

## CONGRATS AND BEST WISHES- PROF.VIVEKANANDAN



***Lady Justice is the symbol of the judiciary. Justice is depicted as a goddess equipped with three symbols of the rule of law: a sword symbolizing the court's coercive power; scales representing the weighing of competing claims; and a blindfold indicating impartiality***



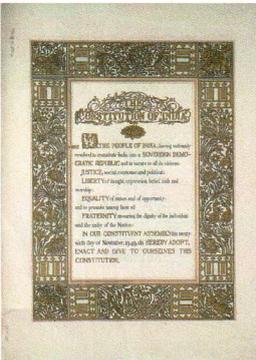
***The French Declaration of the Rights of Man and of the Citizen, whose principles still have constitutional value.***



***The famous Carbolig Smoke Ball advertisement to cure influenza was held to be a unilateral contract.***



***A trial in the Ottoman Empire, 1879, when religious law applied under the Mecelle***



***The Constitution of India is the longest written constitution for a country, containing 346 articles, 12 schedules, numerous amendments and 117,369 words***

*"Intel has harmed millions of European consumers by deliberately acting to keep competitors out of the market for computer chips for many years. Such a serious and sustained violation of the EU's antitrust rules cannot be tolerated"*  
Neelie Kroes, European Commissioner for Competition

On 13 May 2009, the European Commission adopted a decision finding that Intel Corporation infringed Article 82<sup>ii</sup> of the EC Treaty by abusing its dominant position on the x86 central processing unit (CPU) market. The decision imposed a fine of EUR 1.06 billion and obliged Intel to cease the identified illegal practices, to the extent that they are ongoing, and not to engage in the same or equivalent practices in the future<sup>iii</sup>.

The Decision sets out how Intel broke EU antitrust law by engaging in two types of practices:-

**First**, Intel gave wholly or partially **hidden rebates to computer manufacturers** – Dell, HP, NEC, Lenovo on condition that they bought all, or almost all, their x86 CPUs from Intel. Intel also made direct payments to Europe's largest PC retailer – Media Saturn Holding (MSH) on condition that it stocked only computers with Intel x86 CPUs.<sup>iv</sup>

**Second**, Intel made **direct payments to computer manufacturers** – HP, Acer, Lenovo - to stop or delay the launch of specific products containing a competitor's x86 CPUs and to limit the sales channels available to these products<sup>v</sup>. According to the European

Commission, Intel's anticompetitive behavior diminished competitors' ability to compete on the merits of their x86 CPUs. This resulted in a reduction of consumer choice and in lower incentives to innovate.

**In India**, the abuse of dominant position is covered under Section 4<sup>vi</sup> of the Competition Act 2002, this is on similar lines as that of Article 82 of the EC rules on competition. Given that Section 4 of the Act was notified around the same time as that of the EC's ruling on Intel, it remains to be seen whether the Competition Commission of India would undertake a suo motu investigation of Intel's practices in India. On 22 July 2009 Intel is reported to have appealed before the Court of First Instance in Luxembourg, against the decision of the European Commission claiming that the European antitrust regulator failed "to meet the required standard of proof" when it fined the chipmaker \$1.45 billion in May for anticompetitive behavior against Advanced Micro Devices<sup>vii</sup>. The decision of the European Court is eagerly awaited, however, given the documentary evidences; it is unlikely that there would be any substantial decrease in fine imposed by the European Commission.

<sup>i</sup> Third Year, LL.B student at Rajiv Gandhi School of Intellectual Property Law, IIT Kharagpur

<sup>ii</sup> European Community Treaty, Title VI, Chapter 1, Section 1, Article 82

<sup>iii</sup> Available at <http://ec.europa.eu/competition/antitrust/cases> (last visited 7 October 2009)

<sup>iv</sup> Some noted examples of Intel rebates

- Intel rebates to **Dell** from December 2002 to December 2005 were conditioned on Dell purchasing exclusively Intel CPUs.
- Intel rebates to **HP** from November 2002 to May 2005 were conditioned in particular on HP purchasing no less than 95% of its CPU needs for business desktops from Intel.
- Intel rebates to **NEC** during the period ranging from October 2002 to November 2005 were conditioned on NEC purchasing no less than 80% of its CPU needs for its desktop and notebook segments from Intel.
- Intel rebates to **Lenovo** during year 2007 were conditioned on Lenovo purchasing its CPU needs for its notebook segment exclusively from Intel.
- Intel payments to **Media Saturn Holding (MSH)**, Europe's largest PC retailer, were conditioned on MSH selling exclusively Intel-based PCs from October 2002 to December 2007.

<sup>v</sup> Some noted examples of payments to delay

- Intel payments to **Acer** were conditioned on Acer postponing the launch of an AMD-based notebook from September 2003 to January 2004.
- Intel payments to **Lenovo** were linked to or conditioned on Lenovo postponing the launch of AMD-based notebooks from June 2006 to the end of 2006.

<sup>vi</sup> See Also Competition Act 2002; Section 4 Abuse of dominant position.

<sup>vii</sup> Available at [www.reuters.com](http://www.reuters.com) (last visited 8 November 2009)

## **Online Gambling – Prohibition or Regulation?**

Gambling is a way to make money fast and lose it even faster. Internet facilitates gambling by giving people easy access to online casinos. This leads to the creation of a casino in every house where internet can be accessed. Internet has also increased the problems related with gambling manifolds.

Bets on internet can be placed anonymously, regardless of gambler's age and finances. Hence, even minors can place bets easily as on-site providers do not generally verify the age of their customers. The other serious problem of gambling which has been intensified by online gambling is that of addiction. The major factor that contributes to online gambling addiction is accessibility. Further, fraud activities by on-site operators put a question mark to the genuineness of the games offered by the gambling websites.

## **SOCIO-ECONOMIC IMPACT OF GI STATUS TO BANARASI SARI**

Intellectual property right in the form of geographical indication (GI) now protects the Banarasi Sari, well known for its intricate work and design. GIs, first introduced in France and later harmonised in the European Union (EU), are included in the TRIPS Agreement, which is the basis for the enactment of the GI Act in India. TRIPS Agreement defines GIs as *"indications, which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin"*.

The GI certificate recognises the uniqueness and distinct identity of Banarasi Sari and related products such as silk brocades, dress material, bed and table. Before GI protection, cheap imitation of Banarasi sari was a common practice due to import of embroidery machines. Due to this imitation, an asymmetry of information between producers and consumers has been developed, resulting in the decreased market share of genuine Banarasi Sari.

Fraud practices by the operators include sites taking wagers and refusing to pay out winnings, on-site operators misusing card and bank details or manipulating the software to the disadvantage of the users. With so many cons of internet gambling, should it be prohibited? Prohibiting online gambling is against customers' freedom to use their money and time the way they want to. It is a popular pass time for people around the world. Further, it generates a good amount of tax revenue for the government. Regulating internet gambling seems to be a workable solution as it will abate the negative points without the government losing the revenue. Regulations should look into both consumer freedom and consumer protection. Higher level of standards of fairness and protection of consumers should be set up like extensive auditing of the software, mechanism for verifying the age of the customer and imposing moderate or high taxes.

**-Neha Dangi, 3rd Year, RGSOIPL.**

GI registration would help local community to face challenges from other sari producing regions such as Bhagalpur, Surat and Bangalore. A brand image of the product is emerging due to increased media attention, focus group discussion in different parts of the country. GI tag for Banarasi Sari would provide the weavers of the region a commercial leverage to enhance their incomes as well as open access to export markets. It will in turn improve the socio-economic status of weavers.

After receiving legal protection, the main challenge is to evolve a financially viable model for monitoring and surveillance, identifying the instances of infringement of the GI protection by ineligible producers or traders and initiating the suitable action. Ensuring percolation of the benefits accruing from the GI status of Banarasi Sari to the weavers is another challenge. Government, local bodies and non-profit institutions have to play a big role in order to ensure realization of potential benefits of GIs to weaver community.

**-Suryamani Tripathi, 3rd Year, RGSOIPL.**

## ARE SEARCH ENGINES LIABLE FOR COPYRIGHT INFRINGEMENT ?? (PART 1)

By: B Prashant Kumar\*

*Copyright* is a type of exclusive right given to creators of works such as literary, dramatic and artistic works, software, cinematographic and sound recordings, etc. This exclusive right is bundle of rights including right to reproduction, communication, distribution, adaptation available to owners of copyright for their works.

Hence, *infringement* of the copyright refers to the unauthorized use of the materials 'covered' under copyright law and at the same time violating the exclusive right of the owners. In common use, such a violation, when done in electronic and audio-visual media, is called piracy which is one of the major issues in our discussion.

Copyright law provides liability for infringement through various causes of action under direct, contributory and vicarious infringement. Some of them will be discussed in this series.

### **Caching**

Caching is a term very well known in web world where the search engines save a copy of the webpage on its servers to facilitate the inclusion of website in the index of the search engine. This is generally done by automated programs owned by various search engines called 'crawlers' (like in case of Google, they are called 'Googlebots') which continuously crawl over the internet, locate and analyze available web pages, to catalog them into the searchable web index of the search engine. It has to be noted that between such automated programs crawl on the web, there are also numerous, industry wide accepted and popularized mechanisms which can be used by the developers to communicate to these crawlers or robots. There have been several cases where such caching has led to some disappointment of some owners and the most celebrated of them is *Field v. Google Inc.*<sup>1</sup> where the caching feature provided by Google, which facilitated the users to download the archived web pages, was claimed to be infringing the copyrights of the plaintiff. But the court in its jurisdiction said that the plaintiff knew about such system well in advance and also ways to prevent such indexing of his website, the search engine Google would not be liable in any sense for the same. Similar decision was upheld in another famous case of *Parker v. Google*<sup>2</sup> where the claim of direct infringement by plaintiff against the process of indexing and caching websites was dismissed on the lines of judgment given in *Field* case.

### **Thumbnail Images**

Under this type of infringement, the major area of contention is the crawlers used by the search engines while archiving copies of web pages in their servers; also create a thumbnail image of the original images if present on the web pages. The issue here arises is the violation of copyrights of the owner of the actual images. There have been various cases regarding the same, one of them was between *Perfect 10 v. Google*<sup>3</sup> where the plaintiff argued that Google was infringing the copyright by creating and displaying the thumbnail images of plaintiff's photographs. In this case, as the plaintiff generated revenues from the reduced size images (also) by selling them to mobile phone users and hence the court held that although the use of thumbnails by Google was a fair use to simplify and expedite access to the information and the image search capability, and that although the method was 'transformative' but at the same time it was found to be 'consumptive' as well, i.e., the use merely supersedes the object of the original instead of carrying a further purpose or different character. Thus a preliminary injunction was given to Google to halt its distribution of thumbnails of Perfect 10's works and at the same time the plaintiff's allegation that Google was guilty of contributory and vicarious copyright infringement liability was *rejected*.

Thus we can see that as the internet world especially the search engines have faced a stream of litigations relating to copyright infringements against the acts or methodology which were actually assumed to be legal for many years, it can be easily agreed that definitely **A NEW FRONT HAS BEEN OPENED IN WAR AGAINST COPYRIGHT INFRINGEMENT**, but the question is, how far is this *logical* and sustainable.

We will discuss this issue further in the next part of the article. Do send in your views.

Till then, **keep Searching !!!**

---

\*1st year student, RGSOIPL.

<sup>1</sup> 412 F Supp 2d 1106 (District Court of Nevada, 2006)

<sup>2</sup> 422 F Supp 2d 492 (ED Pa, 2006)

---

<sup>3</sup> 416 F. Supp.2d 828 (C.D.Cal. 2006), affirmed in part, revised in part sub nom *Perfect 10 v. Amazon.com*, 487 F.3d 701 (9th Cir. 2007)

## Crime and Punishment

Newspapers brim with reports of 'crimes' committed all over the country. Be it homosexual activity, the ban of a 'controversial' book or cyber impersonation, it's all there. These reports force one to think - "What is a crime?"

In my endeavour to unravel the mysteries of this question, I shall elaborate on various such 'crimes' that have and will take place. The recent Delhi High Court judgement, decriminalized sec 377 (partly) of the aged Indian Penal Code. Why? Jaswant Singh's artificially controversial, "*Jinnah-India, Partition, Independence*" was banned in Gujarat citing certain sections of the IPC. Why? Twitter, has cyber impersonations of some well known Indian cricketers. Is it a crime? Why or why not?

Interestingly, Sutherland and Cressey in their '*Principles of Criminology*', list out seven differentiae of crime. Ideally, unless all seven behaviors are present, an act would not be labeled as a crime.

1. there must be certain external consequences or 'harm'. In other words, mere intention to commit a crime is no crime at all.
2. the 'harm' must be legally forbidden. An act is not a crime unless prohibited by law.
3. there must be a 'conduct', an intentional or reckless action that causes 'harm'.
4. *mens rea* or 'criminal intent' must be present.
5. there must be a concurrence between *mens rea* and the conduct.
6. there must be a causal relation between the legally forbidden harm and the voluntary misconduct.
7. there should be a legally prescribed punishment.

Socially speaking.....

A bit of further research gave me- "Crime is a social construct". So, society decides crime.

Crime involves three elements:

1. A value which is appreciated by a group or part of a group which is politically important.
2. Isolation of or cultural conflict in another part of this group so that its members do not

appreciate the value or appreciate it less highly and consequently tend to endanger it.

3. A pugnacious resort to coercion decently applied by those who appreciate the value to those who disregard it.

This is a social nature of crime and lacks precision. It still does not answer my question. At least I am not satisfied by it. Many of the early crimes were primarily religious offences which were included in the penal codes over time.

Read on for a list of crimes which we would consider bizarre now.

- *It was a crime in Ireland in the Viking age for a person to write verses about another, even if the sentiment was complimentary! Imagine Romeo in Ireland then!*
- *A Prussian law of 1784 prohibited mothers and nurses from taking children under two years of age to their beds.*
- *The English villain in the fourteenth century was not allowed to send his son to school.*
- *Again, no one lower than a freeholder was permitted by law to keep a dog.*
- *Printing a book has been a crime.*
- *Professing the medical doctrine of circulation of the blood was a crime.*
- *Driving with reins was a crime.*
- *Sale of coin to foreigners was a crime.*
- *Having gold in the house was a crime.*
- *Buying goods on the way to the market or in the market for selling them at a higher price was a crime.*
- *Writing a cheque for less than a dollar was a crime.*

The list goes on. Even today, the definition of crime is not uniform. Euthanasia is not a crime in some of the Scandinavian countries but amounts to murder in most countries. Adultery is not a crime in Louisiana, USA but is in the rest of the world.

So what exactly is a crime? Keeping a reader in suspense is not a crime as of now. So please wait for the next article !

**-Rohan Coutinho, 2nd Year, RGSOIPL.**

## **In Re Adoption of Payal Sharinee Vinay Pathak and His Wife Sonika Sahaya Pathak**

### **Facts of the Case**

The first petitioner Sharinee Vinay Pathak and the second petitioner his wife Sonika Sahay actors by profession had a biological girl child who was born on 4th February, 2003. The child was born on 12th November, 2004 to a mother whose identity is in the interests of her privacy not necessary to be disclosed here. The mother and her spouse executed a declaration on 16th November, 2004, four days after the child was born, recording the circumstances in which they had decided to surrender the child at the nursing home where the child was born. A Scrutiny officer of the Indian Council for Social Welfare made an endorsement of having counseled the parents of the contents of the document and of making the mother aware of the fact that she had a period of two months to reclaim the child, failing which the child may be placed either in adoption or guardianship. The An affidavit was filed before this Court on 13th April, 2005 by the managing trustee of Bal Vikas certifying the facts and recording an opinion that it would be in the interest of the child to place her under guardianship. . In a Guardianship Petition Indian Guardianship Petition 83 of 2001 instituted under the Guardians and Wards Act, 1890 before this Court on 13th April, 2005 the Petitioners sought their appointment as guardians of a female child. By an order of Hon'ble Mr. Justice A.M. Khanwilkar dated 8th June, 2005 the Petitioners were appointed guardians of the child. The child has since lived with the Petitioners for over four years. A petition has been filed seeking a declaration that the Petitioners are the adoptive parents of the child with consequential rights, privileges and responsibilities under the law.

### **Judgment:**

The Hindu Adoptions and Maintenance Act, 1956 and the Juvenile Justice Act, 2000 must be harmoniously construed. The Hindu Adoptions and Maintenance Act, 1956 deals with adoption by Hindus and the Juvenile Justice Act of 2000 is a special enactment dealing with children orphaned, abandoned or surrendered who need care and protection.

The legislation seeks to ensure social integration of such children and adoption is one method to achieve that object in spite of religious identity of the child or of the parents who adopt. The law is secular and deals with conditions of social destitution which cut across religious identities.

If there were to be a conflict between the provisions of the Hindu Adoptions and Maintenance Act, 1956 and the Juvenile Justice Act of 2000, dealing with the same subject matter, it is the latter Act which would prevail though the 2000 Act is held to be inconsistent with the 1956 Act, when passing the later Act Parliament impliedly amended the Hindu Adoptions and Maintenance Act, 1956, to permit adoption of children in the specified subclass, irrespective of whether a person has children of the same sex.

Special laws V. general laws: Courts examining implied amendments of earlier Acts distinguish special laws from general laws. Here, the Hindu Adoptions and Maintenance Act, 1956, establishes rules of general applicability in Hindu family matters, including rules for adoption. Considered against the entire swathe of Personal Law in India, it is a special act, providing rules applicable only to Hindus. In the field of adoption, however, it provides general principles of application to Hindus. The Juvenile Justice Act, 2000, establishes specific rules for the adoption of a limited subclass of persons-abandoned, surrendered, or orphaned children. The special provision modifies the operation of the general rule without completely overriding it: in general, Hindus cannot adopt a child of the same gender as an existing child, but there is a special rule in the case of abandoned, surrendered, or orphaned children.

**-Madhumita Sethi, Vivek Ranjan,  
Surendra Sharma, 1st Year, RGSO IPL.**

## Being Democratic

Democracy is so engrossed in us that we never feel it being different essence that is rationally tangible. Have you ever ended up realizing that you were searching spectacles that you have put over your nose? We don't blame spectacles or its lens being so see-through, we rather affirm ourselves of having good deal of great spectacles we have. A system, to get engrossed in breath of citizen in six decades is no less than mammoth feat in itself.

Understanding democracy is another thing of discern. Some of us have complains being part of system which has more of complains than praise. Let's see what democracy is.

Democracy in most easy terms is defined as form of government where the rulers are selected by the ruled. We however, can't read this definition isolated. The essential feature of democracy has more things associated apart from being too strict by definition which may form another class called "Pretending Democracy". Plenty of examples like Myanmar and Pakistan are outside the definition of democracy being the Pretending Democracy. The Democracy demands the decision makers to be selected through people's mandate. **The decision makers must have real power.** They must not be ruled by any other body which is not elected by people or is foreign to the country itself. Hence, Afghanistan, Iraq and USSR ruled Poland are outside the preview of being democratic country.

Another feature of democracy is free and fair electoral competition. This is essential part of democracy for the reason that it directly affects the people's mandate. The countries like China and Mexico, which have been ruled by single party for more than five decades doesn't approve by the definition of being democratic. The artifice used by PRI in Mexico never lead any opposition to rule the country. And hence the essential phenomenon of democracy is **free and fair election to the extent that ruling party has fair chance of losing.**

In Saudi Arabia, Women have no right of voting, and so is the situation in Fiji where the

indigenous Fiji has more value of their vote than Indian Fiji (Though it must be noted that Fiji is currently ruled by Frank Bainimarama, a military personal through it dictating regime.). This country, detach itself from being democratic for the reason that in a democratic country, each adult citizen should have one vote and one vote should have one value. Hence **one vote one value is essential feature of democracy.**

At last, the value of people equality and rights together with the fundamental necessities of life is essential feature of democracy. These may include right to speech, expression, opinion, profession education good life and standards. A popular government may not be democratic government as was the case with Bolsheviks in Russia and Robert Mugabe's Government in Zimbabwe. A democracy is not just the democracy in its true sense because a popular government has won the mandate of people. In democracy, every office bearers is responsible and accountable for people and can't work ad hoc for the reason that it has a public mandate. **The democratic government rules within limits set by constitution and citizen rights.**

The Indian democracy, in all the ways pass out the entire test that makes it powerful and largest democracy in the world. The features like Panchayat put democracy into grass root levels and fair chances of losing the ruling party makes it good example of democracy which affirms the people's mandate being supreme in this country. Hence, I hope readers of this article have realized about see through democratic spectacles and how there every movement in this country is in one or other way is consequence of democratic platform of it. I shall try to continue the features and other features and questions of democracy if at all could make to wall journal next time.

I also welcome suggestions and reply in disagreement to this post so that this discussion can be made more interactive and useful.

**-Vivek Ranjan, 1st Year, RGSOIPL.**

## What ails the National Law Schools in India?

It must not be denied that law forms the backbone of society and no civilisation without a strong legal system remains worthy of being called one. The Law Commission of India realised, as early as, in 1958, that the legal education and the legal profession should undergo reforms to serve the country better. After years of deliberations and discussions, the first National Law School (NLS) was established in 1987 in Bangalore at the initiative of one of the most visionary academicians in the country, Dr. Madhav Menon.

It must not be denied that law forms the backbone of society and no civilisation without a strong legal system remains worthy of being called one. The Law Commission of India realised, as early as, in 1958, that the legal education and the legal profession should undergo reforms to serve the country better. After years of deliberations and discussions, the first National Law School (NLS) was established in 1987 in Bangalore at the initiative of one of the most visionary academicians in the country, Dr. Madhav Menon.

The very reason that the State governments do not fund them has resulted in fee hike in all these NLSs without exception. Thus, it goes without saying that there were many students who withdrew from the recently concluded admission process only because they could not afford the high fee.

## As states agree, SC bans roadside shrines

New Delhi: From now, there will be no fresh construction of temples, mosques or other religious places on roadsides or on public land, ordered the Supreme Court on Tuesday on the basis of a rare consensus among states brokered by the Centre.

The ban, however, may not have any immediate impact on existing temples, mosques, gurudwaras and churches that stand tall on roadsides, causing major traffic bottle-necks.

The court asked state governments to review the status of each such illegal structure and take a decision expeditiously. The interim order imposing a blanket ban on fresh construction of religious places on roadsides or illegally on public land came

The NLSs are so hard-pressed in terms of financial affordability, they sometimes even fail to pay the registration fee for the competition in which the students participate, leave alone meeting the travel and other expenses.

We wish to request the Central government to put all the NLSs under the umbrella of Indian Institute of Law (IILs), something that was once in contemplation.

Mushrooming NLSs in many States has resulted in dilution of the quality of legal education and, consequently, of the quality of lawyers we produce. No wonder that although India produces the most number of lawyers, second only to the United States, it has failed miserably in improving the legal system and the reasons are quite conspicuous.

The question pertains to the larger issue - the neglect of social sciences in India.

**Courtesy: Andrew Fernandes  
(The Hindu, September 20, 2009)**

from a bench comprising Justices Dalveer Bhandari and M K Sharma on an appeal filed by the Centre challenging a Gujarat high court order directing demolition of all such structures in Vadodara.

Solicitor general Gopal Subramaniam told the bench that on September 17, chief secretaries of all states had resolved in principle not to let any religious structure come up illegally on public land.

The bench then ordered, "Pending hearing of the case, as an interim measure, we direct that no unauthorised construction of any religious institution, namely temple, church, mosque or gurudwara, shall be permitted on public street or space henceforth."

**Courtesy: Times of India  
(30 September 2009)**

## WHAT AILS THE NATIONAL LAW SCHOOLS IN INDIA

It must not be denied that law forms the backbone of society and no civilization without a strong legal system remains worthy of being called one. The Law Commission of India realized, as early as, in 1958, that the legal education and the legal profession should undergo reforms to serve the country better. After years of deliberations and discussions, the first National Law School (NLS) was established in 1987 in Bangalore.

Later, other NLSs were established. The concept of law schools was founded in America where law schools are not controlled by the government and thus are autonomous and the NLSs are modeled on those lines; however, American law schools receive private endowments and are not solely dependent upon the fees earned.

NLSs in India are established under State Legislations, thus giving them the status of statutory institutions; however enacting legislation and funding the institutions for a few initial years (if at all it is done), is all that the State Governments do for these NLSs.

The very reason that the State governments do not fund them has resulted in fee hike in all these NLSs without exception and the fee has reached an exorbitant amount of almost 1.8 lakh per annum (almost 9 lakh for a five-year study of law) owing to the Sixth Pay Commission. Thus, it goes without saying that there were many students who withdrew from the recently concluded admission process only because they could not afford the high fee.

### PAUCITY OF FUNDS

The academic fee is not the only expenditure that the student has to make during his law school life. Internships, moot courts and other co-curricular activities are required if one dreams of a getting a job, especially in times of recession. Sometimes for these internships and competitions, students have to travel abroad, which means an additional substantive expenditure. Because the NLSs are so hard-pressed in terms of financial affordability, they sometimes even fail to pay the registration fee for

the competition in which the students participate, leave alone meeting the travel and other expenses.

Barring some NLSs, most of them have not completed a decade of their establishment and therefore have not yet really experienced the paucity of financial resources because of some support from their State governments in their initial years; thus the worst is yet to come.

Another reality is that except some of the older NLSs, most of them have failed to make a substantial mark for themselves. They face problems ranging from a lack of adequate infrastructure to a lack of quality teaching methods and, in some cases, even to a lack of experienced faculty members and financial mismanagement. The truth is that establishing NLSs in almost all States would not ensure a robust legal system. What needs to be done is ensuring that quality legal education is imparted and, importantly, at an affordable cost.

All students at these NLSs, wish to ask the Govt. why it leaves them out and funds other statutory institutions when it claims to have reformed the legal system by merely establishing the ill-funded institutions they study in, leaving up to the administration and, worse the students to manage the running costs. We wish to request the Central government to put all the NLSs under the umbrella of Indian Institute of Law (IILs), something that was once in contemplation.

Mushrooming NLSs in many States has resulted in dilution of the quality of legal education and, consequently, of the quality of lawyers we produce. No wonder that although India produces the most number of lawyers, second only to the United States, it has failed miserably in improving the legal system and the reasons are quite conspicuous. The question pertains to the larger issue — the neglect of social sciences in India.

**Source: The Hindu, dated 20 Sept'09 (Kolkata Edition)**

**Contributed by: Punyatma Singh, 2nd Year, RGSO IPL**

## Constitutional supremacy Vs. Parliamentary Sovereignty

It has been alleged recently that the Supreme Court in the name of Constitutional integrity, passing order one by one usurping legislative prerogatives. There are four different ways in which the Judiciary may tread on the toes of the politicians. The very first is ensuring politicians not to break the law. For instance conviction of Shibu Soren gives the right message that no body is above the law. The second issue is the interpretation of the powers of the other functionaries like Governor and Speaker by the Judiciary. For instance the court ordering the Central Bureau of Investigation (CBI) to proceed with Mayawatis prosecution which ultimately leads to conclusion that the opinion of the senior most constitutional law officer that is Attorney General in state government is irrelevant in deciding that whether the government must with the prosecution or not. The third way by which the court may overstep is decision on policy matters. There are many instances where Judiciary has grossly overstepped its boundaries. From the working of the Indian Supreme Court in last 55 years we may very well opine that the Supreme Court of India became the most powerful Apex Court in the world. Because unlike the United States Supreme Court and the House of Lords in England and for that matter even the Apex Courts in Canada and Australia, the Supreme Court of India may review even a Constitutional amendments and strike it down if it undermines the basic structure of the Constitution. These lead us to ask several questions like:

- (1) what kind of role of the court was envisaged by the Constitution-makers in India?

- (2) what is the role of the court in interpretation of the process under a written constitution?

- (3) whether a new approach of judicial law making adopted by the Judiciary is within the permissible limits of the Indian Constitution?

- (4) whether the Indian court may be considered a major partner in the policy planning process undertaken by the state?

- (5) why the Judiciary is dealing with the matter, which is policy making-or legislative in nature?

So, if we try to answer all these questions, the proper policy-making role for Judiciary in the overall context of Indian political system is such an issue, which may not be answered easily. However, It may be seen that judicial activism which is the search for the spirit of law, has been profitably used for powerless minorities, such as bonded labour, prison inmates, under trial prisoners, sex workers etc. Recently there was news that the Lok Sabha may discuss the need for harmonious functioning of the three organs of the state: the Legislature, the Executive and the Judiciary. Lok Sabha Speaker Somnath Chatterjee has permitted a lengthy debate on this issue under rule 173, as many Parliamentarians perceive judicial activism as judicial over activism which is a big problem in deciding policy matters. Now let us see whether the Supreme Court may issue injunction to restraint this debate.

(Author is an Assistant Professor, Institute of Law, Nirma University of Science & Technology, Ahmedabad, Gujarat)

## Gujarat HC fines itself wrong judgment

**Ahmedabad:** In a curious case of judicial self-introspection, the Gujarat high court has imposed a penalty on itself for misjudging a case. A division bench headed by Chief Justice K S Radhakrishnan on Friday imposed a cost of Rs 15,000 on the high court for neglecting judicial tradition in a case that led to the dismissal of a lower court judge.

*"Judges are at times poor judges of judges, especially in judicial administration,"* the division bench observed while hearing S J Pathak, who was first suspended in 1999 and dismissed seven years later for granting bail to an accused in a serious case without considering settled principles of law. Pathak faced two departmental inquiries. The inquiry report was then placed before a disciplinary committee of Justice B J Shethna and Justice D K Trivedi (both now retired), who "tentatively" held that charges were proved against the judge. This conclusion was not supported by any reasoning.

Since, the conclusions were "tentative" the report was placed before another disciplinary committee of Justice N G Nandi and Justice M S Shah. This committee in 2003

exonerated Pathak of all charges with a detailed analysis.

In wake of conflicting conclusions, the report was placed before the high court for perusal of all judges. In a chamber meeting, all judges did not accept the conclusion arrived at by Justice Nandi and Justice Shah. The judges decided to entrust the case to Justice Shethna again. In 2006, Justice Shethna held that all charges against Pathak were proved and recommended his dismissal from service.

Pathak filed a petition against his dismissal, and the bench of Justice Radhakrishnan and Justice A S Dave pulled up the high court for referring the case to Justice Shethna for re-consideration, particularly when Pathak had expressed apprehension that Justice Sethna was biased.

The Chief Justice ordered return of Pathak to service immediately and made observations against the high court's decision of sending the case back to Justice Shethna, who had "pre-judged" the case, which led to a decision that was "vitiating by bias and liable to be set aside".

## **Disha... Towards a Better Future !!**

Inside our campus, near the rural development centre, there is a fully residential school run for poor children, by a trust which has an IIT Kgp alumnus as its chairperson. Well, how many of us knew that? Atleast I had no idea until some days back.

The school is called *Disha* and it is being run by a trust named *Jyoti Development Trust* chaired by Ms Hansa Nundy. Ms Hansa is a 1962 batch Electrical engineering alumnus of IIT Kgp. She started this school 15 years back leaving behind a plush job in Canada. Currently the school has around 217 students and offers classes upto eight standard. Most of the students are here not because of their love for attending school, but because they get three square meals a day. They have grown up in abject poverty, largely neglected by the society and even by their parents. Fortunately for them their future seems to be brighter. It has to be said that Ms Hansa is doing a truly commendable job with them. They are being provided quality education and all other facilities for their overall development.

Even then there is a lot that we can do for them. Starting from financial help, we can provide them with basic necessities like clothes, blankets, pillows, mosquito nets and anything that you think they will require because for children at this age, nothing seems to be sufficient. It will be good if we can spend some quality time with them, organizing games, musical shows or anything that would make them feel special.

Ms Hansa has also asked our help in setting up a website for her school, which would help her in publicizing her school and in turn raising more funds.

We have all been privileged with quality education and comfortable living conditions. Its high time we give it back to the society.

Ms Hansa can be reached at 9933191066 or at [nundyhansa@hotmail.com](mailto:nundyhansa@hotmail.com).

**-Vishu Gulati & Arun Babu, 1st Year, RGSOIPL.**

# Coming Up !!

## Moot Court Competitions

- **Maiden Post Graduate Moot Court Competition**
  - *Where:* University of Pune
  - *When:* 23-25 January 2010
  - *More details:*  
[www.unipune.ernet.in/indexout.html](http://www.unipune.ernet.in/indexout.html)
- **DM Harish International Moot Court Competition**
  - *Where:* Government Law College , Mumbai, Maharashtra
  - *When:* 12-14 Feb, 2010 (Registrations Closes: 15th Nov 2009, Memorial Submission: 6th Dec'09)
  - *For More details:*  
[www.glc.edu/mootcourt/index1.htm](http://www.glc.edu/mootcourt/index1.htm)

## Paper/Essay Writing Competitions

- **ILS Law College Annual National Legal Research Paper Competition**
  - *Where:* University of Pune
  - *When:*  
Registration and submission of Research Paper closes on 15th December 2009.
  - *For More details:* [www.ilslaw.edu](http://www.ilslaw.edu)
- **Cognitio'09 – National Legal Writing Competition**
  - *Where:* Gujarat National Law University, Gandhinagar.
  - *When:*  
Registration Closes – 10th Jan 2010,  
Submission Deadline - 10th Feb 2010.
  - *For More Details:*  
[www.gnlu.org.in/cognitio.htm](http://www.gnlu.org.in/cognitio.htm)
- **Indian Journal of International Economic Law, 2009-10**
  - *Where:* NLS, Bangalore.
  - *When:* Submission Deadline for the 3rd issue is January 31, 2010.
  - *For More Details:*  
<http://www.ijiel.in/subm.html>

## Conferences

- **Non - Adversarial Justice: Implications for the Legal System and Society Conference**
  - *Where:*  
Hotel Hilton, Melbourne, Australia.
  - *When:* 4-7 May, 2010.
  - *For More details:*  
[www.law.monash.edu.au/nonadvj](http://www.law.monash.edu.au/nonadvj)
- **Government Law College (SPIL) International Law Summit**
  - *Where:* GLC, Mumbai.
  - *When:* 4-7 February, 2010  
(Registration Closes – 20th January 2010)
    - Last Date for Registration for Paper: 20th January 2010
    - Last Date for Submission for Paper: 10th December 2010
  - *For More details:*  
[www.spilmumbai.org/glcintsummit.html](http://www.spilmumbai.org/glcintsummit.html)

## ALSO....

- **Annual NLS Debate Competition**
  - *Where:* NLS, Bangalore.
  - *When:* 26-30 November 2009
  - *For More details:*  
[www.indiandebateunion.blogspot.com/2009/08/8th-edition-of-national-law-school.html](http://www.indiandebateunion.blogspot.com/2009/08/8th-edition-of-national-law-school.html)
    - Only one team goes from each college, so *contact:*  
Ashutosh Mishra,  
Governor, Tech. Literary Soc.  
Email: [akm.ram@gmail.com](mailto:akm.ram@gmail.com)  
Phone: 9749935356
- **The Senate – Parliamentary Debate**
  - *Where:* Kshitij'10, IIT KGP.
  - *For More details:* [www.ktj.in](http://www.ktj.in)
- **The Mocking Bird – Moot Court Competition**
  - *Where:* SpringFest'10, IIT KGP.
  - *For More details:* [www.springfest.in](http://www.springfest.in)

## Rendezvous with 'Improbable'

*Dear co- counselors, this section is dedicated to “we the **rgsoipl-ians**”. This would serve as a forum where we could discuss our problems, remedies, any issue which needs attention, your views about the wall, in short, anything you feel like sharing and you think is important for all of us. Let’s get started and use the power conferred by Article 19(1) (a). Jai ho!!*

*In our very first article, let’s see what makes us an “**rgsoipl-ians**”*

*You know you are in **rgsoipl** when...*

*1. you consider dropping out of law school every hour!*

*2. you can name without hesitation atleast three people who make you want to throw things when you see their hands raised in class.*

### **And from the Teachers Desk....**

For someone who is innately unpredictable like me, handling crucial responsibilities is never a simple assignment; and suddenly IIT came to me as a real-time delusion which was always something I dared to dream even in my sweetest reverie. So, there emerged in my mind a kind of euphoria initially that evaporated even with further rapidity casting the panicky realization that this would be no simple task. Uncertainties were plenty which quickly became conviction with the warm reception from my senior and respected colleagues, munificent and generous students.

As it happened for the last three months or so, I have started believing in ‘that’ vivid horizon beyond which exists the desired aspirations for all of us. As ‘**RGSOIPL-ians**’, we can only fancy our chances not only to survive but to become the surviving means for plenty.

*3. you never answer a question without saying, “well that depends on specific facts of the case....”*

*4. you refer to famous and well known judges as if you know them for ages.*

*5. when every request is a legitimate expectation and every denial is a violation of fundamental right.*

*6. when u dont fall asleep but you **FELL** asleep!!!*

*7. after all the latin maxims, you wonder whether u re a latin american???*

*8. you hear about someone's death and wonder if it was intestate !!!*

**1st Year Students...**

One can be sympathetic with the fact that **RGSOIPL** is still at the nascent stage and therefore, certain number of odds is always to be looked from caring mind-set. This, however, I assume, is embedded with overtone because in an academic institution the word ‘care’ is always entrenched. Our responsibility is only to do justice to it; and this vibrant venture of creating the ‘wall-space’ for the students and others is nothing but an adorable materialization of that sense of justice. Now, we should believe in that ever-optimistic, enchanting prophecy - “For future of **RGSOIPL**, writing is on the wall”.

Wish you all the luck. Let love infatuate your life.

**Arindam Basu**