**Freedom...As I call it**

On the eve of our 59th Republic Day I am still not sure what it means to be free? Does it mean to have Banana Split Ice cream at 2 o'clock at night? Does it mean not having any curfew timings at home? Does it mean playing counter strike all day and all night? Or does it mean enjoying the 2.2 walk in the campus at absolutely any hour of the night? It also means to some people just being able to vote in spite of their gender, to others it might mean being able to listen to music and watch a football match and chose for themselves if they want to grow a beard or remain clean shaven. The contrast is very striking and both kinds of freedom exist in this same world side by side at the same time.

Freedom doesn't mean much to the common man till he gets his meals twice a day and is able to carry on his trade without hindrance. Article 21 has no meaning whatsoever to people who do not even know how to read and write and don't know where their next meal would come from. Talk of justice, liberty to people who have their stomachs empty would not stir any emotions. At the same time, people who are born with silver spoons and have never travelled in a non-AC car or by train and can't travel if it's not J Class also do not understand the concept of freedom because everything comes easy to them, they are not aware of the ground realities and live in their own cocooned worlds. Words like freedom, liberty and idealism and all other good isms are the forte of the middle class educated people. Cynics might say these people just think it's a way to be 'cool' to talk about these big words and nothing comes out of it. But it must be these kinds of talks over coffee or in 'addas' in which 'cha' flows freely must have the idea of RTI germinated in mind of Arvind Kejriwal or the idea of starting Janagragha must have occurred in the minds of Swati and Ramesh Ramanathan. Even though the character of Mohan Bharghav played by in Swades seems simply impossible but a check in your neighborhood might lead you to find many people like him. It's not very long ago that Neda Aga Soltan died and there was almost a revolution in Iran as a result of it powered by youtube.

I am not being overly optimistic when I say that things are becoming better. We are asking ourselves more often what we can do to make a difference; it might be something as simple as turning vegan to lessen the carbon footprint or deciding to cycle to work in place of using a bike. Ours is a young nation with younger people and it was with lot of sweat and toil that our leaders achieved freedom for us. It makes a chill run down my spine to think how young people like Bhagat Singh , Sukhdev and Khudiram Basu were when they gave up their lives so that we could be free. And now that we are 'free', we still remain in chains. As Spiderman very aptly puts it, with freedom comes responsibility. It is our duty, the relatively well off people who are conscientious to help make a difference, shrug off the chalta hai attitude and start asking questions. We need a thousand revolutions, and none of them need to be bloody. Young people are clueless most of the time what to do with themselves, I have a suggestion, join the Teach India programme. Give back, it would feel good. As Captain Vikram Batra,Kargil war martyr put it…Yeh Dil Maange More! Yes, Yeh Dil Maange more out of the youth. I am game, are you?

**Apurba Kundu, 1st year, RGSOIPL**

**A look at democracy and Indian Constitution**

*Honey Pamnani,1st Year, RGSOIPL*

In a democracy, the interplay between social opinion and the law-moulding activities of the state is a more obvious and articulate one than under totalitarian government. Public opinion on vital social issues constantly expresses itself not only through the elected representatives in the legislative assemblies, but through public discussion in press, radio, public lectures, pressure groups and, on a more sophisticated level, through scientific and professional associations, universities and a multitude of other channels, and because of this the tension between the legal and the social norm can seldom be too great.

The Indian Constitution of 1949 has abolished both the polygamous marriage and the caste system, in the face of age-old social and religious custom. Not the prestige of Nehru, or the predominance of the Congress Party in organized political life in India, could have attempted such far-reaching reforms, unless the impact of Western ideas had effected a far-reaching change in educated public opinion.

An example showing the response of the law to social change not through legislation, but through judicial reinterpretations is when the Supreme Court of the United States, in 1954[i], after a series of preparatory judgements, upset the interpretation of the Fourteenth Amendment of the equality of races, given nearly half a century earlier, it partly responded to, and partly led, public opinion. The speed and manner of response in law is usually proportionate to the degree of social pressure and it is also influenced by the constitutional structure.

**After effects of First World War**

Since the First World War the tempo of social change has accelerated beyond all imagination. With it, the challenge to the law has become more powerful and urgent. It is almost certain that the common law would no longer exist if great judges had not from time to time accepted the challenge and boldly laid down new principles to meet new social problems. The decisions which reflect such judicial revolution are relatively few in number, but they stand out as landmarks. An example to illustrate this point is rule formulated by Blackburn J. in Rylands *v. Fletcher*,[ii], he began to adapt the principles of tort liability to the era of expanding industrial enterprise in a once predominantly agricultural society. The technique by which that great judge accomplished this feat was the collection, synthesis and remoulding of several instances of liability.

It was the shattering inflation following the First World War which led the German courts to develop the doctrine of frustration of contract from certain general clauses in the German Civil Code. It became an instrument for the judicial adjustment of obligations which had become grossly unjust as a result of drastic currency devaluation. The doctrine has had great influence on other Continental systems such as French, Swiss and Greek law. That its significance in English law has also increased is shown by some recent decisions of the Court of Appeal.[iii]While the doctrine of frustration is accepted in

American law, its practical impact has been small, because the economy of the United States has not so far been basically shaken by wars or inflations. It was largely in reaction, both to the post-war housing shortage and to the widespread desertion of war-time brides that the Court of Appeal, in *Bendall v. McWhirter*[iv] granted the deserted wife the right to continued occupation of her matrimonial home in which she had no legal ownership, as against the husband's trustee in bankruptcy. This decision was overruled by House of Lords in 1965.[v]

Trade unions are no longer outlaws, or underdogs, but powerful and often monopolistic organizations. Today, the problem of the closed shop shows the clash between two equally accepted legal principles: the right to bargain collectively and the freedom of the individual to choose his place of work and his associations.

The reaction of public opinion against the power of trade unions, to paralyse certain key sectors of public life, such as transport, was reflected in the decision of the House of Lords in *Rookes v. Barnard*.[vi] The House of Lords held two fellow employees and the union organizer liable in damages to the plaintiff, an employee of the BOAC, who had been dismissed- without breach of contract-under a threat uttered by the defendants acting on behalf of the union that, without the plaintiff's dismissal there would be a strike-in breach of a 'no strike' agreement.

**The Invasion of Time and Space**

The market is intruding into realms of time, space, emotions, language, ideas, and activity previously reserved for civil society. At the same time, the State is squeezing a major institution of civil society, namely religion.

According to a survey in US, a major change in the last 35 years is the number of women in the marketplace, indicating a significant shift in where they spend time. In 1960 only 90% of married women with children under 6 years old were employed outside the home. By 1991, 60% were. As women leave the home sphere, the job culture expands at the expense of the family culture. When women stayed home, they where the guardians and champions of home and family values. While reviled by some feminists as locking women into a second-class existence, this division of labor did acknowledge the existence and importance of family activities. Some think returning to that era will solve today's problems, but changes in the global economy make such a regression unlikely for the majority of families.

In education and other public services, privatization is increasingly offered as the solution to myriad problems. For vital institutions of civil society to flourish, we need both structural and cultural changes on our society. All three legs of the social tripod-civil society, economy, and the state-need to be strong.

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[i] Brown v. Board of Education, 347 US 483 (1954)
[ii] (1868) L.R. 3 H.L.330
[iii] *Parkinson v. Commissioners of Works* [1949] 2 K.B. 632;
*British Movietonews v. London Cinemas* [1951] 1 K.B.190. The latter decision was reversed by the House of Lords[1952] A.C. 166
[iv] [1952] 2 Q.B. 466
[v] *National Provincial Bank v. Ainsworth* [1965] A.C. 1175.
[vi] [1964] A.C. 1129

MANU/SC/1913/2009

# Kamal Nayan Mishra v. State of Madhya Pradesh and Ors.

**Facts of the case**

Appellant was appointed as a Peon in the Water Resources Department (Bansagar Project) in the State of Madhya, Pradesh on 24.7.1980. Nearly a decade later, on 22.8.1989, the appellant was charge-sheeted in a criminal case for the offences under Sections 148, 324/149, 326/149 and 506IPC. He was acquitted by judgment dated 9.9.2004 passed by Judicial Magistrate First Clans, Reva, MP. In the year 1994, the appellant was required to submit an attestation form giving his personal data in regard to his educational qualifications, antecedents etc. He filled up and submitted the said form on 27.10.1994. Column 12 of the said form contained questions regarding the antecedents of the appellant. The main question was whether he has been arrested or prosecuted in a court of law. Appellant answered all the questions of column 12 in negative. After verification, the Deputy Inspector General of Police, Special Cell, Bhopal, by letter dated 14.7.1995 informed the second respondent that appellant had furnished wrong information in regard to the queries in column 12 of the attestation form. No notice was given to the appellant and he continued to work for seven years. Then second respondent issued an office order dated 7.3.2002 terminating the services of appellant forthwith "for giving wrong information and concealment of facts in attestation form at the time of initial recruitment and therefore unfit for Government service". The appellant challenged his termination

**Judgment**

The Court framed 2 issues:

Whether the ratio of Ram Ratan Yadav applies to present case?

Was the termination of appellant was valid?

Ram Ratan Yadav case was based on similar facts where Ram Ratan had furnished wrong information on the basis of which he was dismissed. His dismissal was upheld by Supreme Court. But there is an important difference between the nature of post held by Ram Ratan and appellant in this case. Ram Ratan was on probation when he was dismissed. But in this case appellant was a confirmed holder of a government service post and therefore is entitled to the protection contemplated in the article 311 of the Constitution. In the case of Ajit Singh v. State of Punjab : 1983 (2) SCC 217 Supreme Court differentiated between a probationer and a confirmed employee. Period of probation gave a sort of locus potentiate to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserved a right to dispense with his service without anything more during or at the end of the prescribed period which is styled as period of probation. Therefore termination of service of a probationer during or at the end of a period of probation will not be a punishment because the servant so appointed has no right to continue to hold such a post. But once such employee is confirmed he is entitled to the protection of article 311.

Article 311(2) says that no person who is under a civil service of Union or State shall be dismissed except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The certificate at the end of the attestation form states that "I am not aware of any circumstances which might impair my fitness for employment under government. I agree that if the above information is found false or incomplete in any material respect, the appointing' authority will have a right to terminate my services without giving notice or showing cause." This certificate also has no value. Because in the case of Moti Ram Deka v. General Manager, N.E. Frontier Railway : 1964 (5) SCR 683, rejected contention that a person who enters service by executing a contract containing a rule contrary to Article 311, with open eyes, cannot be permitted to challenge the validity of the said rule or the contract. Therefore the termination order dated 7.3.2002 is set aside. Respondents are directed to reinstate the appellant with continuity of service and other consequential reliefs (except salary for the period 7.3.2002 till date).

Madhumita Sethi, Vivek Ranjan, Surendra Sharma

## ARE SEARCH ENGINES LIABLE FOR COPYRIGHT INFRINGEMENT ?? (PART 2)

*By: B Prashant Kumar*[*]

Continuing from the previous issue where we discussed Caching and Thumbnail Imaging as some of the commonly sort after claims of copyright infringement against the search engines, we will discuss some more forms here.

***(Helping) File Sharing***

The latest and the hottest issue, against which the search engines have been held liable is of sharing of copyrighted audio-visual artistic works such as songs, movies, TV series etc. Although the search engines do not themselves provide access to such copyrighted materials nor do they upload any such materials on their servers as it happens in case of caching, but still they seem to play a major role in case of such violations. Take for example the recent case of *Pirate Bay, wh*ere the owners of a torrent tracking website (www.piratebay.org) were accused of promoting copyright violation. The charges were filed by a consortium of Intellectual Rights holders led by International Federation of Phonographic Industry (IFPI). The issue here was that the website, one of the most popular one among the index providers for BitTorrent[1] files was charged with 'promoting other people's infringements of copyright laws' as the indexes provided actually consisted of many copyrighted audio-video materials. Although the verdict of this case was against the website owners but what has to be seen is that the court however never presented its *corpus delicti, i.e., 'it never attempted to prove that the crime was committed, but it succeeded in proving that someone was the accessory to that crime'.* Thus, they were charged just because, they seemed to assist those indefinite or virtual people who actually did those copyright infringements.

The reason why search engines cannot be held liable according to author's view is that they can be said to abet the violation if and only if they actually would have initiated the file transfer. The problems, as in the above case, arise because file transfer is such a protocol, which can not only be used legally but also illegally. Peer to peer file sharing protocols were actually designed to improve robustness of computer networks by allowing users to share bandwidth, storage space and computing power. Legally speaking, file sharing can be looked upon as a promotional tool for not only copyrighted materials but also to freeware, shareware and open source based resources. Some people even advocate that sharing can help the affected industry to sample the product before actually using it. Say, movies or songs can be promoted using either previews or low quality versions of the respective movie/song, and hence let the user try so that it helps them deciding if they want to buy or not.

A similar case was of *Viacom v. YouTube & Google*[2] where a high profile lawsuit was filed by Viacom against YouTube, a Google owned subsidiary accusing the defendants of six types of copyright infringements. Here also YouTube was just a search engine and the actual infringers were the users who uploaded the copyright protected materials like movies, videos, songs etc. Although in this case, YouTube presented twelve defenses which were *safe harbors, license, fair use, failure to mitigate, failure to state a claim, innocent intent, copyright misuse, estoppel, waiver, unclean hands, latches and substantial non-infringing uses*. Hence, the court although gave a decree to solve the issue mutually, but it never held, as in Pirate Bay case, the owners liable of copyright infringement.

**CONCLUSION**

With so many new 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. Such 'liability' issues are more complex than those which include just the determination if a website posts infringing contents. Search engines have enabled internet users to find and retrieve information from the ocean of data and hence becoming one of the major flag holders of the success story of internet. So, the ultimate aim of the copyright law would be to strike a balance between right to own an information and ability to reuse or access it for the improvement of its social utility, which can be done by online indexing done under fair use doctrine.

*Simply saying, holding search engines liable can be compared with a situation where some documents, which are copyrighted and should not be reproduced in any form, if photocopied, then not only the wrong doer is to be made liable but also the manufacturer of photocopy machine should be made party to the crime just because it was abettor as it actually allowed the copyright infringement to happen at the first place.*

Thus some amount of reproduction or communication in which search engine engage, should be well respected and tolerated to allow the normal flow and access to the information. Also, as the uncertainty is clearly visible in various jurisdictions around the world with regards to the liability of search engines for copyright infringement, the courts need to come out with the difficult policy (as against the traditional copyright policies) which deals with the issue remembering the fact that search engines are the quintessential part of our daily life.

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[1] *BitTorrent: A peer-to-peer file sharing protocol, used for distributing large amounts of data, where many users share the part of files they have even with low resources in their computer through the network.*

[2] *Viacom International Inc v YouTube Inc, YouTube LLC and Google Inc, (United States District Court for the Southern District of New York, filed 13 March 2007), exact citation not available.*

# INDIAN TRUST ACT, 1882, NEEDS TO BE AMENDED CAUTIOUSLY

In a move to revitalise archaic laws, the government in a market boosting initiative recently announced a proposal to amend the Indian Trust Act, 1882 ("Act") to permit all trusts to invest in shares and bonds of listed companies. In the current global scenario of offshore funds and investment options, the Act lags behind time. Trusts today play a significant role in most financial and legal systems and are recognised under the Hague Convention.

Under common law, a trust is an arrangement under which the settlor entrusts his property to certain persons or trustees, who become the legal owners of the trust property but hold it for the benefit of third parties, i.e. the beneficiaries. The basic constituents of a trust are transmutation of trust property, declaration of the purpose and the beneficiary.

The sole purpose of this Act was to introduce the English concept of legal and equitable ownership in estates in order to recognise the vested interests of the large body of domiciled Europeans and Eurasians. The existence and rules of "native property holders" such as Islamic waqfs and Hindu debuttar properties were preserved. The Act extends to private trusts only, and not to public trusts. Nonetheless, Indian courts have held certain provisions applicable to public trusts as well, as principles of equity and good conscience, which includes Section 20.

The difference between a public and private trust is essentially in its beneficiaries: - A private trust's beneficiaries are a closed group, while a public trust is for the benefit of a larger cross-section having a public purpose. Trusts are not legal entities, and are governed by the trust deed and applicable local laws. Depending on the corpus, a trust may be formed as a company or society. In case of companies, Section 25 of the Companies Act applies to non-profit making companies while institutions established for promoting religion, science etc. may also be registered as limited companies.

Under the Income Tax Act, wholly charitable and religious trusts are exempt from tax. A notified approval from the DG Income Tax Exemptions may be obtained under Section 10 (23C) for three assessment years at a time, subject to the fulfilment of certain specified conditions.

The investment restrictions under Section 20 of the Act permit trust money to be invested only in specified government securities, (including that of UK and Ireland) (sic). Since 1975, this has been extended to units issued by the Unit Trust of India.

The Income Tax Act makes it mandatory for registered trusts to invest 85 per cent of the funds received annually in the specified securities in order to avail the tax exempted status. More than philanthropy or privacy, trusts spell big money which account for a substantial portion of trading and investment in major stock exchanges.

Complex business arrangements in the financial and insurance sectors use trusts in their structure. Asset protection is another important consideration, to move assets to a separate structure with ease to safeguard against bankruptcy. Trust structures have evolved in offshore destinations such as Mauritius and BVI, offering investment routing to settlers with high tax domiciles, facilitating investors to lawfully avoid withholding tax or capital gains.

These tax havens have altered the traditional concept of trusts significantly, with additional protective mechanisms being internally provided, effectively extinguishing Court's role.

Even within these limitations, tax planning through public and private trusts is resorted to in India, usually for large families, even though private trusts are subjected to tax at maximum marginal rate, since trust income becomes taxable either in the hands of the beneficiary or trustee i.e. a different entity like the Hindu Undivided Family, this offers the creation of another taxable entity, claiming permissible deductions, set off's etc. combined with asset protection.

Corporates generally form their own public or charitable trusts, with similar restrictions. And this is where the big bucks are — with funds lying untapped or in notified securities, which the amendments intend to remove and make the stock markets boom.

But such unshackling needs to be tempered by appropriate regulations — mutual funds in capital markets are subject to strict compliances and disclosures. Trusts also invest other persons' monies and unless adequate controls are concurrently in place, there could be mayhem in the market.

***Source: Business Standard, New Delhi, 07.01.10***

# Indo-US Nuclear Deal: The Untold Story

***By: ABHISHEK RAJ,*** *LL.B (Final Year)*

*United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, which approves the U.S.-India 123 Agreement. The legislation does not change the terms of the 123 Agreement as I submitted it to the Congress. That agreement is consistent with the Atomic Energy Act and other elements of U.S. law. The legislation does not change the fuel assurance commitments that the U.S. Government has made to the Government of India, as recorded in the 123 Agreement.*[1]

**George W. Bush**

Clearly this deal is a sort of achievement for India and a gift from United States, in the sense that India will become the only country that gets nuclear technology without signing the NPT. This would go a long way in securing Nuclear reactors and fuel for making power for energy deficient India. It is worth noting that more than a mere bilateral friendship, **this agreement is based upon sound thinking by the United States.** Some of the strategic reasons, other than those propounded by the United States in the media, could be that, firstly that India plans to spend $150 billion in the next decade for nuclear power plants, such a deal would allow the US companies a foot hold in India to capture a significant share of this $150 billion market. Secondly, with the growing influence of China in the world affairs, a strong and stable India adequately equipped with Nuclear capabilities would act as a counter weight and keep China in check. Thirdly, and finally, Thorium is lauded as the future of Nuclear Technology. Given that India is at the forefront of Thorium based nuclear technology, and also that India has world's largest reserves of Thorium, it makes strategic sense for the United States to secure access to both Thorium technology as well as thorium as a fuel for running its own nuclear program in future.

It is worth noting that prior to the adoption of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006, the U.S. President would have needed to exempt the nuclear cooperation agreement with India from some requirements of Section 123 a., however, the Act of 2006 exempted nuclear cooperation with India from some of the AEA's requirements.

With regard to the relationship between India and US and also with that of other members of the Nuclear Suppliers Group, there are still a few grey areas which only with passage of time would be clear. For example, the 123 agreement stands void, if India conducts nuclear explosive test. Therefore, Indian power plant along-with the foreign and private investors shall be at risk. Also US government is not prepared to underwrite risk guarantees for US companies engaging with their Indian counterpart. U.S. nuclear vendors cannot sell any reactors to India unless and until India caps third party liabilities or establishes a credible liability pool to protect U.S. firms from being sued in the case of an accident or a terrorist act of sabotage against nuclear plants. Under the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act 2008, there are some provisions which needs to be very critically examined, in light of India's rights and interests over the long term. For example if the United states were to terminate or suspend nuclear transfers to India, it would seek to prevent other Nuclear Supplier Group members from making any nuclear transfers to India. The Act also obligates the United States to take necessary measures to ensure that India in

practice follows the NPT, even though India is not a signatory to NPT.[1] Even for licensing and transfer of the Nuclear Technology from United States to India, the Act of 2008 mandates a rather bureaucratic and time consuming process, this will clearly slow down the actual transfer of technology to India from United States. So far as reprocessing of Nuclear materials are concerned, the Act stipulates necessary waiting time of 30 days before it is allowed by the US congress, this provision makes India's nuclear program subservient to U.S. Congress policy decisions[2]. Also another point worth noting is that Section 201 of the Act of 2008 gives the US congress overriding powers of disapproval over the decision of the U.S. President, prior to the enactment of the Act, both the U.S. Congress and the U.S. President had concurrent power to disapprove[3].

However to conclude, in the short term at least, India has gained much more than the US. Immediate access to nuclear fuel is not a choice but rather a necessity for India. In effect, the United States promoted the radical concept that India be exempted from the guidelines of the Nuclear Suppliers Group, which stipulate that any country seeking nuclear materials, equipment or technology must either have joined the NPT or accepted fullscope safeguards on its entire nuclear program.

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[1] Section 201 (2) : any nuclear power reactor fuel reserve provided to India for use in safeguarded civilian nuclear facilities should be commensurate with reasonable reactor operating requirements. States that before exchanging specified diplomatic notes the President shall certify to Congress that entry into force and **implementation of the Agreement pursuant to its terms is consistent with** the obligation of the United States under the Treaty on the **Nonproliferation of Nuclear Weapons (Nuclear Nonproliferation Treaty).. not to assist, encourage, or induce India to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices**.

[2] **Title II - Strengthening United States Nonproliferation Law Relating to Peaceful Nuclear Cooperation**
**Section 201 -no subsequent arrangement concerning reprocessing arrangements and procedures shall take effect until:**
**(1) the President reports to the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations (Committees) respecting the reasons for such arrangement and a certification that third-party reprocessing arrangements with India will be conducted under similar arrangements; and**
(2) a period of 30 days of continuous session has elapsed after such report's transmittal. States that a subsequent agreement shall not become effective if during such 30-day period Congress enacts a joint resolution of disapproval.

[3] Section 203 -
Requires that **Congress** enact a **joint resolution to override a presidential determination** permitting the export of nuclear materials, equipment, or technology to a country to which such export is otherwise prohibited. (*Current law provides for a concurrent resolution of disapproval*.)

# HALF OF CAMBRIDGE STUDENTS ADMIT CHEATING

Half of students at Cambridge University have admitted cheating, according to new figures. A survey shows 49 % of undergraduates have plagiarized work whilst studying at the university. **Law students were the worst offenders with 62 % of them breaking the university plagiarism rules, according to student newspaper Varsity.**

The university is now planning to introduce special plagiarism detection software to tackle the problem."It's a depressing set of statistics," said Robert Foley, a professor in biological anthropology at King's College.

At St Edmunds College, 67 % said they had broken the rules. Only 5 % of students who took part in the survey said they had been caught plagiarizing while 80 % said they thought the university already did enough to punish it.

Many students blamed their intense work load for cutting corners, while others said they did not understand the university's definition of plagiarism and were surprised to know they had broken the rules.

**"Sometimes when I'm really fed up, I Google the essay title, copy and throw everything on to a blank word document and jiggle to order a bit. They usually end up being the best essays," said a Land Economy student at Pembroke College.**

A member of the University Council, the principal executive and policy making body of the university, said: "It stands to reason that those students, who are performing less well, will resort to more underhand means to get by."

**"I have used the same essay three times in two years for three different supervisors. I wasn't particularly worried about being caught," said an English student at Homerton College.** Ant Bagshawe, academic affairs officer at the student union, said the university needed to do more to punish cheats. He said: "If the university is not going to take teaching people about plagiarism seriously, then it has to expect headline figures like these." But the university denied they did not take plagiarism seriously.

A statement from the university said: "The University regards deliberate acts of plagiarism as a serious and potentially disciplinary offence which can lead to failure to obtain, or withdrawal of a degree. **Some students said they continued cheating because they were not afraid of the consequences.**

"Disciplinary regulations and the penalty framework are under review to ensure that they are appropriate and clear to ensure that disciplinary action can be taken as necessary."

The Law faculty said that they were surprised by the results, but said plagiarism would have taken place for supervision essays, rather than course-work, and so students would have got no advantage from this in the long run.

More than 1,000 students responded to the Varsity survey, answering whether they had ever plagiarized by handing in someone's else's essay; copying stats, code or field-work; making up stats, code or field-work; handing in previously submitted work; using someone else's ideas without acknowledgement; buying an essay, or having an essay edited by Oxbridge Essays or similar organization

**Source:**

http://www.telegraph.co.uk/education/universityeducation/3287653 & The Telegraph 01/11/2008, Kolkata Edition

**Input:** Punyatma S. Singh (LL.B II year)

## COPYRIGHT AMENDMENT BILL APPROVED

The Union Cabinet has approved the proposal of the ministry of human resource development (HRD) to introduce a legislation to amend the Copyright Act, 1957. The draft is expected to be tabled in parliament during the Budget session.

The Cabinet is learnt to have taken note of the concerns expressed by the broadcasting industry (both TV and radio) over "tinkering" of the fair use clause. Following representations made by the broadcasting industry, the Cabinet has decided that the clause will remain.

The Cabinet note said the amendments "are being made to bring the act in conformity with the World Intellectual Property Organization (WIPO) Internet Treaties, namely WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty (WPPT) which have set the international standards in these spheres".

The existing performers' rights are proposed to be further enhanced by introducing a new section to provide exclusive rights compatible with WPPT. Also, the moral rights of performers are proposed to be introduced in a new section of the Act. In addition, "amendments have been proposed to protect the interests of researchers, students and educational institutions so as to ensure that technological measures do not act as a barrier for further development of the technology".

According to the Cabinet decision, the period of copyright for photographers is proposed to be enhanced to "life plus 60 years", instead of only 60 years as at present. In the case of music and films, statutory license for version recordings and authorship will ensure that while making a sound recording of any literary, dramatic or musical work, the interest of the copyright holder is duly protected. The Cabinet also decided to extend the term of copyright for cinematograph films by making the producers and principal director joint authors.

Besides, a copyright term of 70 years to principal director has been announced.

*Source: www.dnaindia.com, dtd: 25/12/2009*

## BCI PROPOSES BAR COUNCIL EXAM; SETS NO TIMELINE

The Bar Council of India (BCI) has in a letter written to all state bar councils proposed setting up of a Bar Council Exam and will take a decision based on their replies, a member of the BCI said.

"It is a proposal. We have sent letters to the state councils, and the decision will be based on their reply," said Jagdev, BCI member from Delhi. Jagdev, however, said no timeline has been set to reach a decision. The Bar Council Exam was introduced about three decades ago but was subsequently scrapped. Without such an exam, it means anyone with a law degree can practise.

Managing Trustee of the Bar Council of India Trust Ashok Kumar Deb said the BCI's motto is "improvement of legal education" and that all efforts are being made — including sending letters to the PM, finance minister and the law minister — to bring the law colleges offering three-year course on the same qualitative level as the law universities. "But it will take time," he said.

Some three-year law colleges in Ahmedabad have been noted, who do not fulfil the BCI norms regarding staff strength, and some even have only one full-time staff - the principal. BCI member Jagdev, however, said they knew of no major problems, and that if the colleges write to them, action would be taken. "We are preparing a book on law colleges throughout the country. Every law college has been asked to furnish details about staff, faculty and student strength, and other things like library access. The booklet will be published soon," he said. *Source: www.indianexpress.com, dtd: 09/01/2010*

**Input: Punyatma S. Singh (LL.B II year)**

# Law Education in It's Real Form – A Look of JD Program (Juris Doctor) at Harvard Law School

**The First Year**

Harvard Law School recently undertook a sweeping overhaul of its first-year curriculum. The new curriculum reflects legal practice in the 21st century, adding courses in legislation and regulation and international and comparative law to the traditional curriculum of civil procedure, contracts, criminal law, property, and torts. All first-year students now take a problem solving workshop in which they grapple with real-world challenges involving complex fact patterns and encompassing diverse bodies of law. Students also participate in a legal research and writing course which teaches important skills essential to the practice of law. And students choose electives, in the international law arena and, more generally, from the wide array of courses Harvard offers.

The first-year class is divided into seven sections of eighty students each. Faculty Section Leaders, generally senior faculty members who teach one of the section's basic courses, provide guidance and support to the students in their sections and develop a program of extra-curricular activities related to the law.

In addition to section activities, students may participate in first-year reading groups—groups of 10-12 students—that offer the opportunity to interact with faculty in informal settings outside the classroom. Led by faculty members who often focus on areas of particular personal interest, these upgraded groups explore

such topics as diverse as law and literature, legal responses to terrorism, regulation of climate change, and issues of bioethics. (For a full list of the first-year reading groups offered in 2009-10.

***Source: www.law.harvard.edu/cgi-bin/showregistration.cgi***

**The Upper-Level Years**

In the second and third years of law school, **Harvard students shape their own courses of study**, selecting among a wide offering of electives. Students generally take a mix of classroom, clinical, writing and cross-registration credits, selecting courses at the Law School and throughout the University that align with their interests. Five optional Programs of Study – Law and Government; Law and Social Change; Law and Business; International and Comparative Law; and Law, Science and Technology—developed by the Law School faculty provide pathways through the upper-level curriculum. The Programs of Study offer students guidance on structuring an academic program that will give them extensive exposure to the law, policies, theory, and practice in their chosen areas of focus. Of particular importance for many students are clinical and inter-disciplinary opportunities, which enable students to experience law in practice and to understand how law appears from the perspective of other activities and approaches. The Law School encourages students to engage in their third year in a capstone learning experience: advanced seminars, clinical practice, and writing projects that call on students to use the full extent of their knowledge, skills, and methodological tools in a field to address the most interesting, complicated and intractable legal problems of today.

***Courtesy: Harvard Law School Website***
***www.law.harvard.edu***

***Input: John Singh, 1st Year, RGSOIPL.***

## PLAN FOR SPECIAL COURTS TO TRY SEXUAL OFFENCES

**New Delhi**: Soon, it would no longer be an endless wait for victims of sexual offences as the first draft of the proposed *Sexual Offences (Special Courts) Bill, 2010*, being sent to the home ministry, provides for designated Sessions Courts that will try the cases within a maximum period of six months. Incorporating recommendations made in a series of important judgments by the Supreme Court, starting from the famous Vishakha verdict in 1997, the Bill also provides for amendment in the Indian Evidence Act, law minister M Veerappa Moily told TOI on Wednesday.

The Bill turns all sexual offences into cognizable offences. The schedule of the Bill specifically defines sexual crime as covered by sections 354, 375, 376 A-G (molestation and all forms of sexual assault against women) of the Indian Penal Code. The Bill specifically says that the statement of a victim will only be recorded by a woman police officer or a woman government official. In case, there is no woman government official in the vicinity, a recognized female social worker will record the statement. Changes will be brought in Sections 53 and 146 of the Evidence Act. A new section, 53A, will be added that will ensure that the moral character of the victim and her previous sexual experience are not questioned during the trial. Also, there will be no interference during the recording of the statement. Section 354 of IPC says whoever assaults or uses criminal force to any woman shall be punished with two years imprisonment or with fine, or with both. Section 375 defines rape and a person found guilty shall be imprisoned for seven years which can be extended to life imprisonment.

***Source: THE TIMES OF INDIA, MUMBAI, 31.12.2009***

## PARLIAMENTARY GOVERNMENT TRUMPS PRESIDENTIAL

Many people are of the view of presidential form of government to solve all our problems. For instance, will a presidential form of government remove corruption? Will it result in effective law and order situation in the country? We certainly look unto USA as a model for presidential form of government. If we look into some of the best democracies, what difference they create is in their effective judiciary system.

A presidential system takes a winner-take-all approach to political power for the entire term of office. Defeat in the U.S. presidential election took Al Gore out of active politics. In a parliamentary system, he would have been in the legislature as opposition leader, and his considerable knowledge and skills in environmental diplomacy would not have been lost in the crucial debates on the Kyoto climate change.

A better comparator for judging the efficiency and effectiveness of parliamentary government against the U.S. benchmark is the U.K. It is worth remembering too that across Western Europe, parliamentary governments are the norm and presidential governments the exception. Australia, New Zealand, Japan and Canada — four countries are also paragons of effective parliamentary governments with enviable standards of living.

A fixed term makes presidential systems correspondingly more rigid. A President can be removed from office only by the uncertain, drastic and divisive process of impeachment. Parliamentary systems confer greater flexibility through the simpler expedient of votes of confidence on the floor of the house: governments can be formed and re-formed to reflect changing political realities or alignments. Superficially, the constant changeover of governments might project an image of volatility and instability. In fact, such flexibility prevents the crisis of a particular government being converted into a crisis of regime: the ouster of a Prime Minister poses no threat to democracy itself.

Presidential form of government can create autocracy and tyranny. May be the framers of our constitution never wanted our country to fall in wrong hands and they were right in many ways if we look at the fate of some of the South American countries and our neighbours.

***Source: HT blog, Ramesh Thakur***
***Inputs from Ayusman Mahanta, 1sy yr 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

- **Surana & Surana National Corporate Law Moot Court Competition 2010**
  - *Where*: Army Institute of Law, Mohali.
  - *When*: 12-14 Feb 2010
  - Last date of Registration - 1st Feb 2010, Memorial Submission - 8th Feb 2010.
  - *More details*: www.mootsite.com/pdf/National Corporate Law Moot 2010 - Rules.pdf

- **9th Surana & Surana International Technology Law MCC 2010**
  - *Where*: Symbiosis Law College, Pune.
  - *When*: 26-28 Feb 2010.
  - *More details*: symlaw.ac.in/latest_events.aspx?id=36

## Literary Events

- **Cognitio'09 – National Legal Writing Competition**
  - *Where*: Gujarat NLU, Gandhinagar.
  - *When*: Last Registration - 20th Jan 2010, Submission Deadline - 10th Feb 2010.
  - *For More Details*: www.gnlu.org.in/cognitio.htm

- **Indian Journal of International Economic Law, 2009-10**
  - *Where*: NLS, Bangalore.
  - Submission Deadline for the 3rd issue is January 31, 2010.
  - *For More Details*: http://www.ijiel.in/subm.html

- **Socio-Legal Review, 2009-10**
  - *Where*: NLS, Bangalore.
  - Submission Deadline for the 6th Volume is January 31, 2010.
  - *For More Details*: www.nls.ac.in/slr2010.pdf

- **1st Subrata Roy Chowdhury Memorial Essay Writing Competition**
  - *Where*: NUJS, Kolkata.
  - *Submission Deadline* - 10th Feb 2010.
  - *More details*: www.nujs.edu/downloads/subrata-roy-chowdhury-memorial-essay-writing-competition.pdf

- **2nd Shilesh Chandra Mishra Parliamentary Debate competition**
  - *Where*: Chanakya NLU, Patna.
  - *When*: 8 - 10 February 2010.
  - *Last date of Registration* – 20th Jan 2010.
  - *More details*: www.cnlu.ac.in/debate.php

- **The 1st Intellectual Property Review**
  - *Where*: NLS, Bangalore.
  - Submission Deadline - 10th Feb, 2010.
  - *More details*: nls.ac.in/IPRJOURNAL/indexpage.htm

## Conferences

- **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