ITM – LEGAL DIGEST

A MONTHLY MAGAZINE WITH A LEGAL PERSPECTIVE

edition: July 2015

From the Desk:

Last two decades have witnessed a valorous change in higher, technical and professional education, the entry of deemed to be universities and then private universities, additional IIMs, NITs and IIST in the field of higher education had opened the window of opportunities to the aspirants. Except Medical, Dental and allied remaining all the programs being offered by all the institutions, which not only opened the doors of opportunity of diversity of specializations and mode of operations which was never been experienced by Indian professional education field, Even deprived students from various corners of India are able to avail the out of reach programs, even the flexible banks loans and competitive fees structure is a helping cause for the same.

Chief Justice of India H L Duttu, during the First Convocation of Damodaram Sanjivayya National Law University, Visakhapatnam on 19th December 2014, said, "Law is not some artifact that is admired from a distance and merely dusted and polished so that it regain its original gleam. It is more like a tree- it has its roots in history, but keeps growing branches in all directions. It grows with the society. Often, it drops seeds for a new tree to grow. for the justice to be achieved, law must progress of society. Law can never be stagnant. This is where Lawyers and Judges- all who started out just like this august gathering with nothing but an LLB degree- have an important role to play. We must be alert to the need of the society to ensure while there is stability in the law: it never ceased to the dynamic.

"The purpose of law is not to abolish or restrain, but to preserve and enlarge freedom."

-John Locke

It would repeat the words of Benjamin Cardozo- "The inn that shelters for the night is not the journeys end. Law, like the traveler, must be ready for the marrow". Excerpts

The original objectives of Legal education is to supply well-trained lawyers to the trial and appellate bar as well as for judicial service so that access to justice is enlarged and the quality of justice for the common man is improved and strengthened. However, the legal education could not experience the flexibility or the push, even after the entry of the NLUs and other institutions, as are offering the contemporary program with mild change in one or two different subjects. In Indian professional education system only the law graduates having the opportunity to obtain statutory positions and excel in practice, which to leave huge scope and opportunity to experiment and further to enhance the quality in legal education which to provide the additional advantage to the prospective/eligible student.

To fill the gap in legal education by providing competitive and progressive legal education ITM is providing through ITM law schools and universities by inducting diversified curriculum, extended practical orientation blended with international exposure and internships, this will help the need of time in Legal education apart of contemporary subject knowledge along with extensive practical exposure and to prepare the younger practitioners as value addition to the industry and academia.

Word of the Month: *'Pro bono publico'* (For the public good)

It means the professional work undertaken voluntarily without payment or at a reduced fee as a public service. In legal profession, the term "***pro bono publico***" refers to legal services performed for the public good without expecting any fee. Unlike traditional volunteerism, pro bono services leverage the skills of legal professionals to help those who are unable to afford a lawyer. Pro bono services help marginalized communities and underserved populations who are often denied access to justice.

In India "***pro bono publico***" is performing through public interest litigation. Prior to 1980s, only the aggrieved party could personally knock the doors of justice and seek remedy for his grievance and any other person who was not personally affected parties had the locus standi to file a case and continue the litigation. Justice V. R. Krishna Iyer and P. N. Bhagwati recognized the possibility of providing access to justice to the poor and the exploited people by relaxing the rules of standing. Justice P.N. Bhagawati in S.P. Gupta Vs Union of India, held that "any member of the public or social action group acting bonafide can invoke the Writ Jurisdiction of the High Courts or the Supreme Court seeking redressal against violation of a legal or constitutional rights of persons who due to social or economic or any other disability cannot approach the Court". As a result any citizen of India or any consumer groups or social action groups can now approach the court seeking legal remedies in all cases where the interests

of general public or a section of public are at stake.

But now a day's some public litigation are filed in ulterior motives. In Dr.Subramaniya Swamy Vs Election Commission of India in WP No. 3969 (M/B) of 2005 [2007] INUPLUHC 2, the Supreme Court opined that it has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They pretend to act in the name of ***Pro Bono Publico***, though they have no interest of the public or even of their own to protect. In 2010 SC in State of Uttaranchal V/s. Balwant Singh Chaufal [2010(1) SCALE 492] laid down guidelines asking courts to crack down frivolous ***Pro Bono Publico*** litigations on ulterior motives and to impose exemplanary costs on such petitioners.

De-Jure: 'Once again a call for Uniform Civil Code in secular India'

Debate on Uniform Civil Code has once again come to the force after the apex Court denied the sanctity of the Shariat Courts and issuing various Fatwas. Indian constitution provides equal rights to all citizens irrespective of their religion. But at present, different set of rules and laws are prevalent for different communities as far as the matter concerned with marriage, divorce, maintenance, adoption and inheritance. Under Uniform Civil Code, idea is to make one unified set of laws which will comprise of all these personal rules. Currently, among States only Goa has this similar provision called Goa Civil Code or the Goa Family Law. Though, first Prime Minister Jawaharlal Nehru had raised this demand during his tenure but only succeed to include it in Directive Principles of the Indian Constitution.

The Apex Court in WP: 386 0f 2005 filed by Advocate Vishwa Lochan Madan against union of India, Justice Chandramauli Kr. Prasad and Justice Pinaki Chandra Ghose pointed out some of the Fatwa that basically infringes the rights of individuals by dissolving the marriage and passed a decree for perpetual injunction restraining the husband and wife living together, though none of them ever approached the Dar-ul-Uloom. Another Fatwa that asked the 19 years old Muslim women to accept the rapist father-in-law as her real husband and divorce her husband and the Court observed that "No religion is allowed to curb anyone's fundamental rights."

Fatwa means an exposition of religious law by a Muslim cleric or seminary in answer to a specific query. The fatwa-giver writes his opinion as per his own understanding of religion, right or wrong, and does not claim it to be authentic. But the Muslim law neither obliges any person to seek a fatwa in any matter nor makes it incumbent upon her to follow it if obtained. The Supreme Court opined that fatwas are conflict with the Indian Judicial System; it touching upon the rights of an individual at the instance of rank strangers may cause irreparable damage and therefore, would be absolutely uncalled for. It shall be in violation of basic human rights. It cannot

be used to punish innocent. Religion cannot be allowed to be merciless to the victim. Fatwa is not recognised by law and it does not have a force of law and, therefore, cannot be enforced by any process using coercive method. Any person trying to enforce that by any method shall be illegal and has to be dealt with in accordance with law.

The Supreme Court already in Shah Banu case directed the Parliament to frame a uniform civil code in the year 1985, In this case, a penurious Muslim woman claimed for maintenance from her husband under Section 125 of the Code of Criminal Procedure after she was given triple talaq from him who was not entitled under the personal Law. The Supreme Court held that the Muslim woman have a right to get maintenance from her husband under Section 125. In Union of India in Sarla Mudgal v. Union of India to "endeavor" in framing a Uniform Civil Code. In the 212th report of the Law Commission has suggested certain amendments in both the Special Marriage Act, 1954 and the Foreign Marriage Act, 1969 so that their provisions become uniformly available to a larger number of marriages of all Indian communities.

The recent verdict is likely to trigger a debate on Muslim personal law and the necessity of having a Uniform Civil Code, and have a direct bearing on the operation of panchayats and similar institutions that issue contentious diktats. Justice Vikramjit Sen said during the hearing on a PIL seeking recognition for Christian courts set up under its personal law "It is a secular country but I don't know how long it will remain so". These personal laws affect the major religious community of the country. This requires the necessity of parallel judicial system and enforcement of Article 44 of the Constitution. It will help to integrate the nation to be secular and non-discriminatory. The point of uniform civil code is not to divide by religion but to unite by nationality.

"Law"gic: 'Misuse of Dowry Law'

The laws that have come into force to safeguard the interests of every individual, but now a day it is being used to harass others. Criminal proceeding is brought against other person for improper motives. Dowry Laws are enacted to protect the married women from being subjected to cruelty by the husband or his relatives. Some of the laws which were created to protect them are being misused to take revenge on others. The anti-dowry law was originally designed to safeguard women from abuse and sometimes death in the hands of relatives but it is used to harass the husband and his relatives. According to the National Crime Records Bureau statistics, nearly 200,000 people, including 47,951 women, were arrested in regard to dowry offences in 2012, but only 15% of the accused were convicted.
Sushil Kumar Sharma Vs.UOI (2005), the Supreme Court lamented that in many instances complaints under S.498A were being filed with an oblique motive to wreck personal vendetta and observed. "It may therefore become necessary for the Legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt

with" It was also observed that "by misuse of the provision, a new legal terrorism can be unleashed". In the case of Preeti Gupta vs. State of Jharkhand (2010) the Supreme Court observed that "serious re-look of the entire provision is warranted by the Legislature. It is a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over - implication is also reflected in a very large number of cases".

Recently the Supreme Court in Criminal Appeal No. 1277 of 2014, Arnesh Kumar Vs State of Bihar & Anr Justice Chandramauli Kr. Prasad opined that some of the women are misusing the dowry laws to harass their husbands and in-laws. Court viewed that in some case bed-ridden grand-fathers and grand-mothers of the husbands and sisters who are living abroad for decades are arrested. More than 50 per cent of the under-trials in Indian jails spend months in custody under the misuse of dowry law and nobody in the family is left out to pursue their cases. Judges reminded the authorities must follow the checklist that has been part of the anti-dowry law before noting down a dowry-related complaint and ruled that in case the police make an arrest, a magistrate must approve further detention of the accused.

The Law Commission in its 154th Report opined that there was a clear recommendation to make the offence compoundable. Justice Mallimath Committee on Criminal Justice Reform also recommended that it should be made compoundable as well as bailable. The Committee of Petitions (Rajya Sabha) in the report presented on 7.09.2011, observed thus under the heading "Making the offence under Section 498A IPC compoundable." In the 237th Report under the title of "Compounding of IPC Offences". The Commission recommended that the offence under Section 498A should be made a compoundable offence with the permission of Court.

In the 243th Report of Law Commission it was recommended that the Section together with its allied CrPC provisions shall not act as an instrument of oppression and counter- harassment and become a tool of indiscreet and arbitrary actions on the part of the Police.

The Courts have to be very cautious and careful while entertaining these types of litigations and it should discourage the unjustified litigants at the initial stage itself and the person who misuses the law should be made accountable for it. Government has to take a relook at the anti-dowry laws, Domestic Violence Act, Maintenance Act from misusing.

Forum: 'Is a Stricter Juvenile Justice Act needed'

A juvenile delinquent is a person who is typically under the age of 18 and commits an act that otherwise would have been charged as a crime if they were an adult. **Section 2(K)** of the Juvenile Justice (Care and Protection of Children) Act, 2000 defines a 'juvenile' or a 'child' as a person who has not completed 18 years of age while **Section 2(I)** says a "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence.

The Juvenile Justice (Care and Protection of Children) Act, 2000 is a legal framework for juvenile justice in the country. The Act provides for a special approach towards the prevention and treatment of underage offenders. It provides a framework for the protection, treatment and rehabilitation of children. The mission being not to simply punish the violators but to help the young violators of law to get back in the society on the right path. The focus being to look into the complexity of the life situation of the child offenders and thus offering adequate rehabitation programs to them.

In the incident of December 2012 Delhi gangrape case out of the five arrested and convicted for the gruesome attack, one of them, whom the investigation reports suggested to be most brutal among all, escaped death sentence because he was found to be underage. This created a huge uproar as the most dangerous offender got away with a minor sentence. The development triggered a nationwide debate and questions were raised whether the justice juvenile Act needs to be amended. Under the present setup, a 17 and-a-half-year-old dreaded rapist and killer would go scot free after committing one of the most heinous and gruesome crimes of the modern times in India.

The Supreme Court emphasized the necessity for a stricter and a detailed juvenile justice act. Apex court bench said, "You can't have a cut-off date for crime" like you have for government jobs, the court said. "Go by how the neurons are growing." The move by the court was initiated after *Maneka Gandhi*, the Women and Child Development Minister, demanded equal punishment for juveniles and adults, accused of rape. According to the Women and child Development Minister, the recent reports by the police confirms the fact that 50 per cent of all sexual crimes are committed by the 16 year olds, who are well aware of the leniency of the Juvenile Justice Act. But once they are brought into the purview of the adult world concerning cases of premeditated murder, and rape, it will certainly scare them. Thereby, the Minister proposed that juveniles above 16 years, accused of heinous crimes should be treated on par with adults. She also said that she would work towards making necessary changes in the law and the process related to the same.

According to NCRB data, there has been 60% increase in rapes committed by juveniles in 2013 as compared to 2012. The number of rapes committed by juveniles in 2013 was 2,074, compared to 1,316 in the previous year. Government data show involvement of juveniles- aged between 16 and 18 - in serious crime has risen by 65% in the last one decade. Proposals for amending Juvenile Justice Act, 2000 has been under consideration for many years. A draft of proposed Juvenile Justice (Care and Protection of Children) Bill, 2014, has already been placed by the Ministry.

However, according to of Justice Verma committee, “the Juvenile Justice Act has failed miserably to protect the children in the country. We cannot hold the child responsible for a crime before first providing to him/her the basic rights given to him by the Indian Constitution. It opined that the aim of the juvenile act was reformation of child offenders and so an age ceiling of 18 must be maintained. The panel was formed for the purpose of amending the criminal justice act, after the horrifying case of Delhi gang rape in

2012. The National Commission for protection of child Rights also opposing the amendments that most of the children who are in conflict with law are in need of care and protection. Amendments will move away the basic philosophy of the Juvenile Justice Act which is reformative rather than being punitive.

The cabinet has approved the Juvenile Justice (Care and Protection of Children) Bill, 2014 that proposes treating minors older than 16 years as adults if charged with serious crimes such as rape and acid attacks. However, they would not be sentenced to life or death if found guilty. What needs to be done is to assess the mental criminal responsibility of the child offender and not age. The law was framed to protect the juveniles, but it should be used judiciously and not mechanically because the society needs to be protected too. Juvenility is a state of development, not a birth date or a technicality. Depending on the type and severity of the offence committed the persons under eighteen should be charged and tried as adults.

Intellectual Property: Trademark infringement

According to Section 2 (1) (zb) of Trade mark Act 1999, trade mark is a mark which is capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours.

Trademark infringement is a violation of the exclusive rights attached to a trademark without the authorization of the trademark owner or any licensees (provided that such authorization was within the scope of the license). Infringement may occur when one party, the "infringer", uses a trademark which is identical or confusingly similar to a trademark owned by another party, in relation to products or services which are identical or similar to the products or services which the registration covers. According to section 29 of Trade Mark Act 1999, an owner of a trademark may commence legal proceedings against a party which infringes its registration.

Amul dairy products of Gujarat have won a trademark dispute with a milk producers' co-operative union in West Bengal, which sought to market a brand of milk named 'Imul'. Ichhamati Co-operative Milk Producers' Union Limited filed an application for registration of the mark 'IMUL' (Application No. 1281174) under class 29 of the Trademarks Act, 1999. After the advertisement of this application, Kaira District Co-Operative Milk Producers' Union Limited opposed registration of the trademark. The opposition was based on the ground that the appellant was carrying on a well established business of manufacturing, marketing and exporting milk products under the name AMUL since 1955. By virtue of its long, continuous and extensive use of the trademark, it was contended that the public now associated 'AMUL' with the appellant's products. Therefore, the respondent's mark IMUL would cause confusion as it was deceptively similar to the appellant's trademark.

The registrar found that the respondent's adoption of the mark IMUL was honest and was not deceptively similar. The decision was based on the fact that the respondent had been using this mark since 2001 and its turnover had increased continuously since then. Against this order, the appellant appealed to the IPAB (Circuit Bench, Kolkata). Despite notice, the respondents did not appear before the IPAB nor did they file counter statements. The IPAB decided the matter in favour of AMUL *ex parte*.

The IPAB comprising Vice-Chairman S.Usha and member V.Ravi held that a statement showing increase in sales turnover by way of affidavit was no ground to grant registration of a trademark. It held that the mark 'IMUL' was phonetically similar to 'AMUL', except for the first letter 'A' and 'I'. The IPAB used the test of "an unwary purchaser with average intelligence and imperfect recollection" to show that phonetically similar marks are likely to cause confusion among such purchasers. Moreover, case law showed that AMUL had become a household name and the appellant had been successful, in the past, in restraining others from using its registered trademark. Also, AMUL was a well known mark and the registration of a deceptively similar mark ought not to have been allowed. Therefore, the order of Registrar was set aside.

Eco'Law'mics: An Overview on Sahara dispute

The Securities and Exchange Board of India in 2010 bars Sahara Parivar chief Subrata Roy and two of its companies Sahara India Real Estate Corp and Sahara Housing Investment Corp from raising money from the public as they raised several thousand crores through optionally fully convertible debentures (OFCD) which SEBI deemed illegal. They also issued show cause notices as to why action should not be initiated, including directions to refund the money raised by them through a debenture instrument OFCD. The regulator passed the order on a complaint from Professional Group for Investor Protection alleging that no disclosure was made about one of the housing companies of the group raising money by issuing convertible bonds for many months.

In June 2011 Securities Appellate Tribunal ordered two unlisted Sahara Group companies to refund about 17,656.53 crore with 15% interest which it had raised through a flotation of OFCDs. In November 2011 Sahara India Pariwar moved to Supreme Court against SAT's order. The SC stayed the SAT order and asked the two companies to refund 17,400 crores to their investors and asked the details & liabilities of the companies. Supreme Court gives time to Sahara to choose between options to secure investments made by public in OFCD scheme. Either to give sufficient bank guarantee or attach properties worth the amount raised through OFCD's.

June 2012 SEBI informed Supreme Court that real estate division of Sahara had no right to mobilize Rs.27,000 crore from investors through OFCD without complying norms of Market regulator SEBI. Supreme Court in August 2012 directs Sahara India Real Estate Corporation Ltd and the Sahara Housing

Investment Corporation Ltd to refund over Rs. 24,400 crore.

SEBI files a contempt petition in November 2012 against Sahara claiming it had not furnished the investor documents within the court stipulated time. Even after the Sahara Group gets a temporary reprieve and granted more time to repay the money Sahara misses the repayment deadline set up by SC. The company fails to deposit the second installment amount with market regulator. In February 2013 SC refused to hear a plea asking for extension of deadline to refund investors' money. SEBI moves in to attach properties of the group and group chief. February 2014 SC issues non bailable warrant against Roy for failing to appear at a court hearing.

The Supreme Court granted bail in March 2014 and asked Sahara group chief Subrata Roy to deposit Rs 10,000 crore with the market regulator SEBI for his release on interim bail from judicial custody. The SC has agreed to defreeze bank accounts of Sahara companies to raise the Rs 10,000 crore and also allowed the sale of three properties Sahara owns in London and New York, worth about Rs 10,000 crore. Sahara has so far deposited Rs 3,117 crore.

In a fresh turn, the RBI in February had moved the Supreme Court seeking to implead itself as a party in the company's tussle with SEBI and sought to stop one of its firms from disposing of assets for securing the release of its chief Subrata Roy.

RBI asked the apex court to restrain Sahara India Financial Corporation Ltd from utilising any of its assets, including securities, for paying dues to SEBI on the ground that SIFCL is Residuary Non-Banking Financial Firm and falls under its (RBI) regulatory control. The matter is yet to be decided by the Supreme Court.

EDU-LAW: 'RTE and its Challenges'

The Indian Constitution is incorporated with well designed constitutional manifesto under Directive Principles of State policy. It imposes certain obligations on the State to take affirmative action to establish good governance and a welfare State. According to Article 45 is the duty of the State to provide free and compulsory education for all children until they complete the age of 14 years. The Supreme Court in Mohini Jain and Unnikrishnan cases recognized the right to education as an implied fundamental right. The National Commission on review of the working of the Constitution has also endorsed the similar view. As a result the parliament inserted Article 21-A to the Constitution by the 86th Constitutional amendment in 2002. This amendment also introduced new fundamental duty on parents to provide education to their children under Article 51-A to take affirmative action to fulfill the Constitutional mandate.

In furtherance of its constitutional obligation under Article 21-A, the Indian Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009. The essential schema of this act, as articulated in Section 12, mandates government schools to provide for free and compulsory elementary education and directs private unaided schools to do the same in respect of children belonging to the weaker sections and disadvantaged

groups, subject to a maximum of twenty five percent of their student intake. In the case of the latter, the act guarantees them reimbursement of the same per-child-expenditure as would be incurred by a government school. The Supreme Court also upheld this enactment in Society for Unaided Private Schools of Rajasthan v. Union of India. A Bench of Chief Justice S.H. Kapadia and Justice Swatanter Kumar while upholding the law, however, held that it would not be applicable to unaided minority schools.

'Elementary education' is defined in Section 2(f) as education from the first class to the eighth class, the expression 'child belonging to disadvantaged group' is defined in Section 2(d) as a child belonging to the Scheduled Caste, Scheduled Tribe, or any other socially and educationally backward class or similar group that is disadvantaged owing to gender or social, cultural, economic, geographic, linguistic, or similar factors, and the expression 'child belonging to weaker section' is defined in Section 2(e) as a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate government.

With the Right to Education Act coming into force, government faces a number of challenges in its implementation, especially quality of education, availability of teachers, coordination of various implementing agencies and setting up of neighborhood schools. According to the National Crime Records Bureau, every year around 65,000 children fall victim to trafficking. Only 10% of such cases are registered with the police. Officially, therefore, only 6,500 children are trafficking victims. Besides this, around 1.20 crore children are involved in child labour (2001 census), keeping them out of school. A recent survey under the Sarva Shiksha Abhiyan programme in Rajasthan found that 12 lakh children were out of school. Of these, 7.13 lakh children were girls and the rest were boys. Other states must carry out similar studies.

Not only the central and state governments but the nation as a whole should take responsibility in this regard. Each state should prepare a set of model rules for implementation of the right to education, with the participation of the community and other stakeholders. Community participation and support can make marked difference in achieving this goal. There exists a need for greater coordination amongst different agencies and functionaries involved in this task. To overcome population pressures and budgetary constraints, cost effectiveness and accountability must be ascertained at every level.

Case of the Month

IN THE SUPREME COURT OF INDIA

SLP 10581 of 2015 in Appeal 704 of 2014 along with Review Petition (L) 50 of 2014 in Notice of Motion 310 of 2012 in suit No: 284 of 2012

ITM Trust & Others Vs Educate India Society

Coram: Justice Ranjan Gogoi &
Justice N.V.Ramana

Petition filed by the ITM Trust against the respondent for infringement of registered trade mark and passing off. Plaintiff seeks to restrain the defendant from using "ITM" either by itself or in conjunction with other word including the word 'University'.

The Court held – Defendant has no registration of the mark "ITM" as a mark. There is no material to evidence the use of the mark since 1999. Defendant themselves applied for the registration of the mark only on 2010. Any use after 2010 is not honest since the defendants are made aware of the plaintiffs prior mark existing on the Register of the Trade Marks. In the application in the year 2010, the defendant said that the mark of which they sought registration, "ITM University is proposed to be used.

The defendant failed to show any user at all since 1999 or any honest and concurrent user of the mark "ITM" as a trade mark. Hence the defendants, by themselves, their agents or their employee are restrained from using the mark "ITM" or any other deceptively similar mark in respect of technical and educational services so as to infringe the registered trade mark "ITM" or passing off or enable others to pass off the defendants service as that of the plaintiffs. Petition allowed.

While dealing with the review petition (L) 50 of 2014 by referring the arguments and to rejecting the review petition the Honb'le Court observed that petition not falls under proviso (b) Order XLVII Rule 4(2) of the CPC. Defendant seized the opportunity to marshal all its materials. There is no new evidence to be entertaining the petition filed by Educate India Society or any fraud committed on the court or mistake or error apparently on the face of record to entertain the petition to review the Order dated 15th September 2014 or any other sufficient reason to entertain and subsequently the review petition rejected and affirmed the injunction.

Subsequently while dealing with the admission of Appeal filed by Educate India Society vide Appeal Lodging No. 704 of 2014 against the injunction Order before the Hon'ble Bombay High Court. While dealing with the appeal the division Bench observed that the Educate India Society had never used the 'ITM' as a trade mark per se. Therefore the Hon'ble High Court not inclined to interfere with the injunction order passed by the learned Single Judge. While denying the extension of stay of the injunction Order only

provided six weeks time to other party to comply with the Order with and protected the bonafide right of ITM Trust.

Further to, Educate India Society preferred Special Leave Petition vide SLP(Civil) 10581 of 2015 which was represented by the renowned Senior Advocates like Mr.Harish Salve, Mr. Amit Sibal and others. The matter came up for hearing before the Hon'ble Division bench Justice Ranjan Gogai and Justice N.V.Ramana on 13th April 2015, while dismissing the petition, the court observed that there is no legal and valid ground to interfere the order of Bombay High Court. Educate India Society was given only three months time to implement the Order of Bombay High Court. On the basis of this order on 21st April 2015, Educate India Society withdrawn the counterblast suit filed by them before Hon'ble Delhi High Court against ITM Society which is a constituent unit of ITM Group. With this the bonafide and genuine rights of ITM Trust over ITM trade mark was protected.

Know the Law: Negotiable Instruments Act

Definition of Negotiable instrument – A "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer. A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable. A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank. Where a promissory note, bill of exchange or cheque, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option. [section 13(1)]. A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. [section 13(2)].

Promissory Note – A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. [Section 4].

Bill of Exchange – As per statutory definition, "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. [section 5]. A cheque is a special type of Bill of Exchange. It is drawn on banker and is required to be made payable on demand.

Drawer, Drawee and payee – The maker of a bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called the "drawee" [section 7]. – **-** The person named in the instrument, to whom, or to whose order the money is by the instrument directed to be paid, is

called the "payee" [section 7]. – - However, a drawer and payee can be one person as he can order to pay the amount to himself.

At sight, On presentment, After sight – In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean 'on demand'. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance. [section 21]. – - Thus, in case of document 'after sight', the countdown starts only after document is 'sighted' by the concerned party.

Provisions in respect of Cheques – A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. 'Cheque' includes electronic image of a truncated cheque and a cheque in electronic form. [section 6]. The definition is amended by Amendment Act, 2002, making provision for electronic submission and clearance of cheque. The cheque is one form of Bill of Exchange. It is addressed to Banker. It cannot be made payable after some days. It must be made payable 'on demand'.

Cheque crossed generally - Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally. [section 123]

Cheque crossed specially – Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker. [section 124].

Payment of cheque crossed generally or specially – Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker. Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection. [section 126].

Cheque bearing "not negotiable" – A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable", shall not have, and shall not be capable of giving, a better title to the cheque than that which the person form whom he took it had. [section 130]. Thus, mere writing words 'Not negotiable' does not mean that the cheque is not transferable. It is still transferable, but the transferee cannot get title better than what transferor had.

Electronic Cheque – Provisions of electronic cheque has been made by Amendment Act, 2002. As per *Explanation* I(a) to section 6, 'A cheque in the electronic form' means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed by a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system.

Truncated Cheque – Provisions of electronic cheque has been made by Amendment Act, 2002. As per *Explanation*

I(b) to section 6, 'A truncated cheque' means a cheque which is truncated during the clearing cycle, either by the clearing house during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Return of cheque should be for insufficiency of funds – The offence takes place only when cheque is dishonoured for insufficiency of funds or where the amount exceeds the arrangement. Section 146 of NI Act only provides that once complainant produces bank's slip or memo having official mark that the cheque is dishonoured, the Court will presume dishonour of the cheque, unless and until such fact is disproved.

Calculation of date of maturity of Bill of Exchange - If the instrument is not payable on demand, calculation of date of maturity is important. An instrument not payable on demand is entitled to get 3 days grace period.

Liability of parties – Basic liability of payment is as follows – (a) Maker in case of Promissory Note or Cheque and (b) Drawer of Bill till it is accepted by drawee and acceptor after the Bill is accepted . They are liable as 'principal debtors' and other parties to instrument are liable as sureties for maker, drawer or acceptor, as the case may be. When document is endorsed number of times, each prior party is liable to each subsequent party as principal debtor. In case of dishonour, notice is required to be given to drawer and all earlier endorsees.

Presentment of Negotiable Instrument – The Negotiable Instrument is required to be presented for payment to the person who is liable to pay. In case of Bill of Exchange payable 'after sight', it has to be presented for acceptance by drawee. 'Acceptance' means that drawee agrees to pay the amount as shown in the Bill. This is required as the maker of bill (drawer) is asking drawee to pay certain amount to payee. The drawee may refuse the payment as he has not signed the Bill and has not accepted the liability.

In case of Promissory Note, such acceptance is not required, as the maker who has signed the note himself is liable to make payment. However, if the promissory note is payable certain days 'after sight' [say 30 days after sight], it will have to be presented for 'sight'.

If the instrument uses the expressions "on demand", "at sight" or "on presentment", the amount is payable on demand. In such case, presentment for acceptance is not required. The Negotiable Instrument will be directly presented for payment.

Penalty in case of dishonour of cheques for insufficiency of funds [Section 138] - If a cheque is dishonoured even when presented before expiry of 6 months, the payee or holder in due course is required to give notice to drawer of cheque within 30 days from receiving information from bank.. The drawer should make payment within 15 days of receipt of notice. If he does not pay within 15 days, the payee has to lodge a complaint with Metropolitan Magistrate or Judicial Magistrate of First Class, against drawer within one month from the last day on which drawer should have paid the amount. The penalty can be upto two years imprisonment or fine upto twice the amount of cheque or both. The offense can be tried summarily. Notice can be sent to drawer by speed post or

courier. Offense is compoundable. Even if penalty is imposed on drawer, he is still liable to make payment of the cheque which was dishonoured. Thus, the fine/imprisonment is in addition to his liability to make payment of the cheque.

DNA never Lies:

By Dr. Prasad Kolla (*Coordinator Bioscience Program, ITM-University, Raipur*)

At the advent of the millennium biology has taken a quantum leap and with a deep understanding of Human Genome Sequence, many unsolved mysteries of the Genes and Genetic composition of individuals were answered. Genes are the blue print of every organism and they are transferred from the biological parents to the offspring, which means all individuals are the combination of gene sets of their parents. It is natures master stroke, which is imprinted in our genes, and no one can defy or deny.

This very fact has found the relevance in many lawsuits, where parentage of the child was questioned. The technique is called a DNA finger printing, and was invented by Prof. Alec Jeffery, University of Leicester, UK. The Indigenous version of this technique was made popularized by Prof. Lalji Singh (ex Director of Center for cellular and molecular Biology, Hyderabad). This technique was first time presented in court of Law and the Kerala High Court has upheld the verdict since then many orders are been pronounced based on the evidence of paternity testing.

A very high profile case of paternity dispute which got wide spread attention from all corners in India was of Mr. N.D. Tiwari Vs Rohit Shekhar OS(CS). 700 of 2008. After years of denying Mr. Tiwari has refused to accept Mr. Shekhar as his biological son. Finally a lawsuit was filed against Mr. Tiwari by Mr. Shekhar, in the Delhi High Court for paternity on 13th September 2007.

During the pendency of the suit Mr. Shekhar filed I.A. No. 4720/2008 under Order XXXIX Rules 1 & 2 of the Civil Procedure Code, 1908 (CPC) for direction to Mr. N.D. Tiwari to submit himself for a DNA test and/or any other test required to determine the parentage of the appellant. The learned Single Judge before whom the suit was then pending, vide order/judgment dated 23rd December, 2010 allowed the said application and directed the parties to appear before the Joint Registrar; the Joint Registrar was directed to arrange for the DNA testing of the Mr. N.D. Tiwari by the Centre for Cellular & Molecular Biology (Constituent Laboratory of the Council of Scientific Industrial Research, Government of India). In the DNA test it was proven that Mr. Tiwari was the Biological father of Mr. Rohit Shekhar. The matching of Tiwari`s DNA samples with that of Rohit Shekhar and his mother Ujjawala Sharma has finally ended the paternity row involving the Congress leader.

Expert talks: Judicial Reform

The recommendations of 230th Report of Law Commission in the subject of reforms in Judiciary. The recommendations in this Report are the suggestions made by the Hon'ble Shri. Justice Ashok Kumar Ganguly,

1. There must be full utilization of the court working hours. The judges must be punctual and lawyers must not be asking for adjournments, unless it is absolutely necessary. Grant of adjournment must be guided strictly by the provisions of Order 17 of the Civil Procedure Code.

2. Many cases are filed on similar points and one judgment can decide a large number of cases. Such cases should be clubbed with the help of technology and used to dispose other such cases on a priority basis; this will substantially reduce the arrears. Similarly, old cases, many of which have become infructuous, can be separated and listed for hearing and their disposal normally will not take much time. Same is true for many interlocutory applications filed even after the main cases are disposed of. Such cases can be traced with the help of technology and disposed of very quickly.

3. Judges must deliver judgments within a reasonable time and in that matter, the guidelines given by the apex court in the case of Anil Rai v. State of Bihar, (2001) 7 SCC 318 must be scrupulously observed, both in civil and criminal cases.

4. Considering the staggering arrears, vacations in the higher judiciary must be curtailed by at least 10 to 15 days and the court working hours should be extended by at least half-an-hour.

5. Lawyers must curtail prolix and repetitive arguments and should supplement it by written notes. The length of the oral argument in any case should not exceed one hour and thirty minutes, unless the case involves complicated questions of law or interpretation of Constitution.

6. Judgments must be clear and decisive and free from ambiguity, and should not generate further litigation.

7. Lawyers must not resort to strike under any circumstances and must follow the decision of the Constitution Bench of the Supreme Court in the case of Harish Uppal (Ex-Capt.) v. Union of India reported in (2003) 2 SCC 45.

CONSUMER RIGHTS

By K.VYAS *(Human Rights Activist)*

The awareness among consumers in today's modernized world is giving way to consumers ascertaining the rights provided to them under Consumer Protection Act and seeking redressal against the unfair trade practice. The prospect of the consumer justice system in our country appears to be bright in view of the provisions available in the Indian statutes and legislation and various proactive policies, schemes/programmes being adopted by the Government. Involvement of trade and industry, civil society organizations and above all consumer themselves is vital to keep a check on the practice of unfair trade in the years to come.

The term "Unfair Trade Practice" does not have a universal standard definition. However, the term Unfair Trade Practice broadly refers to any fraudulent, deceptive or dishonest trade practice; or business misrepresentation of the products or services that are being sold; which is prohibited by a statute or has been recognized as actionable under law by a judgement of the court. However, the Indian statute dealing with the term is Consumer Protection Act, 1986.

Abuse of dominant position makes conclusion of New Mobile deals with so called & Fabricated Free Calling Plans & plans at lower rates which in fact not provided on actual activation of Services by Reliance. We the customers who are ultimately harmfully affected by so called underground malpractices & tactics are kept totally in Dark. This unfair trade practice by Reliance Communications Ltd surely affect other eminent competitors (like Loop Mobile , MTNL , MTS , Uninor , Aircel , Tata Tele Services , Idea Cellular , Vodafone , Airtel) as well as consumers And the relevant market in its favor.

Similar to the logic of aftermarket which is adopted by the Hon'ble Commission in the automobiles matter, in this case also, there is an aftermarket (i.e. market for services provided by the Telecom Company post the consumer books its service), where each Telecom player is dominant because the consumer has to face the unscrupulous practices of the Telecom providers and cannot resort to number portability with ease, unless they incur substantial switching cost.

Awareness of RTI & its Effects

Democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Government and their instrumentality accountable to the governed"-------- (Preamble, RTI Act 2005).

The Right to Information Act 2005 grants every citizen the right to seek information subject to provisions of this Act from every public Authority about the various tasks and activities performed by them. The Act essentially focuses on maximum disclosure and minimum exceptions. Section 25 (2) of the RTI Act stipulates that "Each Ministry or Department shall, in relation to the Public Authorities within their jurisdiction, collect and provide such information to the Central Information Commission or State Information Commission, as the case may be, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section". But there have been many commissions that haven't been updating their records and reports on the number of complaints.

The State Government of Maharashtra empowered the Slum Rehabilitation Authority (SRA) to create a scheme to provide inexpensive housing to 800,000 slum dwellers in Mumbai. Mr Shailesh Gandhi, RTI activist filed a public interest litigation suit alleging that the housing scheme was being hijacked to benefit a few at the expense of the public at large, and prayed that the respondent, State of Maharashtra, set up a special investigation team to investigate complaints of corruption in the implementation of the scheme.
Mr Gandhi filed applications under the Right to Information Act, 2005 (RTI Act) with the Anti-Corruption Bureau (ACB), requesting details of investigations made into allegations of corruption in the implementation of the slum rehabilitation programme. Information obtained under the RTI Act revealed that the ACB had received 89 complaints of criminal misconduct against officials of SRA who colluded with the land developers. Only three of these complaints had been effectively investigated with the registration of first information reports. By filing this public interest litigation in the Bombay High Court, Mr Gandhi revealed this unsavory reality about the state government's laxity in bringing the corrupt to book. The Court found that neither the ACB nor the state government had taken adequate action in over 10 cases.

The court observed that all these 87 complaints, except the ones which are already before the Court of Competent Jurisdiction, would be examined by the members of the High-Powered Committee constituted by the State; and the Committee, upon the inquiry and examination of the relevant records, shall record its opinion.

- While examining these complaints, the High-Powered Committee shall take the assistance of police officers not below the rank of an Additional Commissioner. The collective opinion of these authorities shall be recorded and the concerned departments shall take action in furtherance thereto in accordance with law.

- Wherever element of criminality is involved, particularly in cases of fraud, impersonation or like cases, the investigation would be handed over to an appropriate agency which shall without being influenced in any manner whatsoever by the position or status of the person involved in the case.

According to the report of Commonwealth Human Right initiative published on October 2013, number of information requests received by Public Authorities and the proportion of rejection at the RTI Application Stage

SI.No	Government/ State	No of RTI applications received	Rejection at the application stage
1	Central Government	6,55,572	8.14%
2	Andhra Pradesh	1,22,133	4.94%
3	Bihar	1,29,807	4.22%
4	Chhattisgarh	48,785	3.85%
5	Karnataka	2,93,405	0.30%
6	Maharashtra	6,82,286	7.2%
7	Meghalaya	1,068	0.74%
8	Mizoram	1,045	0.86%
9	Nagaland	2,206	9.74%
10	Rajasthan	71,243	4.59%
11	Jammu and Kashmir	12,136	1.37%
	Grand Total	29,39,288	

Domain name & Infringement of Trade Mark

A domain name is an identification which defines a realm of administrative autonomy, authority or control within the internet Domain names are used in various networking contexts and application-specific naming and addressing purposes. Domain names are formed by the rules and procedures of the Domain Name System. Any name registered in the Domain Name System is a domain name. Domain name represents an Internet Protocol resource, such as a personal computer used to access the Internet, a server computer hosting a web site, or the website itself or any other service communicated via the Internet. The domain name system is administered by the Internet Corporation for Assigned Names and Numbers (ICANN).

It is a general practice where companies desire to obtain such domain names which can be easily identified with their established trademarks. This helps the public to identify the company, as there is no physical contact between them. Domain names and trademarks are connected with each other. Domain names serve the same functions as a trademark, and are not mere addresses or like finding a number on the internet and therefore, it is entitled to equal protection as trademarks.

If a company or an individual register a domain name which is similar to or identical to someone else's trademark or domain name and then tries to sell the same for a profit, it is known as "Cybersquatting". Companies in India have also bore the brunt of cybersquatting in the recent past. Besides, the courts in India have been extremely vigilant in protecting the trademark interest of the domain owners who have suffered from cybersquatters.

The court in *Tata Sons Ltd. v. Manukosuri and Others* held that domain names are entitled to the protection as trademark and trade mark law applies to the activities on internet, and the mere fact that the petitioner has no registered domain name by itself may not stand in the way of passing off action.

In Acqua Minerals Ltd. v. Pramod Borse *and Another, observed that "*unless and until a person has credible explanation as to why did he choose a particular name for registration as a domain name or for that purpose as a trade name which was already in long and prior existence and has established its goodwill and reputation; there is no other inference drawn than that the said person wanted to trade in the name of trade name he has picked up for registration or as a domain name because of its being an established name with widespread reputation and goodwill achieved at huge cost and expenses involved in advertisement."

We solicit you opinions and Suggestions on: – itm@itm.edu