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The Legal Gauge

The latest news and announcements

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In this issue...

Dear Readers,

Greetings from the Publication Committee of School of Law!

We are elated to have invited a brand new apex body this month, comprising of third year students Nivruthi Pasupunuri, Anshita Naidu, and Eesha Tekale who shall now be executing the duties of Reporting Editor, Co-Editor, and Creative Editor respectively. They have worked alongside our content researchers, reporters, and designers to create this month's Thirty.

The past month has been an exciting one for the legal fraternity, with judgments dealing with a myriad of issues from the jurisdictional bounds of the NGT and Lok Adalats to complex rights issues in the Karnataka High Court judgment on the right to breastfeed and the right to be breastfed. The Uthra verdict had us all on our toes as a Kerala Court dealt with the complex interpretational challenges posited by a case of murder by snake bite.

This eight-pager explores them all, and then some. We encourage you to peruse!

Wishing you luck,
Niharika Ravi
Editor-In-Chief

Kerala Sessions Court Holds Man Guilty for Murder by Snake Bite in a First-of-its-Kind Case

- Isha Singh

In a first-of-its-kind case, the Additional Sessions Court in the Kollam district of Kerala on October 11, found Sooraj, a resident of Kollam, guilty of killing his 25-year-old wife using a Cobra. According to the judgment, the convict will have to first undergo 17 years of imprisonment as he was found guilty under Section 328 of the IPC, following which, he will have go through a double life sentence for Section 302 (murder) and Section 307 (attempt to murder). The court also imposed a fine of ₹5 lakh on the convict.

The mystery began when Uthra, a 25-year-old differently-abled woman, was found dead due to a snakebite in her home. The young homemaker had sustained a near-fatal bite on March 2, 2020 as well. Her life was claimed by another Snake on May 7, 2021 while she was recovering from the initial attack. She was first bitten by a Viper in 2020 and then by a Cobra in 2021. The two incidents took place nearly nine weeks apart from each other. Uthra was found dead in her home in Anchal and the Cobra that killed her was also spotted there. Uthra's family did not dismiss the incident as an unfortunate death due to a snakebite and alleged foul play. A police investigation followed and the charge sheet provided details of a conspiracy, pointing to a murder painstakingly planned and executed by her husband Sooraj.

Sooraj was found guilty of poisoning her twice; it was the second snakebite that led to her death. What raised suspicions was the proximity of two similar incidents which led the police to investigate the murder charges. When experts on Herpetology were called to aid in the investigation, it was found that the first time she was bitten by a Viper, Uthra was on the first floor of the house. What was intriguing was that Vipers do not usually climb trees or heights. In the second instance, Sooraj established that the snake had come in through an open window, which was not possible as the Snake could not have climbed 150 cms to reach it. The cops also reportedly used a dummy to scientifically prove that the snake bite was induced and not natural. The police concluded in their report that Sooraj wanted the gold and dowry that Uthra had brought along with her. They said he wanted to get rid of his wife to marry another woman. The couple has a child who is one-and-a-half-years-old and living with Uthra's parents.

The case has garnered a lot of attention due to the manner in which the murder was committed i.e by throwing a starving Cobra onto a sleeping woman to induce death by snakebite.

The media and public attention naturally led to cries for death penalty. The Special Public Prosecutor (SPP) argued that when the uxoricide was committed in a manner of unparalleled cunning and in an extremely dastardly and ghastly manner, normal punishment of life imprisonment is not sufficient. For the first time in Keralite history, the modus operandi of using a live Cobra as a weapon for murder was adopted to inflict deadly envenomation on a hapless victim who was bedridden. The SPP argued that the murder was committed in a diabolic manner which has shocked "the collective conscience of the society". but the prayer for death penalty was categorically rejected by Additional Sessions Court, Kollam, presided by Justice M Manoj. Going by various decisions of the Supreme Court which lay down the guidelines for awarding the death penalty, the Court felt that, despite the heinousness of the crime, the mitigating circumstances of the accused must be taken into account.

No doubt, the murder is diabolic, ghastly, brutal, and heinous. However, death sentence can be awarded only in rarest of the rare category, and in deciding that, the mitigating circumstances in favour of the accused also have to be considered," the order stated. The Court noted that the accused is only 28 years old and had no criminal antecedents and held that in this case, death penalty need not be imposed.

The judge then cited the Supreme Court's landmark judgment in Macchi Singh vs State of Punjab (1983 AIR 957) which, in turn, relied on the rarest of rare doctrine propounded by the Supreme Court in Bachan Singh vs State of Punjab (AIR 1980 SC 898). The judge recalled that the doctrine of rarest of rare cases confines two aspects and when both the aspects are satisfied, only then can the death penalty be imposed. Firstly, the case must clearly fall within the ambit of "rarest of rare" and secondly, when the alternative option of awarding imprisonment for life is foreclosed. The selection of death punishment as the penalty is the last resort when the alternative punishment of life imprisonment will be futile and serves no purpose.

Continued..

The judge then relied on the decision of the Supreme Court in Md. Mannan & Abdul Mannan vs State of Bihar (2019 16 SCC 584) regarding the criteria to decide the rarest of the rare category. In this case, the Supreme Court held that in deciding whether a case falls within the category of the rarest of rare, it is not just the crime which the court is to take into consideration, but also the criminal, the state of his mind, his socio-economic background, etc. The court also held that awarding the death sentence is an exception and life imprisonment is the rule.

It appears that the theory of collective conscience being shocked by the gravity of the crime as the aggravating factor for confirming death sentence continues to sway the Supreme Court judges, even though a rethinking among the trial court judges is discernible, as is evident from the Uthra murder case.

Breastfeeding is an Inalienable Right of a Lactating Mother: Karnataka HC

Simran Parmani

In the recent case of Husna Banu vs State of Karnataka (MANU/KA/4131/2021), the High Court of Karnataka held that breastfeeding is an inalienable Right of a lactating mother and is protected under Article 21 of the Constitution. Similarly, a suckling infant has the Right to be breastfed which is consistent with the right of the mother to breastfeed.

The case in question was a custody dispute between a baby's birth mother and the foster mother. The foster mother's counsel contended that she had cared for and looked after the child for months and should thus, be allowed to retain the child's custody. It was also stated that the biological mother already has two children, whereas the foster mother has none. The argument put forth by the foster mother was not appreciated by the Court. In response to her argument, the single judge Justice Krishna S. Dixit stated that:

"Children are not chattel for being apportioned between their genetic mother and a stranger, on the basis of their numerical abundance"

The Court also held that in such cases, claims made by strangers to the child would be given lesser weightage than claims made by genetic parents. Justice Krishna S. Dixit expressed his dismay over the fact that the child had not been breastfed till now and held that breastfeeding is an important attribute of motherhood, and thus, is protected under the umbrella of the Right to Life as enshrined in Article 21 of the Indian Constitution.
Later, the Court was informed that the foster mother had handed over the custody of the child to the genetic mother, who in turn had agreed to allow the foster mother to see the child whenever she wanted.

Acknowledging this settlement, the Court said that –

"...such kind gestures coming from two women hailing from two different religious backgrounds, are marked by their rarity, nowadays; thus, this legal battle for the custody of the pretty child is drawn to a close with a happy note, once for all."

"The Result of Seeking Virtual Hearing as a Norm is to Envisage that the Building where we sit should be Closed Down"- Supreme Court

Anshita Naidu

"Virtual courts cannot become the norm as this would envisage that the building in which we sit should be closed" observed the Supreme Court in a case referred to as the National Federation of Societies for Faster Justice and others v. High Court of Uttarakhand and others (WP(c) No,1051/2021). This observation came pursuant to a writ petition filed by the National Federation of Societies for Fast Justice, an advocacy NGO that campaigns for judicial reforms along with former Central Information Commissioner (CIC) Shailesh Gandhi and former Mumbai Police Commissioner Julio Ribeiro.

The writ petition seeking *virtual hearing* as a fundamental right sought for the retention of hybrid options for physical and virtual hearings in courts stating that this enhances the citizens' right to access courts.

A bench of Justice L. Nageswara Rao and Justice B.R. Gavai, as a response to the petition, orally remarked, "Virtual hearing cannot be the norm, as it was adopted to meet the extraordinary crisis created by the COVID pandemic." The bench further commented that it is one thing to say that the public has a right to witness the court hearings through live stream and another thing to say that they should have the right to have "virtual hearings".

Senior Adv. Manoj Swaroop, counsel appearing on behalf of the petitioners, argued that physical court hearings put people living in remote areas at a disadvantage since they have to travel all the way to Delhi for hearings. The apex court countered this argument stating that, "Nobody in remote areas is being denied access to justice. There is only a small percentage of cases that reach the Supreme Court from trial courts. Litigants already have the facility to approach those courts. If we allow virtual courts, that will be sounding the death knell for physical functioning of courts."

In the end, the Bench allowed the Senior Advocate to return after four weeks along with suggestions on how to lay down norms for virtual hearings in exceptional cases.

Supreme Court Declares NGT has Suo Motu Powers to take Cognizance based on Letters, Media Reports, Representations.

Isha Singh

The Supreme Court recently ruled that the National Green Tribunal (NGT) has the power to take suo motu cognizance on the basis of letters, representations, and media reports and can initiate proceedings on its own on issues pertaining to the environment. A bench of Justices A.M. Khanwilkar, Hrishikesh Roy, and C.T. Ravikumar delivered the judgment on a batch of petitions which raised the issue of whether the NGT has suo motu jurisdiction

"The National Green Tribunal cannot afford to remain a mute spectator when no one knocks on its door," the court said while passing an order that vests suo motu powers to the body created for the protection of the environment under the National Green Tribunal Act, 2010.

Senior Advocate Sanjay Parikh had argued that the NGT has been conferred powers to pass orders for the restitution of the environment, hence it can exercise suo motu powers. However, a battery of senior advocates opposed his arguments, stating that only constitutional courts can exercise suo motu powers and a statutory tribunal like the NGT has to act within the confines of its parent law. Additional Solicitor General ("ASG") Aishwarya Bhati, representing the Centre, argued that the NGT does not have the power to take cognizance of a matter on its own. She also contended that the tribunal's powers cannot be bound by procedural constraints.

"This is a peculiar tribunal dealing with environmental matters. Often, the environment ends up being nobody's baby," she said. The bench had queried whether the tribunal would be duty-bound to initiate the process if it were to receive information in connection with the environment. The ASG responded that once a letter or communication is received by the tribunal, it is within its powers to take cognizance of it.

On September 8, the bench had reserved its verdict on the issue. Senior Advocate Anand Grover, amicus curiae in the case, had opined that the NGT cannot exercise suo motu powers on the basis of letters, representations, or media reports.

Lok Adalats have no Jurisdiction to decide on a matter based on Merits

Saumya Krishnakumar

The apex court has said that once a settlement or a compromise fails, the Lok Adalat must return the case to the Court from which the reference was received for disposal in accordance with the law.

The Supreme Court has stated that the provisions of the Legal Services Authorities Act, 1987 make it clear that the jurisdiction of the Lok Adalats will extend until the determination of a compromise or a settlement between the disputing parties takes place. It further said that if this attempt at securing a settlement or a compromise fails, then the Lok Adalats must return the case to the Court from which the reference of the case was received.

This judgment given by the Supreme Court was passed on an appeal filed by an Estate Officer who challenged the 2013 order passed by the Madhya Pradesh High Court under which the members of the concerned Lok Adalat examined the merits of the writ petition and had dismissed the case based on the lack of the same. The apex court clarified that the order passed by the Lok Adalat dismissing the writ petition was unsustainable and it would deserve to be quashed and set aside.

Thus, it has been held that Lok Adalats have no jurisdiction over cases based on its merits once it has been found that any kind of compromise or settlement could not be reached between the parties.

Legislative Limbo

Does the Essential Defence Services Bill Violate Employees' Right to Freedom of Speech and Expression?

Saumya Krishnakumar

The Essential Defence Services Bill, 2021, introduced in the Lok Sabha in July 2021 by Defence Minister Rajnath Singh, sought to replace the Ordinance promulgated in June 2021 and aimed to prevent the workforce of approximately 70,000 of the 41 government-owned country-wide Ordnance factories from going on a strike.

Essential defence services include any kind of services in any establishment or undertaking that deal with the production of goods or equipment required for purposes that are related to defence, any establishment of the armed forces or any establishment connected with the armed forces of India. These essential defence services also include services that would affect the safety of the establishment engaged in such services or its employees if they were ceased. In addition, the essential defence services could also include anything that the government declares as an essential defence service if the cessation of such service would affect the production of defence equipment or goods, the operation or maintenance of industrial establishments or units engaged in such production, or the repair and maintenance of products connected with defence.

In June 2021, the government announced the corporatisation of the Ordnance Factory Board (OFB) which was originally directly under the Department of Defence Production, and it hence worked as an arm of the government. As per this plan, 41 Ordnance Factories that made ammunition and other equipment for the armed forces would become a part of the seven government-owned corporate entities. The government claimed that the move was aimed at improving the efficacy and responsibility of these factories. The employees in these factories were unhappy with the development and threatened the government with indefinite strikes as they feared that the promulgation of the reforms promised by the June 2021 announcement would negatively impact their service and retirement conditions. The subsequent Essential Defence Services Bill of July, 2021 allows for the central government to prohibit strikes, lock-outs, and lay-offs in units engaged in essential defence services.

The July 2021 Essential Defence Services Bill amended the Industrial Disputes Act of 1947 to include essential defence services under public services, under which, a notice of six weeks must be given before persons employed in such services go on strike or when employers carrying on such services lockout. The prohibition of strikes, lock-outs, and lay-offs would not apply to lay-offs made due to power shortages. Under the Bill, employers violating the prohibition order through illegal lock-outs or lay-offs would be penalized with up to one-year imprisonment, or a fine of Rs 10,000, or both. Persons commencing or participating in illegal strikes would be penalized with imprisonment up to one year, or a fine of Rs 10,000, or both. Persons instigating, inciting, or taking actions to continue illegal strikes, or knowingly supplying money for such purposes would be punished with imprisonment up to two years, or a fine of Rs 15,000, or both. Further, such employees would also be liable to any disciplinary action, which includes their dismissal as per the terms and conditions of their service. In such disciplinary cases, the concerned authority has the authority to dismiss or remove the employee from their jobs without any inquiry if it is not reasonably practicable to hold such an inquiry.

Disputes over the interpretation of Article 19 (1) (a) of the Indian Constitution have existed since its inception. Many a time, the Supreme Court of India has interpreted the Article to expand the scope of its implementation. When Chapter V of the Industrial Disputes Act, 1947 was passed, it recognized both the right of employees to go on strike and to go on lockout as an extension to their Freedom of Speech and Expression. However, neither the rights of the employees to strike nor to go on a lockout were absolute and they both were subject to restrictions. These restrictions included the sovereignty and integrity of India, the security of any state, public order, the public, decency, or morality being adversely affected in any way. The Essential Defence Services Bill of July 2021 essentially empowered the government to declare certain services as essential defence services and consequently prohibited strikes and lockouts on the part of the employees working in these services. If there was a strike among the employees of the essential defence services sector then it may be said that the security of India is threatened. Due to this, it can be understood that such restriction on the Freedom of Speech and Expression of any employee in this sector would technically not be a violation of their inalienable rights. However, given that we have tried to widen the ambit of these inalienable rights time and again, the curtailing or lessening of the rights of the employees might prove ultra vires the Constitution. The defence services are paramount. However, this should not mean that we alienate them from their rights. The people who work for our safety must not be the very ones who are deprived of their rights and safety.

Is the Medical Termination of Pregnancy (Amendment) Act, 2021 progressive enough?

Simran Parmani

The Medical Termination of Pregnancy (Amendment) Act, 2021 came into force on September 24, 2021. It modified the Medical Termination of Pregnancy Act of 1971, which governed the circumstances under which medical termination of pregnancy may be pursued. It has made amendments to Section 3 of the MTP Act and has now raised the maximum gestational limit for pregnancies that can be terminated on the advice of a single registered medical practitioner from 12 to 20 weeks whereas the limit for pregnancies that can be terminated on the advice of two medical practitioners has been raised from 20 to 24 weeks.

This progressive change has been appreciated as it takes into account the fact that some "birth anomalies" can only be detected in the later stages of pregnancy. In the un-amended version of this Act, women had to follow a tiresome procedure wherein they had to file a writ petition in the High Court or the Supreme Court if they had to terminate their pregnancy beyond the stipulated time frame.

However, the Act uses the phrase "in the case of such category of woman as may be prescribed by rules made under this Act," which implies that only women who fall under the purview of the MTP Rules will be able to exercise this option. But a laudable change has been observed in the amended act, as the sentence "by any married woman or her husband" has been replaced with "any woman or her partner.". These seemingly insignificant and mere changes reflect shifting societal norms and effectively de-stigmatize pregnancies outside of marriage. The new definition means that the MTP Act now covers pregnancies that occur outside of the ‘sacred’ tradition of marriage. This will end statutory discrimination between married and unmarried women and extend the benefits to any woman who wants to consider abortion.

Another commendable amendment is the inclusion of unintended pregnancies that are caused by contraceptive failures, as a legal basis for abortion. Earlier, abortions were only allowed when there was a grave risk to the pregnant woman or a grave risk of serious physical or mental abnormality to the baby. However, the Amended Act makes unwanted pregnancies a sufficient ground for abortion. Similarly, Explanation 2 of S.3 (2) clarifies that if a pregnancy is the result of rape, the anguish caused shall be construed as an injury to the woman's mental health. This, hopefully, will put an end to the judicial intervention pursued by rape survivors as a Hail Mary to seek medical termination.

Another positive step is the statutory requirement to set up Medical Boards for cases where women seek to terminate their pregnancy after 24 weeks. Currently, Medical Boards are formed by various High Courts and the Supreme Court after hearing writs filed by women and are not statutorily mandated. By mandating the establishment of a Medical Board, a pregnant woman will no longer need to approach the Supreme Court or High Court pleading that they set one up, thus making the process easier and more flexible.

Despite all these praiseworthy changes, this Act also has certain drawbacks. It is not progressive enough to change the landscape of abortion rights in India. The most serious criticism levelled against the MTP Act is that it misses the mark on being rights-based legislation as S.3 of the MTP Act still mandates a doctor's opinion. The choice to have an abortion is not solely in the hands of the woman and her partner. This implies that even if a pregnant woman wishes to have an abortion, her consent is inadequate unless it is backed by the consent of a medical practitioner.

Furthermore, after 24 weeks, the MTP Act only allows abortions for pregnancies with "substantial fetal abnormalities." Disability activists have long argued that by treating physical and mental disability as distinct categories and raising the statutory limit of 24 weeks, the MPT Act reinforces the notion that fetuses with potential disabilities are undesirable.

Finally, even though the Amendment Act significantly broadened its scope by replacing the word "husband" with "partner," it has still limited its ambit to a framework that works around ‘partnership’, thus, excluding groups such as sex workers.

Even though the Medical Termination of Pregnancy Amendment Act, 2021 has brought about some noteworthy and progressive changes, it still revolves around a doctor-centric framework, thus, depriving a woman of the right to her body autonomy. It is of utmost importance that the legislative framework on abortion guarantees an individual the right to exercise their reproductive rights in a safe and accessible manner.

Thus, the new amendment in the MTP Act has made significant headway in widening the Rights of pregnant persons and by increasing their safety and autonomy. However, there are considerable loopholes that threaten the lives of certain groups of people. It is hoped that in the future, we devise a law that encompasses the rights of all the people and mitigates the issues with the current laws.

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