

OUT WITH UNETHICAL 'FATWAS'
Bar Council of India must step in

TROUBLES OF THE OTHER SEX
Long road ahead for transgenders

NO BARS FOR CRIMINALS
Open jails remain non-starters

LegalNotes

DECEMBER 2017 • ₹100

VOLUME I • ISSUE 5

Don't erase
our
identity

MINORITY
IS
MAJORITY
+

MINORITY REPORT

Our Constitution does not believe in the 'melting pot' theory but stands for a 'salad bowl' concept where distinctive identities of all groups are to be celebrated and preserved, why then do communities want special status as minority communities?



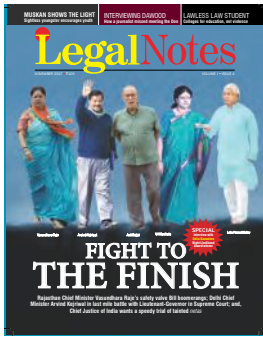
**IT'S NOT ABOUT BEING
NOTICED, IT'S ABOUT
BEING REMEMBERED**

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The cover story (LEGAL NOTES November, 2017) this time was surely your best foot forward till now. A mixed bag of stories ranging from speed trials for politicians to the Rajasthan Ordinance Bill, LN successfully covered all the stories that have shaken the legal world. The more you see the situation of the country now, the funnier it gets with the apex court on one hand wanting to bring fast track courts for the corrupt politicians and on the other, the Rajasthan government stooping down to the level of passing a bill to save the very same corrupt politicians. I somehow feel that the Ordinance Bill is just another attempt by the corrupt system to create a divide in the treatment and the rights provided by the Constitution to the



‘common man’ and the ‘politicians.’ Sadly all we can do is wait and watch.

SHALLY KANSAL
New Delhi

One of your regular sections, ‘Men in Black’ (LEGAL NOTES November, 2017) was an absolute treat to read this time. A character as mysterious and fascinating as the superheroes of Marvel, Dawood Ibrahim is someone you surely would want to meet at least once in your life, even though it might turn out to be the last meeting of your life. Only the thought of meeting Dawood created such a long lasting impression in the writer’s mind. I specifically liked the time travel that your Consulting Editor used. Reading about how the meeting never happened was no less than a heart break. A topical issue like this attached with a personal experience only makes the reading worthwhile. I sincerely look forward to read the next column.

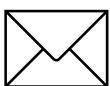
NISHANT SHARMA, Noida

A ‘Sinha’ problem in Bangladesh (LEGAL NOTES November, 2017) draws attention to a crisis that every country is facing in some way or the other, i.e. the tussle over power between the judiciary and the government. The situation of Surendra Kumar Sinha is no less than what is happening today in India with the increasing number of cases between the centre and the courts. The recent intervention of the apex court in banning cracker sales during Diwali only highlights the transgression of judiciary into executive decision-making. But instances like the state passing a new law for Jallikattu even after a ban by the SC and the sport being played as scheduled only depicts who the Boss is in the end. But to simply force a CJ to leave the country is probably the worst decision any government can take and only tells us how intolerant the government is. But nonetheless, your LN Special section is my favourite as your team always makes sure that the International story you choose is *hatke*.

AMRIT KAUR, Punjab

It surely is a proud moment for India to be the land of birth of Advocate Colin Gonsalves who has been chosen for the prestigious Alternative Nobel Prize 2017. The interview (One-on-One, LEGAL NOTES November, 2017) was an insight into the struggles of an advocate who is no less than the Robinhood of the 21st century, helping the less fortunate ones by giving them a fair chance to represent themselves. From fighting for the Rohingyas to tackling issues like malnutrition and hunger, the untold story of Gonsalves has won my heart. It was a surprise for me to read the candid comments of the Advocate that the current free legal aid system of the country is in a “shambles”. In a country that has lost faith in its judiciary, it is wonderful to know that people like Gonsalves, who are fighting for causes day and night with an unflinching sense of passion, exist. These are the heroes who make the judicial system affordable to all.

MENAKSHI GOEL, Rajasthan



WRITE US

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06 Glossary

All shall never be well for V K Sasikala aka Chinamma who dreamt of sitting on the AIADMK throne and eventually of Tamil Nadu. An infographic look at the various cases and subsequent raids against Chinamma and her family, commonly known as the Mannargudi Mafia.

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Regret not investing in Bitcoin because you were unaware of the implications of this digital currency? Rachna Singh talks about the legal framework that should surround the currency and also the chance of the Bharat coin working in India for all those waiting to put their money in crypto currencies.

46 *Tarreq pe tareeq pe tareeq!* A phrase that has always deterred a person from knocking the doors of the judiciary. Praveen Agrawal reveals that the reason for the delay in justice to victims has also a role to play with the 'fatwas' declared by Bar associations, barring lawyers from taking up the case of the accused at the first place.

36 CAPTURED

It surely was the month of radicals in Pakistan that saw the rule of people take over the rule of law.

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With the release of Hafiz Saeed and the resignation of Law Minister Zahid Hamid, Pakistan's law ministry saw itself in a shambles.

50 The relief was not just for Penny Wong but homosexuals throughout Australia after the country legalised same sex marriage. A story of the first openly gay member of the Australian Cabinet who chose to fight the discrimination against homosexuals from within the political system.

52 Focus

A sex realignment surgery by 25-year-old Manish Giri of Bihar to convert himself to Sabi Giri has turned heads across the country. It was not the bold step of changing his gender but the sacking by the Navy that followed. P P Singh pieces together the tale of Sabi who decided to take the battle to the judicial system.

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Chinnamma in deep waters!

Once hailed as the successor to Amma Jayalalithaa, Chinnamma Sasikala Natrajan and her Mannargudi Mafia have got embroiled in cases ranging from land grab, amassing property disproportionate to her known sources of income and even acquiring huge amounts of foreign exchange illegally. LN takes a close look at the quagmire that Chinnamma and her cohorts are in.

Accusations:

- Conspiracy:** On December 19, 2011, Jayalalithaa expelled Sasikala and 13 others from the AIADMK on charges of conspiracy against her. However, the matter was resolved by March 2012, when Sasikala was reinstated as a party member after issuing a written apology.
- Disproportionate assets case:** In 1996, Subramanian Swamy filed a case against Jayalalithaa alleging that during her tenure as CM of Tamil Nadu, she had amassed property worth ₹66.65 crore disproportionate to her known sources of income. The assets were in her and in the names of her confidante, Sasikala, her sister-in-law Ilavarasi, and nephew V N Sudhakaran. SC on February 2017 convicted them for four years and barred Sasikala from contesting polls for nearly 10 years.
- FERA case:** Sasikala was arrested in 1996 for Foreign Exchange Regulations Act (FERA) violations. Another case was filed against Sasikala in 2001 on charges of acquiring a huge amount of foreign exchange illegally through an acquaintance in Malaysia and utilising that money to purchase the Kodanad tea estate in Nilgiris district. The court in 2015 discharged her in two cases, but refused to discharge her from three other FERA cases of JJTV.

Raids:

- Poes Garden bungalow of the late Jayalalithaa
- Offices of Jaya TV, Namadhu MGR and premises in Tamil Nadu, Puducherry, Hyderabad and Bengaluru.
- Firms and farmhouses of relatives and friends of Sasikala.
- Kodanadu Estate, Jayalalithaa's favourite resort in the Nilgiris
- Residence of Sasikala's husband Natarajan in Thanjavur
- Houses of her brother Diwakaran in Mannargudi
- Midas Distillery at Padappai, owned by Sasikala's relatives.
- Home of her niece Krishnapriya in Chennai, where Sasikala stayed while on parole
- Jazz Cinemas, Midas Distilleries, Sharada Paper and Boards, Senthil Group of Companies, Nilgiri Furniture in Coimbatore

Seizures



₹6-7 crores of cash along with 8.5 kgs of gold.



₹1,430 crore worth of investments in real estate.



Sengamala Thayaar Educational Trust Women's College at Sundarakottai near Mannargudi owned by Dhinakaran sealed. About ₹55 lakh in cash seized.



Though the key target was the family that operates Jaya TV, the other nine groups we now believe had some kind of monetary transaction with them."

SENIOR OFFICER,
Income Tax Department



Amma (Jayalalithaa) utilised her (Sasikala) fully, but went (died) without giving her any protection."

V DIVAKARAN
Managing Trustee, Sengamala Thayaar Educational Trust Women's College.

Mannargudi Mafia



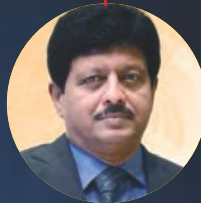
M Natarajan (Husband)

In February 2012, arrested for a land-grabbing case in a village in Thanjavur.



T T V Dinakaran (Nephew)

Former AIADMK Rajya Sabha MP, Dinakaran was found guilty of money laundering and benami transactions in a 1996 case (FERA). The Madras HC on January 6, 2017 confirmed the penalty of ₹25 crores imposed on Dinakaran by the ED.



V Divakaran (Brother)

Charged with two land grab cases, both registered by the Jayalalithaa government in 2012.



T T V Bhaskaran (younger brother of Dinakaran)

MD of JJTV allegedly made "off-the-record" payments of USD 500,000 to an American company (FERA case).



V N Sudhakaran (Nephew) and J Ilavarasi (her deceased brother's wife)

Both co-accused in disproportionate assets case with Sasikala.



She (Sasikala) has no documents. She has already parked the money in Dubai and UK."

DEEPAK JAYAKUMAR
(Jayalalithaa's nephew)



PM Modi and Arun Jaitley are trying to destroy our family using the I-T Department."

TTV DINAKARAN
Deputy General Secretary and former AIADMK MP





K Srinivasan

Editor's note

BROADCAST VIGILANTISM

S ometime in the second week of November, when the Karni Sena's lawlessness made life uncomfortable for Sanjay Leela Bhansali, the Director of *Padmavati* decided that he too must commit a lawless act, minor in comparison, though, to the vandalism of the Karnis.

If the Karnis could make up their mind without seeing a frame of the film, Bhansali decided that the best way out was to show the film to those who could broadcast his point of view to the world at large; of how good a movie *Padmavati* was and how well he had projected on screen the legendary Rani's courage and the valour of the Rajputs. And this he decided was best done on primetime news for which he hand-picked two of the most prominent nine pm faces.

Now mind you, this is not a dog-bites-dog story and I have no desire to castigate fellow professionals for having watched the movie and then put forth Bhansali's perspective from their bully pulpit on evening primetime. But this entire exercise of Bhansali — of showing the film to them privately, their acceding to view it privately, their then broadcasting their reviews to millions of viewers on primetime does raise a few troubling questions. Let me try and outline them for you.

If the Karnis could make up their mind without seeing a frame of the film, Bhansali decided that the best way out was to show the film to those who could broadcast his point of view

Was it right for Sanjay Leela Bhansali to screen an uncensored version of *Padmavati* to the notables?

Censor Board Chairman Prasoon Joshi slammed Bhansali (with whom he collaborated as a lyricist in the acclaimed film, *Black*) and told the *Indian Express* that it “sets an opportunistic precedent” and attempts “to subvert the existing norm of film certification.”

Joshi further added: “It is disappointing that the film is being screened for the media and getting reviewed on national channels without

the CBFC having seen or certified the film. This compromises the role of systems and balances that are part of a functioning industry.”

He is right and Bhansali really had no defence. Sadly, he took the easy way out when the Parliamentary Standing Committee on Information Technology wondered how ethical was it for him to show an uncensored film, by stating that he had made a “mistake” to have shown the film without certification. If something like this had happened in the US or in Europe, the authorities would have imposed a hefty fine on the Producers – big enough to hurt them. But this is India, Bhansali got away with a ‘sorry.’ So, don't be surprised if it happens again and again and again. After all, the price one pays as penalty is a five letter word called, ‘sorry’!

Were our primetime superstars right in viewing the film and then using their platform to project the Bhansali viewpoint?

Now, this is a tricky question. As journalists, their job entitles them to huge bandwidth — cultivate crooks as sources, thugs as informants, meet with all sort of unsavoury characters, interview the most diverse of people — good, bad and indifferent— and participate in the most bizarre of adventures to further the cause that they say they represent— good journalism, and informing the people about the unvarnished truth.

Therefore, it is not for them to take a call over the legality of watching a film. That is an issue for Sanjay Bhansali, who made it available to them in the first place, to address. For them, it was a juicy opportunity to view some exclusive footage and they grabbed it with both hands. Any journalist worth their salt should do that.

And, this is where the issue gets a little complex. The film was seen and reviewed on primetime as a fine example of courage and

valour. One of them said on air, “I understand the feelings of people who have been hurt by this film, but their anger is merely based on hearsay. I will humbly appeal to all my Rajput brothers and sisters to watch this film at least once and then decide.”

One wonders if issuing appeals and certifying films on primetime is the job of journalists. But that’s what Bhansali wanted and that’s what he got. He wanted a bully pulpit response to his woes, in effect a rapid action force that could help him take on all comers.

That is one of the dangers that confronts journalism in this era. Where the 9 pm news is the be-all and end-all of all things good and bad and nothing else really matters. If you have smelt it there, you have smelt the roses.

It is this broadcast vigilantism that is increasingly seen across the Indian media landscape that is worrying. A situation where it is the visuals and byte on the small screen that sets the agenda or acts like a trigger for a tremor.

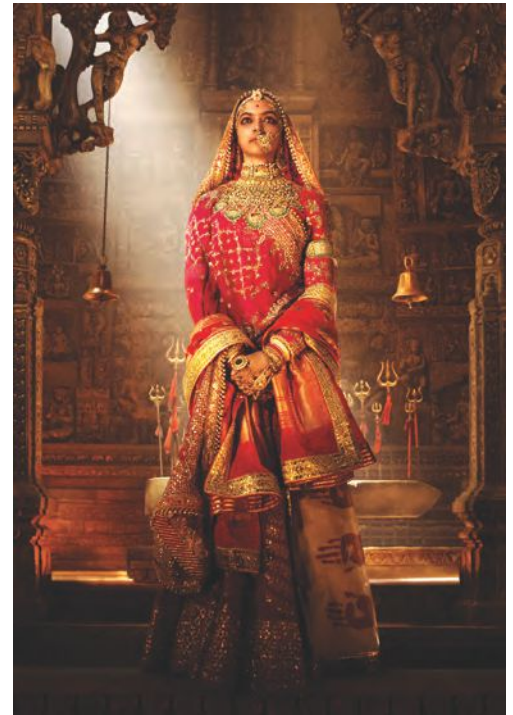
The Karnis wanted their act on TV and they got plenty of space to exhibit their wares and when the tremors reached seismic proportions, Mr Bhansali was forced to go to the masters of the Pulpit extolling the virtues of his film on telly. Is that fair, is the question that we need to ask ourselves?

There are many other questions that La Affaire Padmavati has produced. Here are a few:

- ✓ The astonishing feat of several Chief Ministers banning the film that had not been seen or certified?
- ✓ The astonishing fact that the highest court in the land took weeks before taking cognisance of the issue — long after the Karnis had done their damage and the likes of Yogi Adityanath had banned the film. Of course, the SC did ask everyone to shut up but that was after a raucous and high-decibel diatribe for over a month. And later a bench of Justices S C Dharmadhikari and Bharati Dangi of the Mumbai High Court said: “In which other country do you see threats made to artistes and performers? It is distressing to know a person makes a feature film and several others work tirelessly towards it but

are unable to release the film for public viewing because of continuous threats...A feature film cannot be released in this country. What have we come to?”

- ✓ The astonishing fact that there has been no action against those who had put a price on the head of Bhansali or on cutting the nose of Deepika Padukone. A fact noted by the High Court.
- ✓ The astonishing fact that MPs wondered if it was fair to even depict the banned practice of Sati on screen. By that yardstick, no rape no murder that is part of a story can be shown on screen.



All in all, *Padmavati* was a rivetting made-to-order story for television. Filmstars, controversy, drama, angry demonstrations and what have you. The sort of cocktail that is the ‘*khurak*’ that our channels love. As one reporter exclaimed when death threats were issued to Bhansali and Deepika: “*Hafta bhaar ka masala mil gaya.*” It tells us much about the way TV is run in this country where any controversy means several hours of confirmed news feed. A juicy subject for the bully pulpit and a large audience, a majority of which peers at the screen as if it were the Colosseum where the next round of blood-letting would commence shortly.

There are no rules, no respect for laws, it is quite simply broadcast vigilantism if you will.

srini@newslines.in

All in all, *Padmavati* was a rivetting made-to-order story for television. Filmstars, controversy, drama, angry demonstrations and what have you. The sort of cocktail that is the ‘*khurak*’ that our channels love.

FIERY AND UNSTOPPABLE

"It's appalling, it's absolutely appalling. What have we gotten ourselves into? And where have we reached as a nation? We have regressed. The only people we are answerable to is the censor board, and I know and I believe that nothing can stop the release of this film."

Deepika Padukone
Actress

OUT, DAMNED MOVIE! OUT, I SAY!

The drama over the release of *Padmavati* has evidently stretched more than the actual length of the film. With state's CMs and fringe groups supporting the burning of effigies, issuance of death threats and the censor board not reviewing the film, the fundamental question behind the ruckus still remains unanswered, who really has seen the film?

DIVIDED WE FALL

"The Padmavati controversy is not only unfortunate but also a calculated plan of a political party to destroy the freedom to express ourselves. We condemn this super emergency. All in the film industry must come together and protest in one voice."

Mamta Banerjee
CM, West Bengal

GIVE IT A CHANCE

"There is no scene between Rani Padmavati and Allahudin Khilji in the film that will hurt anyone's sentiments. We have made this film with great responsibility and have taken care of the maan and maryada of Rajputs."

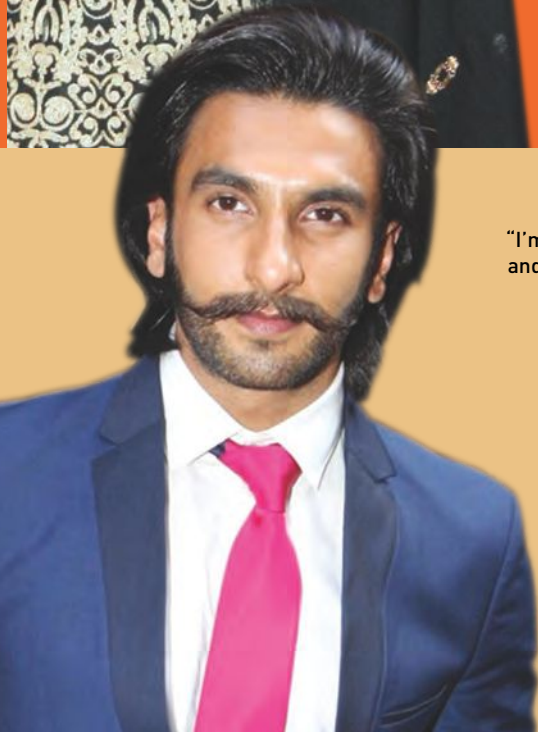
Sanjay Leela Bhansali
Film Director



SORTED

"I'm 200% with the film and my director Sanjay Leela Bhansali."

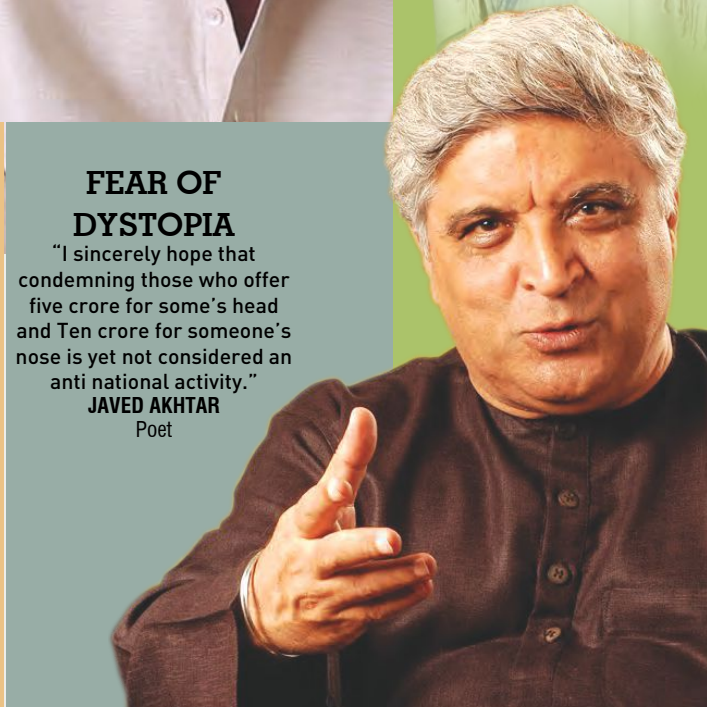
Ranveer Singh
Actor



FEAR OF DYSTOPIA

"I sincerely hope that condemning those who offer five crore for some's head and Ten crore for someone's nose is yet not considered an anti national activity."

JAVED AKHTAR
Poet



UNDERSTAND THE CONSEQUENCES

"...All concerned people, holding responsible posts must be guided by rule of law and shouldn't venture into passing comments on films which haven't been cleared by CBFC. It'll prejudice minds of board members while taking a decision."
Supreme Court of India

DON'T MESS WITH HISTORY

"Nobody will accept distortion of history and those who are protesting are rightly doing so."
Captain Amarinder Singh
CM, Punjab



STOP THE PHOBIA

"Everyone gets scared when it's their film on the line. It is a small industry... There are not that many people. If they don't come together to create an environment where they themselves can function in, the way they want to, nobody else is going to do it for them."
Farhan Akhtar
Actor/Director



EVERYONE'S GUILTY YOUR HONOUR

"Nobody has the right to take law into their own hands, be it Sanjay Leela Bhansali or anybody is. And I feel that if those giving death threats are guilty, then Bhansali is also guilty of hurting people's sentiments."
Yogi Adityanath
CM, Uttar Pradesh



RAJPUT AAN BAAN

"Rajputs never raise a hand on women but if need be, we will do to Deepika what Lakshman did to Shurpanakha."
Mahipal Singh Makrana
Rajput Karni Sena member



NO COMMENTS

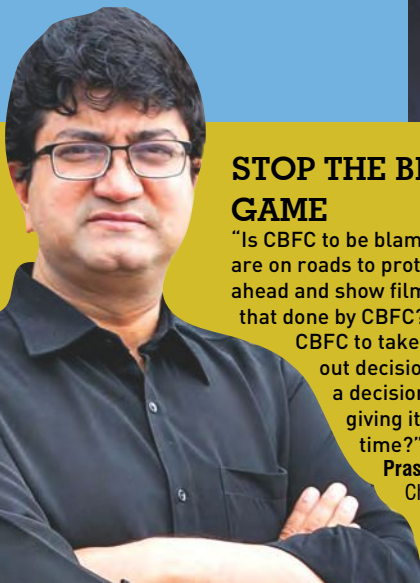
"Padmavati is, well, not my film."
Boney Kapoor
Film Producer



STOP THE BLAME GAME

"Is CBFC to be blamed that people are on roads to protest? If makers go ahead and show film to press, was that done by CBFC? But you want CBFC to take a well thought out decision. How will it take a decision if you are not giving it the space and the time?"

Prasoon Joshi
Chief, Central Board of Film Certification



WHY SET A MOUSETRAP

"Why mention real names if Padmavati is fictional? A movie is meant for entertainment, not for creating a tensed atmosphere across the country."
Anurag Thakur
Chairman of parliamentary panel



SHAMEFUL

"I'm appalled at the drama that's unfolding... it's ludicrous and I'm so ashamed of some of these Indians."
Sonam Kapoor
Actress





MAN MOHAN

UNHEARD, UNSEEN

- In an unusual instance, two hearing and speech impaired accused in a murder case were deposed through sign language before a Mumbai sessions court.

As no interpreter had turned up in court, the mother of one of them, Saifraza Bhavnagari (31), and father of the other accused, Parvez Khan (33), interpreted the questions for them and the answers for the court during the 90-minute proceedings. The accused signed their answers to over 200 questions.

Bhavnagari and Khan are on trial for the murder of Nalini Chainani (55) whose body was found in a pool of blood by her husband in their 10th floor flat at Madhuban building, Bandra

(West), in June 2013. The accused have been in jail since their arrest on June 12 that year. While the accused answered with "I don't know" or "I don't remember" to a few of the questions, Bhavnagari gestured that he was innocent.

THE UNTOUCHABLES

- No "worldly" court can direct the highest religious body of Sikhs: the Jathedars (high priests). This reaction came from former Shiromani Gurudwara Prabhandhak Committee (SGPC) chief, Kirpal Singh Badungar, recently.

Badungar was reacting to the notice issued by the Punjab and Haryana High Court to the SGPC over a petition filed by Sikh historian H S Dilgeer against a directive of the five Takht Jathedars.

The clergy had excommunicated Dilgeer and banned his books on July 27. "The Jathedars are supreme for the Sikh community. When it comes to religious matters, no worldly court can direct them," the SGPC President said.

UNDER THE TABLE GOONDAGARD!!

- Some smart lawyers practising criminal cases always stay in constant touch with the police and jail officials as they 'advice' arrested men to hire a particular advocate for defence. In return, the lawyers pay back in cash and kind.

An excellent marketing strategy – as lawyers are "barred from advertising their talents" under the rules formulated by the Bar Council of India. The roots of this law are based in



"NO HUSBAND CAN BE THE GUARDIAN OF HIS WIFE"

- In the keenly watched Kerala's 'love jihad' case of a Hindu girl Akhila turning Hadiya by embracing Islam and marrying a Muslim Shafin Jahan, there were some lighter moments in the Supreme Court, with Judges, advocates and visitors bursting out in laughter.

The Kerala HC had annulled the marriage and sent Hadiya to her parent's home. Jahan had then moved the SC pleading that his wife be returned to him.

The three-Judge Bench headed by Chief Justice of India (CJI) Dipak Misra included

Justices A M Khanwilkar and D. Y. Chandrachud. The CJI termed the case as "the most complex" he had seen as a judge.

Akhila alias Hadiya asked the judges if her husband Jahan could be "my guardian" during her house surgeon education at Salem Medical College. Amid peals of laughter, Justice Chandrachud replied that "no husband can be the guardian of his wife. At least, I am not."

Justice Chandrachud told senior advocate Kapil Sibal, representing Jahan, "Please explain to her, wife is not chattel. She is an individual, entitled to her own status in society."

the age old Victorian notions of British Common law. Legal services are considered as a 'noble profession.'

Members of the Anandpur Sahib Bar Association in Punjab recently protested against the alleged nexus between police personnel and some lawyers – as many of them were finding it difficult to get clients. They alleged that the police investigation officers in Anandpur Sahib and Nangal pressure people facing criminal charges to go to lawyers of their choice.

The protesting lawyers, including Bar president Munish Sharma, vice-president Hardip Singh Walia, general secretary Surjit Singh Teja, P K Uppal and Sandip Kaushal, said that "it was observed that of nearly 175 lawyers in Anandpur Sahib, a mere half a dozen bag all criminal cases. Many times, the police officers even threatened such people for going against their advice".



FACEBOOK/@AMERICANHOSPITAL

EVICITION NOTICE TO MOM'S WOMB

- A US court judge had to issue an "eviction notice" to an unborn baby girl for the delivery on a mother's plea!

A Utah mom in her final days of pregnancy gave her baby an eviction notice and made it official with a judge's signature. Incredibly, the baby (seems to be a law-abiding citizen in the making) obeyed.

Kaylee Bays was pregnant with her third child, a girl, and thought she was going into labour, but it stopped. She went back to her job as a judicial assistant at the Fourth District Court in Provo, and 'jokingly' asked Judge Lynn Davis to serve an eviction notice on her baby.

Judge Davis did. And it worked. Less than 12 hours later, baby Gretsel was born. Bays said the Judge told her it was his first baby eviction notice in his 31 years as a court's presiding officer. The excited mom said that the eviction notice gave her baby three days "to vacate the premises". The baby in the womb obeyed but she came 12 hours later. She didn't want to be in contempt of court.

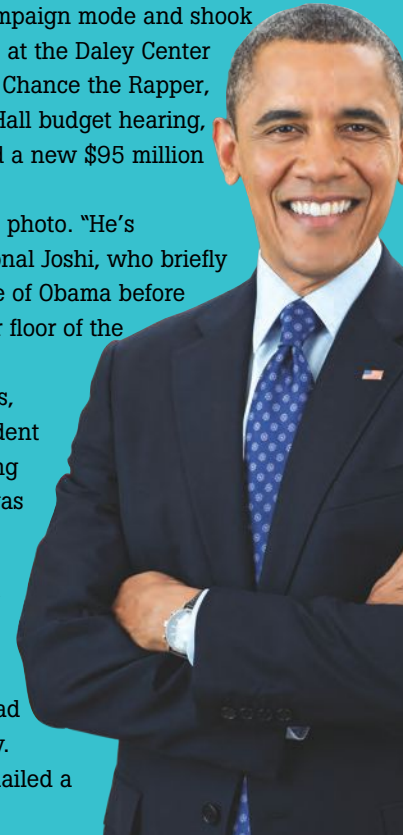
"GORGEOUS" OBAMA IN COURT

- Barack Obama, two-time US President, was invited by a Chicago Court to be a member of the jury in a case. But Obama ultimately was not chosen to sit on the jury bench. He was greeted by Chief Judge Timothy Evans on the 17th floor.

Obama came smiling as if in campaign mode and shook hands with people. His appearance at the Daley Center came as another Chicago celebrity, Chance the Rapper, testified across the street at a City Hall budget hearing, denouncing the city's plans to build a new \$95 million police academy.

Everyone tried to snap Obama's photo. "He's gorgeous!" exclaimed court clerk Sonal Joshi, who briefly came upstairs and caught a glimpse of Obama before rushing back to her post on a lower floor of the building.

There were 168 would-be jurors, including Obama. The former President watched a decades-old juror training video hosted by Lester Holt, who was once a local news anchor before landing in the big chair at "NBC Nightly News". He put a red "Juror" sticker on the left lapel of Obama's sport jacket. An hour later, it was announced that former President had not been selected to serve on a jury. Like the other jurors, Obama was mailed a check for \$17.20.



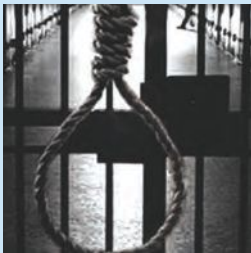
JUDGES TAKE OFFENCE ON FALSE RAPE CASE

- A fast-track Delhi court ordered the prosecution of a woman for filing a false rape case and making a "mockery" of the judicial system. "She has wasted precious time of the court. The accused persons have suffered humiliation and distress," Additional Sessions Judge Shail Jain said.

The woman had filed a rape case against a man whom she married during the pendency of the case, but backtracked from her statement in court prompting the court to take a serious view. She had complained that on January 18, 2014, the accused along with two other men abducted and raped her after drugging her. Details of the case also revealed that the complainant and the accused married in court on February 21.

The woman had met the man in April, 2013 and admitted that due to temperamental differences between the couple, she had filed a false rape case. During cross examination by the public prosecutor, she did not support the case and turned hostile. There was no incriminating evidence on record against the accused.

briefs



SC: Can we have an alternative to hanging?

In another extension to a case on the legal provision of only hanging a death convict, the Supreme Court has asked the centre to file its response on the issue. A petition filed by Advocate Rishi Malhotra referred Article 21 of the Constitution that included the right of a condemned prisoner to have a dignified mode of execution so that death becomes less painful. The apex court in its earlier hearing had termed the Constitution as a “compassionate” and “organic” guiding book and said the legislature could think of changing the law so that a convict, facing death penalty, dies “in peace and not in pain”. Drawing a comparison, the petition said that while in hanging, the entire execution process takes over 40 minutes to declare the prisoner dead, the shooting process

No more ‘pyaar with Hookah bar’

■ For all you hookah lovers who have spent hours making those perfect hoops to keep up your swag over your Instagram and FaceBook accounts, Delhi Health Minister Satyendar Jain has directed the Delhi police and municipal corporation to cancel licences of hookahs in restaurants, bars, and lounges. No restaurants, bars or lounges in Delhi will now be allowed to serve hookahs either in non-smoking or smoking zones. Pointing to the trend of considering hookah as an alternative to smoking cigarettes, Jain stated, “The Delhi tobacco control cell recently conducted several raids in restaurants, bars and lounges in various parts of Delhi, and collected samples of the mixture used in hookah. Thereafter chemical analyses of samples showed presence of nicotine in



significant amount. Whereas, they were claimed it to be herbal in nature.” Doctors too have supported the move, citing that a 30-80 minute hookah session is equivalent to smoking 100 cigarettes and hence can’t be considered a safer alternative to cigarettes.

Judicial proceedings comes under RTI

The Central Information Commission (CIC) in its latest order has held that all judicial proceedings and records would now be accessible to the public and a person, even if he is not party to the said proceedings, had a right to secure desired information. The order came after an RTI (Right to Information) was filed by YN Prasad before an evening court, seeking copy of the response filed in a complaint against the management of Redeemed Christian Church of God, Janakpuri, Delhi.

“You are not a dictator”

■ Coming down heavily on the Maharashtra government after the arbitrary cancellation of a 12,500-sq mt Goregaon plot reserved for a Christian cemetery, the Bombay High Court stated, “You are not a dictator. We are living in a democratic society.” Expressing resentment towards the move, the bench asked the government why the allotment was cancelled without any apparent reason. The bench has now directed the Commissioner and a Secretary from the Urban Development Department to appear before the court to explain the cancellation of the allotment.

Mumbai hawkers get exit notice

■ Facing traffic congestion, not finding place to walk on a footpath due to the occupancy of the same by two wheelers or hawkers is an inconvenience we all face on a daily basis. However, losing lives due to the same hawkers still remains a shock to the whole nation as it does to Mumbai after 22 commuters died and 30 were injured in a stampede at the Elphinstone Road Railway Station. The tragedy took place at an overbridge linking Elphinstone Road and Parel suburban stations that became overcrowded after people took shelter from the heavy downpour. The Bombay High Court terming hawkers on the overbridge one of

SC orders a *Swach Bharat* review

■ Looks like celebrities and politicians holding a broom and cleaning the city isn't really working out well for Prime Minister Narendra Modi's *Swach Bharat Abhyan*. The Supreme Court has put the centre on the burner and asked it to furnish in four weeks details of steps taken to implement the 18-month old Solid Waste Management Rules across the country. The bench rebuked the Centre after an affidavit was filed by the Directorate General of Health Services stated that various vector-borne diseases, including dengue, were widespread in different parts of the country because of absence of solid waste management. The apex court took *suo motu* cognizance of the outrage in 2015 when the parents of a child committed suicide following his death due to dengue.



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involves not more than a few minutes. In case of intravenous lethal injection, it is all over in 5 minutes.

Lack of basic sanitation for women cops

Not just the common man but the apathy to provide basic sanitation facilities to women cops in police stations has now come to light after a PIL was filed in Madhya Pradesh against inadequate or no facility of washrooms and retiring rooms for women cops in most of the police stations and outposts across the state. Considering the diseases that women are prone to without basic sanitation facilities, the Madhya Pradesh HC has now sought a reply from the state government over the alleged negligence.



No CCTVs in 'protection' stations

■ One of the key promises made by the AAP government before coming to power in Delhi was the installation of 15 lakh CCTV cameras in the capital. Cut to 2017, two years after AAP came to power, the government is still trying to roll out its first phase of installation in 2018. Forget about buses, streets, commercial and residential areas, the situation became laughable after the Delhi High Court pulled up the Delhi Police for not having CCTVs installed in police stations. The court, while hearing an appeal challenging a clean chit given to an employee of CSIR accused of sexual harassment, said it was absolutely mandatory for police stations in the city to have CCTVs. "CCTVs are meant for security and should exist in every police station," the court observed. In addition, it also directed the police to expedite the process of filling vacancies in order to have a greater workforce to ensure the safety of women in the city which is considered as one of the most unsafe places for women.



the main contributors behind the mishap, observed that hawkers could not squat beyond designated zones. The observation came as a reply to the claims made by the hawker unions that non-hawking zones had been abolished owing to the enactment of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and

they were free to vend anywhere after the Act came into force. The bench has now directed all municipal corporations, including the Brihanmumbai Municipal Corporation (BMC), not to allow any hawking within 100m of any place of worship, educational institutions and hospitals and within 150m of municipal markets or railway stations.



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Law ministry predicts record breaking appointments



Law Minister Ravi Shankar Prasad anticipates that the judiciary will break its own record this year of appointing the maximum number of judges – more than 126 recruited in 2016. The claim came as a response to the one day strike observed by the Odisha Bar Association over the transfer of a judge despite the shortage of judges in the Odisha HC. The Supreme Court Collegium is also said to be appointing 40 new judges to nine courts across the country. The total vacancies stand at around 397 as on November 1, 2017.

Name and shame lands housewife in jail

A 40-year-old housewife in Vellore has been arrested by the police for making negative remarks against a Madras HC judge,

Calcutta HC to hear ‘third gender’ PIL

■ The Calcutta High Court is all set to hear a PIL filed by lawyer Arnab Nandy seeking directions to the West Bengal government to introduce ‘third gender’ as an option for transgender in application forms for examinations it holds and follow the 2014 Supreme Court order that acknowledged them as neither male nor female. Gupta told *Hindustan Times*, “Bengal government is yet to introduce that option in forms for examinations, including the ones conducted by the West Bengal Public Service Commission.” Bihar became the first state to introduce

the ‘third gender’ option in Bihar School Examination Board (BSEB) tests in February this year and observed 18 students taking the test under this category. Earlier this year, the Calcutta HC ruled in favour of a transgender, Atri Kar who challenged the SBI’s recruitment procedure where it did not provide the third gender category in the application form. The court not only directed the SBI to accept Kar’s application for the post of probationary officer as a transgender person, it also directed the bank to treat Kar’s application in the reserve category as directed by the Supreme Court.



Lawyer’s son arrested for fraud

■ In what could have been one of the most ironic episode to have ever happened in the judiciary, a Patna civil court lawyer’s son, Ravnish Kumar Sinha, was arrested on the charge of using a fake website of the Patna High Court to dupe job aspirants. The fraud was unveiled by the HC to the police. Preliminary investigation revealed that unemployed youths were asked to enter their details on the website and download appointment letters. In place of the link to the list of retired judges found on the original website, the fake website had a link to the ‘panel list’ through which applicants could check whether they had been selected for a job or not. Sinha earlier worked for an IT firm where he developed and maintained websites for private clients.





MP takes the extreme view

■ Taking a strong stand against the increasing number of crimes committed against children, the Madhya Pradesh government is all set to introduce a public safety bill during the winter session suggesting death penalty for offenders who commit heinous crimes against children.

The bill seeks to tackle the otherwise worrisome statistics revealed by the National Commission for the Protection of Child Rights (NCPCR) in November 2017 that there has been a 300 per cent increase in the number of crimes against children since 2009.

No place for poor people

■ The Delhi HC has pulled up the Delhi police for not catering to the requests of poor people. Citing the instance of the missing report filed by a security guard for his wife, the court stated that the police did not take any action in finding the missing. The bench stated: "It is very regretful to state that a common man on the street has no voice, and very often complaints made by poor people such as the petitioner, who serves as a private guard earning a paltry amount of ₹8,000 or 9,000 per month, go unheeded." It was only after the court directed the police, appropriate action was taken and the wife was successfully located. But the poor chap hardly found any solace after finding his wife as she voluntarily left him and started living with another man.

Sarahah, HA, HA, HA!

■ It looks like the Delhi High Court has had its share of the conundrum surrounding frivolous apps that become instant hits over social networking sites. After dealing with the menace caused by the deadly Blue Whale game, the court has now asked the Centre to consider a ban on social networking sites and mobile applications through which abusive and vulgar messages were being sent by hiding the sender's identity. The Bench was talking about the Sarahah.com, an app that allows users to write anonymous comments to other users that eventually led to cyber bullying.



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Justice N Kirubakaran on Facebook. An active user and frequent commenter on social issues, Maha Laxmi criticised the Judge for his statement over the Tamil Nadu government teachers' strike. According to police sources, many people were engaged in trolling the Judge who later called for a report on the offensive material circulated against him. Following a protest by teachers, demanding the implementation of the Seventh Pay Commission, Justice Kirubakaran stated: "Only five government school students from the state have managed to secure medical seats. Protesting teachers should feel ashamed of this fact. They should know their responsibility. Such persons cannot be involved in strikes." The comment is said to have angered many, including social media users and teachers, who supported the strike.

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NGT gets one-member bench

In a much-needed relief for the NGT, the centre has allowed the body to form a one-member bench in exceptional cases. The regulatory body has been running low on staff since its inception in 2012. Both the regional benches in Chennai and Kolkata are currently functioning with one member benches after the retirement of expert members. The NGT bar association President, Pinkai Misra, however, termed the move as “very lazy governance”. He told *Indian Express*: “Instead of the government taking the time to fill up vacancies, it is now attempting to reduce the bench to a single-member. This may not hold water as a notification cannot amend the principal Act.”



Let me protest at Jantar Mantar

■ The Supreme Court has sought the assistance of the Centre in a case filed by a NGO seeking to allow demonstrations and protest to be held at Jantar Mantar. The NGT in October this year banned protests at Jantar Mantar stating the infringement of the rights of people to live a peaceful and comfortable life by those who create noise pollution in the name of their right of freedom of speech and expression that can never be unlimited. The NGO contested that places other than Jantar Mantar were earlier used for demonstrations but gradually all these areas were being converted to no-protest zones.

Pay up to restore Ulhas and Waldhuni rivers

■ The Supreme Court has asked the Maharashtra government to pay ₹100 crore to clean the ailing Maharashtra rivers, Ulhas and Waldhuni. The order came as a reply to a Special Leave Petition (SLP) filed by an environment group to the NGT in 2012 demanding a complete shutdown of the industries discharging deadly effluents in the rivers. The NGT too, directed the concerned municipalities to pay ₹96 crore but alas all in vain. Considered as one of the major sources of water for metropolitan areas in Maharashtra, Ulhas ranks in the top 50 most polluted rivers in the country. The state's Chief Secretary has agreed to pay the amount by January 2018. The money will be used to set up a sewage network and effluent treatment plants to treat domestic and industrial waste before it is discharged into the river.

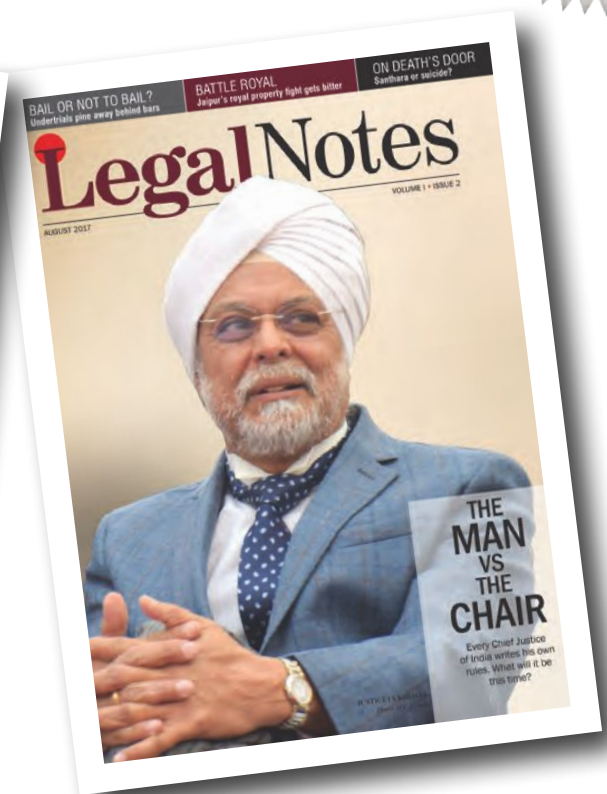
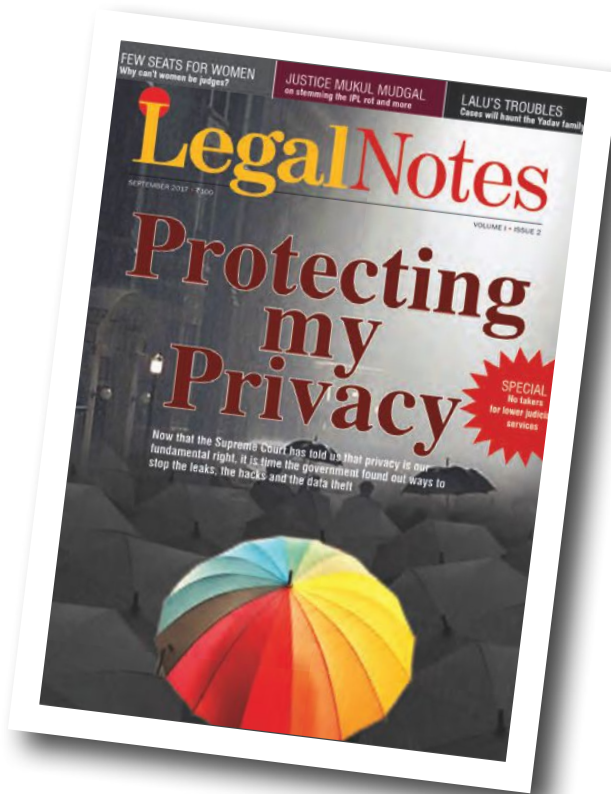


Poop poop all the same

■ In what could be one of those comic situations that the judiciary goes through once in a while, the NGT (National Green Tribunal) has directed the Central Pollution Control Board (CPCB) to take a stand on the whether it can differentiate between human and bird excreta after a retired army officer approached it alleging that faeces was splattered from aircraft on his house in South Delhi before Diwali. Aviation regulator Directorate General of Civil Aviation (DGCA), however, told that it was impossible to dump human waste mid-air from aircraft toilet and that bird droppings had landed on the complainant's house, after which the green panel had ordered testing of the excreta samples. Funnily, the CPCB told the tribunal that it didn't have any equipment to identify the excreta. The NGT then rebuked the board and stated, “It is surprising that CPCB being such a big organisation does not have sufficient equipment to test whether it is human excreta or bird.”



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Can't stop misuse of rape laws

Looks like not only the judiciary but the government is also finding itself in a tight spot when it comes to amending laws in a consensual relationship. In an affidavit filed as a response to a petition, the Maharashtra government's home department told the Bombay High Court that it was not possible to direct the police to not file FIRs (First Information Report) in rape cases lodged by a woman in a consensual relationship. According to a 2013 Supreme Court order, a police officer is duty bound to file an FIR and investigate the case. If in the later stages, the police found out the charges to be wrong, it is then under obligation to inform the court. The petition was filed by a 27-year-old doctor who has been accused of rape by a theatre actress. They had a long physical relationship but the doctor ended up marrying someone else.

'Sex'- no more a hush word

KINSEY CONFIDENTIAL

■ The state with one of the worst sex ratios in the country is set to include sex education as a part of its existing curriculum modules in schools. The Punjab and Haryana HC has directed the Haryana government to change the

course for the academic year 2018-19. The order which is expected to be implemented in Punjab will also focus on providing specialised trainers for the same. The order is said to have emerged after a set of instructions was passed by a bench heading the rape of a minor girl in 2015.

The division bench enlarged the ambit of the case and included the

issues on periodical medical checkup of the students in schools and implementation of the Adolescent Education Programme for awareness of the children and prevention of sexual and physical abuse amongst adolescents.



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Take no more!

■ Physical or emotional abuse? Financial tensions or infidelity? You now don't have to hunt a reason to end a bad marriage. According to the Punjab and Haryana HC, bad conduct of one of the partners for a long period is a valid ground for divorce. The matter came up in a hearing of a matrimonial dispute between couple where the bench observed that married life was required to be reviewed as a whole and bad conduct must be found persistent, which gave credence to the 'reasonable apprehension' to the wronged party that a spouse could 'harm' them. The court stated, "A feeling of anguish, disappointment and frustration in one's spouse caused by the conduct of the other can only be appreciated on assessing the circumstances in which the two partners have been living."

Gujarat HC to decide whether oral sex= rape

■ The Gujarat HC will soon take a call on whether forcing a wife to perform oral sex amounts to sodomy, rape or cruelty in marital life. The observations came during the hearing of a case where the wife accused the husband of forcing her for oral sex with the husband defending himself on the grounds that the act did not fall under the category of rape or sodomy because they are the married couple. As a result, HC asked government, "Can a wife initiate prosecution against her husband for unnatural sex punishable under Section 377 of the IPC? If the husband forces his wife to indulge in oral sex, will the same constitute an offence under Section 377 of the IPC? If the husband compels his wife to indulge in oral sex, whether the same would constitute an offence of cruelty within the meaning of Section 498A of the IPC?" The state government in its reply told the court that forcing a wife to perform oral sex invited charges of domestic violence and not of rape and unnatural sex.



Bhandari wins after 12 rounds

■ This is one international ‘victory’ that we can certainly shout about. It’s Judge Dalveer Bhandari’s re-election to the Hague-based International Court of Justice (ICJ). His was incidentally the fifth and the last seat of the world court.

Simultaneous voting for the 15-member ICJ were held in the UN General Assembly as well as the Security Council. In 11 rounds of voting, Bhandari received 183-193 votes from the General Assembly and all the 15 votes in the Security Council where USA, Russia, France and China — UK is the fifth permanent member of the Council — voted for Judge Christopher Greenwood. That meant that Bhandari had received two-thirds of the votes from the General Assembly while in the Security Council, Greenwood continued to get nine votes against five for his opponent throughout the 11 rounds of voting.

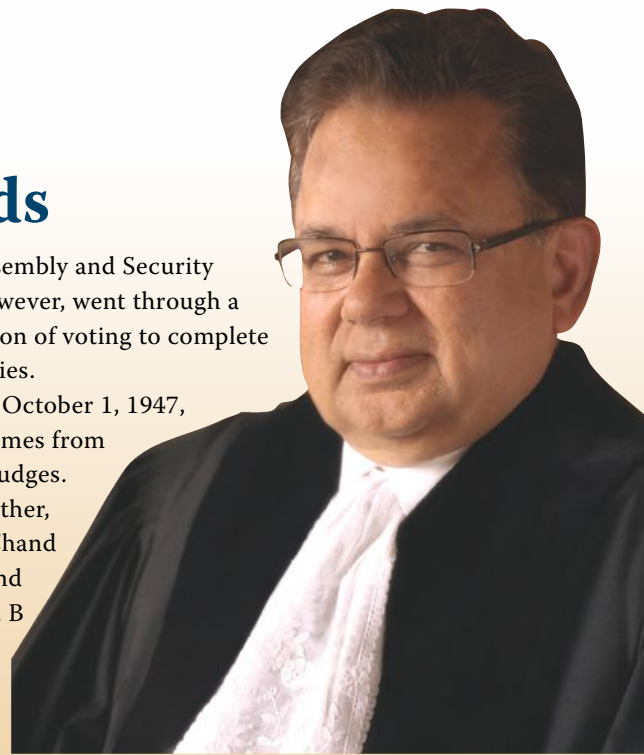
However, just before round number 12 of voting, Matthew Rycroft, the British Permanent Representative to the UN, wrote identical letters to the Presidents of the United Nations General Assembly and the Security Council, stating that the British candidate Christopher Greenwood had decided to withdraw from the election to the ICJ. Rycroft’s letter said that the deadlock would not be broken by further rounds of voting – hence the withdrawal. Since Bhandari was the only candidate left in the race, the

General Assembly and Security Council, however, went through a formal motion of voting to complete the formalities.

Born on October 1, 1947, Bhandari comes from a family of judges. While his father, Mahaveer Chand Bhandari, and grandfather, B C Bhandari, were members of the

Rajasthan bar, he was a judge in the Delhi High Court from 1991 to 2004 and also chaired the Delhi High Court Legal Services Committee, the Advisory Board of Delhi State, and the Delhi chapter of the International Law Association for a number of years.

On July 25, 2004, he was appointed as Chief Justice of the Bombay High Court and later as a Judge of the Supreme Court from 2005 to 2012. He was sworn in as a member of the International Court of Justice on June 19, 2012.



Chandigarh, you’re a beauty say crooks

■ Interstate Criminals find the city beautiful, a safe place to take refuge due to the cosmopolitan nature of the city. Offenders find it easy to mix with the young migrants in the city who come to Chandigarh for work or study. Easy availability of accommodations, congested PG (Paying Guest) accommodation, flats in housing societies and rooms in the University hostels have all turned into hideouts for the criminals.

Senior Superintendent of Police, Chandigarh, Eish Singh who is also a member of the interstate Crime Coordination Committee was quoted saying that Chandigarh had become the centerpoint for gangsters especially for hiding. There were several factors behind this. Criminals who took refuge in Chandigarh and were later arrested include wanted names like Bharat Bhusan alias Bhola Shooter and Inderjit Singh Perry.



Stop the noise and the Metro

■ The Bombay High Court directed a two member committee to hear a matter connected with noise pollution caused due to the ongoing Metro3 project in the city’s upmarket at Cuffe Parade. This was done after the petitioner and the Mumbai Metro Rail Corporation Ltd (MMRCL) failed to arrive at a cordial solution. The court was hearing a petition filed by advocate Robin Jaisinghani opposing the project on several grounds such as excessive noise caused due to the metro construction at Cuffe Parade causing major inconvenience to the residents around that area. The bench was informed that several meetings were held between the concerned parties but it did not yield any result.



A tale of the haunted memoir

■ The 'ordinary' life of Nawazuddin Siddiqui was destined to turn controversial after he decided to leak out some confidential details about his alleged affairs with his 'Miss Lovely' co-star Niharika Singh and television actress Sunita Rajwar in his latest memoir, *An Ordinary Life*. But romantic stories only go down well in fiction was something that Siddiqui realized after Rajwar filed a legal notice against him stating that the book caused

her 'mental trauma' and thus demanded an apology from the actor. Rajwar, in addition has demanded a total sum of ₹ 2 crore as compensation for using her name without her permission which she claims will be donated to charity. Niharika Singh too, accused the actor of "exploiting and disrespecting" a woman to sell his autobiography. In response, a shocked and heart-broken Siddiqui declared he would withdraw the book from the market.

SC steps in for ED Officer

■ For the fourth time in a row, the Supreme Court has stepped in to shield Enforcement Directorate (ED) Joint Director Rajeshwar Singh from departmental action since he took up the case to probe in the alleged irregular allotment of 2G spectrum during the UPA government. The officer has been up against anonymous complaints since he took over cases like the Sahara and Aircel-Maxis deal. Singh since then has approached the Supreme Court thrice asking for protection when the revenue department and the Finance Ministry wanted to take action against him based on the complaints. Asking for an investigation in the conspiracy against him, Singh has asked the court to relieve him from the 2G and Aircel-Maxis case if it wants to. The bench however, has ordered that no action must be taken against the officer by any of the authorities concerned.

'Silenced' by drug case

■ Looks like the AAP leader of Punjab, Sukhpal Singh Khaira has his gun loaded with sarcasm against the ruling Amarinder Singh government as he tagged the drug case against him as a 'favour' extended by the present government to silence him. These observations were made



in the Punjab and Haryana High Court as a bench heard a 2015 case where nine people were arrested with heroin, gold biscuits, pistols and Pakistani SIM cards in Fazilka. Khaira too, was said to be involved in the case but was later acquitted after the SIT (Special Investigation Team) was not able to find any evidence against him. Khaira's counsel, Senior Advocate RS Rai told the court, "During the course of proceedings, a trial court can summon a person as an additional accused. However, not after the conclusion of trial. That power lies with the High Court..."

Death penalty for Cyanide Mohan

■ The Karnataka HC has upheld the death penalty of serial killer Cyanide Mohan (charged in 20 cases) who preyed on damsels in distress. Mohan was held guilty by the District and Sessions court at Mangalore in 2013 for the murder of Sunanda, a resident of Sullia in 2008. Mohan is said to have lured her with the promise of job and gave her a cyanide pill as he took her to a lodge in Mysore. He later robbed her off her money and gold jewellery. Mohan was accused of luring women who were unable to pay dowry or were unable to find suitable husbands. He would kill them by giving them cyanide pills, claiming they were contraceptives, and rob them.



Net neutrality, Indian-style

■ Telecommunications Regulatory Authority of India (TRAI) Chairman RS Sharma has called for the Internet being kept open and free, and not cannibalised. "No one owns the Internet...so, it should be open and accessible to everyone. It is important that the platform is kept open and free and not cannibalised." Sharma added: "We have 500 million Net subscribers and 1.3 billion population... big things will happen on the Internet and it is important to keep it open. Networks should be neutral for the content being accessed."

No way out for Mallya



■ Weeks before a London extradition hearing, Indian tycoon Vijay Mallya faced a second legal battle after Diageo sued to recover approx ₹25 crore payment he made when he was ousted from United Spirits Ltd. last year.

Diageo filed the suit in London recently after setting out the grievances in its annual report in

August. The drinks giant claimed Mallya breached a ₹48 crore agreement – of which it had already paid

out ₹25 crore – made when he stepped down as Chairman of United Spirits in February 2016. It's also seeking about ₹91 crore over questionable payments made by companies affiliated with Mallya. His son, Sidhartha, is also named in the suit.

Diageo has amassed a 55 per cent stake in United Spirits since it first purchased a share of the Indian whiskey producer in 2013. It battled for months to oust Mallya as Chairman after an internal inquiry alleged he'd diverted funds to other companies under his control.

Last year, the British distiller agreed to pay Mallya ₹48 crore over five years to leave the company and not compete or interfere with it for five years. As part of the arrangement, Diageo also said it would release Mallya from liabilities flagged in the internal report. "Diageo is pursuing substantial repayment and compensation from Vijay Mallya and certain of his affiliate companies," a spokeswoman for Diageo said in a statement. "They include seeking compensation from Mallya for breaches of the agreements announced in February 2016 that ended his association with United Spirits."

Walkie talkie 'ok' says ICC



■ The International Cricket Council (ICC) said 'no problem' to the use of a walkie talkie by Indian Cricket Captain Virat Kohli during a recent match against New Zealand. "While walkie talkie is used by support staff to communicate between the dug out and the dressing room, Kohli had sought permission from Venue ACU (Anti Corruption Unit) manager before using it," an ICC official told the media. Though use of mobile phones is banned in the dressing room, players and support staff have access to walkie-talkies under ICC rules.

The nation will now know

■ Republic TV's Arnab Goswami will now continue to tell viewers the mystery behind Sunanda Pushkar's death after the Delhi HC refused to restrain him on airing news or conducting a debate on the same. However, the bench has asked the journalist to send an advance notice to Shashi Tharoor before airing any news regarding his wife's death. The order came after repeated applications were filed by Tharoor in his ₹2 crore defamation case against Goswami. The court had, in its earlier order, stated that the journalist and his news channel could put out stories stating the facts related to the investigation of Pushkar's death but could not call Tharoor "a criminal".

SC seeks report on Ranjit Sinha probe

■ The Supreme Court has sought a status report on the probe conducted by the Special Investigating Team (SIT) against former CBI (Central Bureau of Investigation) Director, Ranjit Sinha in the coal block allocation scam. Setting the deadline of January 2018 for the hearing of the case, the bench has asked the team to submit the report of the investigation started in January this year, within four weeks.



briefs

HC questions government's efforts

The Punjab and Haryana High Court has yet again pulled up the Haryana government on the measures taken by the state to nab key Baba Ram Rahim's staunch functionaries, the main being Aditya Insan who is on the run. They have been booked by the Haryana Police for inciting violence. The Sirsa SP has also been directed to submit a report on whether assets from the Dera were moved out between August 25 and September 8, 2017.



HC scraps privilege of devotees paying for *darshan*

The Madras High Court holding up the principle of 'equal before law' has directed that all devotees visiting temples irrespective of them paying or not for *darshan* must be treated equally. The judgement came as a reply to a PIL filed by a Trust to regulate the system of granting better advantages to the "paid *darshan*" ticket holders. The system that was

put in place for people to avoid long queues, discriminated devotees by making the duration of *darshan* shorter and from a longer distance from those who did not pay.

The trust contended that temples creating a divide between devotees who pay and who don't were violating the fundamental rights under Article 14 and 25 of Constitution.

"Celebrate festivals according to law"

Hearing a petition on the strict implementation of noise pollution rules and illegal *pandals* erected for public meetings and festivals, the Bombay HC directed the civil authorities to work as per the principles of secularism. However, when Advocate Ram Apte appearing for the Thane Municipal Corporation asked the court not to put a stop to religious festivals, the bench replied, "Who is stopping celebration of festivals? We never stopped them...that is never our intention. We are only saying the festivals be celebrated in accordance with law."

A fraud by Karnataka?

The Supreme Court is back in the news for expressing its contrary beliefs and judgements relating to the way festivals are celebrated in the country. The apex court has now expressed its dissatisfaction against the ordinance passed by the Karnataka government to allow Kambala (bull race) in the state after it heard a petition filed by PETA (People of Ethical Treatment of Animals) on the same. Earlier this year, a similar situation was faced in Tamil Nadu when the SC issued an order banning Jallikattu following concerns over animal cruelty. The observations came from a bench headed by CJI Dipak Misra that stated a bill legalising the race was sent back by the President in May 2017 for reconsideration. The bench asking the state's concern in banning the sport



Right to life > Right to Religion

In yet another significant ruling, the Bombay HC held the right to life more important than the right to religion while dealing with a case regarding the custody of a child. The court stated that the 'welfare' of the child held more importance than his/her religion. The case was filed by Firoza Popere, the paternal grandmother of a girl against a lower court's order that granted the girl's custody to Usha Dhananjayan,



briefs

Religious Freedom Bill

The Rajasthan government has tabled the idea of a 'Religious Freedom Bill' that aims to ban forcible religious conversions in a bid to maintain law and order in the state. Religious conversion during marriages has been continuously doing the rounds in Rajasthan with the latest being the conversion of a Hindu girl in Narpat Nagar after marrying a Muslim man. The Rajasthan HC during the hearing of the case asked the government about the existence of a religious conversion law in the state. The Bill which was first introduced in 2006 was later amended in 2008. The term of the punishment for forced conversion was changed from 2-5 years to 1-3 years with a penalty of ₹50,000.

Airlift the one who lifted the mountain

Yes you read it right. Looks like it's time to lift the mighty Hanuman who according to mythological tales lifted a mountain for the *sanjeevani buti*. Taking strong notice over the growing number of illegal constructions in Delhi, the Delhi High Court has suggested to the local authorities to consider "airlifting" the 108 m high Hanuman Statue near Karol Bagh, to remove encroachments around it. Replying to a PIL against unauthorised construction and encroachments, a bench headed by acting Chief Justice Gita Mittal gave the suggestion after citing the example of the relocation of skyscrapers in the United States of America. The bench further added that if the civic bodies could "at even one place show that the law was being enforced, the mindset of the people of Delhi would change". The court has now directed the Delhi government to chalk out a plan to relocate encroachments including religious structures.

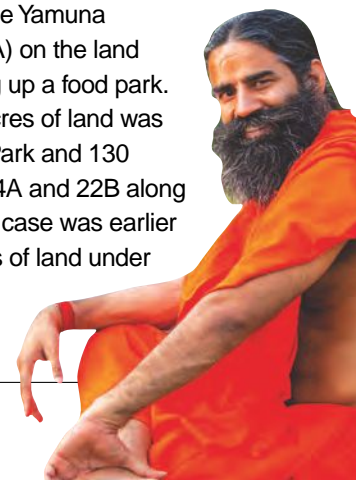


stated: "On one hand the President refuses assent to the bill passed by the legislature and sends it for reconsideration and on the other you (Karnataka) bring an ordinance. Is it permissible under the Constitution? Can you (Karnataka) commit a fraud on the Constitution?"

the maternal grandmother. Popere who is a Muslim by origin filed false sexual abuse complaints against Dhananjayan as she wanted the child in order to make her profess Islam. Terming the atmosphere "unhealthy" in Popere's house for the girl, Justice Bhatkar said, "The atmosphere is bound to crush her innocence and will scuttle her normal mental growth. Though the religion by which the child is governed is to be taken into account, the 'welfare' of the minor is the paramount consideration. Thus, the religion is only one of the determinants."

Baba Ramdev's land under question

The Allahabad High Court has sought a reply from the Yamuna Expressway Industrial Development Authority (YEIDA) on the land allotted to Patanjali founder, Baba Ramdev for setting up a food park. Earlier this year, reports indicated that around 300 acres of land was allotted by YEIDA for the Patanjali Food and Herbal Park and 130 acres for Patanjali Ayurveda Limited in Sectors 24, 24A and 22B along a 120m wide stretch of the Yamuna Expressway. The case was earlier dragged to the court after landowners of the 25 acres of land under the proposed project refused to part ways with their land.





RACHNA SINGH

The brave new world of Bitcoins

Is it an illusion? Is it reality? But once you own bitcoins, they trade like nuggets of gold in your pocket. **RACHNA SINGH** believes that the need of the hour is to bring the crypto currencies into a legal regulatory framework

Assets, like gold and real estate, have lost their come-hither-shine for investors in the contemporary lacklustre Indian economic scenario. Dalal Street seems to be the only harbinger of glad tidings. The 'Ferrari-without-brakes' analogy of the stock market has the denizens of bourses worried and wondering when the bears would trounce the bulls.

The investors and well-heeled Indians, with unused cash piles, are desperately searching for alternate remunerative assets to park their money in. It is no wonder then that a clutch of prosperous Indians have jumped onto the bitcoin bandwagon which is clipping along at an unheard bitcoin value of ₹10,28,415 (as on December 8, 2017).

The increase in user base of local bitcoin exchanges by 250 per cent reflects the rising popularity of this virtual currency. Gold is passé. There are full, half and quarter bitcoins available now.

Traders routinely exchange their black money for bitcoins to escape the clutches of enforcement agencies. Wannacry ransomware attackers demand ransom in bitcoins to duck identification. A PIL demanding regulations for this newbie unregulated currency is before the Supreme Court.

Bitcoins: A snapshot

Bitcoins may be defined as an open-source peer-to-peer blockchain technology (BCT) based crypto currency that can be transacted on the internet without a bank or a middleman. It is believed that one 'Satoshi Nakamoto' was the founding father of this currency in 2009.

Naysayers scoff at bitcoins. But e-commerce

sites like Reddit, Wordpress, Overstock, Amazon et al accept bitcoins as payment. Bitcoins also trade on exchanges like Bitstamp, Coinbase, Bitfinex, Cryptsy etc. Some progressive countries, like Germany and Japan, have accepted crypto currency as a legal tender. The ATMs that exchange bitcoins for dollars have been set up in San Diego and Vancouver.

With a current circulation of 16.8 million, this currency has tapped its merry way from 30 cents in January 2011 to a four-digit mark in November 2017, achieving an almost cult status among the world currencies.

Two sides of the same coin

The bitcoin blend of transparency and anonymity is a siren song for privacy advocates, security adherents and libertarians. Each bitcoin blockchain has three parts: identifying address, called the 'public key', a 'ledger' that lists the history of all those who have bought and sold it and the 'private key' which is a sophisticated digital signature that captures and confirms each transaction in a bitcoin file. The signature key, unique to a user, tracks, tags and publicly discloses every transaction. While every bitcoin records the digital address of the bitcoin wallet it touches, it does not record the names of owners.

The fact that bitcoins are regulated by a free market economy and not the whims of a government or central bank adds to its attraction quotient. Non-existent transaction charges and immunity from global and domestic policy changes are undoubtedly the cherry on the cake.

The increase in user base of local bitcoin exchanges by 250 per cent reflects the rising popularity of this virtual currency. Gold is passé. There are full, half and quarter bitcoins available now.

The recent trend of selling bitcoins through Initial Coin Offering to source start-ups has also caught on. This can be done without the layers of security clearances demanded in the case of IPOs.

There are plenty of bitcoin detractors who lambast its drawbacks. The bitcoins have a limited life as they are capped at 21 million by 2040.

Bitcoins have an unsavory underbelly. They are associated with illegal activities like money laundering, purchase of drugs, arsenal, pornography material etc from e-havens like 'Silk Road'. Critics have also cast aspersions on the security of this currency. The Mt Gox bitcoin heist of 2011 that resulted in transfer of bitcoins worth \$5,00,000 is held up as a prime example of a digital currency security lapse. Of late, 'Parity', an Ethereum wallet, has suffered the same fate.

Minting the Bharat coin

The RBI has expressed its reservations about non-fiat currencies like the bitcoin. A recent public advisory issued by the Central Bank states that bitcoins as a medium of payment are not authorised by any Central bank or monetary authority and that no regulatory approval, registration or authorisation has been obtained by any agency to carry out such activities. 'Minting' of a fiat crypto currency is being seriously considered by policy-makers. The Institute for Development and Research in Banking Technology (IDRBT), the research arm of RBI, released a white paper entitled, '*Applications of Blockchain Technology to Banking and Financial Sector In India*' in January this year.

The authors of the white paper recommended adoption of the Blockchain technology to mint digital currency and also closely regulate monetary transactions. They refer to the digital version of a Canadian dollar called CAD coin that the Central bank of Canada is experimenting with.

The recommended roadmap is a step-by-step digitisation of a central currency. The first goal post is coverage of BFSI (Banking, Financial services, insurance) sectors. Even here, the intention is to set up BCT for internal use by banks and then adopt it for purposes of Inter-bank transactions. So, the minting of a BCT based fiat crypto currency ('Bharatcoin' or 'Lakshmi' is anybody's guess) is on the anvil but it is unlikely to see the light of day in the near future.

Legal niche

The legal status of bitcoins varies from country to country. Bolivia, Ecuador, Kyrgyzstan and Bangladesh have banned bitcoins.


While the European Union imposes VAT/GST on bitcoin payments for goods and services rendered, the Central Bank has categorised it as a 'convertible decentralised virtual currency'. Canada regulates some bitcoin business models such as exchanges and ATMs under its MSB (Money Services Business) Act. The US Federal authorities treat bitcoins as property for purposes of taxation.

India, like most countries with a significant number of bitcoin users, allows private use of bitcoins. This means there are no legal sanctions against use of bitcoins. Domestic bitcoin exchanges like Zebpay do brisk business. As it is not an accepted legal tender, the Central Bank warns users against its trading and transacting business.

In India, there are no regulatory provisions in any law to deal with bitcoins. The need-of-the-hour is to bring crypto currencies (be it bitcoins or altcoins) into a legal regulatory framework. This would deter Mt Gox-type hacks as well as curb illicit use of the digital currency and drastically reduce user risk.

Siege of the bitcoin

Of late, there have been some cracks in bitcoin dominance. While the developers insist on limiting size of blocks in the blockchain as a safety against hacking, the miners talk about increasing the size to make for a faster network.

A bitcoin clone, with blocks of eight megabytes, has made its appearance. Bitcoin has to contend with 'altcoins' like Ethereum, Ripple, Litecoin, dash that are expectantly waiting in the wings. Bitcoins are an illusion, they don't exist physically; they are in your account and in mind. But they behave like physical gold coins and trade like nuggets of gold in your pocket. Let us hope the bitcoin rises stronger from the ashes of adversity. 

(The writer is a senior officer of the Indian Revenue Service and has penned two books on financial issues, Penny Panache: Piecing the Economic Puzzle & Financial Felicity: Making sense of Money Matters.)

A recent public advisory issued by the Central Bank states that bitcoins as a medium of payment are not authorised by any Central bank or monetary authority and that no regulatory approval, registration or authorisation has been obtained by any agency to carry out such activities.

HINDUS ARE A MINORITY IN ALL STATES

The minority question recently came up when a Public Interest Litigation (PIL) was filed seeking minority status to Hindus in eight states. The Supreme Court refused to listen to the petition and pointed out that the issue needed to be decided by National Commission for Minorities. **FAIZAN MUSTAFA** points out that the Indian Constitution does not believe in the 'melting pot' theory. It stands for a 'salad bowl' concept where distinctive identities of all groups are to be celebrated and preserved. Heterogeneity not homogeneity describes India. Unity within diversity is our strength.



The protection of minorities is the hallmark of a civilization. According to Gandhiji the claim of a country to civilization depends on the treatment it extends to the minorities. Lord Acton added another dimension: “The most certain test by which we judge whether a country is really free is the amount of security enjoyed by minorities” These guarantees are essential in a democratic and pluralistic polity because as US President Franklin Roosevelt rightly reminded us “no democracy can long survive which does not accept as fundamental to its very existence the recognition of the rights of minorities”.

The debate on the status of minorities and on minority rights should be lifted from the communalism versus secularism, and the

nationalism versus sectarianism debate, and placed in the theoretical field of democracy, equality, and rights. The case for minority rights, in other words, should derive from, and be legitimised by our understanding of democracy. Minorities are citizens and entitled to full rights as citizens. No nation can really progress if its minorities are left behind. Two world wars were fought in the name of minority rights.

The Bharatiya Janata Party (BJP), on the other hand, believes in ‘justice for all, appeasement of none’ and therefore opposes special minority rights and favours universal citizenship rights. It does criticize Manmohan Singh who as Prime Minister had said that “minorities have the first claim to national resources”.

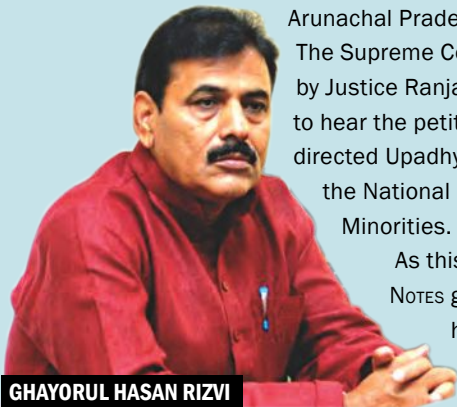


THE MINORITY QUESTION

■ A recent public interest litigation (PIL) filed by Advocate Ashwini Kumar Upadhyay sought minority status to Hindus in eight states: Jammu and Kashmir, Punjab, Lakshadweep,

Mizoram, Nagaland, Meghalaya, Arunachal Pradesh and Manipur. The Supreme Court bench headed by Justice Ranjan Gogoi refused to hear the petition and instead directed Upadhyay to approach the National Commission for Minorities.

As this issue of LEGAL NOTES goes to press, we have learnt that Ghayorul Hasan



GHAYORUL HASAN RIZVI

Rizvi, Chairman, National Minority Commission (NCM) has referred the issue to the Law Commission and was waiting for its “advice, opinion and comments to take the next step. After that, depending on the outcome, we will take up the issue with the government”, he was quoted saying to *Mail Today*.

Rizvi also mentioned that the central government through a notification dated October 23, 1993 had notified five communities – Muslims, Christians, Sikhs, Buddhists and Parsis – as “minority” community while Jains were added to the list in 2014. However, he said that Hindus had not been added to the list.

Regarding Upadhyay’s PIL, Rizvi commented to *Mail Today* that Hindus in the eight states were being deprived of their basic rights, guaranteed under Articles 25 to 30.

The Karachi Charter on Fundamental Rights of 1931 acknowledged the right to religion, and the freedom to profess and practice any religion. It further laid down that the state should be neutral in regard to all religions.

It is good to see that now BJP leader Ashwini Kumar Upadhaya has gone to the Supreme Court seeking declaration of Hindus as minority in more than half a dozen states. Another PIL by Ankur Sharma seeks declaration of Hindus as minority in Kashmir. The Supreme Court is also hearing a petition about minority status for Sikhs in Punjab.

This author supports Upadhaya’s petition with one rider that Hindus are not minority just in few states but in all states. The petitioner is not fully aware of law on the definition of minorities. On the issue of definition of minority we got a highly regressive decision a few years ago from the Allahabad High Court which held that Muslims are not a minority as they are too many and are quite powerful. Najma Heptullah, then Minority Affairs Minister of the Modi Government (presently Governor of Manipur) in her very first statement as Minister too, had refused to accept Muslims even as a minority. The Allahabad High Court also held that no one was a minority in India and thus made minority rights irrelevant. Having minorities is good for our pluralism.

Unlike the BJP, the Indian National Congress had consistently maintained throughout the freedom movement, that it was

committed to the protection of the religious, cultural and other rights of the minorities. In 1927, at Madras, the Congress declared that the basis of any Constitution would be a declaration of their rights. The Motilal Nehru Constitution of 1928 reiterated this and enshrined religious and community rights of all communities.

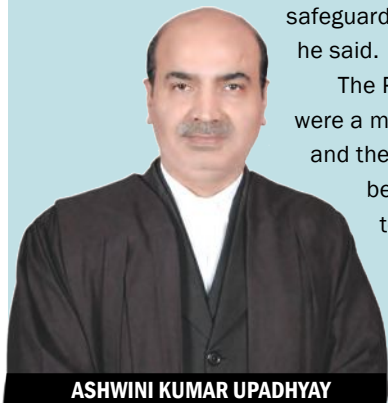
The Karachi Charter on Fundamental Rights of 1931 too, reiterated the above principles. It acknowledged the right to religion, and the freedom to profess and practice any religion. It further laid down that the state should be neutral in regard to all religions. A fresh addition to the list of minority rights in the Charter was the right of the minorities to cultural autonomy and equal access to educational facilities (Clause 3).

Rights of minorities figured prominently in the Constituent Assembly. The framers of the Constitution were deeply concerned to ensure full and meaningful protection to the members of the minority community individually and collectively. The religious minorities, in particular Muslims, the Christians and the Sikhs, were apprehensive that their civil and political rights may be ridden roughshod by the majority community despite the secular pretensions of independent India. Recent

“Hence, the notification on minority community is not only arbitrary and irrational but also invalid and ultra-vires the Constitution of India and its basic structure. “It is the duty of the government to identify and notify religious and linguistic minorities at State level so as to

safeguard the rights of minorities,” he said.

The PIL mentioned that Hindus were a minority in the eight states and their legitimate benefits were being taken away arbitrarily to the majority, because of non-identification and non-notification of minorities at the State level. “The



ASHWINI KUMAR UPADHYAY

Union Government offered 20,000 scholarships in field of technical education for minority students. In J&K, Muslims are 68.30 per cent and government allotted 717 out of 753 scholarships to Muslim students, but none to Hindu students,” the petition pointed out.

According to the 2011 Census, Upadhyay’s petition mentioned that Hindus were a minority in Lakshadweep (2.5 per cent), Mizoram (2.75 per cent), Nagaland (8.75 per cent), Meghalaya (11.53 per cent), J&K (28.44 per cent), Arunachal Pradesh (29 per cent), Manipur (31.39 per cent) and Punjab (38.40 per cent). The petition also mentioned that Muslims were a majority in Lakshadweep (96.20 per cent) and Jammu & Kashmir (68.30 per cent), and there were a significant number of Muslims in Assam (34.20 per cent), West Bengal (27.5 per cent), Kerala (26.60 per cent), Uttar Pradesh (19.30 per cent) and Bihar (18 per cent).

developments are not only proving proponents of two-nation theory right but also demonstrate that the apprehensions of minorities were justified.

Special safeguards were accordingly guaranteed to the minorities and were incorporated in the chapter on fundamental rights with a view to instill in them a sense of confidence and security. The minorities thus accepted the pledge of Sardar Vallabhbhai Patel that “our mission is to satisfy every interest and safeguard the interests of all the minorities to their satisfaction”. The BJP should at least follow Patel.

It is in this background that Articles 25 to 30 were enacted in our Constitution. In the memorable words of Justice H R Khanna, “These provisions enshrined a befitting pledge to the minorities in the Constitution of the country whose greatest son had laid down his life for the protection of the minorities. As long as the Constitution stands as it is today, no tampering with those rights can be countenanced. Any attempt to do so would be not only an act of breach of faith, it would be constitutionally impermissible...”

The expression ‘minorities’ has been employed only at four places in the Indian

Constitution. The headnote of Article 29 uses word ‘minorities’. Then again the expression ‘minorities or minority’ have been employed in the headnote of Article 30 and Clauses (1) and (2) of Article 30. Interestingly, no definition of the term minority is given in the Constitution. The expression ‘minority’ has been derived from the Latin word ‘minor’ and the suffix

On August 1947, Sardar Vallabhbhai Patel presented the Report of the Advisory Committee on Minorities before the Assembly





Dalits and Muslims protest mob lynchings in Gujarat on July 9, 2017

The second component of the definition of minority is that the group must be non-dominant in society and the polity.

‘ity’ which means ‘small in number’. The most obvious definition of minorities and majorities is in terms of numbers.

Let us now have a clear idea about the definition of a minority. A minority is a group that is numerically smaller than the majority in society. This basic definition is, however, not enough. For, the preponderance or the lack of numbers alone is not a guide to any authoritative definition. Minorities have, in apartheid South Africa, for instance, exercised power and domination over the black majority. It is also true that in several countries, the numerical line dividing the minority and the majority may be so thin, that it is impossible to demarcate a minority group. Alternatively, a society may be composed of different groups, none of which forms a minority numerically speaking. The criterion of numbers, therefore, is an essential but not a sufficient condition for any definition of a minority.

We need to go further than just a numerical definition in order to conceptualise minority rights. We may do this by putting forth a second consideration. The second component of the definition of minority is that the group must be

non-dominant in society and the polity. Justice S S M Quadri in his partly dissenting opinion in TMA Pai case referred to non-dominant status test in defining minorities in India. Under this test a group can be conceptualised as a minority, when its values and worldviews are either not reflected at all, or insufficiently reflected both in the public sphere and in the constitution of societal norms. Both these factors reinforce each other. Both the non-recognition or inadequate recognition of the minority group in the public sphere, or in the Constitution of those norms that define a society, signifies marginalisation and exclusion. The Sachar Committee report, for instance, clearly demonstrated marginalisation of Muslims in our public square. In the current Lok Sabha, Muslim representation is at all-time low.

These two characteristics – numerical size and non-dominance – may still not necessarily result in what can be referred to as the minority/majority problem. A group may be numerically smaller than the others, and its values may be incompletely reflected in dominant political or social norms, but this may not logically lead to either resentment or feelings of exclusion. We

can easily conceptualise a situation where a minority group may be perfectly willing to give up its practices and merge into the mainstream for various reasons. Alternatively, the minority group may not wish to be considered as a minority at all.

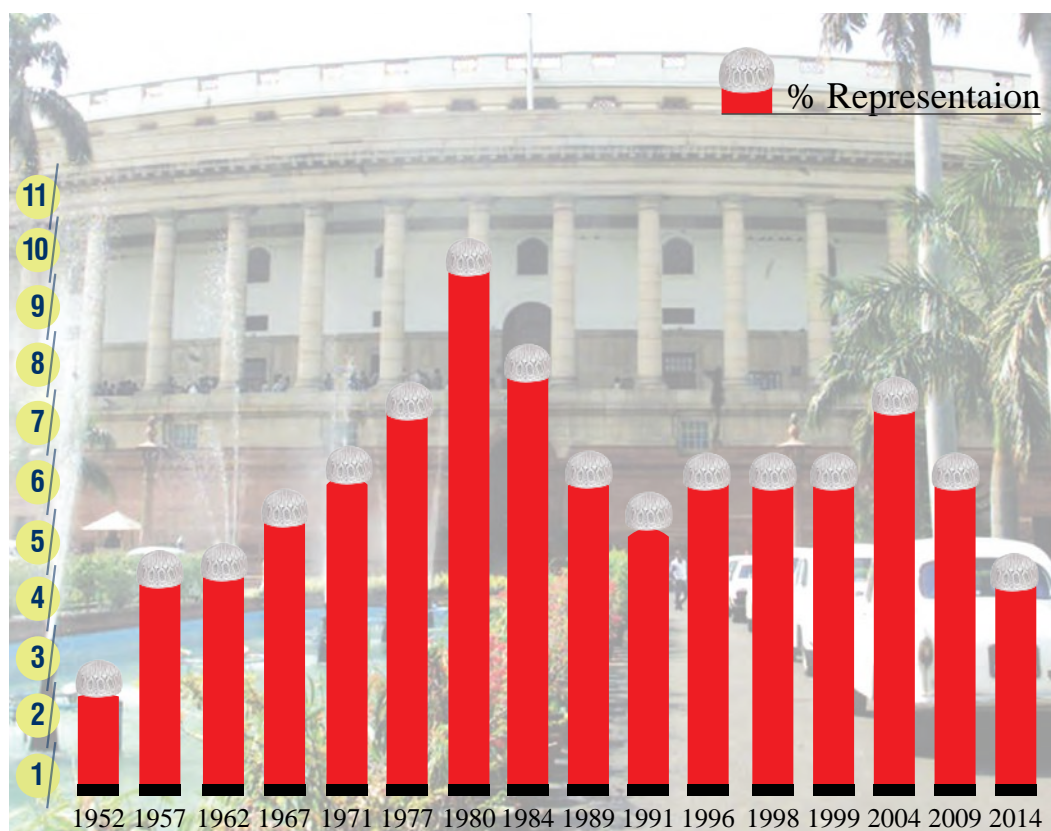
Parsis, for instance, have completely integrated with the majority community though they too have a personal law of their own and have separate courts which are assisted by five Parsis. Thus while the jury system has long been abolished, it still continues for the Parsi community. Those who challenged the Sharia court said nothing about this unique Parsi adjudication system which is statutorily recognised.

Therefore, for the purposes of defining a minority, a third component has been added to these two objective criteria. Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of

Discrimination and Protection of Minorities, argues that minorities are groups that possess distinct and stable ethnic, religious, linguistic characteristics. The crucial point is that (i) these characteristics differ from the rest of the population; and, (ii) that these groups wish to preserve their distinctive identity even if this identity does not conform to the norms and the values of the majority.

Let us now proceed towards a workable definition of term minority. A minority is a group that is numerically smaller in relation to the rest of the population. It is non-dominant to the extent that its values are either inadequately or not represented in the public sphere or in the Constitution of societal norms, it has characteristics which differ from the majority group and more importantly, it wishes to preserve these characteristics. This definition of a minority is relational to the majority in terms of numbers, of domination

Muslim Candidates Representation in Lok Sabha from 1952 to 2014



Source: Adapted from ECI data by Young India Fellowship Election Data Unit

The Bharatiya Janata Party (BJP) believes in 'justice for all, appeasement of none' and therefore opposes special minority rights and favours universal citizenship rights.



Punjabi University students protested on April 23, 2013 against suspected execution of Prof. Bhullar

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Najma Heptullah, then Minority Affairs Minister of the Modi Government (presently Governor of Manipur) in her very first statement as Minister too, had refused to accept Muslims even as a minority.

or the lack of domination, of possessing distinctive characteristics, and in terms of its desire to preserve these characteristics even if they conflict with the sensibilities of the majority.

The Supreme Court of India has consistently held that minorities are to be defined on the basis of numerical inferiority and it is the State in relation to which minority status is to be determined. There has been no deviation from the above principle of the Kerala Education Bill case (1957). The 11-judge bench of the apex court in TMA Pai Foundation (2002) case again clearly laid down that in the absence of any special definition of “minorities”, any community, religious or linguistic, which is numerically less than 50 per cent of the population of the State is entitled to the protection of minority rights. Thus, in states of Nagaland, Mizoram, Meghalaya, Arunachal Pradesh, Manipur, Jammu & Kashmir and Punjab, Hindus on the basis of numerical inferiority test are fully entitled to religious minority status and the concerned state governments must notify them as a minority group. But what the BJP still does not understand is that Hindus can also be linguistic minority in all other states as

well, for instance, Tamil Hindus are entitled to all rights of minorities in other states. Hindi-speaking UP Hindus similarly can set up minority institutions in non-Hindi states. In fact, in N Ammad (1998), our apex court had held that minority status is matter of fact and does not need state recognition. Why then did Ashwini Kumar Upadhyay (*see box*) withdraw his petition? Why did the Supreme Court ask him to go to National Minority Commission?

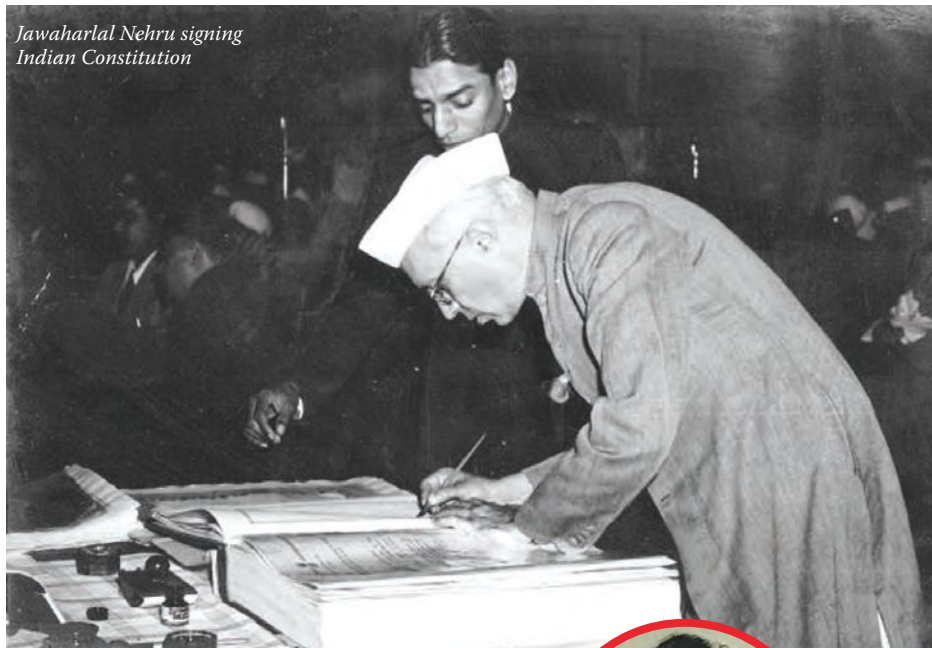
The Supreme Court of India in the famous D A V College case (1971) held Hindus as minority in the State of Punjab. Arya Samajis were also held as a minority. The Punjab & Haryana High Court did hold that Sikhs are not a minority in Punjab. The Supreme Court has been quite supportive of minority rights of already notified minority communities. But when Jains who were already having the religious minority status in number of states such as in UP, Uttarakhand, Maharashtra, MP and Chattisgarh and about whom the National Minority Commission had made recommendation for the conferment of minority status wanted recognition of their minority status by the central government under the National Commission of Minorities

Act, 1992, the Supreme Court became highly regressive in Bal Patil case (2005) and made certain observations which were nothing short of rewriting minority jurisprudence.

The three judge bench strangely observed: "It was not in contemplation of the framers of the Constitution to add to the list of religious minorities." It went on to say that "ideal of a democratic society, which has adopted right of equality as its fundamental creed, should be elimination of majority and minority and so called forward and backward classes". The court further directed the Minority Commission to eliminate minorities when it said: "Commissions set up for minorities have to direct their activities to maintain integrity and unity of India by gradually eliminating the minority and majority classes". As a matter of fact when Jains protested their inclusion in definition of 'Hindu' in Article 25 of the Constitution, on January 31, 1950 itself Pt. Jawaharlal Nehru clarified in writing that Jains were a distinct religious minority.


The Constitution nowhere says minorities should assimilate with the majority. The appeasement of minorities was a false and motivated propaganda of rightist forces. The opposition of minority rights is based on ignorance of constitutional provisions. All communities including Hindus are fully entitled to minority rights both as religious as well as linguistic minorities. The Indian Constitution does not believe in the 'melting pot' theory. It stands for a 'salad bowl' concept where distinctive identities of all groups are to be celebrated and preserved. Heterogeneity not homogeneity describes India. Unity within diversity is our strength.

The majority decision of Chief Justice Bhupinder Nath Kirpal in TMA Pai said that "India is divided into different linguistic states. The states have been carved out on the basis of the language of the majority of persons of that region. For example, Andhra Pradesh was established on the basis of language of that region, viz. Telugu". If for the linguistic minority, the whole of India is taken as a unit, then within Andhra Pradesh, Telugu speakers will have to be regarded as a linguistic



minority. But then this was in 2003. Today, we have Telangana as a new state which has not been created on the basis of the language. Residents of both Andhra Pradesh as well as Telangana speak Telugu. The linguistic basis of state creation is no more valid and thus the apex court may re-examine this issue of defining minorities particularly in the context of religious minorities.

Article 30 gives the same rights to both religious and linguistic rights but it nowhere says that both religious and linguistic minorities must necessarily be determined at the level of the state. One approach can be to define religious minorities nationally and linguistic minorities on the basis of the state.

A better approach, however, would be to accept the dissenting opinion of Justice Ruma Pal in the TMA Pai Case. The learned judge rightly observed that whether a group is a minority or not must be determined in relation to the source and territorial application of the particular legislation against which protection is claimed. If it is a Parliamentary law that is being challenged, minorities must be defined nationally. On the other hand if it is a state law, then minorities must be determined at the state level keeping in view numerical inferiority within the concerned state. 



“As long as the Constitution stands as it is today, no tampering with those rights (minorities) can be countenanced. Any attempt to do so would be not only an act of breach of faith, it would be constitutionally impermissible...”

— Justice H R Khanna
Former Judge, SC

LEGAL NOTES

CAPTURED



Radicals rule the roost!




November saw two dramatic events in Pakistan — a violent street blockade by radicals demanding the resignation of the Law Minister for being blasphemous and the release from house arrest of Hafiz Saeed, declared a global terrorist by US and the UN over his alleged role in the 26/11 Mumbai attacks.

The radicals were led by the unknown Khadim Hussain Rizvi who has recently registered a political party, Tehreek-i-Labbaik Ya Rasool Allah (TLYRA). He exhorted his supporters to violence and protests across the country, brought the national capital to its knees and became a household name.

The sit-in demanded the removal of Law Minister Zahid Hamid for changes in a law related to the Khatm-i-Nabuwwat (finality of prophethood) oath in the Elections Act 2017. They alleged the action undermined Islamic beliefs and linked it to blasphemy. The government said it was a typo, but Rizvi won and Hamid was ultimately sacked.

In another twist, Hafeez Saeed was released from house arrest. Judges of the Lahore High Court — who form the Judicial Review Board of Punjab — unanimously ordered Saeed's release. He had been in house arrest since January. In one of his first comments, Saeed said he would continue his so-called holy war in Kashmir.

Pakistan Muslim League-leader and deposed PM Nawaz Sharief's son-in-law Captain (Retd) Safdar made a telling comment with respect to the Rizvi episode that is equally applicable to the Saeed release: "It is unfortunate that in Pakistan, energy savers are in Lahore but the UPS is in Rawalpindi." The energy savers being the Shariefs and the UPS being the GHQ (General Headquarters) of the Pakistan Army in Rawalpindi—the power behind every throne across the border. 

Will home buyers be left holding the can?

Home buyers of stressed housing projects remain confused, thanks largely to policymakers, writes **VINOD BEHL**. While the apex court has shown a ray of hope, policymakers have yet to solve the question of where to place home buyers in the secured creditors' list: the first or the last.

Thousands of home buyers of stressed projects, especially in severely affected Noida in NCR, continue to vacillate between hope and despair. On one hand, they see a ray of hope from higher courts and government authorities strongly backing them, and on the other hand they are worried that at the policymakers' level, the issue of treatment of home buyers under the Insolvency & Bankruptcy Code (IBC), remains unresolved so far.

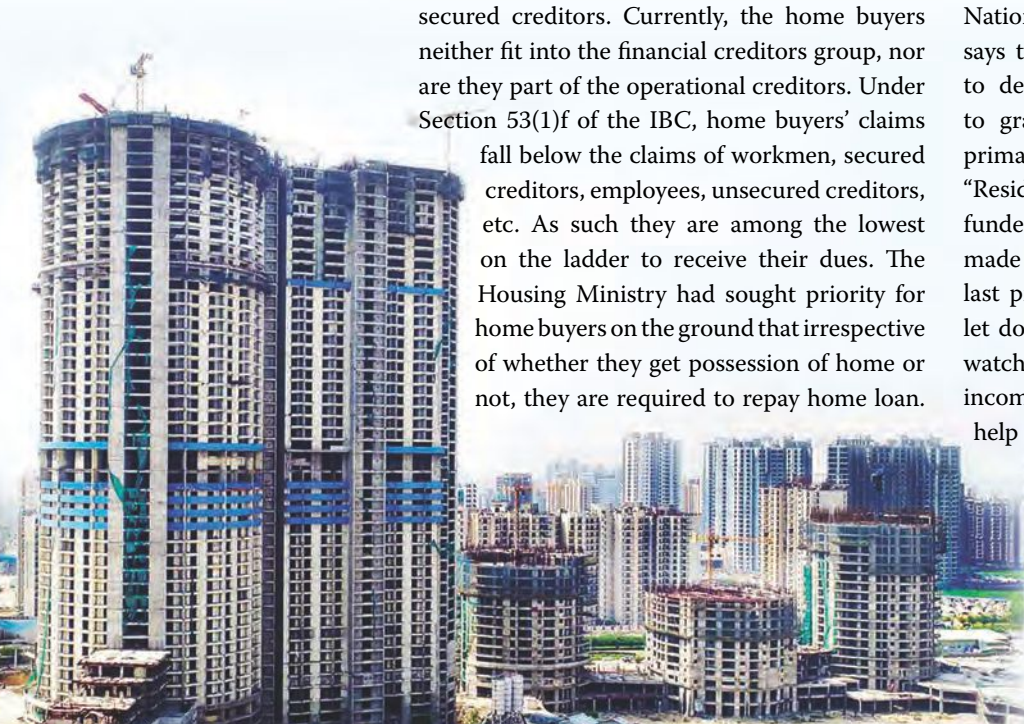
What is a cause of worry for home buyers is a recent development in which the Insolvency Board has declined the recommendation/proposal of the Housing Ministry to treat home buyers as primary secured creditors in insolvency proceedings so that their right to claim over distribution of assets should be above all other secured creditors. Currently, the home buyers neither fit into the financial creditors group, nor are they part of the operational creditors. Under Section 53(1)f of the IBC, home buyers' claims fall below the claims of workmen, secured creditors, employees, unsecured creditors, etc. As such they are among the lowest on the ladder to receive their dues. The Housing Ministry had sought priority for home buyers on the ground that irrespective of whether they get possession of home or not, they are required to repay home loan.

It is significant to mention that in Noida, Jaypee Infratech is facing insolvency, sealing the fate of about 32000 home buyers.

The gravity of the situation can be gauged from the recent report released by a leading real estate rating and research company, Liases Foras. According to the report, over 6 lakh houses are running behind schedule in the worst-hit NCR, especially Noida, Greater Noida and Gurgaon. Every third house delayed by over two years, is in NCR. At the all-India level, over 29 lakh houses under construction are delayed, with most of these falling in NCR, Mumbai, Bengaluru, Pune and Chennai.

Notwithstanding this dismal scenario, real estate experts exude hope. Sushil Mittal, Chairman of Association of Certified Realtors of India (ACRI) and Founder Vice President of National Association of Realtors (NAR-India), says that the decision of the Insolvency Board to decline the Housing Ministry's suggestion to grant home buyers the status of secured primary creditors, is only a temporary setback. "Residential real estate projects are largely funded by customers and as such they need to be made primary creditors. How can we give them last priority? The government cannot afford to let down aggrieved home buyers and helplessly watch their life-long earned capital stuck in incomplete projects. It will work out a way to help distressed home buyers."

His views are endorsed by Pradeep Aggarwal, Chairman, Signature Global, "Government should be playing a key role in tackling this



RERA FOR ALL REASONS

■ The twin landmark regulatory reforms of Real Estate regulation Act (RERA) and Goods & Services Tax (GST) brought in by the Modi government, are set to change the face of Indian real estate, transforming it into a transparent and more organised asset class, with greater appeal to property buyers and investors.

Over the years, in the absence of a regulation, real estate has remained opaque and unorganised. However, RERA, which came into force on May 1 and got operationalised on July 1 this year, will change all that. It will turn the real estate sector into a matured and organised sector with fair and transparent transactions. It will go a long way in both empowering real estate consumers and protecting their interests.

The biggest advantage of RERA is that while providing a protective umbrella to home buyers, it has made developers accountable. Unlike earlier, when developers would launch projects without any land or mandatory approvals, putting unsuspecting buyers at risk, now under RERA, they are barred from doing so. Further, developers are made to make all mandatory disclosures online which home buyers can make use to take informed decisions for a safe and profitable investment. This would prevent developers from duping buyers by way of price escalation or shortchanging them over space and quality of construction. They cannot cheat buyers through misleading ads. RERA is also a boon for home buyers as it sets strict deadlines for projects along with escrow accounts for projects to ensure that these are completed on time. Severe penalty including imprisonment, is a strict deterrent for developers to violate the provisions of RERA.

RERA, because of its strict provisions of booking homes only after all necessary permissions/approvals are in place, will encourage 'Build & Sell Model' for marketing. It would lead to greater confidence of home buyers in turn pushing up sales, especially as buyers are today reluctant to touch under-construction property, due to rampant delivery defaults by developers. They are preferring ready-to-occupy homes. The only hurdle for developers to adopt this model is high land cost which is not funded by banks. But this model may

well suit those developers who have sound finances. Also, this problem can be overcome by developers, by entering into joint development deals with land owners.

The tardy implementation of RERA and some dilution of its provisions by few states, has however cast a shadow over it. It also has short term negative impact, hitting supply due to various regulatory compliances. Moreover, it has not helped boost the confidence of buyers to an extent to push up sales. But realty experts believe that as the dust settles down, both supply and sales will improve and real estate will experience healthy and sustainable growth.

Goods & Services Tax (GST) reform that became operational on July 1, 2017, may well prove to be a boon for real estate. It is set to dismantle federal tax barriers to create a single, unified market, bringing in tax efficiency, coupled with ease and efficiency of business, with reduction in compliance costs. It will also do away with multiple taxes and check the incidence of double taxation. Currently under GST, real estate is partially covered as it is applicable only to under-construction property at the rate of 12 per cent as it is considered a service, governed by works contract. Completed projects and land are out of its ambit. GST has done away with VAT (state tax) and service tax (central tax), together, amounting to about 10 per cent. On the face of it, 12 per cent GST is on the higher side. But unlike earlier, property developers are now entitled for deduction in the form of input credit tax (full credit tax with regard to construction material). This ultimately results in cost reduction, a benefit that developers are required to pass on to buyers. GST is also benefiting real estate by way of improving ease of doing business by bringing down transportation and logistics costs.

As a logical next step, the government is now working to extend GST beyond the construction stage, to final construction of buildings. There is loud thinking among economic experts that besides checking black money, this step will take away the burden of multiple taxes at the time of transactions like reduce tax, boost sales, in turn have a positive impact on the sector as a whole.

The biggest advantage of RERA is that while providing a protective umbrella to home buyers, it has made developers accountable.

crisis like it did in case of the NPA- laden banks by recapitalising them. In order to facilitate construction, the government should rope in public sector construction companies like NBCC or big, financially-sound and credible developers to take up stuck projects for early completion. They should at least finish those projects which are nearing completion. The government can set up a separate fund for projects completion and even create escrow account.”

Mittal says that one thing good about the Insolvency Act is that the resolution/completion of the insolvency proceedings is time-bound (270 days). Already in the case of Jaypee Infratech, there is a significant progress. The Insolvency Resolution Professional (IRP) has got good response with regard to seeking investment from various entities including corporates and asset reconstruction companies to help Jaypee take up its incomplete housing projects. Further, to encourage ARCs to invest in distressed projects, RBI has allowed ARCs to hold more than 26 per cent stake in sick companies. Industry experts like Deepak Parekh, Chairman, HDFC, is taking up the issue of setting up government-backed ARC to help debt-ridden builders who are stuck as they cannot pay loans and do not have funds to complete their projects. In another relief measure, Noida and Greater Noida authorities have planned to offer interest waiver (it charges 11-14 per cent penalised rate of interest on land dues to builders whose housing projects got delayed due to land disputes between farmers and authorities). In a pro-consumers/home buyers move, the government through an ordinance, has amended the IBC to bar wilful defaulters from buying their own stressed assets. Industry experts believe that this streamlining of IBC, will check scams by unscrupulous promoters, siphoning money from the company and, in the process, accumulating unserviceable loans and default on debt servicing as it would prevent them from buying back their own company at a discount. Though the personal assets of defaulting firms are outside the ambit of the memorandum under IBC, the Supreme Court has prevented promoter-directors and independent directors and their family members from alienating their assets. SC has taken a tough stand on

Jayprakash Associates and asked it to repay all dues to buyers of its properties. It has asked the company to deposit ₹2000 crore, with a stinging comment, “You mortgage your property or sell it or you sell your personal jewellery, home buyers should get their money back.”

More, the proposed tax by the union government on unsold units may well prove to be a blessing in disguise for developers and home buyers as it may persuade cash-strapped developers to offload their inventory even at further discounted rates. Pankaj Kapoor, Founder & Managing Director of Liases Foras research and rating agency, says that the tax imposed by the government on ‘stock in trade’, may well make developers offload their property at competitive rates. This will ease their cash flows, in turn helping them to complete their ongoing projects. Under income from house property law, any person having house property which is not being used for self-occupation or business or profession with a deemed annual value, is to be charged as tax, even if such a property has been lying vacant. This is applicable to both individuals and developers. The FY ‘18 Budget had granted temporary relief to developers through a proposal that said that if any house property is held as ‘stock in trade’ and such a property is not let out during the whole or part of the year, there will be zero deemed annual value of the property for one year period from the end of the financial year in which completion certificate of the property was received. Now, at the end of FY’18, unsold units will be assessed on the basis of their notional value and taxed accordingly. Financial experts say that it makes better business sense for developers to offload their unsold inventory, offering discounts rather than sitting over it with about 10 per cent cost of holding, along with additional 2 per cent cost added to it due to new proposed tax on unsold units. All this augurs well for home buyers. What is more is that the Housing Ministry, much to the relief of home buyers, has expressed its commitment to protect the interests of home buyers through legal safeguards under the Real Estate Regulation Act (RERA). The Ministry has maintained that RERA was brought in to protect both existing and future buyers. ■



“Residential real estate projects are largely funded by customers and as such they need to be made primary creditors. How can we give them last priority? The government cannot afford to let down aggrieved home buyers and helplessly watch their life-long earned capital stuck in incomplete projects.”

— **Sushil Mittal**
Chairman, ACRI



(An Autonomous Society of DRDO)



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briefs



Dhaka confirms death for 139

The Bangladesh High Court has upheld the death sentences of 139 former paramilitary men and 146 life imprisonments relating to the 2009 mutiny. A total of 74 people, including 57 Army officials, were brutally murdered on February 25 and 26 in 2009 at the Pilkhana headquarters of the BDR.

Two courts, one verdict

Two courts in two countries — Spain's Constitutional Court and Iraq's Supreme Court— have declared that any effort at undermining the unity of the country independence is a big 'No, no'. Iraq's Supreme Court has also said the same.



US gets first transgender legislator



Danica Roem. Remember the name. This remarkable transgender woman has unseated one of Virginia's longest-serving lawmakers to take her place in history. And the man she defeated, Republican Bob Marshall had earlier this year piloted a bill that would have restricted which bathrooms transgender people could use. He is also the author of a now void constitutional amendment that defined marriage as between a man and woman.

A master class in doping

The notes: Written with a Waterman pen in two hardbound notebooks embossed with the calendar year.

The writer: Grigory Rodchenkov, a chemist who spent years crafting the state strategy that helped Russia's athletes gain an edge by using banned substances.

The writings: Catalogue 2014 and 2015 — his final years as Russia's antidoping lab chief before he fled to the United States.

The venue: Cheating at the last Winter Games in Sochi (Russia) and the extent to which, he says, that was supported by the Russian government and Russian Olympic Federation.

The consequences: These are amongst the critical evidence that has now resulted in Russia being banned from the winter Olympics in Pyeongchang, South Korea.

The revelations provide a new level of detail about Russia's elaborate cheating at the last Winter Games and the extent to which, he says, the nation's government and Olympic officials were involved.

The doping:

- A drug cocktail known amongst Russian officials as Duchess, a mixture of three anabolic steroids and Martini-brand vermouth. Dr Rodchenkov had invented the drink for top athletes to take throughout the Olympics. Rodchenkov regularly tested drugs on himself and documented their effects.



Roem, a former journalist became the only out transgender state legislator in the US and the first to both get elected and take office openly. She started her gender transition about five years ago when she was 28 and began taking hormone replacement therapy in late 2013.

At least two transgender people have been elected to US state legislatures in the past, but Roem will be the first openly transgender person to campaign and be seated. One transgender woman was elected in New Hampshire Legislature, but she resigned before the term started. And in Massachusetts, a transgender woman served in the Legislature but did not campaign openly as a transgender person. She came out while in office but didn't win re-election. For the record, Roem also sings in a metal band.

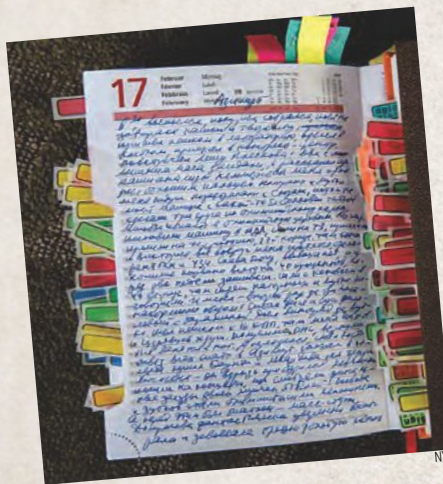
- Hundreds of ounces of clean urine from top athletes collected over months and called "the Sochi plan" was transported to the site to replace tainted test samples.
- Dr Rodchenkov prepared a "Duchess list", naming the dozens of Russian Olympians who were ingesting the drug cocktail and would have their incriminating urine swapped out with their prestocked clean urine.

Russian reaction:

- Russia criminally charged Rodchenkov with abuse of authority and wanted him extradited.
- Angry announcement of IOA (International Olympic Association) decision.
- The President of Russia's athletics federation, Dmitry Shlyakhtin told *Time*, "Anyone can come up with fantasies. I can say I jumped into a pool with alligators and came out unscathed...Why Martini? Women here drink wine. These are the ramblings of a madman!"

Tailpiece: Dr Rodchenkov told the *New York Times* that first published his diaries (quoted here) that he had carefully chosen to write his notes rather than put them on a computer as done by his friend Nikita Kamayev. Kamayev who was that country's former antidoping chief died suddenly and mysteriously in 2016. It was Kamayev who had presented Rodchenkov the black and gold Waterman pen he used for his diaries.

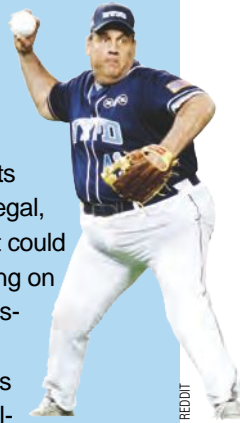
Dr Rodchenkov wrote: "If anyone believes I could have done all of this without the Sports Minister's knowledge and support, they know nothing of Russia." He goes on: "Let me be clear: Mr. Mutko knew about, and was critical to the success of, Russia's doping programme...The very fact that Russia is pursuing criminal charges against me – and only me – for misusing my position tells one everything they need to know: This is a witch hunt, and I am the witch." He did, however, express his regrets for his involvement in the doping programme. "I apologise to everyone I disappointed by helping Russia cheat," he said. But he also wrote: "When senior officials in Russia direct you to do something, you do not ask questions - I had no choice."



briefs

Will the US allow betting in sports?

The US Supreme Court is hearing a case filed by New Jersey Governor Chris Christie to make sports gambling legal, a case that could make betting on football, basketball and other sports widely available.



A federal law at the moment bars states from authorising gambling in most professional and college sports. If the Supreme Court strikes down the law, giving sports betting the go-ahead, 32 states would likely make gambling on leagues such as the NFL and NBA legal within five years, according to a report by a California research firm. The case pits the states against all four major US professional sports leagues, the NCAA (National Collegiate Athletic Association) and the federal government. The stakes are high. The American Gaming Association estimates that Americans illegally wager about \$150bn on sports each year.

NUGGETS

Rape clause troubles Northern Ireland

Women in Northern Ireland whose social security net offers a new two-child limit for such benefits allows exemption for women who can show an additional child was conceived through rape. This exemption, known by opponents as the rape clause has severe repercussions in Northern Ireland where it is an offence to not report a crime to the police. Therefore, the woman could end up facing prosecution, along with social workers and medical staff.

Duterte goes for his CJJ

The Philippines' Supreme Court Chief Justice said that an attempt by allies of President Rodrigo Duterte to impeach her could threaten the country's democracy. Justice Maria Lourdes Sereno gave the warning as legislators in the House of Representatives prepared to begin impeachment hearings against her following a threat by Duterte that Sereno would be forced out.

Plea to arrest Maduro before ICC

Luisa Ortega Díaz, Venezuela's deposed

Flynn pleads guilty

Former National Security Advisor to Donald Trump, Michael Flynn has pleaded guilty to charges of making false statements to the FBI. These relate to two specific statements he made to the agency with the Russian Ambassador and the US. The charges have been brought forward by Special Counsel Robert Muller. Muller has already filed charges against two former campaign officials of President Trump: Paul Manafort and Rick Gates.



Netherlands referendum on snooping law

Netherlands will hold a referendum next year on a controversial surveillance law that was passed in July after years of debate and criticism. Proponents of the legislation claim that increased powers are necessary to counter threats to national security in the modern era.



Opponents of the Bill warn that it gives the government intrusive access into the lives of law-abiding citizens.

Receiving over 3.84 lakh signatures (3 lakh signatures is the threshold to force a public vote under Dutch law), the Council confirmed the proposed vote. At least 30 per cent of the Dutch voters must participate for the vote to have any real legal weight.

Bahrain stakes claim to Qatar land

Believe it or not, Bahrain has issued a statement declaring that the country has a right to reclaim land that the nation believes were wrongfully taken by Qatar.

The dispute was settled by a International Court of Justice decision in 2001. The court split the territory, including settling maritime lines. Rejected by the Bahraini State, the Kingdom has now stated that it "has every right to claim what was cut off forcibly from its land and to dispute the legitimacy of the Qatari rule on the northern territory".

Bahrain said that it did not pursue the land dispute in recent years for the stability of the region.

Miteb released

Saudi Arabia has released Prince Miteb bin Abdullah from custody after reaching an estimated \$1 billion settlement agreement concerning corruption allegations

Miteb "along with 200 other royals, ministers and business tycoons" was arrested and detained in the Ritz-Carlton hotel in Riyadh in November for alleged participation in the so-called "anti-graft campaign". Accusations against him include "embezzlement, hiring ghost employees and awarding contracts to his own firms, including a deal for walkie talkies and bulletproof military gear".



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Sinha quits

The long running soap opera in Bangladesh finally ended with Chief Justice Surendra Kumar Sinha resigning six weeks after he went on a leave amid criticism over a Supreme Court verdict that scrapped a vital constitutional amendment.

He led an appellate division bench of the Supreme Court, which scrapped the 16th amendment to the Constitution, stripping the Parliament's power to impeach apex court judges on grounds of incapacity and misconduct. Justice Sinha had earlier drawn criticism more for the "observations" he made in the verdict than the judgement itself.

Dar gets a brief lifeline



A Pakistan accountability court has reserved its verdict on declaring Ishaq Dar a proclaimed offender. The court was conducting a hearing in connection with a corruption reference filed against the former Finance Minister by that country's National Accountability Bureau (NAB).

Dar, who is accused of amassing assets beyond his known sources of income was likely to be declared a proclaimed offender as the deadline given to the former minister to appear before the court in connection with the case had expired.

Sex please? what's your age?



Can a 13-year-old girl agree to sex? Macron's France wrestles with the question as the state

fine tunes a law to set a legal age for sexual consent for the first time. The controversy arose after French courts in the past few months—twice—turned down prosecution requests against grown men for rape after they had sex with 11-year-olds because authorities couldn't prove coercion. The public fury is now being reflected in the form of the Bill setting an age limit.

Feminist groups are protesting across France arguing that the age should be set at 15. Justice Minister Nicole Belloubet says 13 "is worth considering".

Scotland wins against whiskey!

The UK Supreme Court has allowed the Scottish government's plans to introduce a minimum price for all alcoholic drinks.

After a five-year legal battle that was led by the Scotch Whisky Association (SWA), the court ruled that minimum pricing was legal on health grounds under EU law.

What it means is that the Scottish government can introduce a minimum unit price for alcoholic drinks, likely to be set at 50p. Alcohol-related deaths in Scotland have increased. With alcohol available for sale at just 18p a unit, that death toll remains unacceptably high.

It will increase pressure on UK ministers to follow suit in England.

NUGGETS

chief prosecutor has filed a complaint with the International Criminal Court asking for the arrest and trial of top Venezuela officials for crimes against humanity including the Defence Minister Vladimir López and President Nicolas Maduro.

Judge without trying a case

Brett Talley, a 36-year-old lawyer whom President Trump nominated for a lifetime federal judgeship, has practiced law for only three years and has yet to try a case. Talley, who also writes horror novels on the side, has also received a "not qualified" rating from the American Bar Association, which vets federal judicial nominees.

Dirty Wars punishment

An Argentine judicial panel has sentenced 29 former officials to life in prison, and 19 to between 8-25 years for murder and torture during the junta's 1976-1983 'Dirty Wars'. The sentencing ends a five-year trial and is Argentina's biggest verdict for crimes against humanity. Collectively, the 48 defendants were charged with the deaths of 789 victims.

PRAVEEN
AGRAWAL

BCI must counter unethical ‘fatwas’

The mystery of the Ryan International School murder case might have been solved but the procedural delays in finding the accused still remains questionable. **PRAVEEN AGRAWAL** reveals that it is not always the judiciary that should be blamed but one should also see the arbitrary ‘fatwas’ issued by the Bar associations of not defending the accused – incidentally, the very same association that is entrusted with the responsibility to keep the torch of fairness burning in trials.

It is the fundamental right of every accused – however heinous the crime may be – to be defended by an advocate of his/her choice or by the one being provided by the trial court. “Right to life”, as provided in the Constitution of India, incorporates within its sweep, the right to speedy justice and the right to defend oneself by being represented by a lawyer.

Irrespective of the society profile of the accused, the Bar Associations cannot declare that no lawyer member or anyone from outside their jurisdiction be allowed to defend the accused.

All civilised nations acknowledge the right to effective legal representation. The Indian Constitution too, gives this right to each accused. In fact, the absence of legal representation means trial was not fair. Prime Minister Indira Gandhi’s assassins were defended by P N Lekhi. Pakistani Ajmal Kasab, accused in the 26/11 Mumbai terrorist case, too was given a lawyer.

Unfortunately, whenever there is a major criminal or civil case that attracts countrywide hue and cry, the Bar Associations bar lawyers not to represent the accused. It is nothing but a ‘fatwa’ which has no legal sanctity. This happened in the case of Sacha Sauda sect’s Baba Gurmeet Ram Rahim too, when he was found guilty of two rape cases by a Panchkula court.

It is disgusting that some Bar Associations have now resolved not to defend certain kinds of accused such as Maoists/terrorists or rapists or those facing trial for child abuse. This is a regressive step. It will create a blot on our legal system. Even the worst criminal is to be presumed innocent and be defended by his lawyer. In Chhattishgarh, some bar associations have resolved not to permit outside lawyers to appear. Local lawyers refuse briefs and outside lawyers committed to civil liberties are not allowed in Naxal-affected Bastar, Jagdalpur and several other districts.

The latest case is related to the brutal murder of a student Pradyuman Thakur (7) in Ryan International School, Gurugram (Haryana), recently. Immediately after the arrest of the school bus conductor Ashok Kumar by the police, the Bar Association declared that “no lawyer will be permitted to defend him in the court”.

Are lawyers above law? Can they pass ‘fatwas’ that some accused would not be defended by any lawyer? Does the Bar Council of India, the disciplinary authority for the advocates, have no role to play in such situations?

A similar dilemma was faced by noted jurist Fali Nariman, when he took up the December 1984 Bhopal tragedy case on behalf of the Union Carbide India Limited (UCIL). The gas leakage incident in the pesticide plant was described

It is disgusting that some bar associations have now resolved not to defend certain kinds of accused such as Maoists/terrorists or rapists or those facing trial for child abuse.

as the world's worst industrial disaster. Over 500,000 people were exposed to methyl isocyanate (MIC) gas and other chemicals. Officially, 3,787 people had died. Against the countrywide anger in defending the American multinational UCIL, Nariman said, "I am not supposed to hold a mini trial at the time of accepting a brief to find out who is correct and who is wrong."

The Gurugram school boy's murder attracted huge media coverage. The police alleged that Ashok Kumar had "confessed" of committing the crime. Before the trial court could find him guilty or not, the Bar Association 'presumed' that he was guilty and in a huff passed a resolution that no lawyer would be permitted to defend him. This serious breach in a well-defined fair trial judicial system cannot be ignored. The resolution of the Bar Association of not representing Ashok Kumar so that his conviction became imperative raises some important questions that require to be answered to restore the faith in the judicial institution that advocates community.

The questions are:

- Whether a man can be punished and hanged without being granted a full and fair opportunity of putting forth his defence (offence for which Ashok Kumar was charged was murder and if punished could have been death penalty)?
- Whether advocates acting as a group can boycott an accused and/or refuse to take an accused's case?
- Whether the BCI has failed to discharge its statutory duties by not taking any action against the office bearers of the Bar Association, Gurugram?

If the conduct of the District Bar Association, Gurugram is ignored, it will set a bad precedent and will encourage other Bar Associations to take the judicial system for ransom (in matters in which office bearers of the Bar Associations are personally interested) and the entire justice delivery system may collapse in the eventuality.

The Bar Association, Gurugram, "apparently" found bus conductor Ashok Kumar guilty of

commission of offence, following his arrest as no investigation was conducted by the lawyer's body and the police had not submitted a charge sheet in the court.

This decision of Bar Association Gurugram, to *en bloc* refuse to represent Ashok Kumar was unprofessional, unethical and illegal and was in violation of the Article 21 of the Constitution of India, and the BCI Rules, ironically by the group of people (lawyers) who were supposed to be protectors of the common people for enforcement thereof. Besides, Part Vi, Chapter 2 of the Bar Council of India Rules provides: "*An advocate is bound to accept any brief in the courts or tribunals or before any other authorities in or before which he proposes to practice at a fee consistent with his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.*"

While discussing the accused's rights, the SC in the writ petition preferred by the northern head of Ryan School noted that: "*An accused, whatever the offence may be, has the inherent right to be represented by a counsel of his choice. The tradition of the Bar and the fundamental conception pertaining to access to justice does not permit any Bar Association to pass a resolution of the nature that had been done.*"

The apex court further passed a positive direction that none of the members of the Bar shall create any kind of impediment in the ingress and regress of any counsel representing Ashok Kumar and his family members. A warning was also issued to the office bearers of the Bar that non compliance of this order would be seriously dealt with.

Why is the BCI shying away from taking any action against the office bearers? The BCI ought to have taken strict action including an action of suspension of the licenses of the office bearers of the district Bar Association, Gurugram for what amounts to gross misconduct and interference in the course of justice. Until and unless a strong message is sent to the Bar Associations against issuance of such "*fatwas*" this practice will continue. **LN**

(The writer is an Advocate practicing at the Supreme Court)

If the conduct of the District Bar Association, Gurugram is ignored, it will set a bad precedent and will encourage other Bar Associations to take the judicial system for ransom and the entire justice delivery system may collapse in the eventuality.

SPOTLIGHT ON THE MAHABLA'S VERY OWN RAILWAY MAN

CRUISING HEIGHTS



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6E

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CRUISING HEIGHTS



ATR: THE PLANE FOR ALL REASONS

ATR ready for the competition from the Gulf
ATR looks of India HEMS market
ATR's hi-tech baggage systems launched
ATR takes the lion's share of cargo

SINGAPORE AIR SHOW 2016 TO SHOWCASE LATEST INNOVATIVE TECHNOLOGIES

CRUISING HEIGHTS



FLY BY INNOVATION

AIR CHINA ready to go global
ETIHAD's new-look alliance
Singapore's 11 airlines to take business
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... AND THE AIR INDIA STORY BEGINS — AGAIN

CRUISING HEIGHTS



TKO!

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A CLOSE LOOK AT AIRASIA INDIA'S FIRST YEAR OF EXISTENCE

CRUISING HEIGHTS



1 YEAR OF NOTHINGNESS!

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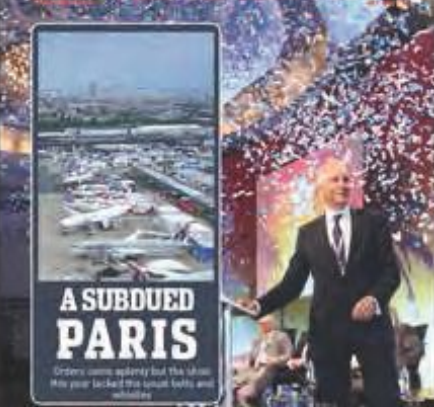
"I am a former member of the board. Having seen the airline's performance, I am not surprised that it has failed."

"The airline is not the airline it was. It's the airline it is. It's the airline it is. It's the airline it is."

"One person is a brilliant marketing and sales person. Another is a brilliant pilot. Another is a brilliant pilot. Another is a brilliant pilot."

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CRUISING HEIGHTS



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I'm

After a rousing national debate and referendum, Australia has legalised same sex marriages. The winning margin was 62 per cent to 38 per cent.


It was an emotional roller coaster ride for Penny Wong. A Labour Senator for South Australia, Wong, who has two children, Alexandra and Hannah, with her partner Sophie Allouache, was the first openly gay woman in Parliament and first openly gay member of Cabinet.

It has been a tough road for Wong who cried as soon as the results were announced. "I'm relieved. Thank you, Australia," she said soon after.

In a moving speech in Parliament later, she spoke of the the difficult choices she faced in 2004 when the Conservative Howard government introduced the Marriage Amendment Act.

"For me, Labour's support for the amendment meant I voted for discrimination against myself and the people whom I loved. I had a choice at that time, I could go out in a blaze of publicity, take a public stand against my party and become an outsider in a pretty dramatic way. I decided to fight this discrimination from within the political system and I chose to stay and accept the solidarity to which I had signed up as a member of a collective political party.

"Our laws reflect the values of our nation and shape the behaviour of our people. My formative experience of prejudice and discrimination was not on the basis of sexuality but because of my race. Moving to Australia from Malaysia as an eight-year-old, I felt out of place. At primary school, I was the only Asian face and I was often made to feel different and excluded. Neighbours rejected me for my difference for no reason other than the colour of my skin, the colour of my hair, the shape of my eyes. It was this experience growing up in a predominantly White Australia that taught me the impact of fear and of prejudice, and it is from this experience that I am driven to remove discrimination and embed equality.

"In 2004, many considered it untenable to support marriage equality. Now it is untenable to oppose it. For a decade the majority of Australians have supported marriage equality, and for a decade the Parliament has lagged the Australian community." 



Proposing on the floor

Liberal MP Tim Wilson – one of the most vocal same-sex marriage advocates – asked his partner Ryan Bolger, who was sitting in the public gallery to marry him during his speech on the bill. The response was an immediate "Yes".

relieved!



You belong
 PM Malcolm Turnbull: "The message today to every gay person in this nation is clear: we love you and we respect you. Your relationship is legitimate and honourable as anyone else's. You belong."



For my late son

Labour's Linda Burney was heart-wrenching: Her son took his life earlier this year. "I have seen first-hand the confusion, anxiety and pain that many of our young people experience struggling with their sexuality. I honour these people. In particular my late son, Binni."



No and yes

He was the loudest voice against same-sex marriage and, yet, former PM Tony Abbott will attend one of Australia's first wedding of a gay couple. "Now I certainly don't pretend to be an overnight convert supporting same-sex marriage, but...there should be a clear distinction between marriage as understood by the church and marriage as recognised by the state. On that basis, I am looking forward to attending the marriage of my sister, Christine, to her partner, Virginia, sometime early in the New Year."

Manish = Sabi = Loss of Navy job

What does it take to follow your heart? Change of a job, city and sometimes gender. But all of it comes at a price and in the case of Sabi Giri it was losing her job. **P P SINGH** takes a look at the battle that one must go through to live a life that one desires.

It is a curious case of a 25-year-old sailor Manish Giri, of Chapra (Bihar). He was enrolled in the Indian Navy in July 2010. But today, he has become Sabi Giri.

On becoming a woman following a gender surgery, the Navy dismissed her from service. Sabi then moved the Delhi High Court to challenge the decision.

She was, however, feeling far from content. In an exclusive conversation with **LEGAL NOTES**, Sabi said for several years she felt increasingly uncomfortable 'living as a man'. Slowly, but steadily, the distressed youth began to express a woman's traits, wearing nail polish, trimming his eyebrows and growing hair long. Before long, Giri started embracing a new identity, even while on duty.

"In February 2015," she said, "I informed the naval authorities that I was suffering from gender dysphoria and needed medical intervention. They paid no serious heed to my concern and rather subjected me to harsh psychiatric counselling and confined me in a ward for five months. As I was left with no option, I underwent a sex re-assignment surgery (SRS) at a private hospital in Delhi in October 2016. Meanwhile, I had thwarted my parent's decision to marry a woman. I feel sorry for them as they would not have understood the dilemma I was going through."

Troubled transgenders

While the battle for Sabi Giri post her treatment looks like an unending one, the country for long has remained split on ways transgenders or people diagnosed with gender dysphoria are treated across different states.

The situation, however, doesn't remain grim everywhere with the recent case of 24-year-old Ganga Kumari who is all set to become the first transgender cop of Rajasthan. Having cleared her exams in 2013, her appointment only came in 2015 due to the lack in the clarity of laws for transgenders. In Kolkata too, a PIL has been filed in the Calcutta High Court to introduce 'third gender' for transgenders in the application forms for public examinations.

Kerala also was not behind in giving the socially-stigmatised community their rightful place. The Kochi Metro Rail Limited started in 2017, hired 21 transgenders in its first phase. The

Kochi Metro now aims to increase the number to 60 in the next two years. A move widely applauded by the government of all states, may see the rail corporation in quicksand while carrying out the recruitment process with the existing employed transgenders finding it hard to sustain themselves with no one willing to house them thus forcing a lot of them to leave their jobs.

Statistics submitted by doctors across the country reveal an increase in the number of people opting for sex realignment surgery. But the delay in the appointment of Kumari along with the need to file a PIL to include third category even after a similar ruling by the Calcutta HC to include transgenders in the exams conducted for SBI and the reluctance by people to house transgenders only points at the lack of stricter laws for their inclusion in society which further leads to the taboo that exists around them. The situation remains the same for people who opt for sex realignment as post their surgeries, the lack in a clear definition of how this section will be reintegrated in their jobs makes them fight for rights guaranteed to all by the Constitution of India. The need of the hour thus remains to address the grey area that exists while dealing with this marginalised community.



GANGA KUMARI

When the Chief of Naval Staff and other senior officials under the Ministry of Defence found out about Giri's SRS procedure, they confined 'her' to a psychiatric ward for five months and subjected her to innumerable medical assessments.

When Giri as a woman re-joined work in April 2017, 'she' was served a show-cause notice of 'Service No Longer Required' (SNLR) under Regulation 279 (b), Navy Regulations-Part III on April 19, 2017, to which she duly replied saying, "I was suffering from gender identity issues and due to this I had absconded."

On October 4, 2017, the Ministry of Defence finally issued the order of discharge against her from the Indian Navy for SNLR, on the basis that "the existing service rules and regulations did not permit the sailor's continued employment owing to the altered gender status, medical condition and resultant employability restrictions".

Thrown out from the Navy, Manish-turned-Sabi Giri suddenly found herself virtually at sea. But she moved fast and moved the Delhi High Court against the termination of her service.

This curious case recently came up for hearing before a bench of Justices G S Sistani and V K Rao who then asked the Ministry of Defence to look into the case. The court had asked the ministry to perceive the situation like that of an injured Air Force pilot who was given a ground duty instead of being ousted from the services.

Terming it as an "out-of-the-box situation", the Delhi High Court has asked the Centre to consider giving an alternate job to the sailor. Calling for a change in mindset, the High Court said that while it would not interfere with the Centre's policy, the case was probably "the only one of its kind in the armed forces" and asked the Navy to consider Giri for some other job.

"Here is an opportunity to look at it from

Thrown out from the Navy, Manish-turned-Sabi Giri suddenly found herself virtually at sea. But she moved fast and moved the Delhi High Court against the termination of her service.

...but in Maharashtra, it's different

While an Indian Navy sailor Manish Giri has been sacked following his sex change, a 29-year-old woman police constable in Maharashtra has succeeded in retaining the job after sex change.

The cop's case is one of switching physical identity from a woman to a man. It, however, happened only after Maharashtra Chief Minister Devendra Fadnavis intervened to help the woman constable keep her job after undergoing a sex-change operation. He asked the Director General of Police "to make an exception so that Constable Lalita Salve could continue in service".

The constable had sought permission from her superiors to undergo a sex-reassignment procedure. The po-

lice department, however, rejected the application and warned that "she would be sacked if she went ahead with the surgery". Lalita then moved the Bombay High Court.

Salve joined the police force in 2010. She told the court that diagnosed with gender dysphoria she had been advised sex-reassignment and had been attending counselling sessions with psychiatrists at J J Hospital.

Post-surgery, Salve will assume a man's identity. "I will call myself Lalit," she told LEGAL NOTES. "I have asked for one month's leave." At present, she is posted in Majalgaon police station in Beed district.

Following a hue and cry over the



"inhuman attitude" of the police department, the CM intervened. Fadnavis said that "Lalita Salve's plea to continue in service as a man constable was turned down as the eligibility criteria [height, weight] for men constables is differ-

a different perspective. It may be a first-of-its-kind situation. Here is a person struggling with gender identity. Had she suppressed the condition and continued, it would have been dangerous. It could have been fatal. Think about it and come back," the Bench said. The Centre is likely to file its response on or before the next date of hearing. Meanwhile, Additional Solicitor General (ASG) Sanjay Jain appearing for the Centre as well the Navy, at the hearing before the High Court, submitted that "Giri had a chequered history of indiscipline for being absent without leave several times and suffered from gender identity disorder. The individual had got badly infected after undergoing the sex reassignment surgery and it was the Navy which treated her humanely and provided treatment and counselling to her. One seat in another branch or department of the force cannot be blocked for such an individual who also suffered from psychiatric and gender identity problems. Since the petitioner is a female now, she cannot be employed as a sailor in the Navy as that position is not open for women."

With a sympathetic view towards the petitioner, the court said that "it was a good thing

that she came out in the open instead of living with the inherent gender disorder for life, which would have made it worse for her as well as the department". However, the court believed that while the person deserved to be punished for indiscipline, a situation with a medical condition of this sort should also be seen with a different perspective. "In today's situation," the bench said, "a medical condition like this cannot be suppressed."

The court was of the view that the petitioner, who was posted onboard INS Eksila at Visakhapatnam, can give up the claim for the job of sailor and may accept a clerical position so that the family, comprising aged parents, need not suffer. The Navy has now offered the sailor a job of a data entry operator in a private company.

In her petition, Sabi Giri claimed that she was suffering from gender identity issues since 2011 and when she told her parents, they forced her to marry a woman. She further added that she was absent from service without leave several times as she suffered bouts of depression, owing to her gender identity issues. In addition, Giri challenged the validity of Section 9 of the

In her petition, Sabi Giri claimed that she was suffering from gender identity issues since 2011 and when she told her parents, they forced her to marry a woman.

ent than that for women constables. I requested the DGP (Satish Mathur) to consider her case favourably.”

Lalita Salve completed graduation in literature from Lokmanya Tilak College at Wadvani in Beed district and joined the Maharashtra police constabulary in May 2010.

Salve’s counsel, Ejaj Naqvi said that for the past two-three years she had been experiencing a conflict within herself, “and that was why she felt the urge to undergo the surgery for sex change”. The petition stated, “The physical abnormality associated with the gender is by birth. Even though Salve is born as girl, her orientation is that of a male.”

In her plea, Salve said she underwent a psychological test at J J Hospital

in Mumbai in June 2016, where the doctors told her she suffered from “gender dysphoria”, and to lead a normal life she would have to undergo “sex reassignment” surgery.

In her petition, she said she had approached her seniors with a request to grant leave for the surgery, but they refused. She claimed the Superintendent of Police, Beed asked her not to undergo the sex reassignment surgery, violating her fundamental right to life guaranteed under Article 21 of the Constitution of India.

The constable also sought a direction to the Superintendent of Police of Beed to allow her to use her new identity – Lalit Salve – as a male in the police constabulary. She also sought medical

expenses for the surgery and hormonal supplements.

The home department officials said that “it is one-of-its-kind case and needs to be considered after looking at all aspects”. Officials also pointed out: “There is no such provision in the service rule of government employees. Being a disciplined force with great importance to physical fitness, the permission could set a precedent.” According to them, this will be applicable to other government employees, too. The administration will have to consider legal, technical and administrative aspects.

Salve’s case may have a bearing on the Indian naval sailor Sabi Giri’s case also.

Navy Act, 1957 that grants enrolment of only men sailors and said the Navy violated her fundamental rights to equality, non-discrimination and freedom of gender expression by discharging her. The discharge of the petitioner from the Indian Navy on the ground of her transgender identity is wholly illegal and arbitrary, and violative of her fundamental rights to equality, non-discrimination, freedom of gender expression, dignity, autonomy and health guaranteed under Articles 14, 15, 16, 19 and 21 of the Constitution of India.

The validity of Section 9 along with the corresponding Navy Regulations is also challenged on the ground that no policy/regulation exists for transgender sailors, like the petitioner, who was already employed in the Indian Navy, thereby violating Articles 14 and 21 of the Constitution. “I am fully and functionally fit to perform my duties as required,” Giri told LEGAL NOTES. She has made this claim in her petition as well.

A transgender sailor cannot be expected to follow the service norms of appearance of male sailors. “I have sought court’s direction to be reinstated in the same rank and pay, with full back wages and consequent benefits,” Giri told

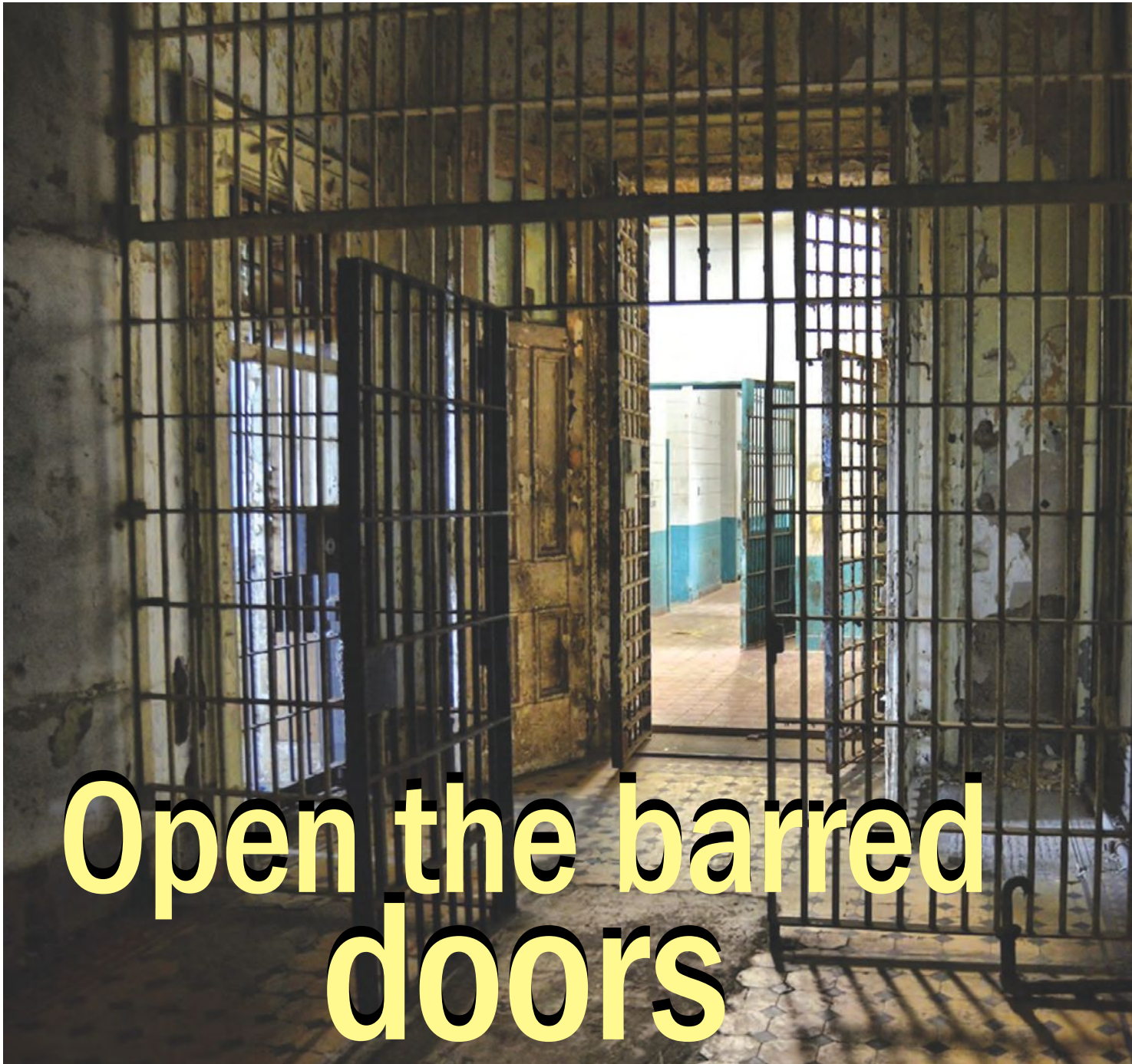
this correspondent. She has urged the court for direction to the authorities to produce her entire service record and serve her a copy.

Giri has also sought the court’s order to direct an enquiry or investigation into the wrongful and mala fide conduct of the officers of the Ministry and the Indian Navy in detaining her at a psychiatric ward for five months and to ascertain and fix the responsibility and liability and punish the wrongdoers found guilty. In her plea she has sought a direction to be issued to the authorities to incorporate an appropriate provision for gender-affirming medical services for transgender persons as part of the medical facilities provided to armed forces. “I want the government to frame a policy for the recruitment, enrolment and conditions of service of transgender persons, after due consultation with the transgender community,” Giri said.

“I am quite amused at the sudden changes in my life, literally and physically, but I am confident that God willing I will be bouncing back in real life soon,” commented Giri, displaying confidence in herself. **LN**

(The writer is a Delhi-based journalist covering courts and legal affairs)

In her plea she has sought a direction to be issued to the authorities to incorporate an appropriate provision for gender-affirming medical services for transgender persons as part of the medical facilities provided to armed forces



The Open Jail concept is still a nascent one in India although the first one was introduced way back in 1905. **SHWETA MENON** analyses why the country needs jail reforms urgently and advocated that open jails for men and women could usher in rehabilitation of hardened criminals faster



“Every saint has a past and every sinner has a future.” That was Oscar Wilde in the 19th century. Today in the 21st century, his words have found their rightful place: Witness the abominable increase in the number of ghastly crimes taking place in society.

Everyday news is flooded with incidents of

cold blooded murders, rapes, rampant increase in juvenile delinquency and other crimes. It is of paramount importance to not just comment and jerk one’s shoulder on the gradual degradation of moral values over the generations but to assess the functional aspects of the system put in place to maintain checks and balance in a society – the system of ‘prisons.’

A veritable instrument to correct those who fall short of the set standard of values of behaving in society, statistics over the years constantly indicate towards the poor performance of the prisons in maintaining the ratio of criminals to the general public. The palpable question that remains is whether it’s finally time to change the modus operandi of prisons in the country.

“I have worked for 35 years in Tihar and it feels like I have served two murder sentences” were the words of Advocate Sunil Kumar Gupta (61), former Legal Advisor and Public Relation Officer of Tihar Jail, Delhi who dedicated one-third of his life working for those behind bars. Known for his determination to change the scenario of Tihar and to keep up its position as the trendsetter of jails in the country, Gupta retired in August 2016 but has still not given up his dream of ‘reformation’, or more the dream of setting up semi-open and open jails in Tihar for ‘women.’

Diametrically opposite to the concept of general closed prisons, the format of semi open and open jails was first introduced in Switzerland in 1891 as a means to focus on the ‘reformatory’ aspect of delivering justice. The concept of semi-open jails works on allowing inmates to go outside their confined places and be engaged in various activities. In the case of Tihar, these activities include horticulture, setting up hair salons and tailoring shops within the premises of the jail.

However, the concept of open jail works on a much liberal approach where the inmates are allowed to leave the jails and work outside as normal employees in various institutions, meet their family and then come back to the prison every day. The prisoners in this case are not behind bars and locks and are accommodated in rooms with little surveillance. The first open jail in India was introduced in 1905 in the Bombay Presidency but was only for a temporary period. The concept was later adopted by Uttar Pradesh in 1960 which was

Diametrically opposite to the concept of general closed prisons, the format of semi open and open jails was first introduced in Switzerland in 1891 as a means to focus on the ‘reformatory’ aspect of delivering justice.

then followed by other states. According to a report on prison statistics presented by the National Crime Records Bureau (NCRB) in 2015, the country has a total of 63 functional open jails.

A petition, which is due to be heard in the Supreme Court soon, was filed by Gupta on August 30, 2017 seeking to make women eligible to be a part of semi-open/open prisons in Tihar. The efforts for women, however, were started in 2016 but drew little attention from the government then.

Incidentally, the capital got its first semi-open prison in 2012 and the first open prison in 2014 — for men. Gupta recalls the apprehensions the team faced in starting the system in Tihar. Known as the ‘city of cheats’, prison experiments in Delhi never went down well in the past. To start a system like semi/open prisons required the authorities to put a huge amount of trust on the loyalty of prisoners.

When asked why women were not allowed with men during the semi-open jails in Tihar experiment, Gupta replied, “We were not quite sure of the success of the system but it was supposed to be undertaken in order to keep up the position of Tihar as the trendsetter. So, we only thought of putting male inmates through the experiment.”

The initial apprehension finds an explanation provided by Vartika Nanda, prison reformer and Founder of Tinka Tinka, an initiative that aims to work on reforms of inmates via art, culture and literature. Nanda believes that the divide has existed since time immemorial. “If you look at it historically, society has never been liberal with women. Amending laws for women has always been difficult as giving liberty to women is not considered a great idea and the same line of thought finds its way in prisons.”

Discrimination against women or not, the fact remains that prison reforms for women and in a larger picture, the concept of reformation remains largely ignored in the society. The problem to pass an order to make semi-open prisons functional for women in Tihar has been a battle that runs deeper than the general misconception of discrimination against women in jails. The order finds itself stuck before the long running feud between the Lieutenant Governor and the Delhi government over the supremacy in exercising powers while taking



A woman prisoner stands outside her hut in the Jyetsar open prison near India-Pakistan border.

decisions relevant to the capital. Hence, cases like these are then directed towards the courts which with its burgeoning number of cases find it hard to prioritise the situation.

This is the situation in Delhi but what stops other state governments from implementing the same? As one digs deeper into the miserable conditions of prisons, industry insiders reveal that prisons are possibly the last when it comes to reforming existing structures. “Prison reformation is the last priority of any state. In a democracy the promises of more schools, dispensaries and other such services would garner you more votes. The efficient working of jails hardly concerns the voters as they exercise their franchise,” said Gupta.

The view also holds true for reformers who has worked extensively in the field. Said Smita Chakraborty, Honorary Prison Commissioner, Rajasthan and an independent researcher studying prison systems “NGOs (Non-Governmental

As one digs deeper into the miserable conditions of prisons, industry insiders reveal that prisons are possibly the last when it comes to reforming existing structures.



Organisations) too don't want to work on prisons. It becomes difficult for them to organise funds for the same due to the general perception of no goodwill factor attached to the concept."

As per an affidavit filed by the CBI (Central Bureau of Investigation) in 2015, India has a total of 31 lakh functional NGOs which is statistically double the number of schools in the country. Yet we only have a handful of NGOs working on prison reforms. Studies reveal that child education, women rights and drug rehabilitation centres are the most sought after areas targeted for the noble cause of 'development.'

LEGAL NOTES tried asking the Chairperson of a drug rehabilitation centre in Delhi why he did not try working on prison reforms. The reply was startling: "Prisons? What reformation do they need? This is a subject of the government. Besides, our NGO serves the society better by focusing on a larger section of the population that is affected by depression and other mental illnesses triggered by drug abuse."

The concept of open prisons was primarily introduced to eradicate the issue of mental illness observed in prisoners who are three times more susceptible to chronic mental diseases than the general population. Prisons data too, indicate an increase in the number of unnatural deaths of inmates. As per the NCRB, 552 prisoners died unnatural deaths between 2012 and 2015. Prisoners were reported to have developed suicidal tendencies, with an increase in the number of incidents of violent attempts to kill other inmates during local fights. The SC, too, expressed its concern in September this year over the persisting issue of unnatural deaths inside Indian prisons. Stating that prisoners cannot be treated as "chattel", the Court ordered High Courts across the country to identify kin of all the inmates who died unnatural deaths inside prisons between 2012- 2015 and compensate them adequately. The bench in its order stated, "No state government can shirk its duties and responsibilities for providing better facilities to prisoners. If a state government is unable to do so, it should be far more circumspect in arresting and detaining persons, particularly undertrial prisoners who constitute the vast majority of those in judicial custody."

The problem of renewed infrastructure and space has been a major hurdle that Tihar faces in expanding its services. When jails were started in India, there were strict rules regarding its location being outside the municipal area. Take the case of Tihar. Spread across a vast area of 200 acres, the jail faces the problem of accommodating convicts in human conditions. The reasons are simple: one, the congestion that exists due to the increased number of occupants in Delhi; and, second, the vast difference in the number of 'convicts' and 'undertrials' in the prison. While the ratio of undertrials to convicts in prisons across the country stands at 65:35 per cent, the condition in Tihar is much worse: the percentage of undertrials is as high as 75 per cent. Statistics reveal that the total capacity of jails as of 2015 stood at 3,66,781 but the total number of inmates were 4,19,623 of which 2,82,076 were undertrials. This pitiful situation of overcrowding further swells up, thanks to the sluggish rate of disposal of cases by the Indian judiciary.

As one tries unfolding the issues surrounding

While the ratio of undertrials to convicts in prisons across the country stands at 65:35 per cent, the condition in Tihar is much worse: the percentage of undertrials is as high as 75 per cent.



A view of a cell in the Norway prison (Halden).

To acknowledge that some offenders need to be rehabilitated is a way to accept that circumstances can constrain an individual's judgement that can lead to criminality.

prison reforms, the onus of applying the concept just does not end up on the government or the court's shoulder. The success of the reform process also lies with the prison personnel. The issue of sensitisation towards women and on a broader level treatment of prisoners by jail authorities too, needs to change for the system to create a long-lasting impact.

Reformation still remains a farfetched dream due to the taboo that exists around prisons. "The posting of officials to jails is perceived more like a sentence than a responsibility. You will find people trying to leave their positions in prison as soon as they get it," said Nanda. Tihar ranks third in terms of a staff crunch with a shortage of 50 per cent staffers. However, states like Uttar Pradesh, Bihar and Jharkhand have the most scantily-guarded jails with over 65 per cent staff vacancies. In the absence of adequate prison staff, overcrowding of prisons leads to rampant violence and increased indulgence in self harming activities. In 2015, on an average, four prisoners

died every day. A total of 1,584 prisoners died in jails, 1,469 of which were natural deaths and the remaining 115 were attributed to unnatural causes. The concept of open jails aims not just to tackle the issues of overcrowding and unnatural deaths in prisons but is considered a method to reintegrate people in society. The concepts of parole and probation are recommended as one of the best measures to reclaim offenders to society as reformed persons. The idea functions well since prisoners shortlisted to be a part of semi-open jails are those that have spent 2/3rd of their sentence in closed prisons with excellent conduct. Those who are further promoted to open prisons should have spent two years in semi-open prisons. A display of faulty behaviour by any of these inmates strictly reduces their chances of being a part of the system thus ensuring a smooth functioning of the format.

The study of criminology describes various theories of punishments and the most useful in this regard is the 'Reformative Theory'. Psychologists studying inmates in the two formats have repeatedly pointed out the differences that exist between prisoners of closed and semi-open/open prisons. Inmates in open prisons exhibit more positive self-esteem and positive attitude towards co-inmates than those in closed prisons. The faith shown by the authorities on inmates helps them restore their faith on the intention of the system towards them. For long the society has treated punishment as a synonym of justice. As Chakraburttu pointed out, "Prison is a taboo and harrowing prison conditions are justified as social justice. Society interprets punishment as justice. Retribution is a popular form of punishment and the respective state governments endorse this populist standpoint."

On the other hand, rehabilitation is one of the most valuable aspects of punishment as it promotes the belief of saving prisoners and not just punishing them for the sake of punishment. The process also recognises the concept of social inequality. To acknowledge that some offenders need to be rehabilitated is a way to accept that circumstances can constrain an individual's judgement that can lead to criminality. Policies that ignore these hardships directly neglect the inmates who are already disadvantaged and fur-

ther deepen their resentment towards the system.

Various societies have reacted well to rehabilitation programmes with the rates of recidivism reducing by 12 to 15 per cent. A classic example of this is the prison system of Norway which works on the phenomenon of ‘restorative justice’ that aims to repair the harm caused by crime rather than just punishing people. With an incarceration rate of just 75 per 100,000, Norway’s prison system is considered one of the most successful systems in the world. According to their law, being sent to prison has nothing to do with putting a convict in a terrible prison to make him suffer but the punishment is that they lose their freedom. Attention is paid in treating these convicts as humans and not animals. By allowing inmates to take part in activities of varied interests, Norway has been able to reduce the recidivism rate by 20 per cent.

Every prisoner needs to go through the process of reformation before integrating them in the society. The concept helps in decreasing the rate of recidivism exponentially as it allows an inmate to be engaged in activities that not only trains an individual to become self-reliant by learning new activities but also helps in accumulating their own share of savings that can be later put to use. The process further prevents frustration and creates hope in long-termers by making them a part of dependable permanent labour. Gone are those days when making *agarbattis* was considered an art worth learning when in prison. “Not everyone can be made to become a tailor or a barber. It is time that the prison system realises the heterogeneity that exists in prisons. People of different strata of society constitute this population and hence there should be different modules for their training,” stated Nanda. It may be mentioned that prisons over the years have increased their attention to maintain well-equipped libraries for the benefit of inmates.

A system without reformation leaves a prisoner in a situation comparable to the one you see with animals in zoos. A closer look at animals in zoos indicates a repetition in their activities. For instance, a leopard running in circles will continue to run in the same trajectory similar to a monkey that climbs the same tree in the same manner every time. Studies have constantly in-



Tihar jail inmates engaged in making bakery products

dedicated the madness these animals go through when held captive for years at the same place and these repeated actions are a result of the psychological impact of their captivity. The same is applicable for prisoners who are kept in closed prisons throughout their sentence. By being held behind bars coupled with even worse treatment by jail personnel, the psychological ramifications of the captivity is seen later — once they are released in society.

A society that sees prisons as a means of rehabilitation with greater acceptance to concepts like open prisons, might possibly take a decade even with the constant effort of reformers. In fact, the glaring loopholes – like putting undertrials in prisons for years or officials seeing working in jails as taboo – need to be filled before any reform process can have a long-lasting impact.

While this may be the situation of prisons that recognises the importance of ‘rehabilitation’, what happens to the other 1400 odd jails in the country buried under the barbarity of retribution? Jails, for example, that remain in the 18th century and know little about the concept of reformation. The question then arises: Is it finally time for the central government to take the country to a regime of centralised prison rules that could help inmates across the length and breadth of the country to reap equal benefits of reformation? **IN**

(All the data on jails have been extracted from the National Crime Records Bureau- Prison statistics 2015)

A society that sees prisons as a means of rehabilitation with greater acceptance to concepts like open prisons, might possibly take a decade even with the constant effort of reformers.

REMEMBRANCES OF THINGS...PAST

**LIFE AMONG THE SCORPIONS –
Memoirs of a woman in Indian Politics**

Author: Jaya Jaitly

Publisher: Rupa Publications

Pages: 308

Price: ₹595

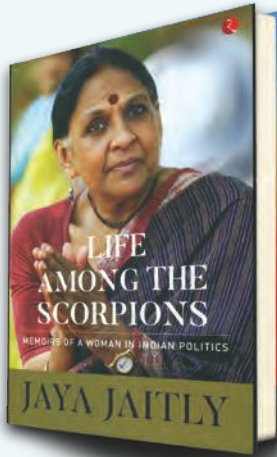
• Memoirs can be boring, they can be riveting and, well, they can be, to use that delicious Indian-English expression 'so so'. So, where does the Jaitley memoir fall? This one is neither boring, nor so so, it's a sensitive, honest and richly anecdotal account of a life well lived – on one's own terms. Jaya Jaitley is right; women in Indian politics are virtually living amongst scorpions. Apart from the treacherous nature of the game itself, one has to reckon with all kinds of innuendos and the literal hard climb one has to suffer in what still continues to be essentially a man's world. There is many an interesting bit, but we have chosen one that only reinforces the tragic state of our legal system and how it literally grinds down a person without producing a teaspoon of justice!

The excerpt

Is it too much of a cliché to say that the wheels of justice move slowly in India? Except for those stuck in the octopus-like grip of our legal system, people consider it as a given, and look away since it is not their concern. After all, surveys at the end of 2016 show around 61,000 cases pending in the Supreme Court, around four million in the high courts and approximately 28 million in the lower courts. If an average of three persons are involved in the case, it has been calculated that 84 million people are waiting for justice. Just as a statistic, I am one of those nearly 28 million stuck in the legal system of our country since 2006. It has been eleven years so far.

Ninety-four per cent of the cases have been pending from five to fifteen years. The average is three years and nine months in the Delhi High Court which is considered one of the better ones, but my own appeal, the one filed in the same high court against a lower court decision to send me to trial, has not been fully heard for four years so far. Lawyers ask why the high court should stay the trial now, when it is reaching its end. I ask what the point of the recourse of an appeal is if it is never heard. Instead, both are seemingly stuck in a block of concrete.

Sometimes verdicts take over two years to be pronounced although the rules say they should be taken within thirty days. There is a chronic shortage of judges, but apart from that,



the delays are mostly because lawyers seek numerous adjournments both for the sake of a criminal client who prefers to evade progress towards judgement day or because lawyers have to keep juggling too many balls in the air to earn a living. In either case, they end up with no available dates for early hearings. Then there are gazette holidays, long vacations, 'the judge is on leave today' days, and lawyers' strikes to add to the frustrated client's woes. Lawyers blame it on the 'system' that prevents them from offering solutions to expedite a case. Delays of all kinds – from the judge's habitually slow pace, lack of a sense of urgency, or a heavy workload

– emanate from the fact that in India we have only 17 judges per million cases, while France has 124, USA 108, Australia 40, Canada 33, and even a small country like the UK, 22 judges.

Preoccupations of state-prosecuting agencies are taken as a given. For lawyers, it is par for the course. Most lawyers look at a case as just one more case to be handled with the rusty tools and creaking systems available to them. They see nothing unusual in my situation where, the prosecution has taken 468 weeks to produce forty-seven witnesses with the final witness, who is their main one, playing hide and seek for three years.

India's current Finance Minister Arun Jaitley hit the nail on its head in his address to the CBI in his D P Kohli memorial lecture in 2016:

"The investigator follows the golden rule that if he gives a report that the accused is prime facie not guilty, then, questions are going to be raised about him. Therefore, his golden rule is he must somehow make the case and it is the accused's good luck whether he gets a fair trial..."

With such clarity of perception in the new government, I imagined our pace of trials would find ways of picking up.

The CBI finally filed a charge sheet much later in April 2006.

Hearings at Patiala House courts near India Gate in 2007 took place in two different rooms before two different judges within a short time. But then the case abruptly shifted to the district courts in Rohini in far-off north-west Delhi.

Till 2010, I went to the Rohini courts by changing two metro lines and then going the last stretch by cycle rickshaw. Finally, it was so wearisome that I went by car since my children had gifted me one for my birthday that year. Three judges changed during my case at Rohini

Then the case got transferred to the Dwarka district court in another far-off area of Delhi. It seemed to me as if the presiding



In conversation with George Fernandes when the car had broken down while returning from Muzaffarpur to Patna- on polling day, during the Lok Sabha elections in 1980. Jaitly was one of the fiery Socialist leader's loyal comrade-in-arms and at one time the President of the Samata Party he founded.

judge had pre-determined intentions. In 2012, when he allowed me to travel to Singapore to attend a reunion of the Smith College alumnae from Asia, he arbitrarily raised my deposit from 25,000 rupees to 3,00,000 rupees. It was a big jump; I did not possess this amount. I told him so when he passed the order but he simply shrugged and smiled smugly with his arms crossed in triumph.

I had to appeal to the high court quickly with passbooks and demonstrations of my meager resources. Fortunately, we got this order reversed so that I could travel to be amongst some of the highest Asian achievers among my alma mater.

When I shared my political experiences, including the struggle to get to Singapore, the audience burst out into applause.

One day in court on yet another fruitless trip, I took out my calculator and did some 'back of the envelope' mathematical calculations. At an average of attending hearings ten times a year for ten years, I would have made approximately a hundred trips to court. Add to that, another thirty sundry trips for applications for travel and extending validation of my passport which initially got curtailed to only a year's validity. Add the national costs of lawyers for all accused persons at the aborted Inquiry Commission and then at various district courts. Add to that expenses on paper, photocopying, stationery, petrol and transportation for all concerned and other consultations and extraneous expenditures. It would have cost a minimum of 400,000 rupees a year for ten years.

The costs to the Government of India for this entire exercise would be many, many times that amount – forty million rupees spent over this case over the whole period, in the very least, on bringing all the accused to justice. My head whirled at trying to arrive at a grand total when a lawyer reported that a judge had revealed that while in court it cost the government 3500 rupees each time a case file had to be taken from the registry and brought to the courtroom. This did not include what was spent and aborted on the Commission of Inquiry for four years before this.

(Excerpted with the permission of the publishers, Rupa Publication.)

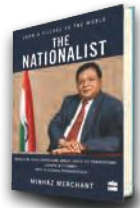
THE NATIONALIST: How A.M. Naik Overcame Great Odds to Transform Larsen & Toubro into a Global Powerhouse

Author: Minhaz Merchant

Publisher: Harper Business

Price: ₹799

Pages: 272



- This is the story of A M Naik and how he transformed Larsen and Tourbo into a powerhouse with a finger in every segment of the infra pie. Extremely friendly with a fellow Gujarati, Narendra Modi, Naik who sees business through the prism of nationalism and how L&T can be a transformational company.

THE DIRTY DOZEN: Hitmen of the Mumbai Underworld

Author: Gabriel Khan

Publisher: Westland

Price: ₹350

Pages: 256



- Gabriel Khan is the pseudonym for a veteran crime reporter from Mumbai. With experience of over twenty-five years in journalism – mainly print and stints with television and dotcoms – Gabriel navigates the city's underbelly in these well-etched essays.

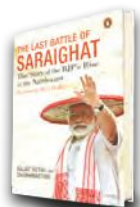
THE LAST BATTLE OF SARAIGHAT: The Story of the BJP's Rise in the North-east

Author: Rajat Sethi and Shubhrastha

Publisher: Penguin Viking

Price: ₹599

Pages: 182



- The Battle of Saraighat was fought in 1671 between the Ahoms of Assam and the Mughal invaders. In 2016, the BJP centred its strategy for the legislative assembly elections on this historic battle. The book is that story.

TRULY A DEMOCRACY'S ELEVEN

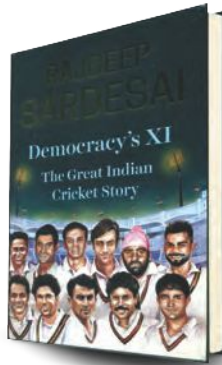
DEMOCRACY'S XI: The Great Indian Cricket Story

Author: **Rajdeep Sardesai**

Publisher: **Juggernaut**

Pages: **371**

Price: **₹599**



• At the best of times, creating a top ten – or in the case of cricket, a top eleven – can be a treacherous exercise. It's always a matter of personal choice and inevitably there will always be questions asked, says **K Srinivasan**.

In that sense Rajdeep Sardesai's hugely readable odyssey of Indian cricket is a splendid addition to one's sports shelf. No surprises that he has chosen to limit himself to the generation he has seen – in bits, in parts and in depth.

Therefore, there is no Vinoo Mankad, there is no Lala Amarnath or no Vijay Merchant, it's a story that begins with Rajdeep's father the legendary Dilip Sardesai and ends with Virat Kohli. And between the covers you have them all: Tiger Pataudi, Bishen Bedi, Sunil Gavaskar, Kapil Dev, Mohd Azharuddin, Sachin Tendulkar, Rahul Dravid, Saurav Ganguly, M S Dhoni and Virat Kohli.

Of course, one can nitpick? Why not Kumble instead of Dravid? Not just for the number of wickets he took, but taking the captaincy when no one expected him to and making a huge success of it. For his courage and obdurate persistence, for taking on the administrators and winning elections to run Karnataka cricket, for his stint as a coach and its own share of controversies. Of course, Dravid too, had his fair share of bumps along the way to greatness and Rajdeep's essay on the elegant right-hander from Bengaluru explores that in all its shades. But Kumble would have been an interesting option.

Full marks, though, to Rajdeep for his choice of Eknath Solkar as the 12th man. One wishes he had put together a full piece on the late Solkar – a feisty, courageous, street fighter. Every time Kohli animatedly scrambles around the park one is reminded of the remarkable Mumbaikar who died tragically young. The Indian captain has the same infectiousness and devil-may-care fearlessness.

One still remembers his diving to scoop a tickle from Ian Chappell off Bishen Bedi at short-leg to send the then Australian Vice Captain back to the pavilion for a duck during a famous victory over Bill Lawry's Australian in Delhi in 1969. Such was the fear of his presence around the corner that batsmen simply got out in trying to keep the cherry away from

short leg. It happened to Doug Walters and Ian Redpath who were both bowled by Bedi in under six balls—one *chappal* had been dismissed—thanks to the assassin from Dadar at short-leg. Ravinder Jadeja reminds one often of Solkar, the same ebullience, the same cocky self-confidence bordering on arrogance, the same pair of safe hands, the same ability to do many things on a cricket field and the same zest for life. Maybe if Twitter had been around when Solkar was playing, his handle would have aptly been Sir Eknath. He was so good.

Finally, a word about the excerpt. It's culled from Rajdeep's loving portrait of his father and recalls that moment when Indian cricket finally hit a trajectory of self-belief and can-do spirit.

The excerpt

1971 is the year of Indira Gandhi, her '*garibi hatao*' slogan and the socialist rhetoric that propelled her to power with a huge majority. It is the year of Sam Manekshaw, the Field Marshal who led the war for liberating Bangladesh. It is the year of Rajesh Khanna, Bollywood's original 'phenomenon' who delivered a string of mega hits at the box office. It is also the year of Ajit Wadekar and the Indian cricket team that conquered new frontiers by winning a series in the West Indies and England for the first time.

If India discovered a new star in Sunil Gavaskar during the West Indies tour, the series also heralded the re-emergence of Dilip as the pivot in the Indian batting line-up. There was no cricket on television but the ball-by-ball radio commentary would transform an entire generation into cricket addicts. 'While we slept at home, Gavaskar and Sardesai in the West Indies would be batting and scoring runs all night over the radio!' recalls Harsha Bhogle, one of the faces of India's cricket television revolution, who was then a schoolboy. Gavaskar scored a world record 774 runs in his debut series while Dilip scored 642, including a double century and two centuries. Years later, at the annual Sardesai Memorial Lecture, Gavaskar would generously remark, 'It was Dilip who showed us the way to play the West Indian fast bowling, we only followed him!'

The irony is that Dilip almost didn't make that tour. He was the last member of the sixteen-player squad to be picked.

The selection controversies had begun with the captain's choice. Mansur Ali Khan Pataudi, or Tiger, had been the Indian captain since 1962, pitched into the top job at the age of twenty-one because of the injury to Contractor. He had led Indian cricket with skill and fortitude for a decade when Merchant decided it was time for a change. Dramatically, he chose the Mumbai 'commoner' Wadekar to replace the 'prince', more

evidence perhaps that Indian society was finally shaking off its class divide (see Chapter 2 for more). Wadekar had been Dilip's batting mate since their college days. Explains Wadekar: 'It was my first tour as captain and I wanted at least a few players around me who I could totally trust. So, when I was allowed to choose one player, I plumped for Dilip right away.' Merchant wasn't thrilled but allowed the captain to have his way.

This was the chance Dilip had been waiting for. From the moment he landed in the West Indies, he felt his moment of redemption had come.

'I remember on the flight to the West Indies we stopped off in New York to watch a boxing match between Muhammad Ali and Joe Frazier. Frazier stunned Ali and I had images of the match



SUPER BLASTER: Dilip Sardesai in action in a match in England

playing in my head. If Frazier could beat Ali, I could take on the West Indies!' recalls my father. There was another reason he felt at home in the Caribbean islands. 'They reminded me of my home in Goa, the beaches, the sea, the palm trees – it was like being back in Margao!'

Dilip was picked for the first Test in Kingston, Jamaica only because another rising star Gundappa Viswanath was injured. He knew this was his final chance. When he went in to bat, India was 75 for 5 and most pundits dismissed the team as a 'club side'. 'Look, I had seen the great West Indies fast bowlers of 1962, compared to them this side was popatwadi (a Mumbai maidan word for "useless"). I told my partner Eknath Solkar to bat as if we were playing at Hindu Gymkhana on Marine Drive,' he said. Dilip and Eknath stitched together a record



HOWZZAT: Alan Knott caught Solkar bowled Venkataraghavan in the famous Oval test in 1971 that India won and also won the series 1-0. Jumping in the slips is Sunil Gavaskar with Farookh Engineer behind the stumps.

partnership; the former going on to score 212, the first double century by an Indian batsman on foreign soil.

That innings would see the best of his batting art – rock-solid technique, no fear of fast bowling, quicksilver use of feet against spin, and a sharp cricket brain. For example, just before the West Indies were to take the second new ball, my father told Solkar to deliberately keep getting beaten at least one ball in every over to the spinners and say 'well bowled' loudly so that captain Sobers would delay taking the new ball. 'Sobers was the greatest cricketer I ever played with but he wasn't such a good captain. He actually thought his spinners had us in trouble when all we were doing was pretending to struggle,' was my father's version.

Cricket lends itself easily to hyperbole and nostalgia can sometimes add many layers to a story of cricketing greatness. But the 212 in the West Indies is etched in the memory of Indian cricket fans like V V S Laxman's magical 287 years later at Eden Gardens – an innings whose significance clearly stretched beyond the boundary. 'Dilip's innings in Kingston changed Indian cricket forever,' says his captain Wadekar. 'It gave us the self-belief and confidence that we could face the West Indies.'

Just how much it has stayed in the public consciousness was brought home to me many years later at Bhubaneswar airport. A Central Industrial Security Force security head came up to me and offered to escort me to a VIP lounge. I presumed he had seen me on television and asked him whether he liked the news. Sir, I don't watch much television news but I think you are Dilip Sardesai's son. Dilip Sardesai, Kingston 1971, 212, no?' If someone could remember a Test match score almost fifty years later only through radio commentary then it had to be a very special innings. My father too didn't forget it: when he applied for a phone number, 212 were the first three digits!

Sweetest victory

“Victory is the beautiful, bright-white rossogolla. Sweetness is the quality without which it could never have reached where it is today.”

Oops...that was not Rabindranath Tagore but a Probashi Bangali (literally a Bengali who live outside Bengal) singing a paean of praise for the humble sweet ball of sponge, the rossogolla. After all, it was victory of sorts that came after a long fight on the ownership of the sweet – and Bengal and Bengalis have often gone lengths to prove that ball of sweetness has been rightfully theirs! But does the Geographical Indication (GI) tag prove that the rossogolla belongs to Kolkata?

To put the record straight, Odisha filed for a GI tag or historical ownership – after more than a century of the Kolkata Rossogolla’s existence – for the ‘Pahala rossogolla’. Pahala is a small hamlet on the Bhubaneswar-Cuttack highway which has traditionally been considered the rossogolla capital of the State; quite unlike the Bengal version since no particular place in West Bengal can be associated with the Banglar rossogolla (or Bangla Rosogolla) for which Didi Mamata Banerjee sent out the sweet tweet.

To put the record straight once again, for the Kolkattan and the Bangali Babu, the Geographical Indications Registry had not issued any GI tag for “Rosogolla” at all. The tag that was issued was for “Banglar Rosogolla”.

But then, no one can take away the thunder from the Kolkata rossogolla or its creator Nobin Chandra Das. If nothing else, the fact

has been literally written in stone. A plaque outside the Das family home in North Kolkata’s Baghbazar states: “The famous institution of the inventor of rossogolla, Mr Nobin Chandra Das, was located here. The institution was shut down by the order of the government banning production of milk sweets in 1965. This stone inscription commemorates the centenary of the invention of rossogolla: 1868-1968.”

Born in 1845 to a family of sugar merchants, Das started a sweet shop when he was 19 years old. The shop did not do well but the young man persisted. Later, he moved the shop to Jorasanko, not quite far away from the Tagore family home. It is there in 1868 that the rossogolla was born when young Nobin boiled balls of cottage cheese in sugar syrup.

Das’ creation became famous when a wealthy Marwari merchant Bhagwandas Bagla bought quite a few of them. The story goes that Das gave the rossogolla to a thirsty child along with a glass of water as was the custom then. The child relished the sweet and his father Bagla became instrumental in creating sweet history.

Das’ family continues the tradition – there are a number of K C Das shops (Krishna Chandra Das was Nobin

Das’ son) in and around Kolkata. Since then, the rossogolla has seen lots of ups and downs

– downs mostly, when it was almost banned. Result: KC Das shut down all

its shops except one in Esplanade which runs even today. The case,

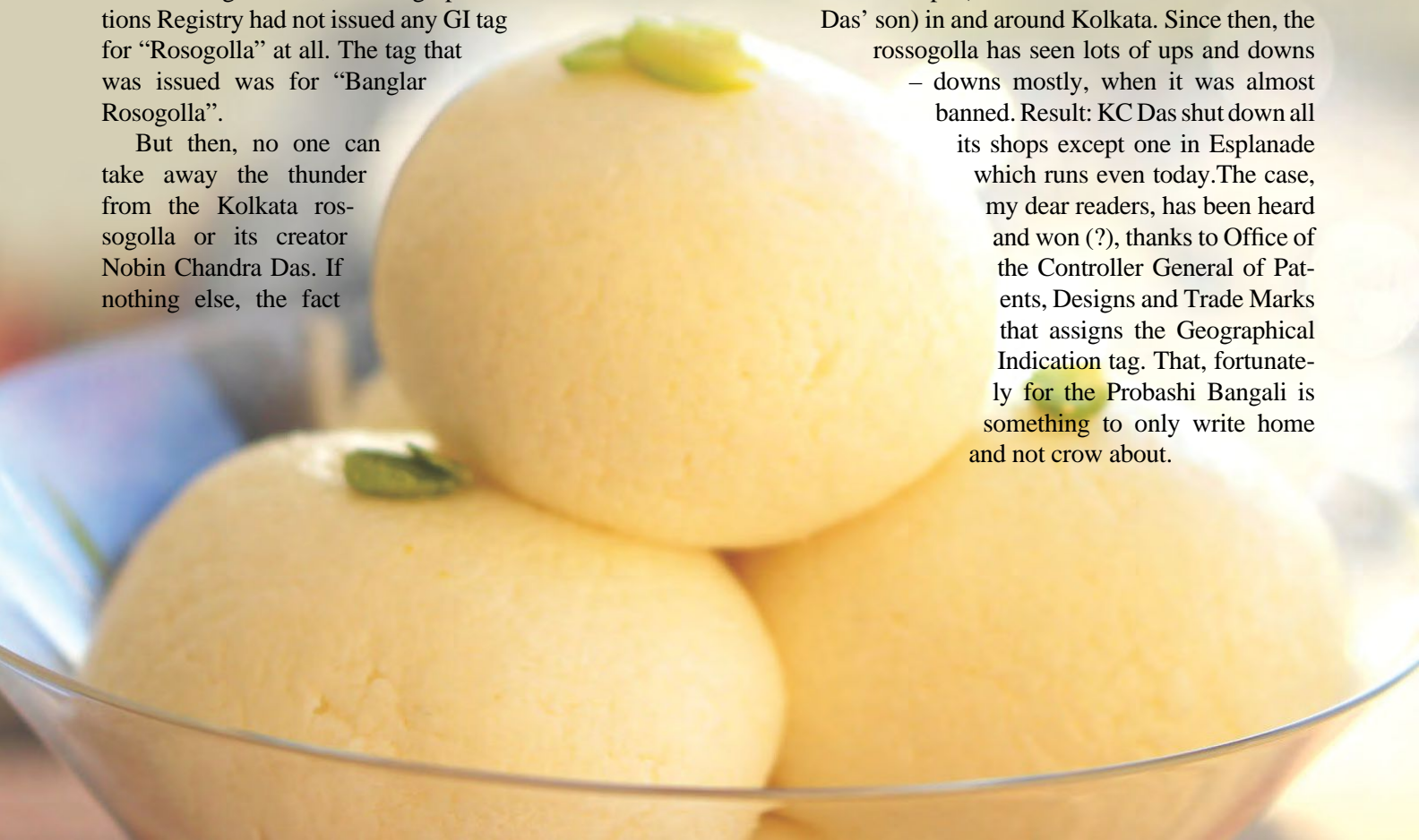
my dear readers, has been heard and won (?), thanks to Office of

the Controller General of Patents, Designs and Trade Marks that assigns the Geographical

Indication tag. That, fortunately for the Probashi Bangali is

something to only write home and not crow about.

and not crow about.





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