

# ADVOCACY



## TMV's Lokmanya Tilak Law College's QUARTERLY eMAGAZINE

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Articles invited for the next issue, interested candidates can mail your articles on [advocacymv@gmail.com](mailto:advocacymv@gmail.com)

**FOREWORD****The Use of Technological Advancement in the Legal Profession**

I am delighted to share the second issue of our eMagazine known as "ADVOCACY" with all of you, which will provide insights on various legal aspects.

In recent times technology has played an important role in development of various aspects of business as well as professionals and Legal profession is no exception to it. Thus, it becomes imperative to understand how technology is used in the Legal Profession.

Globally Artificial intelligence and E-discovery are the most upcoming trends in business and industry. Right from 2004 the global situation is reshaped and transformed by the technological era. The digitization of case law is one of the factors behind the technological revolution in regulation. The Case Management system managed by Department of Legal Affairs under the guidance of Union Ministry of Law and Justice is popularly known as the LIMBS (Legal Information Management and Briefing System).

The technological advancement has changed the outlook of operations of the legal profession. To work on their cases, the lawyers have access to first hand information about the amended or updated laws online on the following link. There are also some Apps consisting of all the Bare Acts available at Google Playstore making such resources accessible only at one click.

There has been a migration from conventional desktop operating structures to mobile operations with the help of advanced computing, storage systems, internet, search engine software, smartphones, tablets, and kindles.

Prior to the advent of technology, basic case search work was time-consuming, involving manual inquiries in person, library visits, report references, phone calls, constant meetings with different parties involved in the case which would take several days to complete. As technology advanced, the legal profession around the country rapidly adapted and incorporated it into their practises, linking internationally to keep up with modern times and stay tuned to the latest data.

Technological advancements have enhanced client communications, data management techniques, case management techniques and also e-discovery and e-filing of cases.

Not only has technology altered the practise of law, but it has also altered the basic legal education framework. In general, artificial intelligence has improved communication and made data more accessible.

Artificial intelligence is undoubtedly a tool to assist in discovering the true facts, since the law's true cause is the pursuit of justice, and determining the truth is a prerequisite for dispensation of justice. The field of law has eventually drawn into the rapid pace of new trends that are being practised around the world, and it is forced to move forward with technology in order to reach the ends of justice as quickly as possible. Despite the fact that technology can be both a blessing and a curse, it has uncontrollably become a part of the system in operation. As a result, it is ideal to follow the suggested aspects to equip by the demands to meet the social, economic, and legal needs while remaining and maintaining the core competency to obtain the ultimately necessary outcome.

I would take this opportunity to congratulate and thank each one of you for all your efforts who participated in giving inputs for this 2<sup>nd</sup> issue. We are working together to give our students a platform to seek pleasure from writing. We hope this eMagazine will take students of Tilak Maharashtra Vidyapeeth a step further in their journey to research, explore and write.

With best wishes,

Asst.Prof.Vidhya Shetty

TMV's Lokmanya Tilak Law College, Pune.

## Tribute to a Legend



The legend and doyen of the bar, Former Attorney General of India and renowned jurist Shri Soli Sorabjee died of Covid-19 in New Delhi today morning. He was 91.

Serving as a legal professional for nearly seven decades, Sorabjee Sir occupied the highest office of the Attorney General of India twice — first from 1989-90 and then from 1998-2004. Sir started his career in 1953 at the Bombay High Court. He was assisting Nani Palkhivala in the landmark Keshavananda Bharati case who argued against the government.

In 1971, he was designated as a Senior Advocate. In 2002, he was awarded the Padma Vibhushan, the second-highest civilian honor in the country. Sir was the petitioner's lawyer in the famous SR Bommai case, which resulted in the Supreme Court's 1994 verdict that held the power of the President to dismiss a state government is not absolute and subject to judicial review. Sir's demise is a loss not only to the legal luminaries but to the entire nation.

By

ADVOCACY E-magazine Team

**Report on International Conference held on 24<sup>th</sup> March 2021 on the topic of  
Procedural Safeguards and Immunities of Drug Use & Drug markets in South  
Asian Countries organized by TMV's Lokmanya Tilak Law College, Pune.**

### **Introduction**

Lokmanya Tilak Law College had organized a One-day International Conference on Procedural Safeguards and Immunities of Drug use & Drug Markets in South Asian Countries under the aegis of Tilak Maharashtra Vidyapeeth, Pune, on 24<sup>th</sup> March 2021. Drug abuse has become the curse of the society not only in India but internationally and Indian system of control of Narcotic Drugs has been put in place as per the country's obligations towards the UN Conventions viz., The UN Single Convention on Narcotics Drugs 1961, The Convention on Psychotropic Substances, 1971 and the Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

India's approach towards Narcotic Drugs and Psychotropic Substances is enshrined in Article 47 of the Constitution of India. The Narcotics Drugs and Psychotropic Substances (NDPS) Act, 1985 was passed to achieve the dual objective of limiting the use of narcotics drugs and psychotropic substances for medical and scientific purposes as well as preventing the abuse of the same.

### **Objective**

Use of Narcotic Drugs and the man-made drug overdose contagion continues to brunt communities all over the world, leading to an unprecedented number of overdose deaths every year. Overdoses have been fuelled by the rapid emergence of new highly potent, non-scheduled dangerous substances. At this juncture to enhance the law enforcement capacity to detect and identify new psychoactive substances and promote cross-border cooperation and information-sharing is the need of the hour.

The workshop endeavored create awareness about the procedural safeguards for use / misuse of Narcotic Drugs and Psychotropic Substances and available Immunities. This online international conference is being organised to create a platform for research and awareness among the stakeholders and to bestow the fruits of research upon the future generations.

### **Themes**

- Drug Demand and supply reduction
- Treatment of drug addicts and their rehabilitation
- Use / misuse of Narcotic Drugs and Psychotropic Substances for medical and scientific purposes
- Procedural Safeguards and Immunities
- Seizure, Freezing and Forfeiture
- Import and Export of Narcotic Drugs and Psychotropic Substances
- Impact of Social Media
- International Drug Control
- Preventing trafficking and diversion through Public-Private Partnership
- Legislation and Control Measures

### **Inaugural Session**

The conference started with the welcome speech delivered by the Officiating Vice Chancellor Dr. Geetali Tilak which was followed by the speech of Principal and Head of the Department of Lokmanya Tilak Law College, Pune, Prof. (Dr.) K K Shri Rama Chandra Murthy on the relevance of the topic and the need of the hour.

Chief Guest for the event Justice Prakash Deu Naik Sir, Bombay High Court was then felicitated by the Principal of our Kharghar Branch Dr. Prakash Deshmukh Sir and Dr. Gauri Kala who had personally visited Prakash Deu Naik Sir's chamber for the same. Sir spoke about various legal provisions of Narcotic Drugs Abuse in India and penal provisions aim respect to drugs. He also

spoke about the recent cases of drug abuses and relevant role of the judiciary on the abuse of drugs and drug trafficking.

### **Resource Persons**

The One day International Conference included various national and international resource persons which are listed below

Dr. Chandrika Subramanian from Australia

Dr. Jidappa Thavarit from Thailand

Dr. A. Ramakrishnan from Kolkatta, India

Dr. Yasir Nawaz Manj from Pakistan

Shri Jayant Naik Navare from Mumbai India

Dr. Bhanu Prakash from Washington D.C

Adv. Umakanth Mishra from Delhi, India.

### **Position and regulation of drugs in Australia**

Dr.Chandrika Subramanian, spoke about the regulation of drugs in Australia in comparison to the drug regulation in India. She spoke about the State and the Federal laws. The Narcotic Drugs Act establishes a framework to both prevent abuse and diversion of controlled narcotics and to ensure the availability of such drugs for medical and research purposes, in accordance with the Single Convention on Narcotic Drugs, 1961 (the Single Convention), as in force from time to time. The Act provides for the control of drugs obtained from the opium poppy and the regulation of the manufacture of licit narcotics, such as morphine. With effect from October 2016, the Act was extended to include a regime for the regulation of cannabis cultivation and production in Australia, to enable a sustainable supply of safe medicinal cannabis products for therapeutic purposes and to benefit Australian patients in need (the 2016 Amendments). She highlighted the importance of a review of the operation of the Narcotics Drugs Act, as soon as possible after the second anniversary of the commencement of the 2016 amendments. Madam also spoke about the requirement of amendment needed for the existing laws.

### **Legal scenario in Thailand and laws for the treatment and rehabilitation of victims of Drug Abuse**

Dr. Jidappa Thavarit made us aware of the legal scenario in Thailand and laws for the treatment and rehabilitation plan as their National Plan of 2015. She talked about the Golden Triangle of Myanmar laws and Thailand where illegal use of drugs is exorbitant. She also spoke about the ways for amendment of the law. It is estimated that drug production and trafficking in the region last year generated profits of at least \$71 billion, with methamphetamine accounting for \$61 billion, four times what it was six years ago. She added that right now, the production and trafficking of methamphetamine is the financial backbone of transnational organized crime and the ethnic armed groups that they partner with for control of autonomous territories in Myanmar. Madam also highlighted about the fuelling conflict and insecurity in the country of Thailand. Also attention was drawn towards record amounts of methamphetamine seizures, the supply of which has surged and the price of the drug has recently dropped to its lowest point in a decade. Madam gave the information that one methamphetamine tablet, known as “yaba” in Thailand and the Mekong region, currently costs only about 50 baht (\$1.60) in the northern area of Thailand, making the drug much more accessible to drug users or potential users.

### **Drug Laws in Pakistan**

Dr. Yasir Nawaz Manj, though was not present in the conference sent his speech to us about the drug laws of Pakistan which was read by Asst. Prof. Shruti Das. Sir provided us with the current scenario information on Drug Abuse in Pakistan. In Pakistan, the total number of drug addicts as per a UN report is 7.6 million, where 78% are male while the rest 22% are female. The number of these addicts is increasing at the rate of 40,000 per year making Pakistan one of the most drug affected countries in the world. Drug usage is increasing day by day in Pakistan. Cannabis is the most commonly used drug in Pakistan (4.03 million [3.6%] individuals aged 15–64 years). The number of these addicts is increasing at the rate of 40,000 per year making Pakistan one of the most drug affected countries in the world. What is most disturbing is the fact that most of these heroin addicts are under the age of 24. Drug use is escalating beyond control, there are both a demand and a seamless supply. Studies have revealed that the relapse rate in Pakistan is around 90%. The main reason for such a high relapse rate is lack of support by the family and community to the treated addicts. Also treatment and specialist interventions are in short supply in Pakistan. During the period under review, treatment was available to less than 30,000 drug users. Pakistan has no dearth of law enforcement agencies; there are



laws, policies, and systems in place, but unfortunately, there are many weaknesses in the existing system. Drug use in society was ignored due to stigma or lack of empathy by the government and bureaucracy. Although the situation is changing and “drug addicts are now being viewed as victims who require care and empathy. Treatment and follow-up still remain big challenges in our society which needs a special consideration. Pakistan has laws to curb this menace. Sir also gave glimpses of Control of Narcotic Substances Act, 1997.

### **Drug Control Authorities**

**Dr. A. Ramakrishnan** spoke about Drug Control Authority, Drug Law Enforcement and provided information on Narcotic Drugs and Psychotropic Substances Act, 1985 and its amendment. Sir also discussed that despite increasing collaboration between Law Enforcement Authorities in different countries illicit drug problems appear likely to increase in the future because of the vast profits available, continuing (and increasing) demand and more permissive attitudes concerning drugs among young people. While rejecting legalization or decriminalization, the search for more effective responses by law enforcement authorities and the community generally must be stepped up. Police services continues to play an important role restricting the availability of illicit drugs but increasing emphasis needs to be given to reducing demand, including more available and more effective preventive drug education in schools. Sir said that the Police also needs to work with harm reduction approaches devised to reduce the negative consequences of drug use for those who continue to use illicit drugs.

These stress the importance of a multi-sectoral approach operating at both national and local levels with the objective of reducing drug-related crime, reducing the acceptability and availability of illicit drugs and reducing the harmful consequences of illicit drug use. Harm reduction requires a commitment for close collaboration between police and drug treatment services to maximize the effectiveness of needle-exchange schemes and other harm reduction approaches. Future progress requires firm commitments to providing adequate and effective drug treatment services, conducting research to develop and evaluate more effective diversion schemes, improving collaboration between sectors and effective leadership. In addition to the major costs of illicit drug use to the community, the huge cost to individuals must remain a major focus driving the search for more effective responses to the problems resulting from illicit drugs.

### **Various aspects of Drug Abuse**

**Shri Jayant Naik Navare** covered various aspects of drug abuse. Sir made us conscious about law enforcement perspective and provided information from Narcotics Control Bureau. The Narcotic Drugs and Psychotropic Substances Act, 1985 is a very comprehensive and sensible legislation but there are some aspects which need change. Especially, in terms of how users are viewed. There needs to be a demarcation as to who is a recreational user, who is a dependent and who is an addict. There is also a need to conceal their identities as those who are addicted to a drug, suffer from substance use disorder. A recreational user is one who uses a narcotic or psychotropic substance for pleasure, and is not necessarily addicted or dependent on any drug. A user can become dependent on drugs like marijuana, MDMA or LSD, and opioids heroin, and cocaine, can be addictive.

### **Artificial Person perspective in Drug Abuse**

**Dr. Bhanu Prakash** reflected light upon Artificial Person perspective in drug abuse, multidimensional approach on uses of drugs. Sir also talked about Narcotic Drugs and Psychotropic Substances Act, 1985 and Drugs and Cosmetics Act. Sir also threw some light on types of drug abuse by different substance. Drugs and Cosmetics Act, 1940 is a life-saving statute. It was enacted with an objective to regulate the import, manufacture, distribution and sale of drugs and cosmetics without licensing. Domestic legislation for regulating narcotic drugs and psychotropic substances in India has come in the form of NDPS Act, 1985, with an objective to limit the use of these substances and to prevent the abuse of these drugs. Both the aforesaid acts regulate narcotic drugs and psychotropic substances but the NDPS Act is special and strictest legislation for these substances. Stringent provisions of this act are examined in depth like minimum mandatory sentence of ten years and fine of one lakh rupees, such offences are cognizable and non-bailable, consumption of drugs is also punishable offence, death sentence for certain repeat offences, attempt to commit an offence would be punishable with similar sentence as provided for that offence, power to tender immunity from prosecution, etc. The speaker also provided some necessary recommendations in Drugs & Cosmetic Act on the basis of Narcotic Drugs and Psychotropic Substances Act, 1985 and also highlighted some lacunas in both acts which need to be overcome.

### **Paper Presentations**

The International Conference has six paper presenters on various themes of the Conference.

### **Safeguards provided in Narcotic Drugs and Psychotropic Substances Act, 1985**

**Adv. Umakanth Mishra** spoke about Safeguards provided in **Narcotic Drugs and Psychotropic Substances Act, 1985** for law enforcement. Safeguards of Fundamental Rights of individual. He explained how normal crime is different in narcotic crime because perpetrator is victim in cases of narcotic crimes. The Narcotic Drugs and Psychotropic Substances Act, 1985 views drug offences very seriously and prescribes strict penalties. The Act follows a graded system of punishment with the punishment varying with the quantum of punishment being dependent upon whether the offence pertains to small, commercial and intermediate quantities of narcotic drugs and psychotropic substances. For offences involving commercial quantities of drugs, a minimum penalty of ten years rigorous imprisonment is prescribed, which may extend to twenty years. Repeat offences attract one and half times the penalty and in a few cases even the death penalty. Alongside these stringent provisions, the Act has procedural safeguards as follows:

- **Personal search:** Any person being searched has a right to be searched before a Gazetted Officer or a Magistrate (Section 50). The Officer searching the person has to explain to the person that he has a right to be searched before a Gazetted Officer or a Magistrate and if the person wishes to be searched before a Gazetted Officer or a Magistrate he should be taken to the Gazetted Officer or the Magistrate and searched. However, if the officer has reason to believe that it is not possible to take him to a Gazetted officer or a magistrate without giving him a chance to part with the drug, controlled substance, etc., he can search him under Section 100 of the Cr. P. C. [Section 50(5) and 50 (6)].
- **Searches:** As per Section 41 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Gazetted Officers of the empowered Departments can authorize searches. Such authorization has to be based on information taken down in writing. As per Section 42, searches can be made under certain circumstances without a warrant (from a magistrate) or an authorization (from a Gazetted Officer). In case of such searches, the officer has to send a copy of the information taken in writing or the grounds of his belief to his immediate superior official within 72 hours.
- **Arrests:** The person who is arrested should be informed, as soon as may be, the grounds of his arrest [Section 52 (1)]. If the arrest or seizure is based on a warrant issued by a

magistrate, the person or the seized article should be forwarded to that magistrate [Section 52(2)].

- As per the provisions of Section 57 of Narcotic Drugs and Psychotropic Substances Act, 1985 The officer who arrests a person has to make a full report to his official superior within 48 hours.

### **Immunities For Drug Offences**

- **Officers:** Officers acting in discharge of their duties in good faith under the Act are immuned from suits, prosecution and other legal proceedings (Section 69).
- **Addicts:** Addicts charged with consumption of drugs (Section 27) or with offences involving small quantities will be immuned from prosecution if they volunteer for de-addiction. This immunity may be withdrawn if the addict does not undergo complete treatment (Section 64A).
- **Offenders:** Central or State Governments can tender immunity to an offender in order to obtain his evidence in the case. This immunity is granted by the government and not by the court (Section 64).
- **Juvenile offenders:** Juvenile offenders (below 18 years of age) will be governed by the Juvenile Justice (Care and Protection of Children) Act, 2000.
- **Diplomats:** Immunities to diplomats as applicable.

### **Vote of Thanks**

Vote of thanks was delivered by Assistant Professor. Arundhuti Bhale which concluded the Conference.

**Report on the One Day Online Workshop on Consumer Laws in India held on 20<sup>th</sup> March, 2021 organized by TMV's Lokmanya Tilak Law College, Pune in association with District Consumer Commission, Pune**

**Introduction**

Lokmanya Tilak Law College has organized a One-day online workshop on Consumer Laws in India under the aegis of Tilak Maharashtra Vidyapeeth, Pune, in collaboration with the District Consumer Commission Pune on 20<sup>th</sup> March 2020. The workshop endeavored to nurture the prevailing consumer laws in India. To cope up with the universal development and all-changing nature of consumerism, the Indian legislature has amended the three-decades-old Consumer Protection Act, 1986 in 2019. The One-day online workshop on Consumer Laws in India was coordinated by Assistant Professor Shruti Das and Assistant Professor Ketki Dalvi. The resource persons of the workshop were from various fields of law, even encompassing the legal academia. The eminent resource persons were Senior Advocate Harshad Vasant Nimbalkar, Advocate Abhijeet Hartalkar, Former Member of Consumer Dispute Redressal Commission Solapur, and Pune Shri. Onkar Patil, President, Pune District Consumer Commission Shri Umesh Jawalikar and Dr. Ashok Wadje I/c. Registrar, Maharashtra National Law University, Aurangabad.

**Objective**

Principal and Head of the Department of Lokmanya Tilak Law College, Prof, (Dr.) K K Shri Rama Chandra Murthy started with the relevance of the topic and concern for the awareness needed to realize the potential of consumer laws. He referred to the latest development and issues of utmost importance with the advent of E-commerce and changing paradigm of consumer issues like Product Liability, Central Consumer Protection Authority, Medical Negligence, etc.

**Offences and Penalties under Consumer Protection Laws**

Dean of Lokmanya Tilak Law College, Senior Advocate Shri Harshad Vasant Nimbalkar, spoke about Offences and Penalties under Consumer Protection Laws. Sir spoke about the inception of consumer protection laws as the consumers found it very difficult because they did not have any redressal in case of cheating. Therefore it is for the benefit of the consumers that this Act came into force.

In due course of time number of judgments have been given by the Supreme Court of India as well as the National consumer commission, the law has now undergone a sea change, and it has become extensive. The powers also increased so far as the enforcement in respect of the law is concerned. The professionals are also now covered under the Consumer Protection Act.

### **E-commerce under the Consumer Protection Act 2019**

Advocate Shri Abhijit Hartalkar spoke on E-commerce under the Consumer Protection Act 2019, a new amendment to the Consumer Protection Act, 1986. The topic became imperative as it was absent in the earlier law, and it had been newly introduced in the law. Sir started with the purpose of the law that must respond to society's needs and the changes in society. If the law does so, it becomes a success or otherwise becomes a useless piece of legislation. Consumer Protection Act is a classic example of laws that coped up with changing demands of society. Consumer Protection Act of 1986, was existing more than three decades ago. The concepts like telemarketing E-Commerce, Direct Selling or Multi-Level Marketing, etc., were not known. These concepts were not considered when the Act of 1986 was enacted for the same reason. E-Commerce has become a buzzword now. It is no more only a fancy idea or a luxury, but rather it has become our day-to-day need. Knowingly or unknowingly, we use E-Commerce so often that digital platforms are so important that we do not realise that whenever we call any cab, we are ordering any food we are using the digital platform means we are dealing through E-Commerce. So obviously, when Ecommerce has become a buzzword, it becomes essential to have a law on this particular societal demand. Therefore, this need was rightly addressed by the legislature. The provision has been incorporated in the new law but what is appreciable here is that the provisions relating to E-Commerce are very much in detail. The speaker explained basic definitions in the Consumer Protection Act and other relevant provisions relating to e-commerce.

### **Product liability**

Former Member of Consumer Dispute Redressal Commission, Solapur and Pune Shri. Onkar Patil threw light on product liability. He spoke about the diametrical change in understanding of liability in case of consumer disputes. Previously, consumers and manufacturers used to escape from their liability as it was the consumer's responsibility before buying the product. Neither the manufacturers and sellers were liable for a faulty product nor were they liable on any kind of property or personal

damage of the consumer due to the faulty product. Product Liability is one of the remarkable and significant steps incorporated in the 2019 Act. An entire chapter under the Act is dedicated to deal with this concept. A complainant can bring a product liability action against any product manufacturer or service provider or a seller if he suffers any harm due to a defective product or service. Sections 82- 86 define product liability and the responsibility for the product manufacturer, seller, or service provider. A **Product Manufacturer** will be held liable under Section 84 of the Act if the product has a manufacturing defect, defective in design, does not follow the manufacturing specifications, does not conform to the implied warranty, and does not contain adequate instructions for proper usage of the product. Section 85 of the Act discusses the liability of the **Service Provider** in a product liability action. To be liable under this Section, the service provided shall be deficient, faulty, inadequate, or imperfect, an act or negligence withholding any information responsible for the harm caused, without adequate warnings and instructions and without conformation to express warranty or contractual terms. A **Product Seller** will be liable in a product liability action if there is the exercise of substantial control over manufacturing, testing, designing, labeling, or packaging of the product. There was substantial alteration or modification responsible for the harm caused. The product seller made an express warranty that does not conform to the warranty made by the manufacturer. The product seller failed to take reasonable care in maintaining, assembling, or inspecting the product. Mr. Patil also enlightened the certain exceptions to product liability action as well. These exceptions are discussed in Section 87 of the 2019 Act. Any consumer who misuses, alters, or modifies the product and suffers harm, as a result, cannot file a product liability claim. A consumer cannot bring product liability action if the product manufacturer has given adequate warnings for the use of the product. The product purchased was used as a part of another product. The end-use caused damage, the product was supposed to be used under an expert's supervision, or the product was used under alcohol influence. A product manufacturer will not be liable for not warning about any danger that is commonly known or obvious.

### **Medical Negligence**

President, Pune District Consumer Commission Shri Umesh Jawalikar Sir rendered his take on Medical Negligence in the One day workshop. The definition of services does not include health services, but judicial activism has brought this medical practice into the definition of services. Medical services are different from other services, and professional expertise is needed to provide

these services. Though patients see the doctors as God and believe that their disease will be cured and the treatment will heal them, sometimes even the doctors make mistakes, which can cost a lot to the patients. This kind of mistake is called negligence. If a restaurant owner can be sued for providing low quality food, even a doctor can provide low quality treatment and care. Medical negligence, also known as medical malpractice, is the improper, unskilled, or negligent treatment of a patient by a physician, dentist, nurse, pharmacist, or other health care professional.

Medical malpractice occurs when a healthcare provider strays from the recognized “standard of care” to treat a patient. The “standard of care” is defined as what a reasonably prudent medical provider would or would not have done under the same or similar circumstances. Professionals are persons professing some particular skill or job, who are trained to profess in that area especially and bear the responsibility of professing with due care. Such professionals include lawyers, doctors, architects, etc. The Supreme Court in *Jacob Mathew vs. State of Punjab* explained a professional entering into certain profession is deemed to have knowledge regarding that profession and it is assured impliedly by him that a reasonable amount of care shall be taken to profess his profession. The person can be held liable under negligence if he did not possess the required skills to profess or he failed to take essential amount of care to profess the said profession. The law nowhere states that a professional shall be held liable if he fails to perform his skills, it states that a professional shall take reasonable amount of care and shall possess knowledge as compared to any practitioner in the same field. The skills of different professionals surely differs from one another even if they are practicing in the same field but what is required is that a professional has knowledge of new advances, discoveries and developments in his field so as to give essential care to the consumers of his profession.

The failure to comply with this which any ordinary professional would have done properly amounts to professional negligence liable under the law.

The conduct of medical malpractice was brought under the Consumer Protection Act, 1986, due to the landmark case of the *Indian Medical Association vs. V. P. Shantha & Others*. The judgment in this case defined medical care as a “service” that was covered under the Act, and also clarified that a person seeking medical attention may be considered a consumer if certain criteria were met.

- The service provided was not free of charge or for a nominal registration fee;



- If free, the charges were waived because of the patient's inability to pay;
- The service was at a private hospital that charges all patients; or
- Any service rendered which was paid for by an insurance firm.

Shri. Jawalikar also referred to the Bollam case, which is a test of how medical negligence can be ascertained and change of paradigm to Bolitho case. In Bollam case, if the medical practitioner follows the rules mentioned by the medical practice, he is not liable for medical negligence. In the Bolitho test, the judge will take the opinion of experts and their reasoning, and then the judge will determine which opinion should be taken.

### **Central Consumer Protection Authority (CCPA)**

The last speaker for the day was Dr. Ashok Wadje. Assistant Professor and Registrar In-charge, Maharashtra National Law University, Aurangabad. Sir deliberated on Central Consumer Protection Authority (CCPA). The authority is being constituted under Section 10(1) of The Consumer Protection Act, 2019. The Act replaced The Consumer Protection Act, 1986, and seeks to widen its scope in addressing consumer concerns. The new Act recognizes offences such as providing false information regarding the quality or quantity of a good or service, and misleading advertisements. It also specifies action to be taken if goods and services are found "dangerous, hazardous or unsafe". The CCPA, introduced in the new Act, aims to protect the rights of the consumer by cracking down on unfair trade practices, and false and misleading advertisements that are detrimental to the interests of the public and consumers. The CCPA will have the powers to inquire or investigate into matters relating to violations of consumer rights or unfair trade practices suo motu, or on a complaint received, or on a direction from the central government. To execute the functions laid on it, the CCPA also enjoys a wide range of powers including but not limited to inquiry, investigation, direction for producing documents, recall of goods or withdraw services, imposition of fine, restrain false advertisements, etc. The functions of the CCPA are regulatory, investigative and adjudicative simultaneously. In an attempt to curb misleading advertisements, the Act 2019 has granted wide powers to CCPA to curb misleading advertisement. The CCPA after investigating that an advertisement is false or misleading and is prejudicial to the interest of any consumer or is in contravention of consumer rights, by order issues directions to the concerned trader or manufacturer or endorser or advertiser or publisher, as the case may be, to discontinue such advertisement or to

modify the same in such manner and within such time as may be specified in that order. Notwithstanding the orders the CCPA may impose penalty in respect of false or misleading advertisement to the tune of Rs 10,00,000/- (Rupees Ten Lakhs Only) or imprisonment for up to 2 (two) years. In case of subsequent offence, the CCPA can enhance the fine to Rs. 50,00,000/- (Rupees Fifty Lakhs Only) with up to 5 (five) years of imprisonment in case of subsequent offense. In sum and substance, the legislative intent under the Act 2019 is to make the endorser cautious of the endorsing advertisement.

### **Vote of Thanks**

The One-day online workshop on Consumer Laws in India was concluded with a vote of thanks by Assistant Professor Ketki Dalvi.

## Post-Emergency Preventive Detention Enactments in Maharashtra.

Sunil Ramanand, LL.B 1st year  
TMV's Lokmanya Tilak Law College. Pune.

'Preventive Detention' can be defined as 'detention without trial' and differs fundamentally from 'Punitive Detention.' Punitive detention is imprisonment awarded by a court subsequent to conviction on a criminal charge. As against this, preventive detention is incarceration ordered, not as punishment, but as a measure to prevent an individual from acting in a certain prejudicial manner *in future*. The apprehension stems from the past conduct of the individual.

Though Laws pertaining to Preventive Detention draw legal credence from Article 22 of the Constitution of India, its genesis can be traced to Rule 26 framed under the Defence of India Act, 1939 which essentially was a war time measure. Liberal western democracies do have a smattering of Laws and provisions for Preventive Detention during war. India ostensibly is the only democracy in the world where Preventive Detention is possible during times of peace. Statistically speaking, more than five thousand individuals are incarcerated by various executive authorities annually in India under various Preventive Detention Laws. The Supreme Court of India has described Preventive Detention Laws as 'Lawless Laws' as it gives sweeping powers to the executive authorities despite checks and balances enunciated in Article 22.

Why does Preventive detention matter? In India, where conviction rates are very low, Preventive Detention has emerged as a via-media to 'punish'(read detain) offenders through the medium of executive orders and thereby check lawlessness.

The Parliament of India has exclusive jurisdiction to enact Preventive Detention Laws in respect of the following subjects – Defence, Foreign Affairs, Security of India (No. 9 of Union List), the State Legislature (and also the Parliament) in respect of – Security of State, Maintenance of Public Order, Maintenance of Supplies and Services essential to the community (No. 3 of Concurrent List). Of the subjects aforementioned in the Union and Concurrent lists, Maintenance of Public Order is the most common ground for issuance of Preventive Detention orders by the executive authorities and has often drawn criticism from higher courts for misuse.

The Preventive Detention Act, 1950, and the Maintenance of Internal Security Act, 1971, (MISA) have been the two most important Parliamentary Laws in respect of Preventive Detention in the Pre-Emergency era. Though both these Acts empowered the Central and State Governments to issue detention orders, the Acts also provided for delegations of powers to District Magistrates (DMs i.e Collectors) and Commissioners of Police (CsP) by the Central/State Government. Thus, in practice, The DMs and CsP were the authorities exercising powers of Preventive Detention under these Acts. Since MISA gained immense notoriety for abuse during the 1975 Emergency, it was repealed in the aftermath and the Parliament enacted the National Security Act, 1980 (NSA) and the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

In so far as the State of Maharashtra is concerned, the early 1980s can be looked upon as the budding stage of Preventive Detention enactments. The very first ordinance in this regard was promulgated on the 27<sup>th</sup> of August, 1980, by the Governor of Maharashtra. It was called - the Maharashtra Prevention of Communal, Anti-social and other Dangerous Activities (MPCAD) Ordinance, 1980. The MPCAD Ordinance provided for Preventive Detention of individuals acting in a manner prejudicial to the maintenance of Public Order.

Close on the heels of the MPCAD Ordinance was promulgated the National Security Ordinance by the President of India. In response to this Presidential Ordinance, the Maharashtra Government passed the MPCAD Act, 1981, in the State Legislature in a majorly truncated form.

Section 1(4) of the MPCAD Act reads - 'Sections 2 to 16 of this Act shall, from the commencement of the National Security Ordinance, 1980, on the 23rd September 1980, apply, and shall be deemed to have applied, only to the orders of detention made or deemed to have been made under this Act before the 23rd September, 1980'.

In an interesting case in the early years of the 21<sup>st</sup> Century, the DM of Nashik passed a detention order under the MPCAD only to realise that the Act was a dead letter. Ironically, the Maharashtra government had then constituted an Advisory Board for MPCAD detentions disregarding Section 1(4).

The redeeming feature of the MPCAD Act was its Section 17(which inserted Section 56(bb) in the Bombay Police Act,1951, providing for a new ground for externment) and Section 18(which inserted Section 151(3) in the Code of Criminal Procedure, 1973, in its application to Maharashtra, thereby providing for Preventive Detention (on grounds of Public Order) of individuals upto a period of 30 days *under the orders of a judicial magistrate*).

No sooner the National Security Ordinance was enacted as NSA, than the second (and the last, thus far) Preventive Detention enactment was done by the Maharashtra Legislature viz the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-offenders Act (MPDA), 1981. The Act provided for Preventive Detention of Slumlords, Bootleggers and Drug offenders whose activities were prejudicial to the maintenance of Public Order.

Section 17 of the MPDA spells out the intention of the Maharashtra Legislature , in that, it specifically bars detention under the NSA of any individual fit for detention under the MPDA. Why the Maharashtra Government developed cold feet in respect of the MPCAD ordinance following the promulgation of the National Security Ordinance and why then it had second thoughts thereafter by way of the MPDA enactment is a subject for research.

Ironically, MPDA remained a sparingly used Act in Maharashtra in the first 15 years of its existence with most of the Preventive Detentions on Public Order grounds being done under NSA. The MPDA was amended in 1996 and this came as a shot in its arm. The amendment introduced a new category in the MPDA viz ‘Dangerous Persons’ with the result that almost all Preventive Detentions thereafter in Maharashtra were done under the MPDA, the NSA getting relegated to the background.

An interesting case is the Preventive Detention of Arun Gawli under NSA by an order issued by CP Mumbai dated 20<sup>th</sup> Feb 1997. The said detention order was challenged in the Bombay High Court, one of the grounds being that the detention under NSA was illegal in view of Section 17 of the MPDA as Arun Gawli fitted in the ‘Dangerous Persons’ category. The then Additional Chief Secretary (Home), Commissioner of Police, Mumbai and the Inspector General of Prisons, Pune were ordered by the High Court to pay exemplary costs of Rs. 25,000/- each.

Three more categories were added later to the MPDA viz Video Pirates, Sand Smugglers and Black Marketers of Essential Commodities (amendments in 2009 & 2016). The introduction of 'Black Marketers of Essential Commodities' as a category in the MPDA (an Act which provides for detention on grounds of 'Public Order') appears to be a legalistic impropriety. Entry No. 5 in the Concurrent List of the Constitution of India enumerates 'Public Order' and 'Maintenance of Supplies and Services Essential to the Community' as distinct subjects/grounds for making Preventive Detention Laws on.

In the ordinary course, the Supreme Court judgements (Ram Manohar Lohia versus State of Bihar (1966) Arun Ghosh versus State of West Bengal (1969)) are considered benchmarks in defining 'Public Order'. By entangling Public Order with Essential Commodities (2016 amendment), the law makers of Maharashtra have made a hodgepodge of MPDA. A bare reading of the amended Section 2(a)(iv-b) below makes it self-explanatory.

2(a) "acting in any manner prejudicial to the maintenance of public order" means— (iv-b) in the case of a person engaged in black-marketing of essential commodities, when he is engaged, or is making preparations for engaging, in any of his activities as a person engaged in black-marketing of essential commodities, which affect adversely, or are likely to affect adversely, the maintenance of public order [Sub-clause (iv-b) inserted by Mah. 5 of 2016]

The anomaly is further exacerbated in view of Section 17A of the MPDA (2016 amendment). Section 17A: No order of detention shall be made by the State Government or any of its officer under the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on or after the commencement of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous persons and video pirates (Amendment) Act, 2016 in respect of any person engaged in black-marketing of essential commodities.

In conclusion, it can be said that though the MPDA has proven to be a very effective tool in the hands of the authorities to maintain Public Order, the plethora of amendments inflicted on it has made it a very inconsistent piece of legislation.

## **Where is the “Rule of Law”?**

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The human race is always blessed with a sense of speech and expression. Way back in the stone age, when the primitive people didn't even develop a speech and might have relied only on the sounds or gestures, they knew how to express their thoughts. The cave paintings and stone items excavated prove it.

Slowly when the civilization started and modernity stepped in, with the passage of time and changes in the ruling authorities, a need to regulate the freedom of speech and expressions was felt. Hence the law came into existence. Intellectuals had to play a challenging game over it to give the “Right of Speech and Expression” a solid place in the Constitution of India. But finally, we have it.

Since post-Independence, we are thoroughly enjoying the Right to Speech, but now is a time when this Right should be questioned. It is not just the Right to Freedom of Speech and Expression for a common person but also the journalists and reporters.

Journalism is a very sacred section of professionalism where torchbearers have even to sometimes play with their lives to reveal the truth to the general public. Not everybody has access to the truth. To reveal the depth of reality, one needs a certain level of courage, potential, dedication, and authenticity to cover a certain event or incident.

It is not that only journalists have a fire in them but then how things will get authentication? There lies a need for extra refinement of the law. Some special privileges should be given to media people to do their job in a better way. People no doubt call the job of the Press a “Presstitution.” But then one needs to think, from where this word emerged? Is it right, wrong, or just being imposed without seeing the actual scenario?

Journalism is something that needs to be curtailed. Not everything needs to be revealed. Up to a certain extent, journalists have a responsibility to maintain peace in society. This can be done only when they are given the right to perform their duties as well.

It is an irony that in India, there is a right to freedom of expression for all, but it is not practiced in a better way. The people who are practicing it are crossing their levels, creating mayhem in the country now and then, and the people who need to practice it do not have the authority.

**Encapsulated benefits with the separate law of “Right to Speech and Expression” in journalism:**

1. A hidden truth in the public interest can be revealed without any fear.
2. The safety of whistleblowers can ensure highlights necessary to bring to light.
3. Better journalists can enter this field who are worthy and courageous.
4. Prostitution will come to an end.
5. Better filtered and authentic news will reach the public.
6. A better platform will come up where the leaders and followers will be able to interact.
7. Somewhere the game of Pro and anti will come to an end.
8. People will see the truth.
9. Money game will somewhere take a back seat.
10. The true meaning of journalism will be displayed.



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