December 2020

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CONSTITUTION DAY

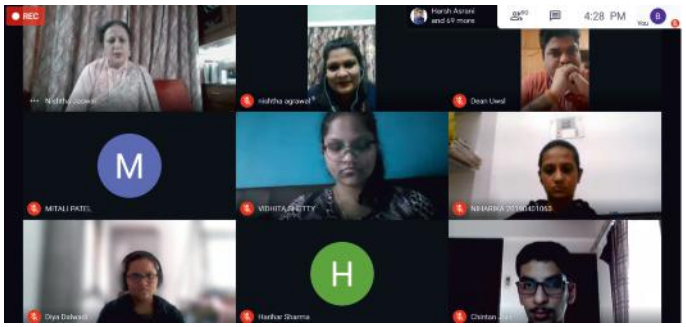
UWSL

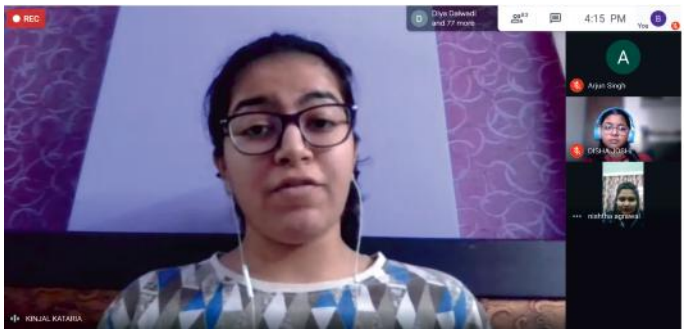
Unitedworld School of Law organised a webinar on 26th November, 2020 to commemorate the Samvidhan Divas. Prof. (Dr.) Nishtha Jaswal, Vice Chancellor, HPNLU presided over the event as the Chief Guest. The Webinar started with recital of Preamble by faculty and students of UWSL in 11 regional languages which instilled in the participants a sense of unity and diversity- a principle that resides at the core of Indian Democracy.

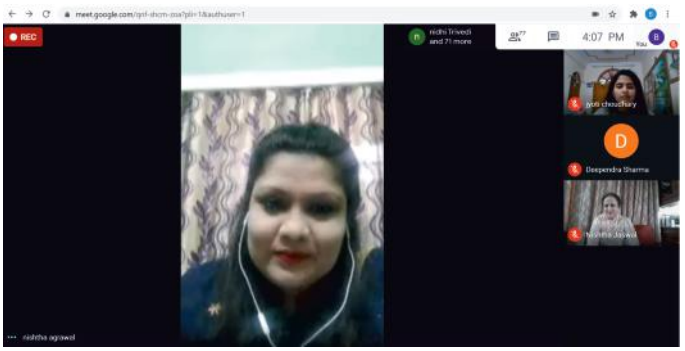
Prof (Dr.) Nishtha Jaswal began with a poem and a shlok from the Rig Veda. The participants were enlightened by her knowledge and intellectual excellence as she weaved the journey of the constitution, the judiciary and the nation from 1950s up until now.

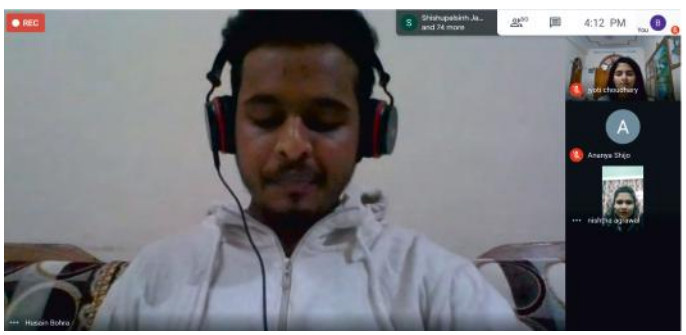
While stating that the Rule of Law as the 'Golden Thread' of the Constitution, Prof Nishta Jaswal went on to explain how cases from Golaknath Case, Kesavananda Bharti, DK Basu case, Navtej Singh Johar case has become an inevitable part of the Constitutional legacy in India. She also highlighted some dark periods in the history of this nation as well as some golden years. She ended her address with a poem and chanted Long Live the Constitution!

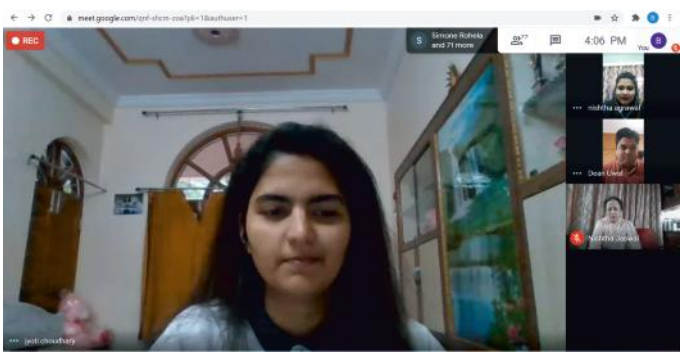
This was followed by a Constitutional Quiz conducted by Prof. Nishtha Agarwal for the students of UWSL. Prof. Umamahesh Sathyanarayan, Advisor - UWSL then delivered a vote of thanks and conveyed gratitude.











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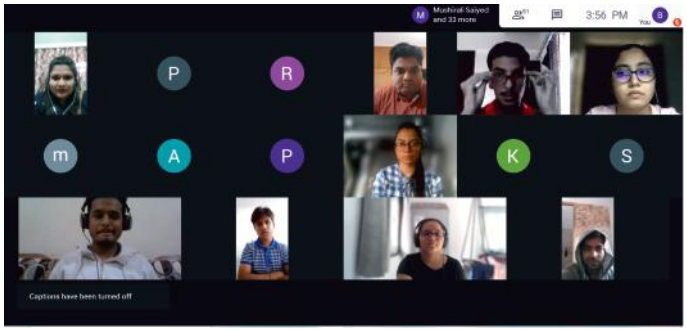

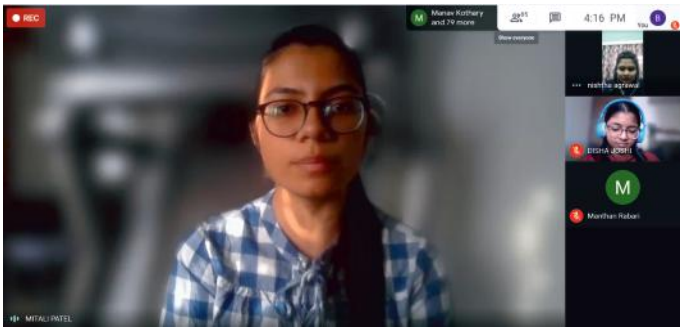

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A SHORT HISTORY OF EVOLUTION OF BANKS IN INDIA

Dr. Amit Bhaskar, Associate Professor, UWSL

Through this interesting write up, I shall try to cover the short history of evolution of banks in India right from the British days. The most important development is the establishment of three presidency banks in India. The Three presidency banks i.e. Bank of Bengal, Bank of Bombay and Bank of Madras were established in the 19th Century under the Charter of the British East India Company to cater to the needs of banking in three presidency towns of Calcutta, Bombay and Madras. Subsequently, in 1935 all these three presidency banks were merged together and a new bank named Imperial Bank of India was formed. The Imperial Bank of India was subsequently named the State Bank of India in 1955 through State Bank of India Act, 1955 which was a parliamentary enactment. The first Indian-owned bank that was established was Allahabad Bank that was set up in 1865 in Allahabad. In 1895, the Punjab National Bank was established. Then, the Bank of India was founded in 1906 in Mumbai. Then subsequently many more commercial banks such as Canara Bank, Indian Bank, Central Bank of India, Bank of Baroda and Bank of Mysore were established between 1906 and 1913 under Indian ownership. The Central Bank called Reserve Bank of India was established in the year 1935 on the recommendation of Hilton-Young Commission under Reserve Bank of India Act, 1934. It started functioning from 1st April, 1935.

At that time, the banking system of the country only covered the urban population and need of rural and agriculture sector was totally neglected which adversely affected the rural masses who were deprived of institutional credit and fell prey into the hands of greedy moneylenders and Zamindars. As a result, many farmers committed suicide and fell into rural distress. At the time of independence, the entire Banking sector was under private ownership. As mentioned, the rural population of the country had to dependent on small money lenders. To solve these issues and better development of the economy the Government of India nationalized the Reserve Bank of India in 1949. In 1955 the Imperial Bank of India was nationalized and renamed the State Bank of India. In 1969, Government of India nationalized 14 major banks whose national deposits were more than 50 crores under the Act called Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969. Later on, six more banks were nationalized in the country under Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. Then Post Liberalization in 1990 and onwards, the Government decided to open up the banking sectors for the private players and also invited foreign banks to operate in India. So, at present we have public and private sector banks, foreign banks and cooperative banks operating across the length and breadth of the country. At present, Indian banking system is very flourishing and has a significant impact on the entire financial system of the country.

Bank of Bengal
Source Tutorialathome.in

Bank of Bombay
Source rbi.org.in

Bank of Madras
Source Victorian Web

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UNITED NATIONS, HUMAN RIGHTS AND RIGHT TO ENVIRONMENT

Dr. Ayaz Ahmad, Associate Professor, UWSL

In 1989, a Sub-Commission of the United Nations Commission on Human Rights was assigned to study the possibility for a human right to environment. The Ksentini Report "greened" existing Human Rights, meaning that existing human rights may already contain environmental rights. Although it is a welcome development but it must be followed by a U.N. resolution to have desirable impact on the evolution of human right to environment. The most comprehensive international statement on environmental rights to date is the 1994 Draft Declaration of Principles on Human Rights and the Environment, appended to the Report of the UN Special Rapporteur on Human Rights and the Environment. First, it sets out a series of general principles, including the human right to a secure and healthy environment. Secondly, it defines a series of substantive rights, including the human right to protection of the environment, the right to safe and healthy water, the right to preservation of unique sites, and the rights of indigenous peoples to land and environmental security. Thirdly, Draft Declaration delineates procedural rights, including the right to environmental information, and active participation in environmental decision-making, and the right to effective redress for environmental harm and finally, Draft Declaration sets out the duties of both individuals and states, including government obligations to disseminate information, facilitate public participation, control harmful activities, monitor and manage environmental use, and provide effective remedies and redress for harm.

The relationship between the quality of the human environment and the enjoyment of basic human rights was first recognized by the UN General Assembly in the late 1960s. The Stockholm Declaration on the Human Environment 1972 (Stockholm Declaration) which laid down the foundation of modern international environmental law also declared the agenda and framework for discussions and initiatives on the subject of human right to environment. Especially two principles talk explicitly of such a right. Principle 1 of the Stockholm Declaration very clearly lays down the genesis of a human right to environment. More importantly it is recognized in this principle that quality of environment has direct bearing on the enjoyment of fundamental freedom of equality and dignity of life.

APPEALS FROM ORIGINAL DECREES – SEC 96-99A, ORDER 41 – FIRST APPEAL

Dr. Ram Niwas Sharma, Associate Professor, UWSL

Appeal has not been defined in the code – It has been held to mean the removal of case from an inferior court to a superior court for the purpose of testing the soundness of the decision of the inferior court. It is thus a remedy provided by law for getting the decree of the lower court nullified, and is in fact, a complaint made to a higher court that the decree of the lower court is unsound and wrong. An appeal must be preferred against the WHOLE decree, and not against any item or items in it. It is only a continuation of the original proceedings, and it is a stage in the suit itself.

Sec 96 of CPC lays down 4 primary rules regarding appeals from original decrees –

1. Unless otherwise provided elsewhere, an appeal lies from every decree passed by any court, exercising original jurisdiction to the court authorized to hear appeals from the decision of such a court.
2. An appeal can be even from an ex-parte decree
3. No appeal lies from a consent decree
4. Except on a question of law, no appeal lies from a decree in any suit cognizable by a small causes court, if the value of the subject matter does not exceed 10K

In order to give a person aright of appeal under this section, the following two conditions must be satisfied:

1. The subject –matter of the appeal must be a decree, that is, a conclusive determination of the rights of the parties with regard to all or any of the matters in controversy in the suit; and
2. The party appearing must have been adversely affected by such determination.

It will be seen that an appeal lies under S. 96 only from a decree. No appeal lies from a mere finding. Section 104 deals with appeals from orders, whereas S. 96 deals with appeals from decrees. This section does not apply to appeals within the High Court, that is, from single judge of the High Court to a Bench thereof. Such appeals are regulated by the Letters Patent of the respective High Courts. An agreement whereby the parties agree not to appeal from a decree is binding upon the parties thereto, if it is for lawful consideration and is otherwise valid.

Remedies against ex-parte decree - It may be noted that there are four remedies open to a person to question a decree passed against him ex-parte (i.e. in his absence), vis—

1. an application under O. IX
2. an appeal under Section 96;
3. an application for review under O. XLVII; and
4. a suit on the ground of fraud.

The general rule is that no appeal lies from a consent decree. There are, however, three cases (all derived from case law) in which decree, though passed with the consent of the parties, can be appealed against. These are-

1. Where the appellant appeals on the ground that it was not a decree passed with the consent of the parties, as where the lawyers of the parties have consented without any authority from their respective clients.
2. Where the consent decree is passed without an order recording compromise. The reason is that recording is not a mere matter of formality, its absence deprives the party of a right to appeal against the order, if it had been passed.
3. Where the appellant was not a party to the consent decree, and the decree affects him prejudicially.

An appeal under S. 96 may be preferred by any of the following persons:

1. Any party to the suit adversely affected by a decree, or if such party is dead, by his legal representative (s. 146).
2. Any transferee of the interest of such party, who so far as such interest is concerned, is bound by the decree, provided his name is entered on the record or the suit.
3. An auction-purchaser may appeal from an order in execution setting aside the sale on the ground of fraud.

No other person, unless he is party to the suit, is entitled to appeal under this section.

Sec 97 – If any party aggrieved by a preliminary degree passed against him does not appeal from such a decree, he is precluded from disputing its correctness in any appeal which maybe preferred. This section expressly exempts preliminary decrees from the position assigned to interlocutory orders, precluding an appellant from impeaching them in the course of an attack on the final decree.

Sec 98 –
Lays down that when an appeal is heard by a Bench of two or more judges, the appeal is to be decided in accordance with the opinion of such judges or of the majority (if any) of such judges. Where there is no such majority which concurs in judgment varying or reversing the decree appealed from, the earlier decree is to be confirmed, i.e. the appeal fails. It is also provided that where the Bench hearing the appeal is composed of two or other even number of judges belonging to a Court consisting of more judges than those constituting the Bench, and the judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ, and the appeal is then to be heard upon that point only by one or more of the other judges, and such point is to be decided according to the opinion of the majority (if any) of the judges who heard the appeal, including those who first heard it.

Sec 99 – No decree is to be reversed or substantially varied, or in any case be remanded in appeal, on account of any misjoinder of parties or causes of action, or any error, defect or irregularity in any proceeding in the suit, not affecting the merits of the case or the jurisdiction of the court.
This section does not apply to a non-joinder of a necessary party.

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WHITE COLLAR CRIMES

Jaideep Singh Chouhan, Semester 3 (Batch 2019-24) UWSL

Increasing consumerism leads to increase in crimes as well. India is a country where several type of white collar crimes are normal due to increasing consumerism. Incompetent and inefficient governments have been unable to control the number of white collar crimes. White collar crimes (name is white but whole structure is black) is synonymous with the full range of frauds committed by business and government professionals. White collar crimes are not only restricted to professionals. Individuals, whether belonging to higher class or middle class are also part and parcel of such crimes. High class people are financially stable, however, they commit crime because of their greed to earn more. Darwin in his theory stated that "survival of the fittest" is necessary and thus there will always be competition for survival. Some people in greed to earn more commit crime. In India tough punishment for white collar crimes is rare, as a result, after committing the crime most of the offenders get away without any punishment. In many cases because of the supreme political connections, most of the offenders get away without any strict action against them. Moreover, in many cases there are no witnesses for the said offences as such offences are committed in private.

White collar crimes are increasing in medical field where the medical professionals put up before the society very poor character. They can stoop to any level to make money which includes misleading and fake advertisements. Claiming absolute curability in medically incurable cases is also one of the frequent malpractices being carried out in the medical profession. Then there are white collar crimes in the education sector where a nastier role is played by the private educational institutions. They concentrate on the making of business at the cost of children's future. The Sanathanam Committee report 1964 on prevention of corruption expressed great concern about the problem of corruption, hoarding, profiteering, and black marketing. The committee also observed that Indian businessman build up secret stocks of foreign exchange abroad and violate the import and export laws. In the end, I just want to add that white collar crimes are a global concern and they are increasing at an alarming rate. Various studies, blogs and research suggest that financial loss to the society from white collar crimes is much more than other crimes in Indian society. India is a developing country and white collar crimes are the major problem of society not only affecting the economic growth but also spoiling the image of the country. Governments must take serious steps against this crime.

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WEBINAR ON 'Lacuna in Criminal Investigation'

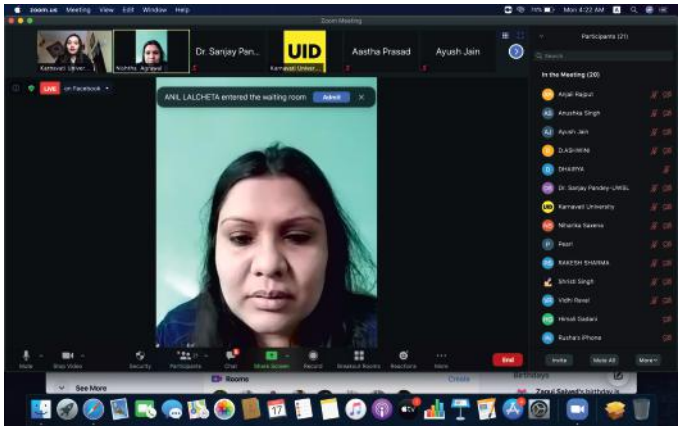
Adv.Hitesh L.Gupta , Gujarat High Court.

Centre for Criminal Justice and Reforms (CCJR) established under Unitedworld School of Law conducted a profound session with AdvocateHitesh L Gupta, Gujarat High Court, on 'Lacuna in Criminal Investigation'. Adv. Hitesh Gupta explained the entire investigation process of a crime, the duties of the Police, the scientific ways to investigate a crime, the practicalities of a crime scene investigation, zero FIR, amoral practices done in an investigation, narco-analysis, polygraph and brain mapping tests and many other real life experiences.

Centre: Centre for Criminal Justice and Reforms (CCJR)

Centre Director: Dr. Sanjay Kumar Pandey, Co- Director: Prof Nishtha Agrawal

Student Research Associates: Ms. Anjali Rajput, Ms. Harshika Mehta, Mr. Rakesh Sharma,Mr. Varun Modasia, Mr. Harshit Khandelwal.



FIRST TIME MUTUAL FUND INVESTOR

Nityanand Jha, Assistant Professor, UWSL

Pranav was overjoyed having received his first salary. His father advised him to start investing some money preferably in a bank fixed deposit. On consulting with friends and work colleagues, he figured out that Bank fixed deposits gave very low returns (4-5% post tax) compared to mutual funds (10-12% post tax).

Pranav ventured out based on his friends and work colleagues advise to do his first investment in Mutual Funds. He was shocked to know that there were more than 40 mutual fund companies and over 2500 mutual fund schemes. The breadth and variety of the schemes was only one challenge, he then had figure out what amount, mode of investment - Onetime vs monthly, route through a bank vs independent financial advisor. In continuing his exploration journey, he also noticed financial planners advising that individuals should make a financial plan and invest according to it.

Pranav got so overwhelmed by the Mutual funds complexities in investing over one week that he went to a bank and opened a recurring deposit for Rs 10,000 earning 6% interest. He realised that investing in a bank was convenient but with low returns and mutual fund investing is complex but with higher returns and risk potential. But he has to learn about personal finance including mutual fund investing before starting them.

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'PARLIAMENTARY PRIVILEGES'

Dr. Sanjay Kumar Pandey, Associate Professor, UWSL

Parliament discharges the function of legislation. With a view to act effectively, without any interference or obstacle from any area, without fear or favour, certain privileges and immunities are attached to each House collectively. Members of Parliament have been given somewhat wider personal liberty and freedom of speech than an ordinary citizen enjoys for the reason that a House cannot function effectively without the unimpeded and uninterrupted use of their services. Privileges are conferred on each House so that it may vindicate its authority, prestige and power and protect its members from any obstruction in the performance of their parliamentary functions. In India, parliamentary privileges are available not only to the members of a House but also to those who, though not members of a House, are under the Constitution entitled to speak and take part in the proceeding of a House or any of its committees. These persons are ministers and Attorney-General. The privileges of a House have two aspects - first, external and second, internal. They can refrain anybody from outside the Houses to interfere with its working. This means that the freedom of speech and expression are restricted to some extent.

The privileges also restrain the members of the House from doing something which may amount to an abuse of their position. Article 105 of the Indian Constitution defines the privileges of the Parliament. This constitutional provision does not exhaustively enumerate the privileges of the two Houses. It specifically defines only a few privileges, but, for the rest, it assimilates the position of a House to that of the House of Commons in Britain. The endeavour of the framers of the constitution was to confer on each House very broad privileges, as broad as those enjoyed by the House of Commons which possesses probably the widest privileges as compared to any other legislature in the world. It is relevant to mention here that under Article 194, in the matter of privileges the position of State Legislatures is the same as that of the Houses of Parliament. Therefore, what is said here in the context of Article 105 applies mutatis mutandis to the State Legislatures as well.

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