

OCTOBER 2020



Sitting on the roof top and musing about my future plans, the eyes gazed at amazing sight of sky, and as hand goes to find the camera for capturing the moment of miracle where the sky paints itself

- By Shreya Patel, Sem 3, Batch 2019-24, UWSL

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KILLING OF WOMEN IN THE NAME OF HONOUR

- By Nishtha Agrawal, Assistant Professor, UWSL

The term 'honour killing' literally means killing for honour. The usage of the term 'honour' has a tendency to rationalize and legitimize the motive of the crime by creating a false notion that the crime has been committed to save the honour of the family. This implies that it is the responsibility of the society to prevent any violation of its tradition. "The regime of honour is unforgiving; women on whom suspicion has fallen are not given an opportunity to defend themselves, and family members have no socially acceptable alternative but to remove the stain on their 'honour' by attacking the woman. Thus the usage of the term 'honour' along with killings is a misnomer and misleading. The term Honour killing is an inaccurate description of this crime.

Honour killings are chiefly characterized by violence against women. The ideology of honour stems from the patriarchal and gendered societal norms which expect women to conform to their traditional roles and any deviation from the same is censured. Woman in all her roles, whether as a mother, daughter, sister or wife is always supposed to be subservient to men. A woman's honour is related to her conformity with the traditional roles ascribed to her and any attempt to break from these is considered a dishonourable act. Such a loss of honour is deemed irreversible and is to be restored by punishing the rebel with death. Conceptions of family honour endorse honour killings. Whenever a woman indulges in acts perceived as dishonourable such as marrying against the family wishes, marrying someone from the so called "lower caste", eloping with someone, becoming victim of a stigmatized offence such as rape, molestations or sexual harassment, refusing an arranged marriage, asking for divorce, having pre-marital or extra marital relationships, adultery etc, she has to pay for it with her life. The community plays a very important role in traditional honour killings. Ultimately it is the community which decides what acts are honourable or dishonourable. The killings are highly unlikely unless the transgression becomes known in the community. It is shocking how caste and other prejudices continue to dictate social life and individual choices even in these contemporary times.

Indian society is patriarchal and gender insensitive. Patriarchy in its wider definition manifests itself in institutionalization of male dominance over women in society. In our tradition bound society, women have always been subjected to social, economic, physical, psychological as well as sexual exploitation. In fact the institutions of family and marriage, where she is considered to be safe, have become the major cause of her oppression. The forms of oppression may vary but the content is same.

The dominant familial ideology in India has shaped and constructed the family as private and beyond state intervention thereby immunizing the oppression of women within this domestic sphere. Any efforts to prohibit violent and oppressive practices within the family have time and again been resisted as an undue intervention into the 'private' sphere of the family. Thus for women the Right to Life and Personal Liberty granted under Article 21 of our constitution is contingent on their acting in conformity with the prevailing social norms and traditions.

Honour killings represent the most overt and brutal method of subjecting women to male control and subordination. The genesis of this problem can be traced back to incidences of voluntary killing of unmarried daughters and wives during turbulent times such as war, partition etc to save them from being violated. Since childhood, girls are subjected to restrictions in matters of dressing, movement and behavior. All this is done to inculcate in them a sense of subservience to the other gender and submit to male dominance. It is a common experience that if the sister or daughter commits something unusual and socially unacceptable such as having a love affair or eloping with a boy of her choice, the society holds the father or brother responsible for not reining in the girl and allowing such a social wrong to occur. Such men caught in a social warp feel the pressure of being the upholders or custodians of traditions and the feeling is that the dishonour once brought upon the family cannot be undone unless the source of dishonour is destroyed which means killing of one's own sister or daughter and sometimes the boy with whom she was involved.

Another issue underlying these gruesome killings is property. Nowadays people want their daughters to be educated and independent yet submit to male dominance within the familial sphere. Educated women have acquired more mobility in the society. This allows them to meet and interact with more men with whom they sometimes strike a friendship. When an educated and liberated female, driven by a new found confidence and ambition chooses her partner in defiance of the social norms, she is giving a subtle yet clear message that she has an equal status in the society and has autonomy over her body and life. This declaration of independence is perceived as a potential threat that she may either herself, or with support from her partner, seek an equal share in the family's property which the law entitles her to but which she is rarely accorded. Even after the 2005 amendments in the Hindu Succession Act, giving equal share to girls in the ancestral property, women seldom stake a claim to their share.

Traditionally, when marriage takes place within an intimate circle, property rights are usually foregone. The lurking threat that the woman may stake a claim to the property assumes importance especially among poor, uneducated youth who are dependent on land. This eventually leads to an overriding sentiment that the evil is to nipped in the bud itself and this is manifested in the killing of such women.

Such killings violate our constitutional provisions regarding equality and protective provisions for women empowerment enshrined under Articles 14, and 15 (1) & (3). They curtail a woman's freedom of movement (Art 19) and violate her right to life and personal liberty (Art 21).

A fair, transparent and impartial judicial system is the backbone of a democratic country like India. The role of the judiciary is extremely significant as it not only administers justice according to law but also promotes social and economic justice through its judgments. More importantly when new situations arise which are not covered by existing laws then the judges are required to call for a judicial legislation. Article 141 of the Indian Constitution lays down that the laws declared by the Supreme Court shall be binding on all courts within the territory of India. Often young couples who fall in love have to seek shelter in the police lines or protection homes, to avoid the wrath of kangaroo courts. In our opinion honour killings, for whatever reason, come within the category of rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilized behavior. All persons who are planning to perpetrate 'honour' killings should know that the gallows await them". Thus the Apex Court has made it very clear that such cases are to be dealt with strictly and nothing but the extreme penalty should be awarded to those who commit such barbaric and horrendous murders in the name of honour.

PERSONAL LAW REFORMS AND COMMON FAMILY CODE (CFC)

- By Dr. Ayaz Ahmad, Associate Professor, UWSL

The Preamble of our constitution exhorts us all to promote 'fraternity' among the people of India assuring the dignity of the individual and the 'unity and integrity' of the Nation. One of the easiest way to develop fraternity among the people is to have a legal framework which can enable family relations cutting across language, religion or caste. A beginning in this direction can be made by adopting a Common Family Code (CFC) under which 'we the people of India' cutting across religious lines can establish family relations with stronger social ties. CFC can facilitate marriage and family relations among common Indians which would in due course translate into social, cultural and political bonds strong enough to repel any challenge to the unity and integrity of the Nation. CFC is the much-needed antidote to the communal conception of citizenship so that democratic ideals of citizenship can find their roots. Obstructing the process of endosmosis among citizens from divergent faith traditions is the worst way to counter increasing segregation of our social life. The Special Marriage Act along with communal personal laws continues to perpetuate the myth that inter-religious marriages are special but marriage between individuals professing the same religion is 'ordinary', 'routine' and 'normal'. Common Family Code can reverse this by legally normalizing inter-religious family and social relations.

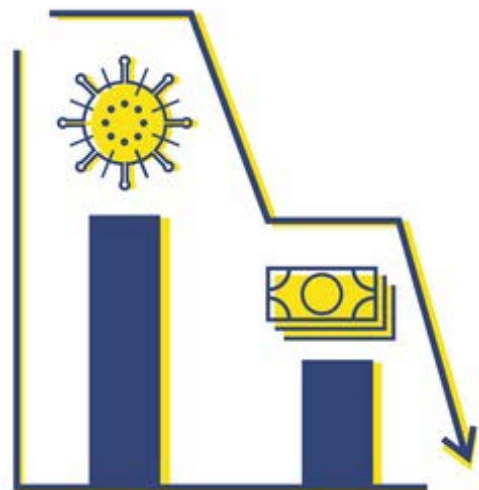
Communal personal laws from the early 20th century ensured that the family life of this subcontinent remains segregated on religious lines camouflaging caste hierarchies. Segregation laws which make it difficult for different communities living in one country to develop family bonds are usually imposed by the ruling class of the day. While communal personal laws attempt to dilute casteist foundations of family life to a limited extent, they glamorize religious character of subcontinental families. Communal personal laws deceptively privilege religious character of subcontinental families over their casteist character. Since independence, the question of personal law reforms is lost in communal identity politics which feeds into patriarchal notions of society. In this context, Nancy Fraser's advice to disentangle issues of cultural particularities from the domain of gender justice is of particular help. For this purpose, the constitutional promise of a Common Family Code could be conceived around the principles of equality, liberty and fraternity committed to gender justice without disturbing cultural sensibilities associated with personal laws. The most important cultural symbol which is part of personal laws includes the marriage ceremony essential for solemnization of the marriage. The CFC could recognize all such ceremonies emanating from the cultural preference of either party to the marriage. From here on personal laws take distinctive temporal shape, requiring just and reasonable settlement of inter-personal family disputes. The guiding principle in all such disputes must be family welfare. At a time when the notion of family itself is under strain, it is desirable to have a flexible legal framework to address such challenges. The Common Family Code could attempt to address these issues by moving the question of personal law reforms away from religious binaries towards social harmony and gender justice.

ROLE OF MONETARY POLICY COMMITTEE IN THIS TIME OF PANDEMIC

- By Dr Amit Bhaskar, Associate Professor, UWSL

Monetary Policy Committee (MPC) of Reserve Bank of India is a 6-member committee formed after the amendment in the RBI Act, 1934 through the Finance Act, 2016. The basic objective of MPC is to maintain price stability and accelerate the growth rate of the economy. Monetary policy refers to the policy of the Reserve Bank of India with regard to the use of monetary instruments under its control to achieve the goals of GDP growth and at the same time maintain the low inflation rate. The aim is to maintain balance between economic growth and inflation. The RBI is authorized to make monetary policy under the Reserve Bank of India Act, 1934. The 6-member Monetary Policy Committee (MPC) is constituted by the Central Government as per the Section 45ZB of the amended RBI Act, 1934 which was inserted into the Act through Finance Act, 2016. After the amendment of the RBI Act, 1934 through Finance Act, 2016 the first meeting of the Monetary Policy Committee (MPC) was held on in Mumbai on October 3, 2016. The history of formulation of Monetary Policy goes back to the Chakravarty Committee Report. The Chakravarty Committee has recommended that the price stability, economic growth, equity, social justice, promoting and nurturing the new monetary and financial institutions should have been the main objectives of the monetary policy in India. In December 1982, Shri Manmohan Singh, the then Governor of the Reserve Bank of India, appointed a Committee under the Chairmanship of Sukhamoy Chakravarty to review the functioning of the monetary system in India and suggest recommendation to improve the functioning of Reserve Bank of India. The Chakravarty Committee is considered to be one of the most important committee reports on the role of monetary policy in India. The RBI has to keep into account the rate of inflation and at the same time maintains economic growth of the country. The Monetary Policy Committee (MPC) constituted by the Central Government under Section 45ZB inserted through Finance Act, 2016. The importance of Monetary Policy Committee lies in the fact that it determines the policy interest rate required to achieve the inflation target in the country. The aim is to maintain the balance between manageable inflation rate and sustainable economic growth. The Reserve Bank's Monetary Policy Department (MPD) assists the Monetary Policy Committee (MPC) in forming the monetary policy. As far as constitution of Monetary Policy Committee is concerned, Section 45ZB of Reserve Bank of India Act, 1934 talks about the constitution of Monetary Policy Committee.

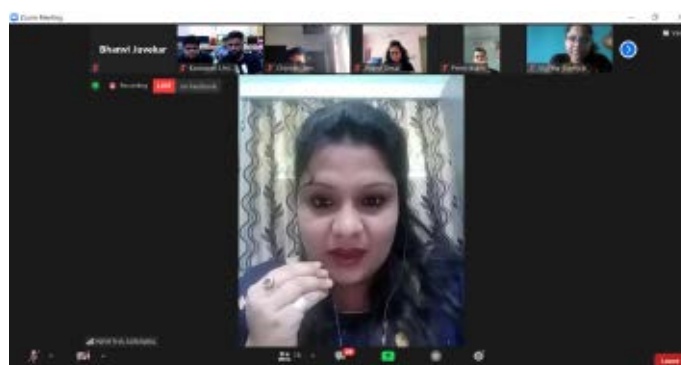
Section 45ZB says (1) The Central Government may, by notification in the Official Gazette, constitute a Committee to be called the Monetary Policy Committee of the Bank. Sub-Section (2) talks about the membership of the Monetary Policy Committee shall consist of the following Members, namely: — (a) the Governor of the Bank—Chairperson, ex officio; (b) Deputy Governor of the Bank, in charge of Monetary Policy—Member, ex officio; (c) one officer of the Bank to be nominated by the Central Board—Member, ex officio; and (d) three persons to be appointed by the Central Government—Members. Sub-Section (3) says that the Monetary Policy Committee shall determine the Policy Rate required achieving the inflation target. Sub-Section (4) lays down the important law that the decision of the Monetary Policy Committee shall be binding on the Reserve Bank of India. The Reserve Bank of India comes out with Monetary Policy every quarter. It sets the course of economic development of the country. Especially, in the time of Pandemic, the role of Monetary Policy Committee is all the more critical. The challenge before the Reserve Bank of India is to give stimulus to the economy during this time of global economic slowdown. The time is to provide stimulus to the micro, small and medium enterprise and also to the rural economy of the country. Many people have lost employment in this Pandemic and hence it is the responsibility of the Government to provide institutional credit to the masses at large at a cheap or concessional rate of interest. The Reserve Bank of India through Monetary Policy Committee can play an important role in economic development of this country in this time of pandemic.

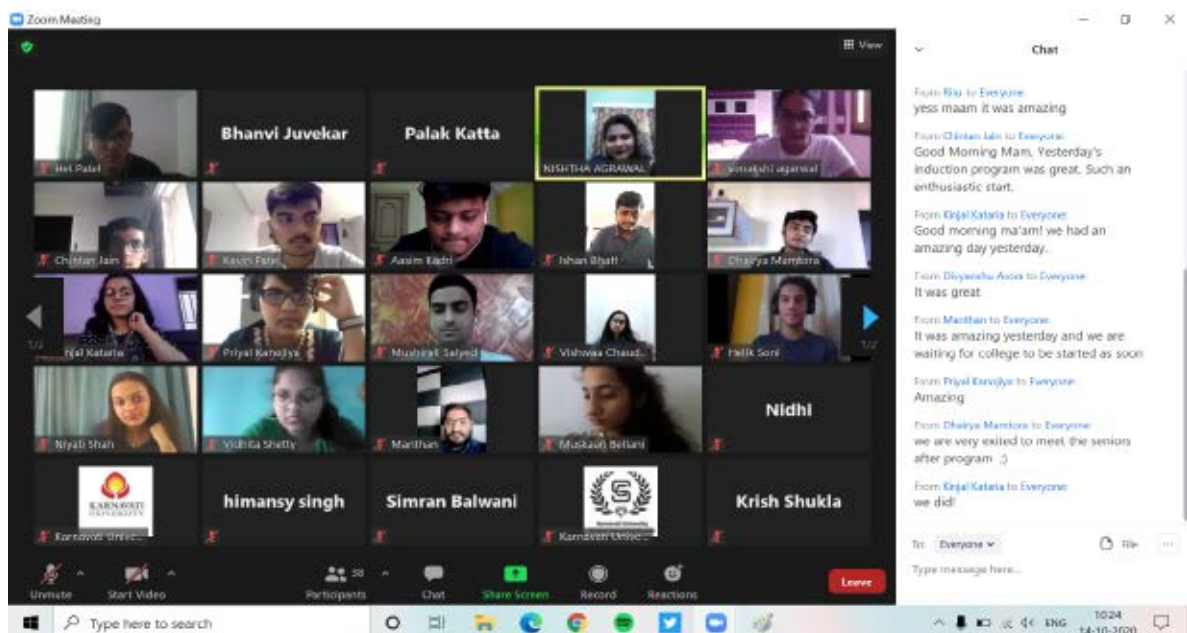
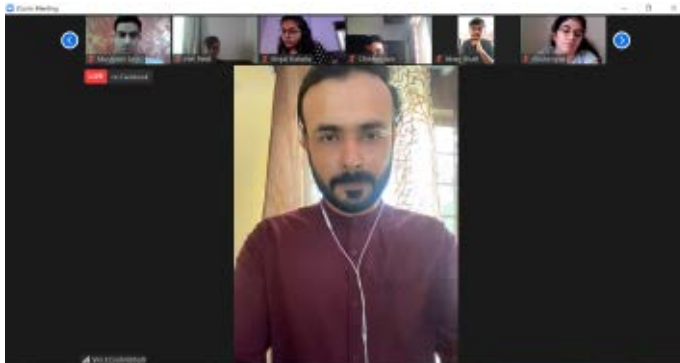


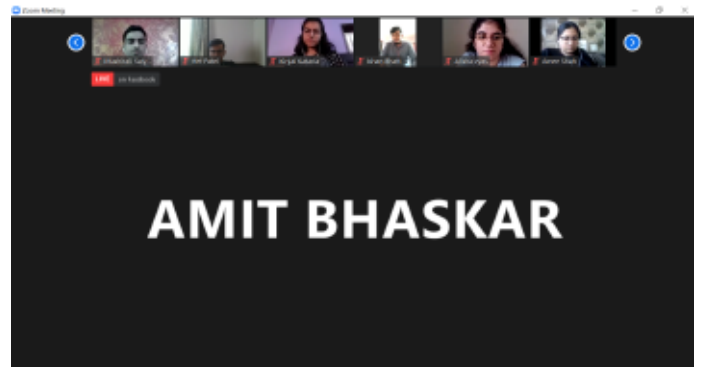
INDUCTION BATCH 2020 (OCTOBER 13-15, 2020)

Unitedworld School of Law conducted Induction of the Batch 2020 from October 13th to 15th, 2020. Fresh Batch of 2020 was welcomed by the Management, Advisors, Faculty and Staff Members of Karnavati University.

The Three Day programme covered sessions of eminent jurists and scholars of Law including Hon'ble Justice Ravi R Tripathi, Former Judge, Gujarat High Court and Chairman, Gujarat Human Rights Commission; Dr Aniruddha Rajput, member of the United Nations International Law Commission; Dr.VasileiosAdamidis, Principal lecturer and International manager of Nottingham Law School; Mr. Aditya Kamath, Head of operations and recruitment at BCP Associates. This sessions remained enlightening for new students.







WOMEN ENTREPRENEURSHIP

- By Shrut Brahmhatt, Assistant Professor, UWSL

“Women’s rights are an essential part of the overall human rights agenda, trained on the equal dignity and ability to live in freedom all people should enjoy.” – Ruth Bader Ginsburg

Women’s rights have remained the matter of discussion since so long. The conceptualisation and evolution of Feminism is nothing but an attribute of bringing women out from the patriarchal societies that undermined the role of women in building the societies. Indian women have been endowed the status of being “Gruh Lakshmi” residing and performing household chores in the four walls of house. The modern need of society to have hands of the best managers of home in the business has motivated the concept of women entrepreneurship in the country. Women entrepreneurship means the economic activity of those women who initiates business enterprise by undertaking all the risks, barriers and handles the uncertainty in the best manner.

Women Empowerment can be achieved by ensuring the respect, dignity, space, and position to women in the society. It is important to note that the empowerment shall begin from homes. The mentality of woman members shall be improved to ensure dignity and respect to other women of the homes. The idea is that each generation shall be keen to uplift the women without which the empowerment remains a concept of theories. The respect and dignity to each other shall be ensured by the female members of the society. The issues out of different relationships shall be kept aside when it comes to respect the womanhood of a member of society. This can only boost the respect and position women as high as sky in the society.

Entrepreneurship is not a male prerogative and hence is no longer considered as a job of men, Indian women have, with the support of society, plunged into business have initiated the steps into the shoes of being entrepreneur. Such entrepreneurs have moved a step ahead from just being in the career of corporate to holding business enterprise and opening the employments for other members of societies. Last three decades has been observant of women entrepreneurs gaining the momentum with the contribution of such entrepreneurs to the economic growth of the country.

While the number of women entrepreneurs is growing in India, there needs positive development of the laws that may shield such entrepreneurs from violation of their rights. Trade Secret is one such area that needs positive protection in order to nurture the start-ups of women.

The confidential information which is building a business needs apt protection so that the competitors do not overtake the business. Protection of trade secrets can definitely boost the business of women entrepreneurs. India do not accord special legislative protection to trade secret as a form of Intellectual property law but its protected under various laws including contract law and data protection laws. These laws are not sufficient as they do not intend protection of trade secrets only and hence do possess certain lacunas when the question comes about protection of undisclosed information. India needs to frame a suitable legislation for protection of Trade Secrets as a form of Intellectual property and such protection can always help building the start-ups of women.

Entrepreneurship is increasingly an important driver of economic growth, productivity, innovation and employment and it is widely accepted as a key of economic dynamism. Entrepreneurship is considered as one of the important and essential factor of production along with land, labour and capital by the economists. The role of entrepreneurs is considered important for the economic growth of any nation. Entrepreneur is the one who undertakes a business on an idea to make maximum economic profit from it by combining all the factors of production. The entrepreneur also takes on all of the risks and rewards of the business. These are the people who have the skills and initiative necessary to take good new ideas to market and make the right decisions to make the idea profitable. The reward for the risk taken by the entrepreneur is the potential economic profits that they could earn.

A more gender centric term is ‘Women Entrepreneurs’, which may be defined as ‘women initiating, organising, or running business enterprise individually or in group’. Women entrepreneurs are defined based on their participation in equity and employment in business enterprise by Indian Government. In accordance to which the enterprises which are ran by women are defined as ‘enterprises owned and controlled by women having a minimum financial interest of 51% of the capital and giving at least 51% of the employment generated in the enterprise to women’.

Indian women entrepreneurship is found in extension of the home activities such as food based industries, cloth weaving, catering, beauty salons. The cultivation of the prior art into a product has been considered as a desirable business among the women entrepreneurs. Such entrepreneurs have probably been entered into the business enterprise out of need and sometimes to showcase their capabilities to society that attempts to control their activities and lives. However, such entry of women into business enterprise is a welcome move as it denotes women empowerment. The term is not only to empower women equally with men in the society but even to grow respect and dignity for women members of the society.

Contemporary India witnesses the women entering into almost all forms of enterprises, from medicine, engineering, and law to corporate. The innovations in these fields have been unique and capable of holding hope of humans high. Women entrepreneurs have not only expanded their kitchen activities but even the activities once considered to be the job of men at the high levels, this is indeed a welcoming thing but carries with it several challenges for the best accomplishments.

BY INDIGENT PERSONS (PAUPER SUITS)

- By Dr. Ram Niwas Sharma, Associate Professor, UWSL

The provisions of Order 33 are intended to enable indigent persons to institute and prosecute suits without payment of the court fee.

If such a person succeeds in the suit, the Govt. has a FIRST charge on the subject-matter of the suit for the amount of court fee which would have been paid by him if he had not been permitted to sue as an indigent person.

A person qualifies to be an indigent person –

- a) if he does not possess sufficient means (other than property exempt from attachment in execution of decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in suit OR
- b) where no such fee is prescribed, if he is not entitled to property worth Rs 1000 (other than property exempt from attachment in execution of decree and the subject-matter of the suit)

It is also clarified that any property which is acquired by a person after the presentation of his application is to be taken into account in considering the question of whether or not the applicant is an indigent person.

The term used was pauper suits which was changed by the 1976 amendment to indigent person.

An indigent person who is a minor may sue through a next friend, although the latter is not an indigent person.

Sec 1A – Every inquiry into the question of whether a person is indigent is to be made in the first instance by the Chief Ministerial officer of the court or the court itself may make an inquiry

The application of sue in forma pauperis (i.e as an indigent person) must contain the particulars required in regard to plaints and suits. Also, a schedule of any movable property belonging to the applicant, with the estimated value thereof, is to be annexed thereto, and the same must be signed and verified in the manner prescribed for the signing of a verification of pleadings (R. 2).

Such an application is to be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case, the application may be presented by an authorised agent, who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined, had such a party attended in person. If however, there are more plaintiff than one, it is sufficient if the application is presented by one of the plaintiffs (R.3)

R4 - The court may then examine the applicant regarding the merits of the claim.

R8 – If his application is granted, it is to be numbered and registered, and the application is deemed to be the plaint, and the suit is then to proceed in the ordinary manner, except that the plaintiff is not liable to pay any court fees.

However, in the following 7 cases, the application for permission to sue as indigent person is to be rejected –

- a) when it is not framed and presented as required above
- b) the applicant is not an indigent person
- c) where he has, WITHIN 2 MONTHS before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as indigent person
- d) where his alienation do not show cause of action
- e) where any other person has person has obtained an interest in the subject matter of suit by way of agreement with him
- f) where the allegations made by the applicant show that the suit would have been barred by any law for the time being in force OR
- g) where any other person has entered into an agreement to finance him

An order rejecting an application for permission to sue in forma pauper's is NOT appealable, and is neither a decree nor order falling under any of the clauses of Order 43 R1

R7 – If, however, the court sees no reason to reject the application (on any of the seven grounds), it must fix a day for receiving evidence in the applicant's pauperism.

At least 10 days clear notice must also be given of this date to the opposite party and also the Govt pleader.

At the hearing, the court must examine the witness if any produced any party.

The applicant or his agent may also be examined, and a full record of all the evidence is to be prepared by the court.

It is only after such examination that the court allows or refuses the applicant to sue as an indigent person.

R9 - Order 33 also contains provisions for dispaupering the P. This can be done by the court on an application of the D or the Govt Pleader of which at least 7 days' notice has to be given to the P of any on any of the following grounds –

- a) if he is guilty of vexatious or improper conduct in the course of the suit OR
- b) it appears that his means are such that he ought not to continue to sue as an indigent person OR
- c) if he has entered into any agreement with reference to the subject matter of the suit under which any other person has obtained an interest in the subject-matter.

VIDEO CONFERENCING: THE NEW NORMAL

- By Anshumi Maloo, Student, Batch 2017-22, UWSL

The elementary courtroom etiquettes hold substantial value in the profession of law. The craft of forming and presenting arguments, leaving sublime impression before the judges, the atmosphere created during the argument- the art of entering courtroom with grace and confidence and a non-hesitant self-portrayal is a must. All these basic etiquettes hold value in one's career especially for young lawyers who ought to learn such skills to develop an impression in the minds of the judges.

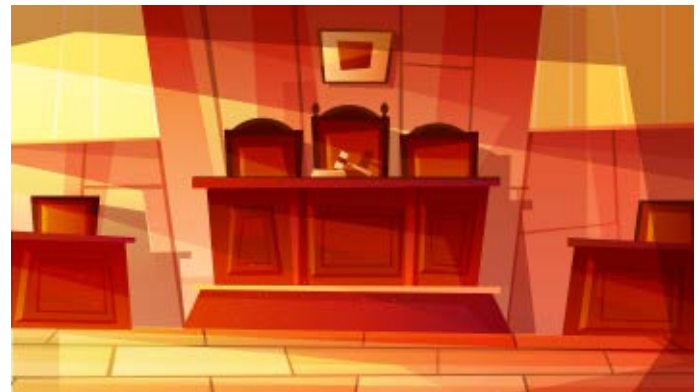
But due to the massive outbreak of Covid-19 the atmosphere of the courtroom has totally modified, there is a shift from the usual courtroom etiquettes to video conferencing. As a result, the charm of lawyering is quite diminishing. One would only hope that this aspect of video conferencing does not become the new normal for the lawyers to present their arguments before the respectable courts. The thrill of arguing in person with passion and zeal in the physical matter will decrease and hence it will lead to the presentation of arguments and cross examinations from the physical world to the virtual world.

In the physical court room ambiance, the facial expressions, body language combined with the comments of the judges help the lawyers to mould their arguments. During video conferencing the whole idea of presenting facts and asking questions to the witnesses can take a major turn due to lack of understanding of body language, gestures, hesitant expressions and similar other issues. Video conferencing can be an easy escape for the witnesses to hide important and essential facts and change their statements due to absence of the lawyer right in front of their naked eye.

An amateur lawyer always learns from the basic etiquettes presented by seniors during the arguments. The way a judge interprets specific laws and also the way judges read. Many a times in the courtrooms Senior judges approach younger lawyers/freshers who are assisting in a case and the judges help them with basic and relevant knowledge of law. Such opportunities help younger lawyers to gain knowledge and work on themselves to present arguments in more effective ways. Such incidents quite pleasant in the physical courtroom, may turn out to be none due to video conferencing.

During the time period of video conferencing, it'll be quite challenging for the judges to hear arguments put forward by young lawyers for a span of 4-5 hours at a stretch. It may require commendable patience in the judges. Arguing a case in point to point manner may not be possible for the amateur lawyers in the initial stage of their careers and they may lose out on requisite training due to online hearings.

During this pandemic time, the court proceeding in person is not possible but it is very astonishing to see that the courts are trying their best to function efficiently and have adapted to this new technology in such a short period of time. Video conferencing being a major drawback in the profession of law has to be adopted and accepted only till the rough phase has completely passed away.



WEBINAR ON 'CAREER IN LAW'

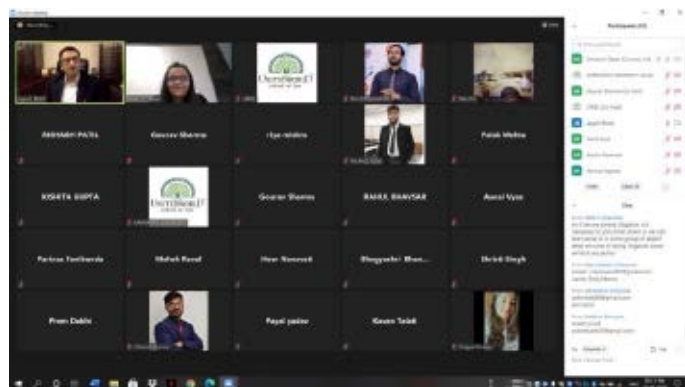
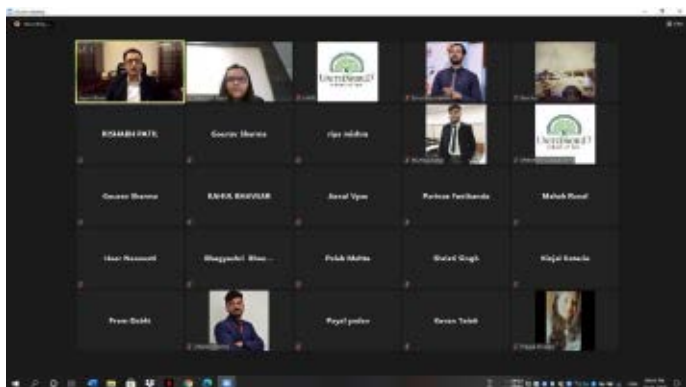
- By ADV. Jayant Bhatt, Supreme Court of INDIA, UWSL

Centre for Corporate Governance and Corporate Training established under Unitedworld School of Law conducted a profound session with Advocate Jayant Bhatt, Supreme Court of India and Delhi High Court, on 'Career in Law' as a part of Webinar Series titled 'Building Careers in Corporate Sectors in India' on September 28, 2020. The Guest Speaker of the Webinar enlightened participants regarding importance of active involvement of Law students in Research, Drafting, Moot Court Competitions, Seminars and Internships to establish career in Law.

Centre: Centre of Corporate Governance and Corporate Training (CCGCT)

Centre Director: Prof. Shruti Brahmabhatt, Co- Director: CA Nitesh Nanavati

Student Research Associates: Ms. Palak Mehta, Ms. Parinaz Fanibanda, Ms. Devanshi Desai, Mr. Gourav Sharma and Mr. Ayush Bhandari



‘FORCE MAJEURE’

- By Alisha Dargar, Student 2019 Batch, UWSL

What do you mean by ‘Force Majeure’?

Force Majeure refers to clause that is included in contract to remove liability. For natural and unavoidable catastrophes that interrupt the expected course of event and prevent participants from obligations.

Force majeure is a French term that literally means "greater force." It is related to the concept of an act of God, an event for which no party can be held accountable, such as a hurricane or a tornado. Force majeure also encompasses human actions such as armed conflict. Generally, for events to constitute force majeure, they must be unforeseeable, external to the parties of the contract and unavoidable. These concepts are defined and applied differently depending on the jurisdiction.

The concept of force majeure originated in French civil law and is an accepted standard in many jurisdictions that derive their legal systems from the Napoleonic Code. In common law systems, such as those of the United States and the United Kingdom, force majeure clauses are acceptable but must be more explicit about the events that would trigger the Clause. A force majeure clause relieves one or both parties from liability to perform contract obligations when performance is prevented by an event or circumstance beyond the parties' control. Typical force majeure events may include fire, flood, civil unrest, or terrorist attack. Force majeure is a term used to describe a "superior force" event. The purpose of a force majeure clause is two-fold: it allocates risk and puts the parties on notice of events that may suspend or excuse service. Contracts are negotiated with certain time constraints ever-present in the background, this ensures that energies are forced on issues that matter and only things which are highly likely to occur during the tenure of the contract are debated. Therefore, the prevailing wisdom has been to concentrate on clauses that have a commercial implication, like an indemnity, assigning a limitation of liability, warranties or assigning damages for breach of a contract. Most business and commercial managers feel that these are the scenarios that may come back and hit them in the gut, Therefore, spending time on negotiating these clauses is worthy of a company's time and resources, all else falls into the side-lines.

However, the outbreak of COVID-19 pandemic has compelled us to re-visit FM clauses in existing contracts in order to analyse where we stand in term of fulfilling our contractual obligations. Hopefully, this short primer will give business managers a broad overview of the things to keep in mind when interpreting existing FM clauses or negotiating FM clause as a result of our learning in these trying times.

Force Majeure Clauses in Contracts

Contracts often contain a force majeure clause that is negotiated between parties and specifies the events that qualify as force majeure events such as, acts of god, wars, terrorism, riots, labour strikes, embargo, acts of government, epidemics, pandemics, plagues, quarantines, and boycotts. If the event that is alleged to have prevented performance under the contract, such as an epidemic, is specifically mentioned in the force majeure clause and the event occurs, then the affected parties may be relieved from performance.

Even if such event is not specifically mentioned in the force majeure clause, many force majeure clauses contain a catch-all phrase that is in addition to the specifically mentioned events. A catch-all phrase would have similar language to "including, but not limited to" or "any cause/ event outside the reasonable control of the parties". Although such catch-all language is construed ejusdem generis, depending on the width of the language of the catch-all phrase, it could be argued that an epidemic/ pandemic like Covid-19 falls within the ambit of the force majeure clause. Even otherwise (i.e. even in the absence of such catch-all language), if 'Vis Major' / 'Act of God' has been specifically included as a force majeure event, it can be contended that an epidemic like Covid-19 is an 'Act of God'.

Statutory Provisions under Indian Law and absence of a Force Majeure Clause

The Indian Contract Act, 1872 ("Act") contains two provisions which are relevant to Force Majeure and Act of God. Section 32 of the Act deals with contingent contracts and inter alia provides that if a contract is based on the happening of a future event and such event becomes impossible, the contract becomes void. Section 56 of the Act deals with frustration of a contract and provides that a contract becomes void inter alia if it becomes impossible, by reason of an event which a promiser could not prevent, after the contract is made.

In a line of decisions starting from *Satyabrata Ghosh v. Mugneeram Bangur* to *Energy Watchdog v. CERC*, the Supreme Court has held that when a force majeure event is relatable to a clause (express or implied) in a contract, it is governed by Section 32 of the Act whereas if a force majeure event occurs dehors the contract, Section 56 of the Act applies.

Force Majeure] Taking Cue From Courts

Few months in the lockdown and we now have a gradually evolving jurisprudence on Force Majeure as several judgments have been passed by the High Courts with regards to interpretation and applicability of the doctrine of Force Majeure. In M/s Polytech Trade Foundation Vs. Union of India & Ors , the High Court of Delhi while rejecting the Petitioner's reliance on advisories issued by Government, inter alia, held: "..Thus, it is very clear from the above circulars that these are in the form of advisories and are not directory in nature and do not mandate respondent no.3 to 6 not to charge ground rent, penal charges/ demurrage etc..."

"..Moreover, the letters/guidelines/advisories also cannot intervene or interfere in a private contract which respondent no. 3 to 6 have with their customers i.e. petitioner..." Thus, what emerges is that Government circulars/guidelines/advisories recognizing the Covid 19 pandemic would apply where the relief sought is against a government entity but cannot be pressed into service against a private entity to compel it to give up its rights arising from a contractual arrangement.

PRINCIPLE OF LEGALITY IN CRIMINAL LAW

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The principle of legality is a very important rule of Criminal Law. A person accused of an offence put under the peril of his life and liberty. Therefore, it becomes necessary that certain safeguards should be provided to him. These protections are almost common to all the developed legal systems of the world including India. One such principle is 'nullum crimen sine lege, nullum poena sine lege', which means that there must be no crime or punishment except in accordance with fixed predetermined law. The rule is known as the principle of legality. This has been regarded as self-evident principle of justice ever since the French Revolution. According to Dicey an Englishman is ruled by the law and by the law alone. An Englishman may be punished for a breach of law, but he can be punished for nothing else. The reason is that the citizen must be able to ascertain beforehand how he stands with regard to the criminal law; otherwise to punish him for breach of that law is purposelessly cruel. Punishment must ensue on a breach of law, because it is in all its forms a loss of right or advantages consequent on a breach of law.

The maxim 'nullum poena sine lege' conveys four different rules, namely: 1-Non retroactivity of penal law, 2-Penal statutes should be construed strictly, 3-Certainty in legislation, 4-Accessibility of the law. The first rule is that no person shall be punished except in pursuance of a statute which fixes a penalty for a criminal conduct. It means there can be no ex-post facto law or the penal laws should not have retrospective operation. As per Article 20(1) of the Indian Constitution the retrospective operation of the following categories of law is prohibited: (i) no law can make an offence with retrospective operation; and (ii) no law can subject a person to a penalty greater than that which might be inflicted at the time when the offence was committed. The Second rule is that penal statutes must be construed strictly. Since all penal laws affect the liberty of the subject, they have to be construed strictly. The rule means that in the trial of an accused, the court must see that the act or omission charged as an offence is within the plain meaning of the words used in the provision making that act or omission an offence and must not strain the words used in defining an offence on any account; such as to provide for an omission or a slip. The person charged has a right to argue that the act or omission charged is although within the words of the relevant provision, is not within the spirit of the Act.

The degree of strictness applied in the construction of a penal statute depends to a great extent on the severity of the statute. Strict construction in relation to penal statutes requires that no case shall fall within a penal statute which does not comprise all the elements, which whether material or not, are in fact, made to constitute the offence as defined by the statute. The third rule is that penal law should be sufficiently definite for those to be affected by it. People must know their duty and be precisely aware about the prohibition created by law. This is possible only when the law is certain and definite. People can then regulate their conduct and behaviour in order to avoid the hazard of falling within grips of the penal provisions of laws. Certainty in legislation does not only mean that crimes should be created by law but it also means that a prohibition must also be drafted in clear, certain and unambiguous language. Therefore, nullum crimen is an injunction to the legislature not to draw its statute in such broad general terms that almost anybody can be brought within them at the whim of the prosecuting authority and the judge. And the Fourth rule is that the penal law must be accessible and intelligible because it is addressed to people in society who are bound to obey it on pain of punishment. Thus almost in every country penal law is enacted. But even such penal law is subject to authoritative interpretation. There is no branch of the law which it can be claimed with such assured conviction that it should be certain and knowable as criminal law. It is notoriously contrary to fact that everyone knows the law, but it is very important that he should be able to ascertain it. Whatever may be the form of law it must be properly publicised then only it can be said to be duly promulgated. The rule requires that a compendious and authoritative statement of penal law should be generally available. This may not be partly necessary where crimes merely put into legal form the ordinary rules of morality and where many of the technical legal rules relate only to the distinction between crimes.





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