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Vineet Khand, Gomti Nagar, Lucknow

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CONTENTS

S.No.	Subject	Page
1.	Training Activities in the Institute	1
	I. Refresher Training Programme for Civil Judges (J.D.)	1
2.	Short Articles	2
3.	Book Review	3
4.	Legal Jottings	5

TRAINING ACTIVITIES IN THE INSTITUTE

I. Refresher Training Programme for Civil Judges (J.D.)

A refresher training programme for Civil Judges (J.D.) started in the month of October from 26.10.2023 and continued in the month of November till 08.11.2023 in which about 68 officers participated. This refresher training programme was organized in the institute which was inaugurated by Sri Vinod Singh Rawat, Director of the institute.

The refresher training programme covered diverse areas of discussion which included theory and praxis-amendment and substitution applications, consideration of clash of interests of legal representatives, recording of statement and confession under Section 164 CrPC with special reference to recording of statement of deaf & dumb witness and minor witness, second application for recording of statement under Section 164 CrPC, parties to suit: non-joinder and misjoinder, representative suit, institution of suit: issue of notice and publication under CPC, provision of notice under different statute, domain of jurisdiction of civil court and revenue court in the context of U.P. Revenue Code and CH Act, common difficulties faced at the time of remand including change from S. 167 to S. 309 CrPC, submission of charge sheet and cognizance, precautions regarding remand of injured accused, request for proper medical facilities by accused during remand, administrative work etc.

It is pertinent to mention that the holistic development of trainee officers is one of the key concerns of JTRI. Newly constructed sports complex buttress the objectives of the Institute. To develop the sportsmen spirit, a cricket tournament was organized on 5th November, 2023 at the newly constructed sports complex during refresher training programme from 26th October, 2023 to 8th November, 2023. Four teams were formed amongst the trainee officers with representation of faculty members. Sri Vinod Singh Rawat, Director, JTRI played match from Team A, Sri Kushalpal, Additional Director and Sri Anurag Panwar OSD played from Team B, Sri Irfan Ahmed, OSD and Sri Manmeet Singh Suri, Additional Director (Training) played from Team C and Sri Nishant Dev, OSD played from Team D. Two league matches were played for the selection of final match. In first league match, Team B outsmarted team A to reach the final round. In second league match, team D outperformed team C to reach the finals. The final match was played between team B and D. The match was won by team D. Keeping the time limit in mind the matches were restricted to ten overs for each team.

The batch of 2018 U.P. Nyayik Sewa boasts of more than fifty percent women representation. A match was also organized between two teams of female participating officers. The match was restricted to five overs. The female trainee officers also played the match with great vigour and enthusiasm.

The participating officers actively participated in the matches in friendly environment. The tournament strengthened the values of cooperation and team work. The sports event was followed by high tea and dinner.

SHORT ARTICLE

The Rose Beautiful

By Rajat Sinha*

Today I saw a rose in my garden
And wondered with all the pace.

For whom was it made by the Lord
For whom was it made to embrace.

Once I thought it was made,
For the Lords in the temple to wear
Once I thought it was made,
For the newly wed bride with eyes in tear.

Once I thought it was made
For a champion as necklace
Once I thought it was made
For a leader to elate.

But as the fragrance touched me
I was made to realize and adore.

Beauty of roses and fragrance
Are life together,
They are to be used
as abstract rather than matter.

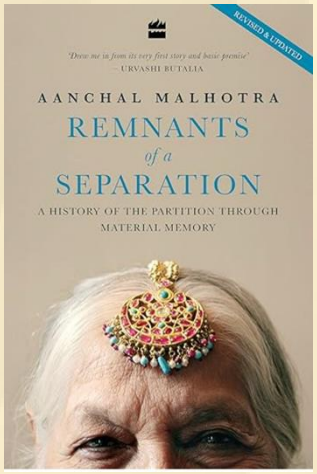
It is for us to sit together
and think our lives as a cluster
Of roses of opportunity and experience
Which we must use wisely and spend.

Life itself is the rose beautiful
Be positive and make your life meaningful
This is the essence of the rose beautiful.

* Spl. Judge (SC/ST Act)/Additional District & Sessions Judge, Kanpur Dehat

BOOK REVIEW

By Anujaya Krishna*



Title of the Book
Remnants of a Separation

Author
Aanchal Malhotra

Publisher
Harper Collins

Year of Publication
2017

The tagline below the title of the book succinctly states what the book is about- 'A history of the partition through material memory'. The premise of the book is rather interesting. Written by an artist and oral historian, Aanchal Malhotra, working with memory and material culture, the book traces the real-life stories of people and families from the era of the Partition of India in 1947. The accounts come from a wide range of people- from India, Pakistan and Britain. The running theme is the juxtaposition of a sense of loss but also belonging proffered by seemingly inanimate objects.

Without revealing too many details, here is an overview of the various stories shared which are twenty-one in number. It starts off with the heirlooms of YP Vij- a gaz and a ghara, where the author captures stories closer home.

In the Gift from a Maharaja, the reader is shown the magnanimity of a *maharaja* towards a little girl with a rare gift of pearls. The story of Bhag Malhotra's *maang-tikka* (a piece of jewellery that adorns the head) is a symbol of so much more than just a jewel, and it is beautifully described, enunciating its subtle imperfections. Army service medals find a place in the Battle-hardened Memorabilia of Lt Gen SN Sharma, as does a sword in *Between This Side and That:* The Sword of Ajit Kaur Kapoor and a trunk passed down with the label 'VP Sondhi, Geological Survey of India' (him having joined the Geological Survey of India in 1926) in *Passage to Freedom:* The Worldly Trunk of Uma Sondhi Ahmad.

In Utensils for Survival, one gets an insight into how something seemingly as basic as utensils acquires the role of a survival aid when times are tough, so much so that when a family is uprooted from its native place, they leave much behind except for some utensils, that are then preserved over time by their progeny. The story about the *Khaas Daan* of Narjis Khatun transports one back to a time when *paan* (betel nut) used to be elegantly offered to guests in this special dish.

The *Hamam-Dasta* (like mortar and pestle) of Savitri Mirchandani has its own story to tell- being the only article to have crossed the Arabian Sea with her at the time of Partition. The Assorted Curios of Prof. Sat Pal Kohli offers an insight into how his widowed mother became a money lender in those times and some of the artefacts they managed to retain were items that had once been mortgaged to them. Similarly, *Sitara Faiyaz Ali's* story is relived through household items from the homes they left behind in India. What is striking is how something as familiar and common as a *kurta* or a fruit bowl become the repository of such strong memories.

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* Civil Judge (Junior Division), Barabanki

The Dialect of Stitches and Secrets takes the reader to the story behind the *bagh* of Hansla Chowdhary and how this ornate garment was hand-stitched as a mark of love. A garment also becomes the pivot in the story of the *pashmina shawl* of Preet Singh.

Poetry, books and diaries, intricately woven in the strands of time, find their way in the stories about the collection of Prof. Partha, the Guru Granth Sahib of Sumitra Kapur and the poems of Prabhjot Kaur, the poetess' verse having moved a young army officer to propose marriage to her in the latter, all based on her words he had read per chance! The story on the Identification Certificates of Sunil Chandra Sanyal almost imparts human form to browning papers.

There are some stories that are lived through photographs as well, such as the ones narrated by the Englishman John Grigor Taylor who was born and brought up in Ahmednagar, near Bombay and then moved to England after the Partition, and that of Nazeer Adhami and the hockey field left behind.

A particularly heartbreaking story is *The Light of a House that Stands No More*: *The Stone Plaque of Mian Faiz Rabbani*, where the original owners visit their ancestral house in Jalandhar after the Partition (having had to migrate to Pakistan during it), and the man of the Sikh family now inhabiting it, introduces him as '*ghar ke maalik aa gaye ne' (the owners of the house have come).*

While there is no comparison among the various stories, each as distinct and moving as the other, the story that touches a special chord somewhere is *The Bird of Gold, My Land: The Hopeful Heart of Nazmuddin Khan.* What separates this one from the rest is the fact that there is no artefact around which the story is woven, but it elaborates on the undying idealism of a man who considers his homeland his homeland, no matter the circumstances, so much so that despite having fled their native place with their very survival in jeopardy during riots, he returns to that very same place later and rebuilds his life there. The author describes this beautifully when she self-deprecates for 'obsessing over the tangible' but realizes that this story was wholesome in its own right.

This period in history has been written about a lot previously as well but what makes this book different from a plethora of other accounts available is that it traces history through artefacts and family heirlooms that people brought and retained with them through and after the Partition.

The book then becomes so much more than just the recounting of history- each account draws you in and transports you back in time, strangely to be able to not just read but also feel what people must have gone through in that duration. This book deserves to be read as a stinging reminder of the pain of Partition but more so, for the lessons it has to offer through tales of brotherhood, camaraderie and the victory of the human spirit above all else, all very relevant in every day and age, including today.

LEGAL JOTTING

> "The expression "mental health" has a wide connotation and means much more than the absence of a mental impairment or a mental illness. The determination of the status of one's mental health is located in one's self and experiences within one's environment and social context"
>
> **Hon'ble Dr. Justice D.Y. Chandrachud**
> **Chief Justice, Supreme Court of India**
> **X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and another**
> **(2023) 9 SCC 433**

SUPREME COURT

1. Animal Welfare Board of India and others v. Union of India, (2023) 9 SCC 322

Presidential assent with regard to three State Amendments – Validity

The Presidential assent was sought for by the three States in terms of Article 254(2) of the Constitution. The petitioners questioned the very act of assent of the President on the grounds that complete details were not disclosed before the President and that the legislation did not relate to an entry in List III of Schedule VII to the Constitution.

The PCA Act, 1960 has been enacted in pursuance of legislative power contained in Schedule VII List III Entry 17 to the Constitution. The impact of the Amendment Acts on the main statute would be revealed from the comparative table set out in para 16.

After the three Amendment Acts received Presidential assent, the States of Tamil Nadu and Maharashtra formulated Rules for conducting bovine sports. These Rules/Notification seek to rigidly regulate conducting bovine sports. They postulate provisions for application for permission of holding the sports, for participating in the race. For organising of Bullock Cart Race, the Rules stipulate for the manner in which such races could be conducted with specifications for the length of the track, rest period and isolation of the track from the general public. The Tamil Nadu Rules specifically provide for the examination of bulls, with specifications for the arena, bull collection yard as also setting up of spectators gallery. These instruments in substance prohibit causing any physical disturbance to the bulls like beating and poking them with sharp objects, sticks, pouring chilli powder in their eyes, and twisting their tails, amongst other such pain inflicting acts.

In *A. Nagaraja case*, the two-Judge Bench, on the basis of the affidavit of the Animal Welfare Board of India and MoEFCC described the manner in which *Jallikattu* was being performed prior to the 2017 Amendment, and noted all the abhorrent and cruel practices which were prevalent then.

Animal rights protection under law

It was observed by the Hon'ble Apex Court on the point of recognizing the rights of animals that the legislative approach appears to be twofold. Of course, the animals cannot demand their right in the same way human beings can assert for bringing a legislation, but as part of the social and cultural policy, the lawmakers have recognized the rights of animals by essentially imposing restrictions on human beings on the manner in which they deal with animals. By virtue of Article 48 of the Constitution, which essentially operates as a national guideline for lawmakers, a two-way path has been devised. The first is imposing a duty on the State to organize agriculture and animal husbandry on modern and scientific lines. The second is emphasizing the duty of the State to take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle. Under the chapter on fundamental duties, a citizen is required to protect and improve the natural environment including forests, lakes, rivers and wildlife ought to have compassion for living creatures. The petitioners want the Court to interpret the Amendment Acts in light of these two constitutional provisions and want the Court to scrutinize the three statutes taking into cognizance the pain and suffering that would be caused to them, so that the bovine species are not compelled to participate in the aforesaid sports organized by human beings for the latter's pleasure. It is the petitioners' stand that wherever the PCA Act, 1960 enjoins human beings from performing certain acts vis-à-vis animals, the obligations ought to be translated jurisprudentially into the rights of the animals not to be subjected to such prohibited acts. The line of reasoning in this regard on behalf of the petitioners is that the very manner in which these sports activities are undertaken directly offend the aforesaid two provisions of the PCA Act, 1960. Merely by introducing these three Amendment Acts, the organizers of these events cannot be saved from the offences specified in the PCA Act, 1960, which aspect has been dealt with in detail in the judgment of the Supreme Court in *A. Nagaraja case*.

On the question of conferring fundamental rights on animals there are no precedents. The Division Bench in *A. Nagaraja case* also does not lay down that animals have fundamental rights. The only tool available for testing this proposition is interpreting the three Amendment Acts on the anvil of reasonableness in Article 14 of the Constitution. While the protection under Article 21 has been conferred on person as opposed to a citizen, which is the case in Article 19 of the Constitution, it will not be prudent to venture into a judicial adventurism to bring bulls within the said protected mechanism. It is doubtful as to whether detaining a stray bull from the street against its wish could give rise to the constitutional writ of habeas corpus or not. In the judgment of *A. Nagaraja case*, the question of elevation of the statutory rights of animals to the realm of fundamental rights has been left at the advisory level or has been framed as a judicial suggestion. There is no need to venture beyond. This exercise should be left to be considered by the appropriate legislative body. Article 14 of the Constitution cannot also be invoked by any animal as a person. While the provisions of an animal welfare legislation can be tested, that would be at the instance of a human being or a juridical person who may espouse the cause of animal welfare.

Thus, the five questions referred to are answered in the following terms:

The Tamil Nadu Amendment Act is not a piece of colourable legislation. It relates, in pith and substance, to Schedule VII List III Entry 17 to the Constitution. It minimizes cruelty to animals in the sports concerned and once the Amendment Act, along with their Rules and Notification are implemented, the bovine sports would not come within the mischief sought to be remedied by Sections 3, 11(1)(a) and (m) of the PCA Act, 1960.

The Tamil Nadu Amendment Act is not in pith and substance, to ensure survival and well-being of the native breeds of bulls. The said Act is also not relatable to Article 48 of the Constitution. The incidental impact of the said Amendment Act may fall upon the breed of a particular type of bull and affect agricultural activities, but in pith and substance, the Act is relatable to Schedule VII List III Entry 17 to the Constitution.

Jallikattu is a type of bovine sport and on the basis of materials disclosed it is going on in the State of Tamil Nadu for at least the last few centuries. This event essentially involves a bull which is set free in an arena and human participants are meant to grab the hump to score in the "game".

But whether this has become an integral part of Tamil culture or not requires religious, cultural and social analysis in greater detail, is an exercise that cannot be undertaken by the Judiciary. The question as to whether the Tamil Nadu Amendment Act is to preserve the cultural heritage of a particular State is a debatable issue which has to be concluded in the House of the People. This ought not be a part of judicial inquiry and particularly having regard to the activity in question and the materials in the form of texts cited before the Court by both the petitioners and the respondents, this question cannot be conclusively determined in the writ proceedings. Since legislative exercise has already been undertaken and *Jallikattu* has been found to be part of the cultural heritage of Tamil Nadu, the Court would not disrupt this view of the legislature.

The Court did not accept the view reflected in *A. Nagaraja case*, that performance of *Jallikattu* is not a part of the cultural heritage of the people of the State of Tamil Nadu. In the Preamble to the Amendment Act, *Jallikattu* has been described to be part of the culture and tradition of Tamil Nadu. In *A. Nagaraja case*, the Court found the cultural approach unsubstantiated and referring to the manner in which the bulls are inflicted pain and suffering, the Court concluded that such activities offended Sections 3 and 11(1)(a) and (m) of the PCA Act, 1960.

The Tamil Nadu Amendment Act does not go contrary to Articles 51-A(g) and 51-A(h) and it does not violate the provisions of Articles 14 and 21 of the Constitution. The Court does not find any flaw in the process of obtaining Presidential assent having regard to the provisions of Article 254(2) of the Constitution.

The Tamil Nadu Amendment Act read along with the Rules framed in that behalf is not directly contrary to the ratio of the judgment in *A. Nagaraja case* and judgment of the Supreme Court delivered on 16-11-2016 dismissing the plea for review of *A. Nagaraja case* judgment as the defects pointed out have been removed.

The decision on the Tamil Nadu Amendment Act would also guide the Maharashtra and the Karnataka Amendment Acts and all the three Amendment Acts are valid legislations.

However, it is directed that the law contained in the Act/Rules/Notification should be strictly enforced by the authorities. In particular, the District Magistrates/ competent authorities should be responsible for ensuring strict compliance with the law, as amended along with its Rules/Notifications.

2. NTPC Limited v. SPML Infra Limited, (2023) 9 SCC 385

It has been held that the Court may for legitimate reasons, to prevent wastage of public and private resources, can exercise judicial discretion to conduct an intense yet summary prima facie review while remaining conscious that it is to assist the arbitration procedure and not usurp jurisdiction of the Arbitral Tribunal. Undertaking a detailed full review or a long-drawn review at the referral stage would obstruct and cause delay undermining the integrity and efficacy of arbitration as a dispute resolution mechanism. Conversely, if the Court becomes too reluctant to intervene, it may undermine effectiveness of both the arbitration and the Court. There are certain cases where the prima facie examination may require a deeper consideration. The Court's challenge is to find the right amount and the context when it would examine the prima facie case or exercise restraint. The legal order needs a right balance between avoiding arbitration obstructing tactics at referral stage and protecting parties from being forced to arbitrate when the matter is clearly non-arbitrable.

The pre-referral jurisdiction of the Courts under Section 11(6) of the 1996 Act is very narrow and inheres two inquiries. The primary inquiry is about the existence and the validity of an arbitration agreement, which also includes an inquiry as to the parties to the agreement and the applicant's privity to the said agreement. These are matters which require a thorough examination by the Referral Court. The secondary inquiry that may arise at the reference stage itself is with respect to the non-arbitrability of the dispute.

As a general rule and a principle, the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. As an exception to the rule, and rarely as a demurrer, the Referral Court may reject claims which are manifestly and *ex facie* non-arbitrable.

While exercising jurisdiction under Section 11 as the judicial forum, the Court may exercise the prima facie test to screen and knockdown *ex facie* meritless, frivolous, and dishonest litigation. Limited jurisdiction of the Courts would ensure expeditious and efficient disposal at the referral stage. At the referral stage, the Court can interfere "only" when it is "manifest" that the claims are ex facie time-barred and dead, or there is no subsisting dispute.

The standard of scrutiny to examine the non-arbitrability of a claim is only prima facie. Referral Courts must not undertake a full review of the contested facts; they must only be confined to a primary first review and let facts speak for themselves. This also requires the Courts to examine whether the assertion on arbitrability is bona fide or not. The prima facie scrutiny of the facts must lead to a clear conclusion that there is not even a vestige of doubt that the claim is non-arbitrable. On the other hand, even if there is the slightest doubt, the rule is to refer the dispute to arbitration.

The limited scrutiny, through the eye of the needle, is necessary and compelling. It is intertwined with the duty of the Referral Court to protect the parties from being forced to arbitrate when the matter is demonstrably non- arbitrable. It has been termed as a legitimate interference by Courts to refuse reference in order to prevent wastage of public and private resources. Further, if this duty within the limited compass is not exercised, and the Court becomes too reluctant to intervene, it may undermine the effectiveness of both, arbitration and the Court. Post the 2015 Amendments, the jurisdiction of the Court under Section 11(6) of the 1996 Act is limited to examining whether an arbitration agreement exists between the parties "nothing more, nothing less".

Therefore, the Supreme Court or a High Court, as the case may be, while exercising jurisdiction under Section 11(6) of the 1996 Act, is not expected to act mechanically merely to deliver a purported dispute raised by an applicant at the doors of the chosen arbitrator.

3. X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and another, (2023) 9 SCC 433

Art. 21 - Right to reproductive autonomy: Autonomy to choose one's course of life - Right to dignity inherent in every individual merely by being a human being. Recognizes every woman's right to make reproductive choice to terminate unwanted pregnancy, without undue interference of State. Forcing a woman to continue with unwanted pregnancy violative of her right to dignity.

The Hon'ble Supreme Court observed that the appellant averred that she is the eldest amongst five siblings and that her parents are agriculturists. The appellant is an unmarried woman aged about twenty-five years, and had become pregnant as a result of a consensual relationship. The appellant wished to terminate her pregnancy as "her partner had refused to marry her at the last stage". The appellant while carrying a single intrauterine pregnancy corresponding to a gestational age of twenty-two weeks filed a writ petition before the High Court seeking permission to terminate her pregnancy in terms of Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 and Rule 3-B(c) of the Medical Termination of Pregnancy Rules, 2003 (as amended on 12-10-2021). She stated that she did not want to carry the pregnancy to term since she was wary of the "social stigma and harassment" pertaining to unmarried single parents, especially women.

Moreover, the appellant submitted that in the absence of a source of livelihood, she was not mentally prepared to "raise and nurture the child as an unmarried mother". The appellant stated that the continuation of the unwanted pregnancy would involve a risk of grave and immense injury to her mental health. The appellant in her petition sought direction to the respondent to include unmarried woman also within the ambit of Rule 3-B of the amended Rules for termination of pregnancy under Section 3(2)(b) of the MTP Act, for a period of up to twenty-four weeks. The appellant also instituted a criminal miscellaneous application for grant of interim relief to terminate her pregnancy during the pendency of the writ petition.

The High Court dismissed the writ petition and the criminal miscellaneous petition observing that Section 3(2)(b) of the MTP Act was inapplicable to the facts of the present case since the appellant, being an unmarried woman, whose pregnancy arose out of a consensual relationship, was not covered by any of the clauses of Rule 3-B of the MTP Rules. The order of the High Court gave rise to the present appeal. Notice was issued on the petition for special leave to appeal on 21-7-2022. The Supreme Court, by its interim order dated 21-7-2022 modified the order of the High Court and permitted the appellant to terminate her pregnancy.

Purposive Interpretation

The question that arises is whether Rule 3-B includes unmarried women, single women, or women without a partner under its ambit. The answer may be discerned by imparting a purposive interpretation to Rule 3-B.

The cardinal principle of the construction of statutes is to identify the intention of the legislature and the true legal meaning of the enactment. The intention of the legislature is derived

by considering the meaning of the words used in the statute, with a view to understanding the purpose or object of the enactment, the mischief, and its corresponding remedy that the enactment is designed to actualize. Ordinarily, the language used by the legislature is indicative of legislative intent. But when the words are capable of bearing two or more constructions, they should be construed in the light of the object and purpose of the enactment. The purposive construction of the provision must be "illumined by the goal, though guided by the word". A statute must be read in its context when attempting to interpret its purpose. Context includes reading the statute as a whole, referring to the previous state of law, the general scope of the statute, surrounding circumstances and the mischief that it was intended to remedy. However, a court's power to purposively interpret a statutory text does not imply that a Judge can substitute legislative intent with their own individual notions. The alternative construction propounded by the Judge must be within the ambit of the statute and should help carry out the purpose and object of the Act in question.

Object and purpose of the MTP Act

The purpose or object of an enactment is the mischief at which the enactment is directed and the remedy which the lawmakers have devised to address the mischief. The whole tenor of the MTP Act is to provide access to safe and legal medical abortions to women. The MTP Act is primarily a beneficial legislation, meant to enable women to access services of medical termination of pregnancies provided by an RMP. Being a beneficial legislation, the provisions of the MTP Rules and the MTP Act must be imbued with a purposive construction. The interpretation accorded to the provisions of the MTP Act and the MTP Rules must be in consonance with the legislative purpose. In view of the serious social malady due to illegal and unsafe abortions, the MTP Amendment Act, 2021 intended to improve the availability and quality of legal abortion care for women by liberalizing certain restrictive features of the unamended MTP Act and by increasing the legal limit of the gestational period within which abortions could be conducted.

The Statement of Objects and Reasons indicates that the MTP Amendment Act, 2021 is primarily concerned with increasing access to safe and legal abortions to reduce maternal mortality and morbidity. The increase in the upper gestational limit for terminating pregnancies under "certain specified conditions" was considered necessary to fulfil the goal of ensuring "dignity, autonomy, confidentiality and justice for women who need to terminate pregnancy."

When interpreting a sub-clause or part of a statutory provision, the entire section should be read together with different sub-clauses being a part of an integral whole. Section 3(2)(b) of the Act in this context is relevant. Women who seek to avail of the benefit under Rule 3-B of the MTP Rules continue to be subject to the requirements of Section 3(2) of the MTP Act.

The MTP Amendment Act, 2021 intended to extend the benefits of the statute to all women, including single and unmarried women. It introduced a major change in Section 3 of the MTP Act by extending the upper limit for permissible termination of pregnancy from twenty weeks to twenty-four weeks for specific categories of women based on the opinion of two RMPs. It also extended the benefit of the legal presumption of a grave injury to the mental health of a woman on account of the failure of contraception, to all women and not just married women by eliminating the words "married woman or her husband" from the scheme of the MTP Act and introducing in Explanation I to Section 3(2)(b) the words "any woman or her partner". Thus the legislature intended to clarify the scope of Section 3 and bring pregnancies which occur outside the institution of marriage within the protective umbrella of the law.

The unamended MTP Act, 1971 was largely concerned with "married women". Significantly, the 2021 Statement of Objects and Reasons does not make a distinction between married and unmarried women. Rather, all women are entitled to the benefit of safe and legal abortions. The Amendment Bill was termed as a "progressive legislation" introduced to uphold women's right to live with dignity. A statutory text concerned with a significant aspect of the right to life and enhancing access to reproductive rights should be given the widest construction. The legislative history of the MTP Amendment Act, 2021 provides insight into the hardship at which the amendment aimed.

The expression "mental health" has a wide connotation and means much more than the absence of a mental impairment or a mental illness. The determination of the status of one's mental health is located in one's self and experiences within one's environment and social context.

Transcending institution of marriage as a source of rights

The law in modern times is shedding the notion that marriage is a precondition to the rights of individuals. Changing social mores must be borne in mind when interpreting the provisions of an enactment to further its object and purpose. Statutes are considered to be "always speaking". The law should be interpreted in terms of the changing needs of the times and circumstances. The law must remain cognizant of the fact that changes in society have ushered in significant changes in family structures. Societal relations indicate the need to legally recognize non-traditional manifestations of familial relationships. Such legal recognition is necessary to enable individuals in non- traditional family structures to avail of the benefits under beneficial legislation, including the MTP Act e.g. Section 5 of the Maternity Benefits Act, 1961, Section 6 of the Hindu Succession Act, 1956; Section 8 of the Hindu Adoptions and Maintenance Act, 1956 and Sections 7 and 8 of the Guardians and Wards Act, 1890. Through the above enactments, the law has emphasized that unmarried women have the same rights as married women in terms of adoption, succession, and maternity benefits. Importantly, these legislations also signify that both married and unmarried women have equal decisional autonomy to make significant choices regarding their own welfare.

Positive obligations of the State

The MTP Act recognizes the reproductive autonomy of every pregnant woman to choose medical intervention to terminate her pregnancy. Implicitly, this right also extends to a right of the pregnant woman to access healthcare facilities to attain the highest standard of sexual and reproductive health. It is meaningless to speak of the latter in the absence of the former. Reproductive health implies that women should have access to safe, effective, and affordable methods of family planning and enabling them to undergo safe pregnancy, if they so choose.

The State has a positive obligation under Article 21 to protect the right to health, and particularly reproductive health of individuals. In terms of reproductive rights and autonomy, the State has to undertake active steps to help increase access to healthcare (including reproductive healthcare such as abortion). Articles 38 and 47 falling within Part IV of the Constitution are relevant in the context.

The State must ensure that information regarding reproduction and safe sexual practices is disseminated to all parts of the population. Further, it must see to it that all segments of society are able to access contraceptives to avoid unintended pregnancies and plan their families.

Medical facilities and RMPs must be present in each district and must be affordable to all. The Government must ensure that RMPs treat all patients equally and sensitively. Treatment must not be denied on the basis of one's caste or due to other social or economic factors. It is only when these recommendations become a reality that it can be said that the right to bodily autonomy and the right to dignity are capable of being realized.

The court, however, held that nothing in this judgment must be construed as diluting the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

Obligations under international law

Article 51 of the Constitution requires the State to foster respect for international law and treaty obligations in the dealings of organized people with one another. The Protection of Human Rights Act, 1993 recognizes and incorporates international conventions and treaties as part of Indian human rights law. International human rights norms contained in treaties and covenants ratified by India are binding on the State to the extent that they elucidate and effectuate the fundamental rights guaranteed by the Constitution. These are International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women, UN Committee on the Elimination of Discrimination against Women.

India's obligations under international law require the State to bring the MTP Act in conformity with the said obligations. The reproductive rights of women must be harmonized in light of the principles laid down under the Constitution as well as the principles of international law codified in the various international conventions ratified by India. The Court's interpretation of the MTP Act and the MTP Rules furthers India's obligations under international law. However, the State must act proactively in order to ensure that women in India are able to actualize their right to reproductive health and healthcare, in line with the obligations assumed by the country under international law.

Barriers to accessing safe and legal abortion

Despite the enactment of the MTP Act, a number of hurdles continue to prevent full access to safe and legal abortions, pushing women to avail of clandestine, unsafe abortions. These barriers include insufficient infrastructural facilities, lack of awareness, social stigma, and failure to ensure confidential care. In some situations, unmarried women face particular barriers due to gender stereotypes about women's sexual autonomy outside marriage. These barriers are a serious impediment and deter single women from seeking safe and legal abortions. Such barriers may contribute to a delay in accessing abortion services or a complete denial of such services, consequently negating women's right to reproductive autonomy.

It is not only the factors mentioned above which hinder access to safe but also a fear of prosecution under the country's criminal laws. Under the current legal framework, the MTP Act merely lays out exceptions to the provisions criminalizing abortion in Sections 312 to 318 IPC.

Presently, under the MTP Act, the opinion of an RMP (in accordance with the restrictions and grounds laid down in the Act) is decisive. It is on the basis of the opinion formed by RMP(s), either under Section 3 or under Section 5, that a woman can terminate a pregnancy under the MTP Act. This makes the MTP Act a provider- centric law. Since women's right to access abortion is conditional on the approval by an RMP, the denial of services by an RMP

compels women to approach courts or seek abortions in unsafe conditions. A fear of prosecution under this complex labyrinth of laws, including linking of the MTP Act with IPC, acts as a major barrier to safe abortion access, by generating a chilling effect on the behaviour of RMPs. The chilling effect-historically associated with protection of freedom of speech and expression under Article 19-has an impact on the decision-making of medical professionals acting under the MTP Act and consequently impedes access to safe and legal abortions and the actualization of women's fundamental right to reproductive autonomy.

Further, it is a common yet lamentable practice for RMPs to insist on compliance with extra-legal conditions such as consent from the woman's family, documentary proofs, or judicial authorization. If the woman fails to comply with these additional requirements, RMPs frequently decline to provide their services in conducting legal abortions. These extra-legal requirements have no basis in law. It is only the woman's consent (or her guardian's consent if she is a minor or mentally ill) which is material. RMPs must refrain from imposing extra-legal conditions on women seeking to terminate their pregnancy in accordance with the law. They need only ensure that the provisions of the MTP Act (along with the accompanying rules and regulations) are complied with. Before the MTP Amendment Act, 2021 was enacted, the petitioners in a number of cases before the High Courts also sought permission to terminate pregnancy where the gestation was below twenty weeks. The Supreme Court has recognized the disastrous effects of unnecessary delays and lack of promptitude in the attitude of authorities when dealing with termination of pregnancies.

An RMP's decision to provide medical termination of a pregnancy is also influenced by social stigma surrounding unmarried women and pre-marital sex, gender stereotypes about women taking on the mantle of motherhood, and the role of women in society. Due to a widespread misconception that termination of pregnancies of unmarried women is illegal, a woman and her partner may resort to availing of abortions by unlicensed medical practitioners in facilities not adequately equipped for such medical procedures, leading to a heightened risk of complications and maternal mortality. The social stigma that women face for engaging in pre-marital sexual relations prevents them from realizing their right to reproductive health in a variety of ways. They have insufficient or no access to knowledge about their own bodies due to a lack of sexual health education, their access to contraceptives is limited, and they are frequently unable to approach healthcare providers and consult them with respect to their reproductive health. Consequently, unmarried and single women face additional obstacles.

ALLAHABAD HIGH COURT

1. Surendra Koli v. State through Central Bureau of Investigation, 2023 (11) ADJ 202 (DB)

Hon'ble Allahabad High Court observed that the manner in which confession is recorded after 60 days of police remand without any medical examination of accused; providing of legal aid; overlooking specific allegation of torture in the confession itself; failure to comply with the requirement of Section 164 Cr.P.C. is shocking to say the least. The failure of investigation to probe the possible involvement of organ trade, despite specific recommendations made by the High Level Committee constituted by the Ministry of Women and Child Development, Government of India, in Nithari killings is nothing short of a betrayal of public trust by

responsible agencies. Loss of life of young children and ladies is a matter of serious concern particularly when their lives were brought to an end in a most inhuman manner but that, in itself, would not justify denial of fair trial to the accused nor would it justify their punishment even in the absence of evidence to implicate them.

It was further held that the investigation otherwise is botched up and basic norms of collecting evidence have been brazenly violated. It appears to us that the investigation opted for the easy course of implicating a poor servant of the house by demonizing him, without taking due care of probing more serious aspects of possible involvement of organized activity of organ trading. Inferences of many kinds, including collusion etc. are probable on account of such serious lapses occasioned during investigation. However, we do not intend to express any definite opinion on these aspects and leave such issues to be examined at the appropriate level.

The Hon'ble Court concluded holding that a fair trial has clearly eluded the accused appellants in this case. The need to have a fair trial has recently been emphasized by the Supreme Court in *Munna Pandey v. State of Bihar, 2023 SCC Online SC 1103*. While referring to the statement of Harry Browne, the Court endorsed the view that "a fair trial is one in which the rules of evidence are honoured, accused has competent counsel, and the Judge enforces the proper Court room procedures and a trial in which every assumption can be challenged.

2. Achhaibar Yadav and others v. State of U.P. and others, 2023 (10) ADJ 768

U.P. Consolidation of Holdings Act, 1953-Section 48 (3) Land Record- Banjar Khata

Gaon Sabha did not file any objection claiming right, title and interest over land in dispute. Once no objection was filed, grievance of Gaon Sabha regarding land in dispute could not have been considered indirectly by passing scheme of the Act. Furthermore, reference was registered as Gaon Sabha v. X and others even when no complaint was made by Gaon Sabha concerned. Complaint giving rise to litigation in which, DDC passed impugned order is not signed by complainant nor a list of signatories is attached to the complaint. Therefore, there was no complaint in eyes of law. As such, in garb of reference proceedings, claim of Gaon Sabha could not have been considered. Moreover, the date on which reference was made, no proceeding was pending before any of Consolidation Authorities regarding land in dispute and therefore, no reference could have been made. Thus, the manner in which, adjudication was made by DDC is unsustainable in law. The net result of same is that once proceedings in which, order impugned has been passed is itself not maintainable, therefore, consequently impugned order is also illegal and hence set aside.

3. Jugal v. State of U.P., 2023 (10) ADJ 647 (DB)

Section 302 IPC and Section 366 of Criminal Procedure Code, 1973.

It was a case of murder in which death reference was made by the trial court. Accused-appellant poured petrol on his mother-in-law and brother-in-law and set them ablaze. Motive alleged to be the desire of accused to keep his daughter, which was objected by her in-laws and the wife. Severity of offence has been considered while awarding sentence of death penalty. Neither the genesis of offence proved by prosecution nor exact reason for discord has been placed on record. Case of prosecution that accused wanted to keep his daughter not proved. Testimony of P.W.-3, on aspect of recovery of plastic can in which petrol was allegedly kept found not much inspired. Mechanical approach in relying upon a dying declaration just because it is there, is extremely dangerous. Dying declaration not properly evaluated-Impugned finding of Court below that guilt of accused-appellant has been established beyond reasonable doubt, therefore, reversed and appellant was directed to be released.

By –

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ABOUT US

Judicial Training and Research Institute, U.P., Lucknow

The Institute was established by the Government of Uttar Pradesh in pursuance of a decision taken at All India Conference of the Chief Justices of High Courts in August/September, 1985 in New Delhi. This landmark conference which was also attended by the Chief Ministers and the Law Ministers of the States, mooted the idea of providing institutional induction and in-service training to the judges of the subordinate courts in the country. The initiative of the state government after being readily agreed to by the Hon'ble High Court of Judicature at Allahabad, saw the Institute coming into existence and becoming functional on 25th April, 1987 with Hon'ble Mr. Justice K.N. Goyal as its first honorary Director. Sri Vinod Singh Rawat is its present Director.

The institute has been established with the overall vision of ensuring ceaseless upgradation of skills and appropriate attitudinal reorientation through induction level and in-service training in consonance with the imperatives of national and global environment.

In the training programmes, case studies, discussion sessions, exercises and activity based studies; book review and case law presentation are used extensively. To make the discussion effective, background material is given before discussion. This helps the trainees to develop analytical skills and decision-making power in addition to enable them in writing orders/judgments.

Keeping in view that in a healthy mind rests a healthy body, the institute has established and developed a gymnasium with latest equipments and machines. The physical training is compulsory part of the training programmes organized by the institute. The facilities of gym have been made available to the trainee officers as well as faculty members.

The Institute believes in continuous involvement of officers in sports activities to relieve the stress and keep them healthy. Besides Volley Ball and Carom, the hostel is also having Badminton Court as well as Table-tennis facilities. The hostel is fully furnished and equipped with the best house-keeping and hospitality facilities. The institute has a big air-conditioned Dining Hall with a dining capacity of about 150 persons at a time. The dining Hall is housed with the officers' hostel in one and the same building.

Judicial reasoning, indeed, is both an art and a science to be cultivated by every judge through study, reflection and hard work. The institute has a beautiful and big library housed into two spacious air-conditioned halls in the 'Training Wing' with one being dedicated to law books, law digest, encyclopedia, commentaries and general books including classics, biographies, fictions (Hindi and English both) memoirs, letters, speeches, words and phrases, books of philosophy, religion, history, politics, computer, management, personality development etc. and the other wing is exclusively meant for storing Journals. This centre of knowledge has more than **25000 books**. The institute has been subscribing **15 Law Journals** of varied nature, **seven newspapers** and **four magazines**. The library has All England Law Reports from 1936 to 2014, Halsbury's Laws of India from 2004 to 2008, Halsbury's Laws of England from 1973 to 1987 and Corpus Juris Secundum from Vol. 1 to 101A, Canadian Law reports, American Law Reports Annotated and Law Commission of India Reports. The institute is working on to develop e-knowledge hub and e-library in near future.