



MONTHLY NEWSLETTER

The Law Desk

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1 ELEVATING ADVOCATE PRACTISING BEFORE THE SUPREME COURT AS THE JUDGES OF HIGH COURTS

The issue of filling up the judicial vacancies of the High Court has been a center of debate since time immemorial. As per the recent data released by the Ministry of Law & Justice, there exists 437 vacancies combined, in the Supreme Court and the High Courts. In a move to address this and represent the interest of the Supreme Court Advocates, Senior Advocate, Mr. Vikas Singh, the President of the Supreme Court Bar Association ('SCBA'), made a *representation* before the Hon'ble Chief Justice of India dated 31.05.2021, *proposing the elevation of advocates practicing before the Supreme Court as Judges of the High Courts*. The proposal also claimed that the lawyers practicing before the Supreme Court are more "*meritorious*" than their colleagues practicing before different High Courts.

The proposal enshrined a mechanism wherein the High Courts may consider the meritorious lawyers practicing before the Supreme Court for elevation as High Court Judges for a pool of lawyers prepared by the 'Search Committee'.

The Search Committee shall comprise of the President and the Vice President of the SCBA along with Ms. Mahalaxmi Prasad (Senior Member, SCBA). The Committee shall also include 4 eminent members of the Bar, namely:

- Mr. Rakesh Dwivedi
- Mr. Shekhar Naphade
- Mr. Vijay Hansaria
- Mr. V. Giri



The Letter dated 08.06.2021 addressed by the President of the SCBA to all the Members of the Supreme Court Bar Association informed that the Chief Justice of India has agreed to the request made vide Letter dated 30.05.2021. This created a massive uproar and widespread criticism from the legal fraternity.

The Delhi High Court Bar Association (DHCBA) addressed a Letter dated 11.06.2021, opposing the proposal and terming it as '*unfair*' and '*arbitrary*'. The letter requested to the CJI to withdraw any directions, if any, given while accepting the proposal dated 31.05.2021 as "the move is disturbing and matter of grave concern to have lawyers practicing before the Supreme Court alone be considered a separate class of Advocates to be considered for such distinction". DHCBA took a strong exception and pointed out several flaws in to procedure so prescribed by the SCBA. The Letter also states that if "Search Committee" is to be formed for recommending the names of

meritorious lawyers for elevation, then why should every High Court Bar Association have such committee to recommend names for elevation in the concerned High Court.

Similarly, on the same lines, the Kerala High Court Advocates Association ('KHCAA'), wrote a strongly worded letter to the Hon'ble Chief Justice of India opposing the proposal by the SCBA. The Letter dated 16.06.2021 expresses extreme grief and disappointment regarding the acceptance of the CJI to the proposal submitted by the SCBA. The KHCAA emphasized the Supreme Court has been India's pride over decades and has been on the forefront to preserved the fundamental rights of the people. If immediate steps are not taken to clear the dark clouds created by the unfair mechanism of the 'search committee', then it will cause grave impact on the spirit of the institution.

Article 217 of the Constitution of India deals with the appointment and conditions of the office of a Judge of a High Court. The Memorandum of Procedure entail that the Chief Justice of the High Court along with the two senior most judges of the concerned High Court shall recommend the names to be elevated. Subsequently the Collegium of the Supreme Court recommend the persons to be appointed to the Ministry of Law & Justice, which shall be sent to the President of India.

The names for elevation to High Courts without adequate opportunity to the High Court

Collegium to observe the talent and competence of the lawyer will highly be detrimental for the working of the institution and would take away the autonomy of the High Court Collegium.



2 THE RIGHTS OF CELEBRITY; THE CURIOUS CASE OF SUSHANT SINGH RAJPUT

Celebrity Rights constitute a specific set of rights granted to well-known personalities such as athletes, public figures, actors, etc. Celebrities are generally defined as individuals who create their own reputation or fame and then capitalize on that image. This is similar to corporations creating goodwill for their brand or trademark. However, with celebrities, they can leverage their image, caricatures, or voice to benefit their own careers. Therefore, these rights are considered a hybrid between Intellectual Property Rights ('IPR') and Privacy Rights.

The law governing celebrity rights is still in its infancy, and it has mostly evolved through judicial precedents, in which courts have granted recognition and protection to a few such rights.

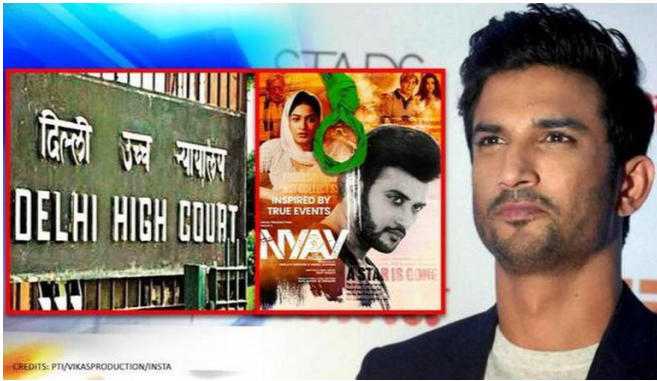
Recently, an injunction was sought by the father of the decorated actor, Sushant Singh Rajput whose suicide in June 2020 created multiple controversies, prohibiting the production company from using the name, caricature, lifestyle of his son in their upcoming projects/films. The father claimed that there is:

Violation of celebrity rights/right to publicity- Celebrity rights are assignable and licensable for commercial purposes, and they also provide posthumous protection to the legal heirs of celebrities. They cannot be utilised for commercial gain by third parties without their legal heirs' approval.

Violation of Right to Privacy- The Plaintiff claims that any depiction of his and his son's lives infringes on their right to privacy.

Violation of Plaintiff's right to a fair trial since a CBI investigation into the death of the actor is ongoing, and the fictitious representation of the events surrounding his death would prejudice his case.

The Defendants, on the other hand, argued that because there is much information about the life and death of the Plaintiff's son's in the public domain, there can be no claim of privacy over what is already out there in public. Furthermore, the film produced by defendants is neither a biopic nor a biography of the late actor, but rather a completely fictional depiction of true events generally surrounding the lives of TV celebrities who have reportedly passed away due to unnatural causes. The film has a detailed disclaimer that no such resemblance to any real person can be contributed.



The Delhi High Court while dealing with this acute question of '*Rights of Celebrities*', in the case of *Krishna Kishore Singh v. Sarla A. Saraogi & Ors.*,¹ held that, the judicial precedents recognize the concept of celebrity rights, and it can be said that 'celebrity rights' is essentially a compendium of other rights accrued by a person upon attaining the status of a 'celebrity,' consisting of a bundle of rights that include certain intellectual property rights, publicity, personality, and privacy rights. These rights, are premised on the idea that a celebrity who makes a living by monetizing their public recognition should be entitled to a meaningful, monetary benefit from the use and assignment of their image or likeness, whether through commercials, merchandise, or other means.

Therefore, the Court must decide *whether "celebrity rights" can be enforced posthumously?*

Undoubtedly, a limited class of celebrity rights that are protected as IPRs and are assignable and licensable under statutes could survive the celebrity's death; nonetheless, the Plaintiff contends that the deceased celebrity has a posthumous publicity right in this instance. The Plaintiff has sought to separate 'celebrity rights' from 'right to privacy,' but the Court noted that in the absence of statutory recognition of celebrity rights, the right to privacy derived from Article 21 would constitute the fountainhead of such rights. The 'right to publicity' in India is derived from the 'right to privacy,' and the two are not entirely separate, as the former cannot exist without the latter. As a result, the Court, in *Justice K. S. Puttaswamy v. Union of India*², noted that *the right to publicity is inextricably linked to and birthed from the right to privacy, and that if the right to privacy expires with the human being, the only necessary corollary is that the right to publicity will also extinguish after the death of the person.*

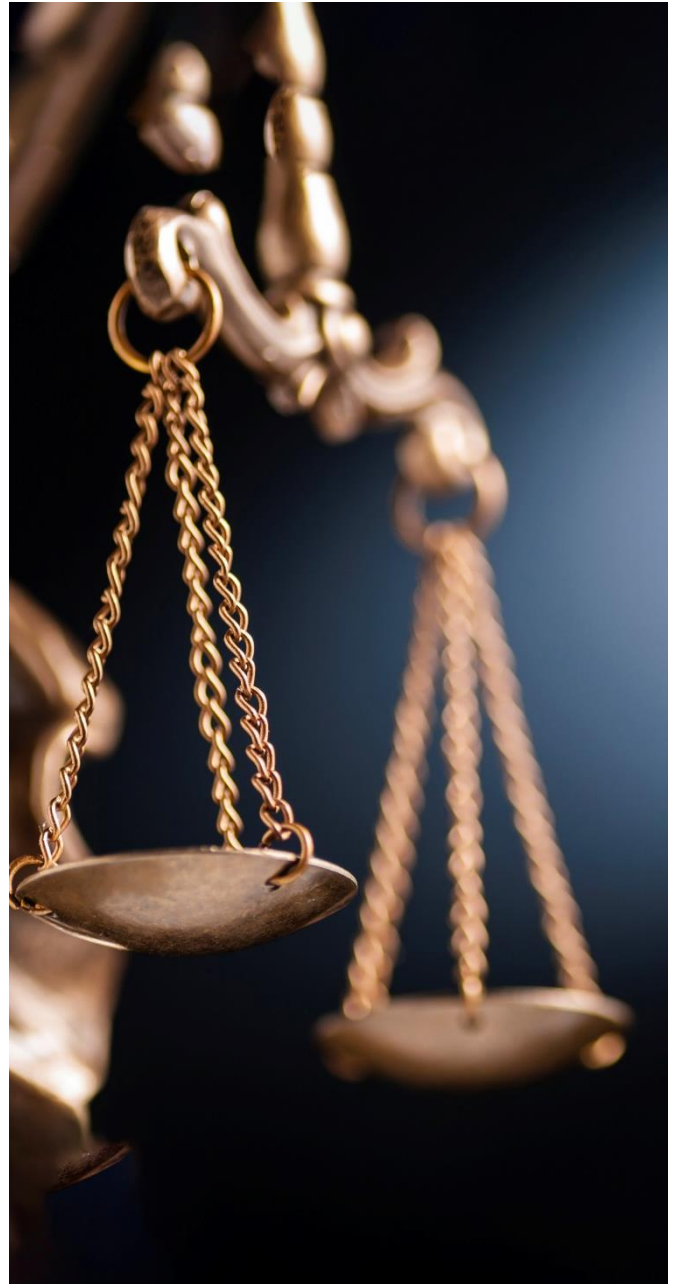
¹ Delhi High Court, CS(COMM) 187/2021, decided on 10 June 2021

² (2017) 10 SCC 1

The Court further stated that in this case, the enforceable right being asserted is in *persona* of the actor, based on the occasions that happened in his life. The father claims a copyright over SSR's life, but under the Copyright Act of 1957, facts that are historical, biographical, or current events cannot be copyrighted because they are in the public domain, accessible to anyone, and do not involve the "originality" and "creation" that are at the heart of copyright protection. As a result, everyone has the right to make films on the events which have actually occurred. Further, the Court emphasized that investigative agencies and the legal system do not rely on cinematographic films for the purpose of investigation or judicial pronouncements, in response to the Plaintiff's right to a fair trial argument.

Hence, the Court concluded that there is no reason to grant a restraining order against the Defendants because the Defendants' films are neither portrayed as a biopic nor a factual narration of what happened in SSR's life and are depicted to be completely fictional and inspired by certain events that

occurred in the past and are available in the public domain.



3 THE MODEL TENANCY ACT, 2021

On 2nd June, 2021, the Union Cabinet approved the *Model Tenancy Act, 2021*, ("the Act") for implementation by states and union territories.

The primary objects of the Act are:

- *develop a quick adjudication process for dispute settlement*
- *regulate the renting of properties*
- *protect landlord and tenant interests*

In 2005, the Jawaharlal Nehru Urban Renewal Mission (JNNURM) advocated changes to tenancy regulations at the national level. The removal of rent-control legislation was mentioned by JNNURM as a required reform in order to receive help under the mission. *The Model Rent Legislation of 1992* could be used by states to develop laws regulating rental housing.

The act covers residential and commercial properties, but not hotels, lodging houses, *dharmshalas*, inns, or industrial properties. The Act further exempts premises owned by a firm, university, or institution that are rented to its

employees as part of a service contract; premises owned by any registered trust; and other buildings specifically exempted in the public interest.



According to the Act, the landlord and tenant must sign a written agreement that stipulates the rent, tenancy duration, and other obligations. For residential properties, the security deposit is set at two months' rent, while for non-residential properties, it is restricted at six months' rent. It also specifies the following conditions for eviction of a tenant:

- refusal to pay agreed-upon rent;*
- failure to pay rent for more than two months;*

- (iii) *occupation of part or entire premises without written agreement;*
- (iv) *misuse of premises despite written notice.*

The Act aims to define both parties' rights and obligations, mandate the use of registered agreements, and provide some elements statutory backing. It also explains that when a landlord may evict a tenant, heirship in the event of a landlord's death, and legal remedies accessible to both the tenant and the landlord if either party breaches the agreement.

The act states that if a fixed-term tenancy ends without being renewed, or if the tenant fails to vacate the premises at the end of such tenancy, the tenant will be liable to pay the landlord an enhanced rent as follows: twice the monthly rent for the first two months; twice the monthly rent for the following two months, after then, four times the monthly rent will be charged until the tenant vacates the premises.

Furthermore, the tenant will not be able to sublet the premises or transfer or assign rights under the tenancy agreement unless they enter into a supplementary

agreement to the existing tenancy agreement, which will also need to be submitted to the Rent Authority.

The act implements a *three-tier quasi-judicial dispute resolution process*:

1. Rent Authority: Headed by Deputy Collector functioning to set up a digital platform to allow tenants to submit



tenancy-related paperwork as needed. Provide the parties to the tenancy agreement with a unique identification number, and upload the agreement details within a week of receiving them. In such circumstances, resolve disagreements about rent revisions and decide revised prices. The Rent Authority has timeline of 30 days after filing of the application.

2. Rent Court: Headed by Additional Collector, or Additional District Magistrate functioning to Appeals against the Rent Authority's orders are adjudicated and Order for eviction and regaining control of

the property. The Rent Court has timeline of 60 days after filing of the application.

3. Rent Tribunal: Headed to District Judge, or Additional District Judge functioning to adjudicate the appeal against the orders of Rent Court. The Rent Tribunal has timeline of 90 days after filing of the application.

Nothing in the Code of Civil Procedure, 1908, applies to Rent Courts and Rent Tribunals, which are guided by natural justice principles and have the authority to determine their own procedure.

The Model Tenancy Act appears to be an attempt to bring coherence to landlord-tenant disputes, which fester in courts for years, if not decades. The government hopes that after the States and Union Territories implement this legislation, it will increase private participation in rental housing, address the massive housing

shortage across all income groups, and reduce homelessness.



4

FORCED VACCINATION VIOLATES FUNDAMENTAL RIGHTS

The Division Bench of Meghalaya High Court comprising of Hon'ble Chief Justice Biswanath Somadder and Justice HS Thangkhiew in the case of *Registrar General, High Court of Meghalaya v. State of Meghalaya*³ has held that the “the welfare policy for vaccination can never contravene or affect a major fundamental right such as Right to Life, personal liberty and livelihood”.

The court was hearing a Public Interest Litigation concerning orders issued by the State Government making vaccination mandatory for shopkeepers, vendors, local taxi drivers, etc, before they can resume their businesses. The Court was dealing with the question “Whether vaccination can be made mandatory by the government for all citizens”.

The Court observed that Article 21 of the Constitution of India encompasses “Right to Health” as a Fundamental Right. The said right includes various facets of ‘right to vaccination’. However, the vaccination by force in the nature of making it mandatory

by adopting coercive methods, vitiates the concept of fundamental rights.



Furthermore, can any such policy of the government impose restrictions from prohibiting people from carrying any occupation or trade, who are otherwise entitled to do so? The Court observed that, “the welfare nature of the State isn't for coercive negative reinforcement by seizing their right to livelihood, proscribing them to earn from their occupation and/or profession without any justification in the garb of public interest, but lies in walking together with concerted efforts attempting to effectuate a social order as mandated under Article 38 by approaching the people directly by engaging them in one-to-one dialogues and dwelling on the efficiency and the positive aspects of administering of the vaccine without compromising its duty under Article 47 nor abrogating its duty to

³ PIL No. 6/2021, Order dated 23.06.2021

secure adequate means of livelihood under Article 39(a)."



Recently, even the Gujarat High Court in the case of *Yogendra Kumar v. Indian Air Force & Anr.*⁴ Restrained the Indian Air Force from taking any coercive action against the Air Force officer who had refused to take the COVID Vaccine.

In the case, the Air Force Officer had been served with a show cause notice seeking explanation as to why should he should not be terminated for his refusal to take the vaccine. The officer in his petition before the High Court submitted that the vaccination is voluntary and the state cannot compel him to undertake the vaccination. The petitioner also relied upon the Reply from a RTI Query from the Ministry of Health which stated that the vaccination was entirely voluntarily. The officer stressed upon the aspect that the

Constitution of India enshrine that everyone has a right to receive treatment of his choice and vaccination cannot be forced upon him.

The Court issued notice on the petition of the officer and directed the Indian Air Force not to take any coercive action against the petitioner who is not willing to take the vaccination.



⁴ R/Special Civil Application No. 8309/2021 dated 22.06.2021

5

**THE MOBOCRACY ISSUE;
EXAMINING THE WEST
BENGAL CRISIS**

The political system in which a mob is the source of power or the governance by the masses, is known as *mobocracy*. This term was first coined during the course of arguments in the case of *State of Punjab vs. Davinder Singh Bhullar and Ors.*⁵ (famously known as Gurmeet Ram Rahim case). During the hearing, the dominance of mobocracy was evident and the judges were under the impression that the followers of Ram Rahim would cause grave injury to public property, if any adverse orders are passed against the self-styled Godman.



Recently, the term again gained traction before the Calcutta High Court in the case of *CBI ACB Kolkata vs Shri Firhad Hakim @ Bobby Hakim & Ors.*⁶ (Narada Scam case), in

which four leaders of the Trinamool Congress (referred to as TMC) were arrested on 17th May 2021. The Central Bureau of Investigation (CBI) vehemently contended before the Hon'ble High Court that the interim bail granted by the CBI Special Court was solely due to the pressure of the TMC's dharna over the arrests and grave apprehension caused by the mob outside the Court premises. During the hearing of the Narada case, the Calcutta High Court observed that even if arrests are presumed to be illegal, do they offer a license to engage in mobocracy?

The CBI contended that if the *court does not take action against the technique of employing mobs to exert pressure on the courts, the same thing will happen again following the arrest of any criminal in the future*. In the perspective of the law, the question was not whether or not the judge was being intimidated, the concern is whether the apparent intimidation would damage the public's trust in the system, as well as if, this "mobocracy" is allowed, followers of a criminal will be able to lay siege to a CBI office following an arrest in the future.

⁵ (2017) SCC Online P&H 3865

⁶ Calcutta High Court- WPA 10504/2021 dated 22.06.2021

Chapter XXXV of the Code of Criminal Procedure ('CrPC') which deals with "*Irregular Proceedings*", whereby Section 461 lays down the conditions the *irregularities which vitiate proceedings*.

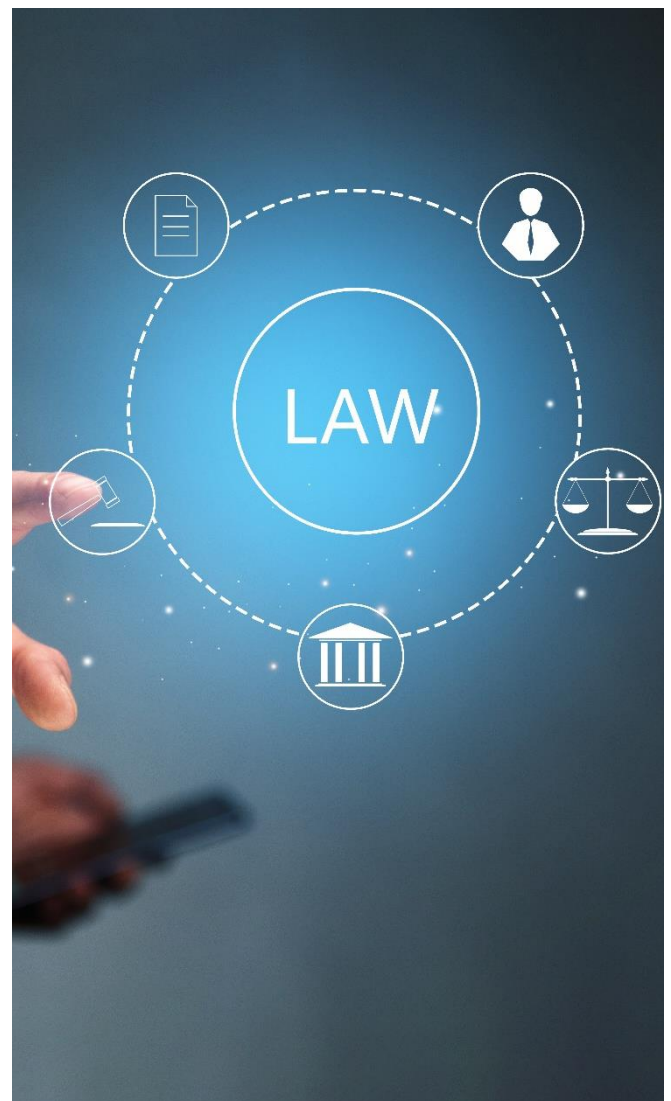
The Solicitor General contended that the CBI has faced engineered mob violence and has not been allowed to perform its duties. He said the agency wanted transfer of the Narada case from the Trial Court to the High Court and to declare the proceedings before the CBI Special Court as nullity in the eyes of law.

The Law Minister was present in the CBI Special Court throughout the day and an order granting bail was issued in this scenario, eroding public faith and confidence in the judicial system.

The High Court observed that they do not approve of any dharanas and any sort of interference in the functioning of the judiciary. However, if the Chief Minister or the Law Minister takes the law into their hands and abuses their power, it should not adversely affect the case of the accused as they have no nexus in staging the dharanas or rampage.

The Hon'ble High Court directed that the concerned authorities can independently proceed against those who have taken law into their hands.

Henceforth, the argument raised by the CBI that the bail was granted under a shroud of mobocracy, coercion, threat, and violence, and that the decision is void in the eyes of the law cannot be sustained in the present case.



6 LEGAL NEWS AND UPDATES

- The Central Government extended the tenure of Senior Advocate Mr. K.K Venugopal as the Attorney General of India by one more year till 30th June 2022. Mr. Venugopal was initially appointed on 1st July 2017 for a three-year term.
- The Division Bench comprising of Hon'ble Justices A.J Desai and A.P Thaker of the Gujarat High Court in the case of *Yogendra Kumar v. Indian Air Force* (R/Special Civil Application No. 8309 of 2021) has restrained the Indian Air Force to take any coercive actions against the Officer who refused to take the COVID Vaccine. The petitioner prayed that he has the right to choose the treatment of his choice and cannot be forced to undertake the vaccination.
- The Fast-Track Sessions Court in Mapusa, Goa acquitted Tarun Tejal, the former Editor-in-Chief of Tehelka Magazine, who was accused of forcing himself on his junior colleague against her wishes. The 527-page order dated 21.06.2021 delivered by Special Judge Kshama Joshi observed that the Goa Police 'destroyed evidence' and held that there was no corroborative evidence to support the allegations made against Mr. Tejpal. Subsequently, the State of Goa filed an appeal against acquittal order before the Bombay High Court at Goa. The Hon'ble High Court directed the District and Sessions Court to redact the victim's identity while uploading the acquittal order on its website.
- In a landmark decision of the Kerala High Court in the case of *Sreelakshmi J.S. v. The Kadukutty Grama Panchayath & Ors.* (W.P Civil No. 27387 of 2020) allowed the registration of marriage through video conferencing. The couple had solemnized the marriage on 24.08.2019 in accordance with their customary rites. The process of registration of the marriage was initiated before the Local Registrar of Marriage, however, the husband had to rush back to South Africa for employment purposes. The wife while trying to obtain the visa to join her husband in South Africa was required to file the marriage certificate which could not be obtained due the non-availability of her husband in India. The Single Bench of Hon'ble Justice P.B Suresh Kumar allowed the plea of the wife and directed that the authorized representative of the husband shall file an affidavit before the Local Registrar of Marriages, who in the presence of the husband on video conferencing shall allow the authorized representative of the husband to sign on behalf of him on the marriage register and accordingly issue the Marriage Certificate. However, the Court directed the husband to appear physically before the Local Registrar of Marriages within one year. Failure to do so, the

Registrar may revoke the registration of the marriage.

- The Bar Council of India has formed a 7-member committee for framing the “*Advocate Protection Bill*” to ensure the safety and protection of Advocates in carrying out their duties. The Council in its meeting dated 10th June 2021, also noted the recent attack on a Jaipur based lawyer and his wife and stated that such incidents are examples of severe threat and attack on the independence of the bar.
- The Kerala High Court has stayed the Order of the Lakshadweep Administration dated 21.05.2021, whereby menu of food items given to the children under the National Programme of Mid-Day Meal in Schools has *excluded chicken and meat items* and the dairy farms in the land were closed down. The Division Bench of the Court comprising of Hon’ble Chief Justice S. Manikumar and Justice Shaji P Chaly, that “*we are unable to understand how there could be a change in the menu of food items given to children, prepared taking into account, the vital aspect of health factor*”.
- The West Bengal Chief Minister, Mamata Banerjee has filed an Election Petition before the Calcutta High Court challenging the election of *Suvendu Adhikari* from *Nandigram constituency* in the recently concluded West Bengal Assembly Elections.
- The Food Safety and Standards Authority of India (FSSAI) vide Order dated 08.06.2021 has made it compulsory for all the Food Business Operators (FBO) to mention their 14 digit FSSAI license or registration number on every cash receipts or purchase invoices or bills from 1st October 2021. The intention behind this is to facilitate the complaints or grievances of the consumers against the FBO directly to the FSSAI.
- The National Human Rights Commission (NHRC) has constituted a committee to enquire into the *complaints of post-poll violence in the State of*



West Bengal. Recently, the Calcutta High Court had refused to recall the order dated 18.06.2021, whereby the Court had directed the NHRC to constitute a committee for examining the complaints of people displaced during the post poll violence in the state.

- The Delhi High Court dismissed the civil suit filed by Juhi Chawla against the 5G Roll out as 'defective', 'non maintainable' and 'vexatious'. The Single Bench of Hon'ble Justice J.R Midha imposed a heavy cost of Rs. 20 lakhs and directed issuance of contempt show cause notice against the persons who barged into the virtual hearing and sang songs while the hearing was in progress.
- The Goods and Services Tax (GST) Council decided to reduce the GST rates levied on items used for preventing or treating COVID-19 to 5% from 12%. The decision was taken in the meeting dated 12th June 2021 which will remain in effect till 30th September 2021.
- The Supreme Court of India has quashed the criminal proceedings against the two Italian Marines; *Massimiliano Latorre* and *Salvatore Girone*, in respect of the 2012 sea firing incident near the Kerala coast, which killed two Indian fishermen. The Vacation Bench comprising of Hon'ble Justices Indira Banerjee and MR Shah accepted the compensation of Rs. 10 crores deposited by the Republic of Italy and requested the Chief Justice of Kerala High Court to nominate a Judge to pass appropriate order of disbursement to protect the interest of heirs and ensure the compensation amount is received by them. Additionally, the court also observed that the Republic of Italy should resume its criminal proceedings against the Marines in Italy in terms of the award passed by the Permanent Court of Arbitration in *Enrica Lexie Case*.
- The Division Bench of the Delhi High Court comprising of Hon'ble Justices Rajiv Shakdher and Talwant Singh has directed that the law firms cannot report or run any blogs/websites in respect of cases which are being prosecuted by them as there is strong possibility of lack of objectivity in reporting. The Court while a hearing case relating to the extension of the various tax due dates had called for suggestions of the parties before the GST Council and the Central Board of Direct Taxes (CBDT). The Law Firm, who was representing the petitioners, published an article titled as "*A Summer of Relief for Taxpayers*" which incorrectly reported the proceedings of the Court. Deciding on a strong objection taking by the Additional Solicitor General Mr. N. Venkatraman, directed the article be removed and the order of the High Court be uploaded on the website where the article was published.
- The Hon'ble Chief Justice of India, Justice NV Ramana, approved the proposal to increase the bench strength of the Telangana High Court by 75%. The strength will now increase from 24 to 42, out of which 32 will be Permanent Judges and 10 will be Additional Judges.

- Hon'ble Justice Munishwar Nath Bhandari has been appointed as the Acting Chief Justice of Allahabad High Court with effect from 26 June 2021, consequent upon the retirement of Hon'ble Justice Sanjay Yadav.
- Hon'ble Justice Arun Kumar Mishra who retired as a Judge of the Supreme Court of India on 2nd September 2020 has been appointed as the Chairperson of the National Human Rights Commission (NHRC) for a period three years.
- Delhi High Court through its latest decision in *Golden Tobie Private Ltd. v. Golden Tobacco Ltd.*⁷ has clarified Laws on Arbitrability of Trademark Disputes. Court Interpreted Section 8 of Arbitration and Conciliation Act and further observed that there was no absolute bar on Arbitration matters dealing with Trademark Disputes rather there is a limitation on Arbitration matters pertaining to registration or grant of a Trademark.
- The Division Bench of the Kerela High Court comprising of Hon'ble Justices C.T. Ravikumar and K. Haripal observed that Arbitral Award u/s 34(2)(a)(v) of Arbitration Act can be set aside on the grounds that the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties.



⁷ MANU/DE/1029/2021



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