to the society. NSS teaches and empowers students to become responsible citizens. This in turn helps them to help the less privileged in the society.

University Activities - The unit attends various activities conducted by the University like Beach Clean-up, Human Rights Rally, Disaster Management workshop, Waste Management workshop, lecture series by Public Concern for Governance Trust, Youth Day Celebration organised to raise youth awareness on various issues vital to the society.

Area Based Activities - The NSS unit has adopted the area of Walkeshwar as their Area Based Project. Classroom teaching sessions along with awareness rallies and street plays were conducted on issues such as cleanliness, addiction, environmental issues, awareness, and management. Paper bags were also made by the volunteers and distributed amongst the locals of Walkeshwar.

Residential Camp - The Winter Residential Camp was conducted in the adopted village of Karegaon, where volunteers stayed in Shashkiya Madhyamik Ashramshala. Activities took place in both the village and the Asramshala to reach out to the villagers and students. Science Exhibitions, Essay Writing Competitions, Sports Competitions, Cultural activities, and involvement of volunteers in classroom teaching were some of the ways in which students in the ashram were challenged out of their comfort zones. Street plays on addiction were also performed in the village for awareness.

Organisational Collaborations - PCGT (Public Concern for Governance Trust) and MAVA (Men Against Violence and Abuse) continuously supported the unit to raise awareness levels in youth, in a bid to challenge the issues faced by society.

NSS continues to work for the betterment of the young minds that form the building blocks of our society. We extend our heartiest gratitude to our Principal, Programming Officer, all the office bearers, seniors and volunteers of the unit, who have constantly contributed in advancement of the unit.

Kaustubh Rangari
General Secretary

PLACEMENT COMMITTEE

Sitting (L-R) : *Shruthi Hariharan, Principal Judge Smt. Suvarna K. Keole, Prof. Mr. H. D. Pithawalla, Pranvi Jain.*
Standing 1st Row (L-R) : *Khushboo Chomal, Suja Nair, Kanchan Burkul, Supriya Nair, Rajdeep Singh Jhala, Krishna Binzani, Chinmayi Kuwalekar, Priyanka Pawar, Devangi Madan.*
Standing 2nd Row (L-R) : *Sushant Dhakane, Kushal Boolchandani, Tushar Pancholi, Kevin Santhosh, Devansh Gadda, Karan Agrawal, Rishabh Kurade, Rushikesh Ghadge, Atharva Khadilkar, Devavrat Nimbalkar, Prajak Waghmare, Manav Asrani, Ashray Vinayaka, Sangram Kokate, Kaustubh Kapote.*
Floor (L-R) : *Anushka Bhosale, Manpreet Kaur Malhari, Lajja Mehta, Nidhi Thakur, Swarupini Srinath, Siddhi Kasekar, Shalmali Kunte, Saanchi Dhulla, Srishti Agrawal, Apurva Jadhav, Ruchi Wagaralkar, Vyoma Joshi.*

The Recruitment Coordination Committee, commonly referred to as the Placement Committee is a team of highly motivated students who work towards achieving the goal of obtaining desired placement offers for the students of GLC. The Committee's flagship events are its Bi-Annual Placement Programmes, conducted in the month of September and February each year which involves participation of law firms, corporates, counsels, from all India. Additionally, the Committee also provides internship opportunities to the students throughout the year in coordination with the law firms. The Committee also facilitates the filling of other vacancies in companies (Associates, Articled Clerks etc.) by coordinating with such companies and the suitable candidates.

In order to achieve its goal of providing opportunities to the students of the college, the Committee carries on a broad range of activities such as organizing Pre-placement talks by company representatives, compiling and forwarding applications from students to the recruiter and complete management and coordination till the end of the procedure, facilitating group discussions and interviews and assisting with job offer and acceptance procedure. Other activities of the committee include preparation of the placement brochure for final placement, Campus Recruitment Drives, communication, networking and relationship building with potential recruiters, invitation to recruiters to visit the institute, general follow-up, joining formalities and other administrative activities.

This year the Committee organized several placement talks, one of which was by IDP Education Limited. Mr. Anoy Sengupta and his team spoke to the students regarding various aspects of the application process to foreign universities for higher studies with respect to fee structure, scholarships and application procedure etc. Veritas Legal also conducted a Placement talk in college this year wherein they spoke about the firm, the associate experience and their recruitment procedure emphaising on the importance of academics.

The committee would like to take this opportunity to extend our gratitude to our ever so supportive Professor-in-Charge, Prof. Mr. H. D. Pithawalla. The committee would also like to thank all its fromer members for their unconditional support and constant guidance, and also the entire body of senior co-ordinators and members of the Committee for their dedication and hardwork, which made this year a successful one for the Committee.

Pranvi Jain

Pranvi Jain
General Secretary

SMT. VINATADEVI TOPE SOCIAL SERVICE LEAGUE

Sitting (L-R) : *Ritesh Patil, Wyndennelle Noronha, Alister Sequeira, Keya Shah, Prof. Mr. S. Gaddapawar, Principal Judge Smt. Suvarna K. Keole, Prof. Mr. P. B. Daphal, Vaishnavi Palkar, Prasad Chaudhary, Aishwarya Tandekar, Sachin Pawar.*

Standing (L-R) : *Aditya Chavan, Isha Sawant, Rakshita Singh, Manpreet Kaur Malhari, Rajvii Gandhi, Kaumudi Tiwarekar, Vishaka Bhagwat, Juilee Naik, Kedar Mayekar, Jitesh Shibire.*

Smt. Vinatadevi Tope Social Service League established in 1966 by the then Principal Dr. T. K. Tope is one of the oldest student committees of our college. The league works to pursue its motto *'in pursuit of social justice'*. In the academic year 2018-19, SSL organized the following events:

12th Annual Exhibition cum Charity Sale – *Shikhar*. It provides a platform to various non-profit organizations to set up a stall exhibiting products made by the them and sold by the students of our college allowing them to showcase their creativity and providing them with economic sustainability through the sale proceeds.

Udaan 2018–An inter-NGO talent competition was organised to provide under privileged students a public platform to showcase their talent and lend them an opportunity to interact with students from various parts of the city. This year the theme of the event was *'Khelo India'*, with the tag line as *'Kheloge Kudoge Hoge Nawab'*. The event was graced by Dr. Vishwambhar Jadhav, a pioneer in the field of physical education.

NGO Visits - The League undertook various visits to NGOs with the students to create an understanding and awareness among the students of the work the NGO undertakes and to assist the NGO in achieving its objective.

Additionally, the league also organised and Old Age Home Visit, a bird camp, a schooling program, the Social Leaders' Internship Programme and a cancer awareness programme.

We would like to take this opportunity to extend our gratitude to our Principal and Professor-in-Charges, Prof. Mr. S. Gaddapwar and Prof. Mrs. P. Mehta. We also thank our Committee, former Office- bearers and members whose support enabled the League to accomplish its goals.

Keya Shah
General Secretary

SPORTS COMMITTEE

Sitting (L-R) : *Siddhesh Pawar, Prof. Mr. V. G. Athawale, Prof. Dr. U. S. Aswar, Principal Judge Smt. Suvarna K. Keole, Prof. Dr. R. S. Ratho, Arjun Parmar, Aayush Grover*

Standing 1st Row (L-R) : *Naman Lodha, Rushikesh Kekane,Bhanu Pratap, Neha Pethkar, Mahesh Dube, Kunal Khond, Saad khan, Ashish Nagar, Labhesh Aldankar, Nikhil Jalal, Abhinav Rai*

'All work and no play makes Jack a dull boy' is the guiding principle of the Sports Committee. Needless to say, the benefits of sports in the overall development of an individual are unparalleled. Therefore, the committee nurtures a passion for sports and provides an opportunity to all the students to represent the college. Given the number of talented sportspersons at our disposal, an active Sports Committee is integral in allowing the same to continue their passion as well as proudly represent College in the same.

The year 2018 - 19 has been momentous in its achievements. The accolades have flown in and the success of our teams and athletes has been remarkable. Our college has been well represented at all the sports fests and has bagged various medals for Football, Cricket, Badminton, Basketball and such other events.

We would like to take this opportunity to thank everyone who has assisted us off the field which enabled us to achieve what we have, on it. The Chairperson and Vice-Chairperson of the committee Prof. Dr. R. S. Ratho and Prof. Dr. U. Aswar have been enthusiastic as always and we could not have been more appreciative. We are grateful to our Principal, Judge Smt. Suvarna K. Keole, whose support has enabled us to grow as a committee. Finally, the Committee would like to express my immense gratitude to all faculty members and office staff for their unrelenting encouragement and support, without which the logistics and execution of many of our tournaments would not have been possible.

STUDENTS' COUNCIL

Sitting (L-R) : *Sakshi Bhalla, Prof. Dr. R. S. Ratho, Principal Judge Smt. Suvarna K. Keole, Prof. Mr. S. A. Dalvi, Kajol Punjabi*
Standing (L-R) : *Samarvir Singh, Ayush Gupta, Mitali Gopani, Renuka Sable, Sonu Bhasi, Manasi Bhushan, Neha Mane, Parth Indalkar, Shakya Dev Chandra*
Inset : *Vanya Utkarsh*

The Students' Council, a statutory body under the Mumbai University Act, is the apex body to address grievances of students of the College and it seeks to enhance cooperative interaction among faculty, administrative staff and students. The academic year 2018-19 was an extremely successful year for the Students' Council.

In pursuance of providing the students with an opportunity to interact with scholars in the field of law and understand their perspective on a certain issue or concept, the Council hosted the following lectures:

i) '*Constitution of India- Legal or Political Document*' by Mr. Aspi Chinoy, Senior Counsel, Bombay High Court

ii) '*How to prepare for Studies at Global top tier law schools*' by Ms. Heather Wallik, former Assistant Director, Admission and Financial Aid, Harvard Law School

The Students' Council organized the Convocation ceremony for the batch of 2017-18 and the Prize Distribution ceremony for rankers and annual award winners for two previous academic years.

Additionally, the Council helped the college administration implement the online admission process for all students from this year. The Council also helped the students who were either marked absent or whose results were withheld to approach the University and solve their issues.

At present, the Council is endeavouring to make all the recordings of various guest lectures and other events organized by various committees available online to students not only of GLC but also other institutions who could not attend the same due to any reason. The Students' Council is grateful to the Principal, Professors, administrative staff and the students for their unstinting support and encouragement which made this year successful and productive for all.

Kajol Punjabi
General Secretary

STUDENTS FOR THE PROMOTION OF INTERNATIONAL LAW

Sitting (L-R) : *Brihad Ralhan, Prof. Ms. S. Masani, Principal Judge Smt. Suvarna K. Keole, Prof. Mr. V. Shroff, Priyanka Rathore, Janhavi Patankar*
Standing 1st Row (L-R) : *Pratik Saini, Shrutika Barabde, Nidhi Raj, Anusha Shah, Disha Mantry, Kushan Kode, Mehul Bacchawat.*
Standing 2nd Row (L-R) : *Nimrat Dhillon, Maitry Gandhi, Souparnika S., Simran Grover, Srishti Agarwal, Nidhi Patel, Akshita Tiwary, Ira Gosavi, Saanchi Dhulla, Nidhi Thakur, Dyaneshwari Esave, Shreya Dubey, Siddhi Ghorpade, Vishakha Bhagwat, Vyoma Joshi, Drasti Jain, Arya Madhani, Alessandra Shroff, Sanya Sud.*
Floor (L-R) : *Devavrat Nimbalkar, Samihan Vinchurkar, Rishabh Kurade, Rushikesh Ghadge, Bhalchandra Jadhav*
Inset : *Anushka Mehta*

Students for the Promotion of International Law (SPIL) Mumbai, was born in furtherance of a desire to understand the tumultuous nature of International Relations and to promote a greater awareness and appreciation of International Law. The theme for the year 2018-2019 was *'International Data Protection Law and Privacy'*.

SPIL in collaboration with the ADR Cell had the opportunity of hosting Mr. Rahul Donde, in August, 2018 who delivered an engaging lecture on *'Investment Arbitration: Procedural Aspects and a Reflection on the Indian experience'*.

The 2nd Edition of Intra Judgment Deliberation Competition was held in September, 2018. The participants from GLC represented the Judges of the International Court of Justice. Keeping up with the tradition, this year too, SPIL has maintained an unwavering focus on the dissemination of knowledge and promotion of International Law.

SPIL also organised a lecture delivered by Prof. K. L. Daswani, on *'The Laws of War'* in September 2018. With his vast knowledge and expertise, he took us through the various aspects of International Law and the present cases of importance across the world.

SPIL in collaboration with the ADR Cell also hosted an orientation session on *'Chartered Institute of Arbitrators (CIArb) student free membership scheme'* in October, 2018.

The 4th Mumbai Judgment Deliberation Competition held in October, 2018 took up the need to discuss the Extradition treaty of India and Afghanistan and the implication of international laws and the Government's role in the present situation.

We presently look forward to a successful Summit awaited to be in the month of April, 2019.

Priyanka Rathore
General Secretary

GOVERNMENT LAW COLLEGE TEACH FOR INDIA SOCIETY

Sitting (L-R) : *Yugandhara Rane, Prof. Ms. A. B. Desale, Principal Judge Smt. Suvarna K. Keole, Mitansh Shah, Freya Irani*
Standing 1st Row (L-R) : *Isha Prakash, Rhea Rao, Anoushka Shetty, Aditya Bharadwaj*
Standing 2nd Row (L-R) : *Viraj Vaidya, Prapti Karkera, Swarupini Srinath, Ira Gosavi, Nidhi Thakur, Arya Madhani.*

Although it has only been slightly over three years since the Government Law College Teach For India Society was founded, the Society has taken strong strides towards achieving its goal *'Each one, teach one.',* in this short time frame. The society's principal activity, year-round, has been several classroom visits in schools all across Bombay, to inculcate awareness on legal and non-legal topics of relevance, as well as general topics complimenting basic education.

The academic year of 2018-19 began on an inspiring note as the Society provided the students of Government Law College the much sought-after opportunity to intern as well as volunteer with Teach For India. Soon after, the Society commenced its classroom visits in a multitude of schools across Mumbai, teaching a wide age group of children ranging from grades 1 to 10 covering topics such as environmental awareness, personal hygiene, civic responsibilities, and the Olympics. The legal sessions conducted were on palatable topics such as democracy, Fundamental Rights, Fundamental Duties, the Constitution, sovereignty, the judiciary system in India, and human rights and ethics. The primary goal of these sessions was to encourage the children to discuss these sensitive issues and make them aware of the general and legal recourse available to them to tackle the same.

Additionally, the Society organised an MUN conference in March 2018 for the students of all these schools, giving them a further opportunity to develop their public speaking skills and explore their diplomacy abilities.

Lastly, we would like to thank our Principal and our Professor-in-Charge, for their unyielding support and guidance throughout the year. Our endeavors would have been far from successful without the invaluable support of Ms. Shaheen Mistri, CEO of Teach For India, Ms. Ashbira Singh, College Relations Lead, and all the fellows of Teach For India who welcomed us into their classrooms during the course of this year. The members of our society have played a monumental role in making this year a successful one, and our annual report would be far from complete without thanking them for their enthusiasm, industry and passion.

Mitansh Shah

Mitansh Shah
President- GLCTFISoc

GLC Achievers

EXAMINATION RANK HOLDERS FOR THE ACADEMIC YEAR 2018-19

FIVE YEAR LAW COURSE

V-I:

Akshaya Rengan	First
Anjali Kumari	Second
Khushboo Chomal	Third

V-II:

Khubi Agarwal	First
Hina Tolani	Second
Sukriti Ajay Kumar Riti	Third

V-III:

Pooja Agarwal	First
Kirti Bhardwaj	First
Raina Kanungo	Second
Anushka Merchant	Third

V-IV:

Vanya Utkarsh	First
Archana Padmanabhan	Second
Sanaya Patel	Second
Mrunali Lanjewar	Third

V-V:

Riddhima Kedia	First
Manasi Bhushan	Second
Mahima Shrimali	Third

THREE YEAR COURSE:

III-I:

Kangana Pandiya	First
Kasab Vora	Second
Snigdha Singh	Third

III-II:

Rohan Manohar	First
Sidharth Agarwal	Second
Darshi Shah	Third

III-III:

Bhoomi Daftary	First
Sonu Bhasi	Second
Yash Dhruva	Third

MOOT COURT ACHIEVEMENTS

Symbiosis Law School Pune - International Criminal Trial Advocacy, 2018

Nikita Shaw	Winners
Pranvi Jain	
Kavita Mohanty	Best Advocate

25th M.C. Chagla Memorial GLC National Moot Court Competition, 2018

Ayesha Qazi	Semi-finalists
Aadil Parsurampuria	
Devansh Shah	

17th Amity National Moot Court Competition, 2018

Vasudeva Kashyap	Runners Up
Gaurang Mansinghka	
Anuja Mandekar	

3rd Amity National Moot Court Competition, 2018

Bharat Mirchandani	Semi-finalists
Tanya Chib	
Vatsla Varandani	

1st Surana and Surana and Ramaiah College of Law National Tort Law Moot Court Competition, 2018

Bryan Pillai	Best Team
Anjali Karunakaran	
Soham Banerjee	Best Speaker

16th All India Moot Court Competition, 2018

Tanya Jain	Best Team
Pooja Khimani	

3rd NUSRL National Trial Advocacy Competition, 2018

Mallika Dandekar	Winners
Drasti Gala	Best Team
Abhishek Nair	

2nd VES National Moot Court Competition, 2018

Pranav Nair	Best Memorial

Burjis Doctor
Ameesha Tripathi

4th National Moot Court Competition, Rajiv Gandhi School of Intellectual Property Law, 2018

Disha Mantry	Best Researcher

Insolvency and Bankruptcy Moot Court Competition, National Law University Delhi, 2018

Prarthna Nanda	Semi-finalists
Vishwajeet Deshmukh	
Eden De Horta Ribeiro	

12th KC College National Moot Court Competition, 2018

Masira Shaikh	Winners
Yash Shiralkar	
Harshit Jaiswal	Best Speaker

(This list has been provided by the Moot Court Committee)

DEBATING ACHIEVEMENTS

NLUJ Debate 2018

Sagar Jaikumar	Runners Up
Shvabh Chakarwarti	

Symbiosis Law School, Pune Debate 2018

Cheshta Tater	Finalists (Novice)
Kavita Mohanty	
Drasti Gala	Semi-Finalists
Sharnam Vaswani	(Novice)

NMIMS Loquitur 2018

Sagar Jaikumar	Best Adjudicator
Pranav Kagalkar	Second Best Adjudicator
Altamash Kadir	Semi-Finalists
Shakya Chandra	
Suman Mitra	

GNLU Debate 2018

Anusha Shah	Finalists (Novice)
Kavita Mohanty	

Contention, BITS Goa Debate 2018

Tushar Nagar	Finalists
Yash Sangani	(Open)
Shvabh Chakarwarti	
Sagar Jaikumar	
Shakya Chandra	
Suman Mitra	
Rangan Majumdar	Semi-Finalists
Mallika Dandekar	(Open)
Aditya Ramaswamy Bhardwaj	

The IIT Bombay debate 2018

Shvabh Chakarwarti	Best Adjudicator

IIM Debate 2018

Cheshta Tater	Runners Up
Mallika Dandekar	

NALSAR Debate 2018

Pranav Kagalkar	Second Best Adjudicator

The SPCE Debate 2018

Ketayun Mistry	Semi-finalists
Ira Gosavi	

DBIT Debate, 2018

Shakya Chandra	Winners
Rangan Majumdar	
Mallika Dandekar	Runners Up
Abhishek Nair	
Anjali Kumari	

PES Debate, 2018

Ketayun Mistry	Finalists
Anjali Kumari	

St. Xavier's Debate, Mumbai

Mallika Dandekar	Runners Up
Altamash Kadir	

(This list has been provided by the Debating & Literary society)

MODEL UNITED NATIONS ACHIEVEMENTS

SPCE MUN, 2018

Altamash Kadir	Best Delegate, AICC
Aditya Lele	Best Delegate, UNSC

NMIMS Kirit P. Mehta's School of Law MUN, 2018

	Best Delegation
Ujjwal Batra	Best Delegate, ECOSOC
Aditya Lele	Best Parliamentarian
Abhijit Bhandarkar	High Commendation
Akshita Tiwari	Special Mention, EU
Suman Mitra	Special Mention, UNSC

IIT Bombay's Techfest MUN, 2018

Sagar BhanusalI	Verbal Mention, UNHRC
Ujjwal Batra	Special Mention, AUC

VJTI MUN XVIII

Drasti Jain	Special Mention
Girdhar Bhansali	Special Mention
Aditya Lele	Best Parliamentarian
Rangan Majumdar	High Commendation
Altamash Kadir	Best Delegation
Shakya Chandra	Historic UNSC
Apurva Singha	Best Delegation, UNSC
Abhijit Bhandarkar	

SPIT MUN, 2019

Ritika Neogi	High Commendation, UNHRC

Flame MUN, Pune, 2019

Shubham Kulkarni	Best Parliamentarian

VITMUN, Mumbai 2019

Altamash Kadir	Best Delegate
Suman Mitra	High Commendation
Shakya Chandra	Hon'ble Mention

(This list has been provided by the MUN Society)

ALTERNATIVE DISPUTE RESOLUTION ACHIEVEMENTS

4th NLS NMC, 2018

Misha Matlani	Best Mediator
Shvabh Chakarwarti Shreya Mundra	Runners up (Negotiation)
Arushi Dua Brihad Ralhan Mitansh Shah Abhilasha Agrawal	Semi-finalists (Mediation, Client - Attorney)

International Negotiation Competition, 2018 – Cardiff

Shreya Mundra Shvabh Chakarwarti	India Contingent

7th NLIU INADR International Law School Mediation Tournament, 2018

Shreya Mundra	Runners up
Revathisri Regulagedda Shvabh Chakarwarti	Second Best Advocate - Client Team

Lex Infinitum International Mediation Competition, 2019

Revathisri Regulagedda Aditya Deshingkar	Runners Up (Negotiation)

Lex Knot ICFAI, 2018

Kavita Mohanty	Best Mediator
Aditya Deshingkar	Runners up
Siddharth Singh Rajput	(Client-Attorney)

(This list has been provided by the ADR Cell)

Awards

6th Nivedita Nathany Memorial Award, 2018

Shreyansh Jain	Winner
Srishti Dugar	Special Mention
Abhishek Devadiga	

About the Members

Isha Prakash

If you don't know Isha, there's a high chance you're going to be intimidated by her poker face, stoic expression and air of indifference. However, the second the shell breaks, you see someone who is brimming with sarcasm, exploding with wit and has been blessed with a decent amount of intelligence too. Jokes apart, (something that's not possible with Isha) you're definitely in for great conversations, on most topics under the sun, that don't end because of the comfort and warmth Isha brings.

Kanika Kulkarni

You can always rely on Kanika to put things in perspective when things get tough at mag. Her sense of clarity and pragmatism keeps the rest of the team grounded amidst the daily hustle of the committee. A mood-lifter, a perfect partner-in-crime and someone you need on a creative team, Kanika has been integral in making *méLAWnge* 2018-19 what it is. A born bookworm, and an absolute wonder with a computer, she can make the most trying situations seem effortless. The one thing you wouldn't want to rely on her for would be her sense of direction or her definition of the term "reasonable".

Misha Matlani

Misha is a force to be reckoned with. Her level-headedness has kept the team balanced and steady through the course of the year. Misha's creativity, her insightful ideas and her practical approach to fixing problems with as little fuss as possible have made her indispensable. Misha, armed with her signature sweet smile can brighten up the gloomiest of moods with a little laughter and a lot of food. A certified people's person, Misha can draw out a conversation from the most reticent of souls. Her pragmatism and optimism has kept this committee going through the hardest of times.

Priyanshi Vakharia

A human octopus, who is always working on atleast 5 things at once, though somehow you can be sure that she will do it all perfectly. You can find her lurking round in the All Committee's room or the library, with a load of books in one hand and a ridiculous sense of humour in the other. Efficiency aside, one of her best qualities is that she will always have her team's back no matter what, and that is what makes her a really good leader. You may have known her for years and she will still leave you surprised with her past and present accolades. This edition of *méLAWnge* would have been incomplete without her constant voice modulations and perfect imitations.

Rhea Rao

For all those who don't know Rhea Rao, get at it right away! One of the most friendly and approachable people at college, Rhea's cheerfulness is mighty contagious and spares no one. Her face is one that will instantaneously bring you both, relief and joy when you feel lost in a room full of people or just life, in general. Despite her height proving to be a major 'short'coming, she still effortlessly manages to stand out in a crowd- but make no mistake, this bubbly and chirpy girl next door, is also easily one of the brainiest of the lot. But most importantly, she is everything one wishes to have in a friend and genuinely much much more.

Akshita
Tiwari

Ameya
Vombathkere

Anushka
Bhosale

Apurva
Damle

Ayushi
Tripathi

Drasti
Jain

Nehal
Gaikwad

Nidhi
Thakur

Nimrat
Dhillon

Parul
Nayak

Prajak
Waghmare

Priyanka
Chauhan

Rebecca
Koshy

Rima
Jain

Ruchi
Wagaralkar

Sejal
Loya

Shrishti
Agarwal

Shumaila
Qureshi

Siddhi
Ghorpade

Souparnika
Seshadrinathan

Suchita
Rankhambe

Sushant
Dhakane

Tanishq
Mohta

Tanya
Goel

Vedant
Bajaj

ACKNOWLEDGEMENTS

We express our heartfelt gratitude to the following people who have, in their own way, assisted the Magazine Committee in all its endeavours:

- Mrs. Justice Sujata Manohar (Retd.), Judge of the Supreme Court of India, for her time and co-operation.
- Mr. Thomas Valenti, conflict resolution specialist, Mr. Naresh Thacker, Partner at Economic Laws Practice, Advocates & Solicitors and Mr. Gary Born, Partner at Wilmer Cutler Pickering Hale and Dorr LLP, for taking time out to write for Stalwarts Speak.
- Dr. Sujay Kantawala, Advocate at the Bombay High Court, Mrs. Zia Mody, Founding Partner of AZB & Partners, Ms. Anshika Misra, Associate at AZB & Partners, Mr. Aman Kacheria, Associate at Rashmikant & Partners and Mr. Akshay Aurora, LL.M student at the Osgoode Hall law School.
- Ms. Vandita Morarka, Founder of One Future Collective, and Mr. Amal Sethi, Doctoral Candidate in Law at the University of Pennsylvania.
- Mr. Soli Dastur, Mrs. Kunti Vyas Jhaveri and the Mulla and Mulla Trust, for their sustained support in helping us organise our essay competitions.
- Hon'ble Justice Mr. S. J. Kathawalla of the Bombay High Court for consenting to judge the 18th Dinesh Vyas Memorial Government Law College National Legal Essay Writing Competition.
- Ms. Helina Desai and Ms. Amanda Rebello for judging the preliminary rounds of the 18th Dinesh Vyas Memorial Government Law College National Legal Essay Writing Competition.
- Mrs. Rashmi Palkhivala for judging the Belles-Lettres: J. E. Dastur Memorial Short Fiction Essay Writing Competition.
- Mr. Sidin Vadukut for judging the preliminary rounds of the Belles-Lettres: J. E. Dastur Memorial Short Fiction Essay Writing Competition.
- Mr. Shardul Thacker for judging the Sir Dinshah Mulla Government Law College Legal Essay Writing Competition.
- Advocate Ms. Flavia Agnes, Mr. Kunal Katariya, Ms. Sakshi Bhalla, Mr. André Charan and Mr. Janak Panicker for making Knock-Out! such a success.
- Our principal, Smt. Suvarna K. Keole and Prof. Dr. R. S. Ratho for their continuous help and encouragement.
- Prof. Mr. H. D. Pithawalla, Prof. Dr. U. S. Aswar, and Prof. Mr. P. B. Daphal for their support and guidance throughout the year.
- Prof. Mr. K. L. Daswani for taking time out of his busy schedule to make LexCryptic - a legal crossword - for the magazine and for his unstinting advice and contribution to various other activities of the Committee.
- Mr. Rajesh Bhagat, Mr. Arputham Pillai, Mr. Venu Shudarshan Bhoga, Mr. Sanjay Angane and Mr. Vishwanath Rajaram Nivalkar of Finesse Graphics & Prints Pvt. Ltd.
- Mr. Deven Goradia and Mr. Hemant Bhavsar for having made the committee photographs a success.
- Mr. B. P. Patil, Ms. S. S. Gole, Mr. S. Singh, Ms. Anushka Khair, Ms. Prajakta More, Mr. Ghumre, Mr. Borkar and all other non-teaching staff for bearing with our constant demands.

DISCLAIMER

Form IV (Rule 8)

1.	Place of Publication	: Government Law College, Churchgate, Mumbai - 400 020
2.	Periodicity of Publication	: Yearly
3.	Printer's Name	: Finesse Graphics Prints & Pvt. Ltd.
	Nationality Address	: Indian : 40364600
4.	Publisher's Name Nationality Address	: Dr. Rachita S. Ratho : Indian : Government Law College, Churchgate, Mumbai - 400 020
5.	Editor's Name Nationality Address	: Dr. Rachita S. Ratho : Indian : Government Law College, Churchgate, Mumbai - 400 020
6.	Name and address of individuals who own the newspaper and partners or shareholders holding more than 1% of the total paid-up capital	: Government Law College, Churchgate, Mumbai - 400 020

I, Dr. Rachita S. Ratho, hereby declare that the particulars given above are true to the best of my knowledge and belief.

Sd/-
Dr. Rachita S. Ratho, Publishers

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