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MESSAGE FROM THE EDITOR(S)

Date: August 15, 2018

Wednesday

Dear All,

We are happy to bring out the second volume of Public Law Bulletin on the auspicious occasion of Independence Day. Adhering to the goal of continuous innovation, we have tried to introduce some new sections. Particularly, we would like to congratulate the students for introducing Constitutional Law Crossword Puzzle.

We wish all of you a very happy independence day.

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(A.) PUBLIC LAW IN THE NEWS

1) SUPREME COURT

- **SC stays order permitting moviegoers to carry food inside theatres:** After Bombay HC and J&K HC passed several directions not to prohibit cinemagoers from carrying their own food and water inside cinema halls, apex court stayed the order after Multiplex Association raised the contention that such a practice would raise grave security concerns.
- **SC comes down heavily on Goel Ganga Developers for environmental damage:** The apex court slapped a fine of Rs. 105cr for environmental damage caused while building residential towers in violation of law.
- **Cops cannot refuse to register an offence if mobs attack private property:** “Whosoever indulges in vandalism must be brought to book, irrespective of religion” said a bench headed by CJI Dipak Misra, calling for the need to crack whip on mob violence.
- **SC bars role of mantris/babus in BCCI, however junks other Lodha Committee recommendations:** The apex court on Thursday, 09 August, 2018 restored crucial aspects of BCCI’s traditional structural functioning by excluding one state one vote rule and relaxation of cooling off period for officials while finalizing the body’s governance code.
- **SC calls Maharashtra’s non-grant of licenses to dance bars total moral policing:** A bench of the apex court rattled the state of Maharashtra for not granting licenses to dance bars under the guise of controlling obscenity. Observing that the notion of obscenity has now transformed, assuming that all bar dances are indeed obscene attributed to total moral policing.
- **Seal 27 resorts built in Nilgiris Elephant corridor within 48 hours: SC** A bench of Justices Madan Lokur, Abdul Nazar and Deepak Gupta directed the state to seal as many as 27 hotels and restaurants built illegally on protected Nilgiris corridor.
- **Furnish Amrapali Honchos’ asset list within a fortnight:** The apex court firmly indicated that it would leave no stone unturned to protect the interest of 43,000 homebuyers who had invested in Amrapali’s construction projects, but were yet to gain possession. It directed the

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group to furnish a comprehensive list of all movable and immovable properties, owned by promoters and directors of the company accompanied by a valuation of the assets in toto.

- **Rate of rape alarming, fumes SC:** Bihar government was put in a dock by the apex court as it slammed the government for virtually financing horrific acts after being informed that NGOs which ran shelter homes facilitating such activities were in fact funded by the government itself.
- **Why are Bollywood deals not registered? Asks Bom. HC:** While Indian Registration Act provides for mandatory registration of gift deeds, assignment of right over immovable property, sale, lease and license of a land or property, Bollywood industry continues to rely on stamp papers where agreements are antedated. Hence, Bom. HC opined that film rights are worth crores and registration should be made mandatory.
- **Don't show even morphed photographs of rape survivors:** Referring to the restraint observed by media in Thailand during the recent rescue of a football team from a flooded cave, the Supreme Court opined that there should be a complete ban on publication and telecast of even morphed images of minor rape survivors to protect their privacy after taking suo motu cognisance of alleged rape and sexual abuse of 30 minor girls in a shelter home run by a state funded NGO in Muzaffarpur, Bihar.
- **US urges SC to reverse order in Tata Plant Suit:** Trump administration has contended before the SC all international organizations based out of US should only be entitled to the same restrictive immunity that foreign governments possess, subject to suit for injuries arising out of commercial disputes. This for the first time that SC shall consider international organisation immunity, with the next hearing fixed in October.
- **Blanket Ban on the sale of firecrackers?¹:** After refusing to impose a blanket ban on sale of firecrackers in an earlier judgement, the SC has said that it will examine whether there should be a blanket ban on the utilization of firecrackers, especially in light of air pollution in Delhi touching danger mark.
- **Proposal of "Social Media Communication Hub" withdrawn by Centre²:** The move of centre for creation of Social Media Communication Hub to act as a surveillance and help in

¹<https://blog.scconline.com/post/2018/08/02/sc-blanket-ban-on-the-sale-of-firecrackers/>

²<https://blog.scconline.com/post/2018/08/03/proposal-of-social-media-hub-withdrawn-by-centre-ag-kk-venugopal/>

monitoring online activities of the government by way of a notification has been withdrawn, as informed by AG KK Venugopal to SC.

- **Assam NRC: “We Would Hold Both Of You In Contempt And Send To Jail”:** SC To NRC State Coordinator And Registrar General³: Reading the conduct of the above officers as highly improper after they issued statements in press with respect to modus operandi of raising objections and documents required for the same, the SC came down heavily on the officers and ordered them to seek directions of the court before putting out public statements.
- **SC to hear Petition Alleging Custodial Torture Of Lawyer & Activist Talib Hussain Tomorrow**⁴: After the rape, abduction and murder of an eight year old girl in Kathua district in January 2018, Talib had demanded a fair probe in the case. However, Talib was later arrested on charges of domestic violence after a complaint from his wife and also for rape after another woman accused him of rape. Talib’s cousin has now approached SC alleging third degree torture of worst kind by police authorities, causing life threatening injuries, a claim made on the basis of their visits to the jail. The SC is set to hear the petition in the upcoming week.
- **“Culture of Banning Books Directly Impacts Flow Of Ideas”, CJI Misra on Plea To Ban Malayalam Novel “Meesha”**⁵: A bench led by CJI Dipak Misra battled for literary freedom after it refused to ban the publication of a book describing temple going women in an obscene manner.

³<https://www.livelaw.in/breaking-assam-nrc-we-would-hold-both-of-you-in-contempt-and-send-to-jail-sc-to-nrc-state-coordinator-and-registrar-general/>

⁴<https://www.livelaw.in/sc-to-hear-petition-alleging-custodial-torture-of-lawyer-activist-talib-hussain-tomorrow/>

⁵<https://www.livelaw.in/culture-of-banning-books-directly-impacts-flow-of-ideas-cji-misra-on-plea-to-ban-malayalam-novel-meesha/>

2) HIGH COURT

- **Long term lease is covered by RERA:** After a critical analysis of salutary object of Real Estate Regulation and Development Act, 2016, Justice Phansalkar Joshi of Bom. HC held that exclusion of allotment given on rent does not amount to exclusion of long term lease. Hence, complaints for payment of compensation for a delay of six to seven years in possession of property could be decided by adjudicating officers under RERA Act.
- **Bom. HC allows rape survivor and murder convict to abort foetus:** A Nagpur bench of the Bom. HC has allowed a rape survivor convicted for murder and serving a life term in Amravati Central Jail to terminate her 12 week pregnancy.
- **Single Parenting a dangerous concept: Madras HC** Justice Kirubakaran expressed concern that the trend of raising single parents could have wide-ranging adverse effects over the society.
- **Biological Age Cannot Decide who is a child under POCSO:** In a significant order, Bom HC observed that to determine as to who is a child under Protection of Child and Sexual Offenders Act, mental age of a sexual abuse of victim is to be considered instead of biological age.
- **Bom. HC questions state's nod to DSK Uni:** Absolutely amazed and astonished after hearing about the existence of DSK World University Act, 2017, Bom HC expressed concern over red carpet support of government to private self-financed universities after students approached HC over fears that the management would not reopen college for new academic year.
- **Neighbour convicted of sexual assault gets 10 year imprisonment:** Rejecting the contention of the defence that prosecution's delayed recording of victim's statement was an instance of deliberate attempt to bolster case, Bom. HC ruled that trauma suffered by the child justifies delayed recording of her statement. Therefore, since there was mes rea involved, accused was sentenced to 10 years rigorous imprisonment under the provisions of POCSO and Indian Penal Code, 1860.
- **Bom. HC upholds civil court's relief to Muslim wife:** Justice Shalini Phansalkar Joshi upheld a civil court relief of grant of maintenance, mehr and a share in property to Muslim women under the Dissolution of Muslim Marriages Act, 1990 although the act does not specifically provide for these reliefs.

- **Uttarakhand HC strikes down rule denying maternity leave for third child:** Terming a rule denying maternity leave to government employees for third child as unconstitutional, HC held that the said rule was against the letter and spirit of the Constitution and fundamental, especially so against Article 42 of the Constitution.⁶
- **Commercial use of elephants banned in Uttarakhand:** Uttarakhand HC has banned the commercial use of elephants in the state and directed state forest department to rescue pachyderms deployed for commercial purposes within 24 hours.
- **To cover a relationship under Section 2(f) of Domestic Violence Act, possibility of a legal marriage is sine qua non⁷:** Dismissing a revision petition under Section 12 of the Domestic Violence Act, the Bom. HC interpreted the words “relationship in the nature of marriage” in Section 2(f) of the Act, the court held that not all live in relationships, but only those live in relationships in nature of marriage are covered by Section 2(f) of the Act. Hence, possibility of a legal marriage is a must.
- **A slum dweller, dispossessed during slum clearance, cannot claim alternative accommodation as a matter of right⁸:** In absence of a scheme or policy, Delhi HC held that there was no obligation on the state to provide to accommodation to dispossessed slum dwellers, except in case of urgency in slum rehabilitation enumerated in the policy.

3) PARLIAMENT

- **RTI/Lokpal: New Amendments Severely Weaken The Legislations Intended To Bring In More Transparency, Justice AP Shah Writes To PM Modi⁹:** Categorically elaborating on issues relating to Companies Act, amendments to electoral bonds, RBI Act, FCRA Act, Income Tax Act and amendment to Representation of Peoples Act, Whistleblowers Act, RTI and Lokpal, Justice A P Shah wrote a letter mentioning suggestions to the new amendments. One of

⁶<https://blog.scconline.com/post/2018/08/03/rule-turning-down-maternity-leave-for-third-child-held-unconstitutional-uttaranchal-hc/>

⁷<https://blog.scconline.com/post/2018/07/30/to-cover-a-relationship-under-section-2f-of-domestic-violence-act-possibility-of-a-legal-marriage-is-sine-qua-non/>

⁸<https://blog.scconline.com/post/2018/08/04/a-slum-dweller-dispossessed-during-slum-clearance-cannot-claim-alternative-accommodation-as-a-matter-of-right/>

⁹<https://www.livelaw.in/rti-lokpal-new-amendments-severely-weaken-the-legislations-intended-to-bring-in-more-transparency-justice-ap-shah-writes-to-pm-modi/>

the suggestions also included that CBI should immediately file appeal against orders of the Session Court in the Satyam case to restore public confidence that no one is above the law.

- **Parliament passes bill to treat homebuyers as creditors:** The Insolvency and Bankruptcy Code (Second Amendment) Bill, which was earlier passed by Lok Sabha, was approved by a Rajya Sabha by voice vote on Friday, 10 August, 2018. The bill allows homebuyers to be treated homebuyers as creditors.
- **LS passes bill to proliferate India as an arbitration hub:** The Arbitration and Conciliation Amendment Bill, 2018 was passed by the Lok Sabha on Friday, 10 August, 2018. Providing for time bound settlement of disputes, accountability of arbitrator and cost effective arbitration, Law Minister Mr. Prasad described it as a “momentous and important legislation.”
- **RS passes three bills in three hours:** The Rajya Sabha on Thursday, 09 August, 2018 passed SC & ST (Prevention of Atrocities) Amendment Bill, 2018 unanimously by voice vote which was followed by sloganeering from Congress over institution of Joint Parliamentary committee to enquire into Rafale deal. Despite noise in the house, National University Sports Bill and Homeopathy Central Council Amendment bill was passed through voice vote amidst slogans.
- **RS okays bill giving constitutional status to national backward classes panel¹⁰:** What seemed to be a major political milestone for the govt. in centre, RS unanimously passed a **bill** giving constitutional status to national backward classes panel. The bill assures no dilution of state powers and provides for the inclusion of a woman member in the panel.

OTHER NEWS

- **Supreme Court Judges elevation:¹¹** Chief Justice of the Madras High Court Justice Indira Banerjee, Chief Justice of the Orissa High Court Justice Saran and Justice K M Joseph will on Monday take oath as judges of the Supreme Court of India. Amidst controversy as to order of oath taking after several judges of the SC opining that Justice K M Joseph should be the first one to be administered oath as per seniority, the order will remain the same as above.

¹⁰<http://www.prsindia.org/billtrack/the-constitution-one-hundred-and-twenty-third-amendment-bill-2017-4725/>

See also <https://blog.scconline.com/post/2018/08/09/the-constitution-one-hundred-and-twenty-third-amendment-bill-2017/>

¹¹<https://www.livelaw.in/a-journey-through-notable-judgments-of-the-newly-sworn-in-sc-judges/>

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- **High Court Judges Elevation/Appointments:** Acting Chief Justice of the Bombay HC, Mrs. Justice V K Tahilramani has been sworn in as Chief Justice of Madras High Court, Acting Chief Justice of the Delhi HC Justice Mrs. Gita Mittal has been sworn in as Chief Justice of J&K High Court while Justice Ms. Sindhu Sharma was elevated as a judge of J&K High Court as well, marking a week of women power in judicial appointments. In addition, Justice Rajendra Menon has been sworn in as Chief Justice of Delhi High Court and Justice Annirudha Bose has been sworn in as Chief Justice of Jharkhand High Court.
- **Separate legislation for “Caste Discrimination among Indian Community” ruled out by UK Government¹²:** The UK government, as a part of its attempt to curb caste discrimination in Britain had gathered public views on how to ensure appropriate legal protection against caste discrimination. It released a statement that separate legislation to eliminate caste discrimination in Indian community was not necessary and the same issue could be addressed by emerging case laws.
- **Pay 290mn dollars to Cancer Patient: US Jury to Monsanto** A California jury has ordered Monsanto to pay 290 million dollars as damages to a groundsman in lieu of its failure to issue a warning that its weed killer RoundUp may make him vulnerable to cancer.
- **Chile’s Bachelet new UN Human Rights Chief:** Chilean President Michelle Bachelet was appointed as new UN Human Right Chief on Wednesday, 08 August, 2018 after Zeid Rad al Hussain from Jordan shall step down at the end of month after a four year term.
- **Repetitive changes to e-ITR forms irks taxpayers:** The I-T department’s mistimed revisions to e-ITR forms for salaried taxpayers have irked many as additional information required by such revisions will mandate re-filling certain data with professional help.
- **Form Panel to restore hot springs: NGT to Uttarakhand Govt.** Principal bench of NGT on Thursday, August 09, 2018 ordered the state to conduct a comprehensive survey of depleting hot springs in the state and suggest measures for their restoration.

¹²<https://blog.sconline.com/post/2018/07/30/no-separate-legislation-for-caste-discrimination-among-indian-community-ruled-out-by-uk-government/>

(B.) CURRENT CASES IN INDIA

▪ SABARIMALA TEMPLE ENTRY

Day 8: Amicus Curiae K Ramamoorthy bolstered the age old practice of restricting menstruating women in the age group of 10 to 50 years from accessing the Sabarimala temple. When questioned as to how in certain cases women were allowed to enter the temple through the northern entrance, K Ramamoorthy rebutted the argument by stating that such practice was an anomaly because it came in the teeth of Article 14 of the Constitution. The post lunch session saw Indira Jaising arguing that such a ban on women was akin to untouchability. She also contended that for a custom to be valid, it must cross the threshold of Article 13 which requires pre-constitutional laws to be tested on the touchstone of fundamental rights. After hearing Senior Advocate P.V. Surendranath and Jaideep Gupta, the court reserved its judgement in the case.¹³

▪ ADULTERY

Day 1: On August 01, 2018, Supreme Court commenced hearing on the petition praying that Section 297 of Indian Penal Code and Section 198(2) of the Criminal Procedure Code be altogether struck down. While the rationale for criminalising consensual sex was also deliberated upon, the apex court bench observed that Section 497 shall be declared unconstitutional if it fails the test of Article 14. Centre put forth its stand by contending that declaring Section 497 unconstitutional shall be against the ethos of Indian society and the sanctity of institution of marriage.¹⁴

¹³ <http://www.livelaw.in/supreme-court-reserves-judgment-in-sabarimala-womens-entry-case/>

¹⁴ <http://www.livelaw.in/adultery-day-2-session-1absurdity-of-s-497-lies-in-the-fact-that-it-legalises-adultery-if-committed-with-the-consent-husband-is-the-wife-being-treated-as-chattel-justice-indu-malhotra/>

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Day 2: This day witnessed certain remarks from the bench which referred to the section as absurd as it treated a married woman like a chattel. Moreover, the scenario of a married man having sexual intercourse with an unmarried woman not falling within the purview of the section is manifestly arbitrary, opined the bench. Advocate Kaleeswaram Raj, on behalf of the petitioner contended that Section 497 violates Articles 14, 15 and 21 of the Constitution by relying on the choice jurisprudence evolved in *Common Cause v. Union of India* and *Shakti Vahini* case.¹⁵ Mr. Raj unleashed that the section immunised woman party to offence even as an abettor. At this juncture, Senior Advocate Meenakshi Arora submitted that Law Commission debates reveal that the logic behind the culpability of the man was to prevent the husband of the woman involved from poisoning or killing her. The second half of the day saw Advocate Arora reflecting on the historical context of adultery as an offence. The hearing concluded for the day with Justice Chandrachud reiterating that sexual autonomy is retained even after marriage.¹⁶

Day 3: This day saw an exchange of ideas on making Section 497 gender neutral. However, the bench was opined that the crux of the issue was if adultery should be a criminal offence at all.¹⁷

▪ **DISQUALIFICATION OF LEGISLATORS ON FRAMING OF CHARGE**¹⁸

A five judge constitutional bench of the apex court commenced hearing on the pleas calling for disqualification of legislators who have been chargesheeted. Using statistics as a weapon, the petitioners argued that because of the soar in criminalisation in democracy, right to vote is more than a statutory right, but a constitutional right if not a fundamental right flowing from Article 325 and 326 of the Constitution. However, the bench, after chipping in on qualification and disqualification as envisaged in the Constitution, suggested bolstering of the offence and setting

¹⁵ <http://www.livelaw.in/adultery-day-2-session-1absurdity-of-s-497-lies-in-the-fact-that-it-legalises-adultery-if-committed-with-the-consent-husband-is-the-wife-being-treated-as-chattel-justice-indu-malhotra/>

¹⁶ <http://www.livelaw.in/adultery-day-2-session-2-one-retains-sexual-autonomy-even-after-marriage-the-right-to-say-no-is-not-forfeited-by-marriage-justice-chandrachud/>

¹⁷ <https://www.livelaw.in/adultery-affects-sanctity-of-marriage-asg-what-is-the-sanctity-when-the-husband-give-consent-for-intercourse-asks-chandrchud-jsc-reserves-judgment/>

¹⁸ <https://www.livelaw.in/disqualification-of-legislators-on-framing-of-chargeday-1-can-a-person-against-whom-murder-charges-have-been-framed-be-allowed-to-take-oath-nariman-j/>

See also <https://www.livelaw.in/adultery-day-2-session-1absurdity-of-s-497-lies-in-the-fact-that-it-legalises-adultery-if-committed-with-the-consent-husband-is-the-wife-being-treated-as-chattel-justice-indu-malhotra/>

up for fast track courts with day to day trials to achieve fasttrack judgements. Once the judgement is delivered, the legislator shall automatically stand disqualified, opined the bench. AG KK Venugopal submitted that legislators, being entitled to Article 21, have the right to undergo the gamut of trial and defence. If the oath supplements allegiance to Constitution and law, legislators can stand by the Constitution even when guilty.

▪ **ARTICLE 35A**

The Supreme Court shall hear whether the challenge to validity of Article 35A should be referred to the Constitution Bench on August 27, 2018. Article 35A confers on the State legislature a carte blanche to determine permanent residents of the state and grant them special rights and privileges in state public sector jobs, acquisition of property within the state, scholarships, public aid and other welfare programmes. The state of Jammu and Kashmir sought a dismissal of the petitions challenging the Article contending that the issues enumerated therein were no longer res integra after being extensively discussed by two constitutional benches.

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(C.) CASES ACROSS THE POND

Date	Case Name	Ratio Decidendi
15 June 2018	<u><i>Trinity Western University v. Law Society of Upper Canada</i></u> ¹⁹	<p>The case pertains to validity of the community covenant of the evangelical University which refrains “sexual intimacy that violates the sacredness of marriage between a man and a woman”, due to which Law Society of Upper Canada denied accreditation to the University’s law school.</p> <p>The Supreme Court of Canada in a 7-2 decision held that LSUC “had the jurisdiction to consider the effect of the mandatory Community Covenant Agreement in refusing to accredit the proposed law school”.</p>
27 June 2018	<u><i>Janus v. American Federation of State, County, and Municipal Employees, Council</i></u> ²⁰	<p>The case decides the power of public sector labour unions to collect fees from public sector non-union members, who refuse to join and oppose the principles of the union like collective bargaining.</p> <p>The Supreme Court of US held that “The State’s extraction of agency fees from non-consenting public-sector employees violates the First Amendment.”</p>
30 July 2018	<u><i>R (on the application of Tag Eldin Ramadan Bashir and others) (Respondents) v</i></u>	<p>The case discusses the obligation on UK under the United Nations Convention Relating to the Status of Refugees, 1951 and 1967 Protocol in respect of Sovereign Base Areas of UK,</p>

¹⁹<https://scc-csc.lexum.com/scc-csc/en/item/17141/index.do?r=AAAAAQAHdHJpbml0cQE>

²⁰https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf

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	<p><i>Secretary of State for the Home Department (Appellant)</i>²¹</p>	<p>namely Akrotiri and Dhekelia (erstwhile part colonial Cyprus) and whether refugees in such areas are entitled to be resettled or admitted as a matter of right in UK.</p> <p>In the interim judgment passed by UK Supreme Court, it was observed that “the interaction of the Convention and domestic public law is a matter of some importance and difficulty, both in this case and more generally”.</p>
30 July 2018	<p><i>An NHS Trust and others (Respondents) v Y (by his litigation friend, the Official Solicitor) and another (Appellant)</i>²²</p>	<p>The UK Supreme Court held that it is not mandatory to obtain court order to withdraw clinically assisted nutrition and hydration to a person with a prolonged disorder of consciousness when the clinical team and the patient’s family agreed that it was not in the patient’s best interests to continue treatment. It observed that “It is lawful to give treatment only if it is in the patient’s best interests. If a doctor carries out treatment in the reasonable belief that it will be in the patient’s best interests, he or she will be entitled to the protection from liability conferred by section 5 of the Mental Capacity Act (“MCA”) 2005”.</p>

²¹<https://www.supremecourt.uk/cases/docs/uksc-2017-0106-judgment.pdf>

²²<https://www.supremecourt.uk/cases/docs/uksc-2017-0202-judgment.pdf>

(D.) VITAL CONSTITUTIONAL QUESTIONS

**BORROWING POWERS OF THE UNION AND STATE: A RIVER WITH NO
TRIBUTARIES²³**

The Central Government can borrow within such limits, if any as maybe fixed by the Parliament by law. Under Article 292 of the Constitution, the executive power of the Union extends to borrowing upon the Consolidated Fund of India within such limits, if any, as maybe so fixed. Similarly, under Article 293(1), the executive power of the state extends to borrowing within India upon the Consolidated Fund of India within such limits, if any, as maybe from time to time be fixed by the State Legislature and to the giving of guarantees, if any, as the State Legislature may fix by law.

Interestingly though, no quantitative restriction has been proliferated on loans by the Parliament or State Legislature, thus saving to Centre and the States, unbridled and unregulated borrowing powers.

The 11th Finance Commission has observed in connection with the borrowing powers of the Centre and States²⁴:

“A time has come when, as a part of the overall thrust towards fiscal responsibility, concrete steps are taken under the provisions of Articles 292 and 293. In particular, Parliament and respective State legislatures may consider fixing limits on total borrowing as well as on guarantees to be given by them.”

The Fiscal Responsibility and Budget Management Act, 2003 was enacted in 2003 to reduce fiscal deficits. However, the said act continues to remain an example of a legislation enacted but never implemented in its spirit.

The question of borrowing powers arose in a court of law only once before a bench of the Kerala High [Court](#). This question to be addressed was whether the provisions embodied in Articles 292 and 293 of the Constitution debar the Central and State Governments from borrowing any money

²³ This write up is authored by Varad S. Kolhe, student in IV B.A.LL.B. at ILS Law College, Pune.

²⁴ https://fincomindia.nic.in/writereaddata/html_en_files/oldcommission_html/fcreport/notedes.pdf

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beyond the amount standing to their credit in the Consolidated Fund. The court held that the above articles are merely enabling provisions and do not limit or place an embargo on the borrowing powers. Such limit or embargo is to be placed only by law enacted by Parliament or state legislatures, especially when the Consolidated Fund is neither a concrete figure nor does it represent the wealth of India.

Thus, it is vital that Parliament and State legislatures effectuate its amending powers and give effect to recommendations of the Finance Commission and observations made above in *Mathew v. Union of India*, ending a perennial streak of unbridled, unregulated borrowing powers.

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(E.) INTERSECTION(S) OF PUBLIC LAW

DECRIMINALIZING BEGGING: A VERDICT MUCH AWAITED²⁵?

“From time to time, governments declare wars on beggars. These despised and dispensable individuals, who live customarily by alms, can never hope to win a battle against such a powerful adversary of the state. [...] They just lie low, bide out their time and return eventually to their shamed vocation. No paths are open to them. [...]”²⁶

[...] *“Is this inspirational city (Delhi) one which criminalises its most destitute citizens, drives them away or locks them up? Or is it a city which truly cares?”²⁷* asked Harish Mander, in 2009 when Delhi government decided to come down heavily on beggars in order to achieve its aspirations of depicting itself as ‘world class’ destination.

Nine years down the lane, a division bench of the Delhi High Court in a writ petition i.e. *Harish Mander and Anr. v. Union of India and Ors.*²⁸, decriminalized begging on August 08, 2018.

Historical Context

The Bombay Prevention of Begging Act was passed by the State of Bombay in 1959. 19 other states and one Union territory later applied this pied piper legislation of Bombay, verbatim or in their own versions. It has been operational in the national capital since 1961 after its application in 1960. What could have been the legislative intent criminalizing begging? The crux of this legislative intent was that the state ran a deterrence theory to prevent begging mafias/organized crime coteries.

After-effects of the Bombay Prevention of Begging Act, 1959(hereinafter the Act)

²⁵ This write up is authored by Varad S. Kolhe, student in IV B.A.LL.B. at ILS Law College, Pune.

²⁶<https://www.thehindu.com/todays-paper/tp-features/tp-sundaymagazine/The-war-against-begging/article15941116.ece>

²⁷ <https://www.thehindu.com/todays-paper/tp-features/tp-sundaymagazine/The-war-against-begging/article15941116.ece>

²⁸ <http://lobis.nic.in/ddir/dhc/GMI/judgement/08-08-2018/GMI08082018CW104982009.pdf>

Section 2(i) of the Act defined begging. It meant having no visible means of subsistence and wandering about or remaining in any public place in such condition or manner, as makes it likely that the person doing so exists by soliciting or receiving alms; entering on any private premises, allowing oneself to be used as an exhibit, for the purpose of soliciting or receiving alms and includes singing, dancing, fortune telling, performing, exposing or exhibiting with the object of obtaining or extorting alms. Even more, Section 6 of the Act provides that those found begging were to be detained at Certified Institutions for a period of one to three years. Second time offenders stood in the face of imprisonment and detention for 10 years, thus also supplementing rehabilitative logic. Section 11 of the Act provides penalty for causing persons for employing or causing persons to beg or using them for the purpose of begging. Ultimately though, for all the long years these laws remained in force, their enforcement was marked by abuse of power by police authorities as majority brought before the court were not part of criminal coteries, but abject products of ‘compelled to beg in poverty.’ While courts exercised pardon powers granted in Section 5 of the Act, state quibbled against such pardons.

The Case of Harish Mander: Analyzing the Constitutional Law Judgement

The dire need to radically re-shape anti-begging laws in India interestingly was discussed not only by Harish Mander in his [article](#) in 2009, but even earlier [here](#) and [here](#). However, the Delhi High Court on August 08, 2018 categorically held that all sections of the Act except Section 11 are contrary to Article 14 and 21 of the Constitution. They are violative of Art. 14 as no distinction was made between voluntary and non-voluntary begging, thus rendering the classification arbitrary. An over-inclusive definition was also further manifestly arbitrary and thus not in consonance with Art. 14 again (paragraphs 14-19). Detention of persons to merely gauge the cause of poverty (paragraphs 27-31, 33) was violative of Article 21 and since alleviating poverty is responsibility of the state, criminalizing does not fulfil that responsibility at all (paragraph 39). Astonishingly and unfortunately, despite the argument being brought on record, the court has refused to discuss Article 19(1) leaving us in no man’s land probably wondering if the court is of the view that speech as such does not protect begging.

Conclusion

We are left with a few more points to ponder over. To what extent can constitutional limits be imposed on criminalisation of conduct, especially in reference to paragraphs 36 and 46 of the judgement. In the end, I hope the decision of the Delhi HC in this writ petition serves as a bellwether of reform throughout the country.

For more clarity and in-depth analysis, kindly visit:

- www.lawjournals.org/download/143/3-3-51-711.pdf
- <http://theprooffofguilt.blogspot.com/>
- <http://blogs.lse.ac.uk/humanrights/2017/07/11/prohibition-of-beggary-acts-criminalizing-a-way-of-life-and-the-need-to-amend-these-laws/>
- <https://www.financialexpress.com/opinion/begging-change-delhi-high-court-did-well-to-decriminalise-begging/1277218/>

(F.) APPURTENANT SCHOLARSHIP

▪ **Courts of India: Past to Present, Supreme Court of India**

This book is dedicated to the history of courts in India with contributions from noted scholars and jurists. We are happy to acknowledge that one of our faculty editors, Dr. Sanjay Jain, has also made a contribution focussing on courts in India in medieval period.

▪ **Directive principles and the expressive accommodation of ideological dissenters, Tarunabh Khaitan²⁹**

The Article provides a fresh perspective to Directive Principles, which is “considered at best to be interpretive aids in constitutional adjudication, and at worst as constitutional dead weight”. The article views them as a useful tool for ideological dissenters.

▪ **Can a President Self-Pardon? – A Comparative Study Between the US and India, Priti³⁰**

The Article discusses the unbridled powers of the President in US and India to grant pardon and dwells into self-pardon and its Constitutional accommodation, given implied contradiction with principles of natural justice.

▪ **Turning the Rule of Law into an English Constitutional Idea, John W.F. Allison³¹**

The Article sheds light on the works of Dicey’s in the English and Commonwealth legal context, in order to transgress the opinion which limits his works to only invention or popularisation of ‘Rule of Law’.

▪ **The Morality of Administrative Law, Cass R. Sunstein and Adrian Vemuele³²**

The Article applies the Fullerian doctrine of morality which consists of minimal internal morality of duty and a higher morality of aspiration, with greater focus on the former, in the context of Administrative Law.

²⁹*International Journal of Constitutional Law*, Volume 16, Issue 2, 15 June 2018, Pages 389–420

³⁰*The IUP Law Review*, Vol. VII, No. 4, October 2017, pp. 62-73

³¹University of Cambridge Faculty of Law Research Paper No. 49/2018

Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3219209

³²131 Harv. L. Rev. 1924 (2018)

Available at <https://harvardlawreview.org/2018/05/the-morality-of-administrative-law/>

(G.) PUBLIC LAW ON OTHER BLOGS

- 1) <https://indconlawphil.wordpress.com/2018/08/09/guest-post-delhi-hc-decriminalises-begging-an-outlier-or-the-start-of-nationwide-reform/>
- 2) <https://indconlawphil.wordpress.com/2018/08/07/death-by-a-thousand-cuts-freedom-of-speech-injunctions-and-the-ramdev-affair/>
- 3) <https://indconlawphil.wordpress.com/2018/08/05/the-meaning-and-limits-of-democracy-under-the-constitution-perspective-on-nct-of-delhi-v-union-of-india/>
- 4) <https://indconlawphil.wordpress.com/2018/08/05/guest-post-the-adultery-challenge-three-roads-ahead/>
- 5) <https://indconlawphil.wordpress.com/2018/08/03/guest-post-on-the-gendered-criminalisation-of-adultery/>
- 6) <https://indconlawphil.wordpress.com/2018/08/01/guest-post-parliamentary-privileges-and-the-transformative-constitution-a-response-to-karan-lahiri/>
- 7) <http://www.scotusblog.com/2018/08/empirical-scotus-the-big-business-court/>
- 8) <https://blog.sconline.com/post/2018/08/04/pro-bono-work-a-case-for-its-integration-into-legal-services-in-india/>
- 9) <https://blog.sconline.com/post/2018/07/25/no-reason-for-bureaucrats-to-shirk-decision-making-now/>
- 10) <https://blog.sconline.com/post/2018/07/17/interpretation-of-first-referral-point-in-assam-accord-case/>
- 11) <https://blog.sconline.com/post/2018/08/07/the-lokpal-act-2013-still-waiting-for-the-sunrise/>
- 12) <https://www.livelaw.in/in-a-first-supreme-court-has-three-sitting-woman-judges-today/>
- 13) <https://www.livelaw.in/supreme-imbalance-gender-disparity-in-apex-court/>
- 14) <https://www.livelaw.in/people-tell-me-im-breaking-the-glass-ceiling-but-ive-miles-to-go-before-i-sleep-justice-gita-mittal-bids-farewell/>
- 15) <https://www.livelaw.in/seniority-fiasco-of-justice-k-m-joseph/>

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- 16) <https://www.livelaw.in/eroding-democratic-values/>
- 17) <https://www.livelaw.in/phone-tapping-in-india-a-need-to-revisit-law/>
- 18) <https://www.livelaw.in/centres-scramble-for-one-upmanship-over-judicial-appointments/>
- 19) <https://www.livelaw.in/data-protection-bill-govts-yet-another-attempt-to-weaken-rti-act-in-the-name-of-privacy/>
- 20) <https://www.livelaw.in/father-son-face-off-in-supreme-court/>
- 21) <https://www.livelaw.in/much-like-an-earlier-rti-response-govt-dodges-question-on-justice-narayan-shuklas-removal-in-lok-sabha/>
- 22) <https://lawandotherthings.com/2018/06/2017-in-review-how-did-the-supreme-court-fare-on-the-question-of-fundamental-rights/>
- 23) <https://lawandotherthings.com/2018/06/the-inter-linking-of-rivers-project-eroding-the-constitution-one-river-at-a-time/>
- 24) <http://theproofofguilt.blogspot.com/2018/08/delhi-hc-decriminalises-begging-outlier.html>
- 25) <http://theproofofguilt.blogspot.com/2018/08/no-swords-but-absolute-shield-indias.html>

(H.) MESMERIZING QUOTES

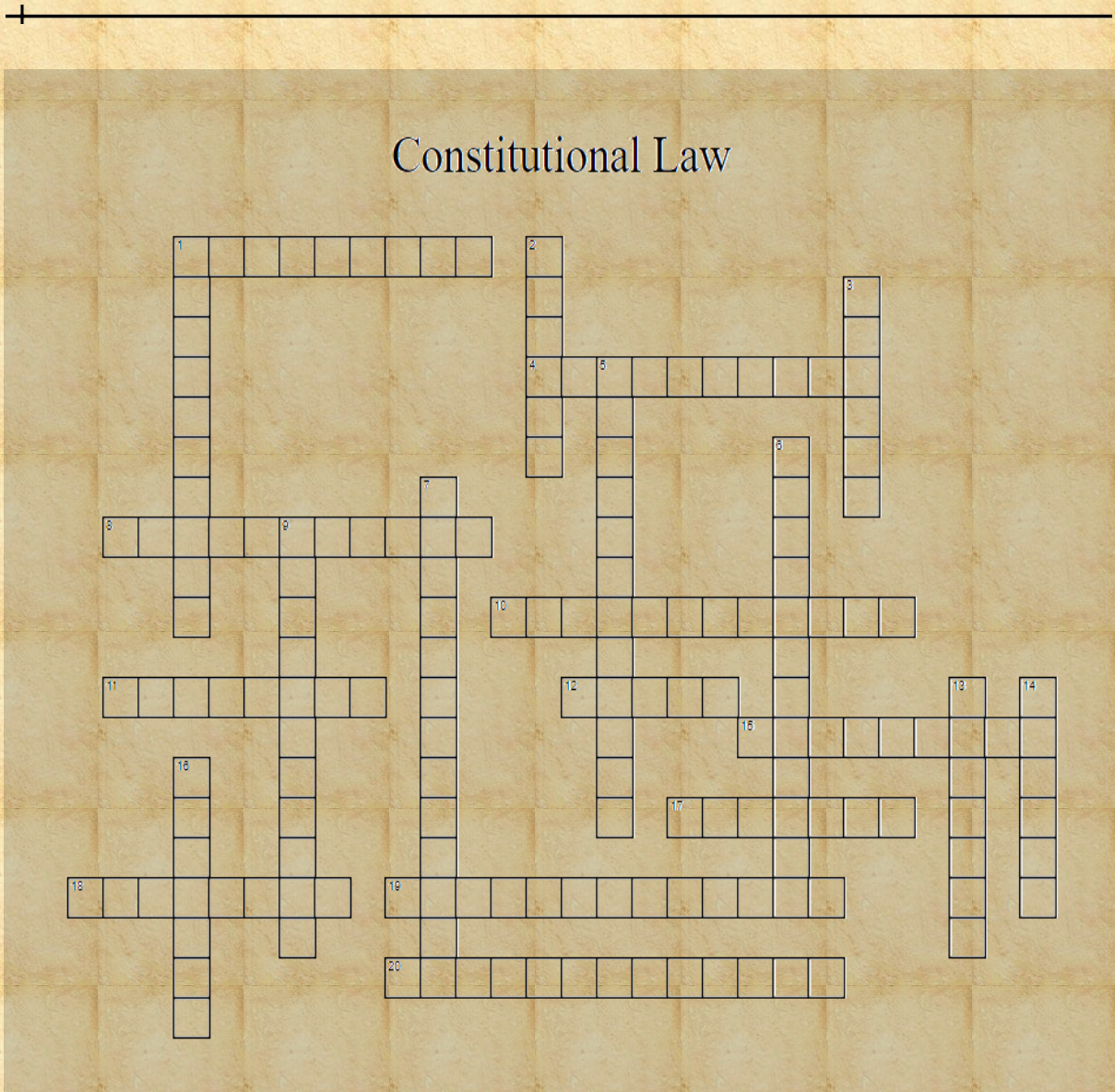
- **Justice Louis D. Brandeis, dissenting, *Olmstead v. United States*, 277 US 479 (1928)**

“Experience should teach us to be most on our guard to protect liberty when the Government’s purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

- **Justice H.R. Khanna, Making of India’s Constitution**

"If the Indian constitution is our heritage bequeathed to us by our founding fathers, no less are we, the people of India, the trustees and custodians of the values which pulsate within its provisions! A constitution is not a parchment of paper, it is a way of life and has to be lived up to. Eternal vigilance is the price of liberty and in the final analysis, its only keepers are the people."

(I.) CONSTITUTIONAL LAW CROSSWORD³³



Note: Kindly mail the solutions of this crossword to publiclawbulletin@gmail.com. Individuals who send the first two mails (in time) by 16 August, 2018 emanating all correct solutions shall be awarded letters of appreciation.

³³ The crossword is created, designed and prepared by Prachi Acharya, Ayush Wadhi, Pranay Jaiswal and Ashok Pandey, student members of the Centre for Public Law at ILS Law College, Pune.

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ACROSS

- 1 The Constituent Assembly had these many number of Committees.
- 4 The doctrine that was evolved in the case of *Bellamy v. Sabine*.
- 8 A judgement ignoring relevant statutory provisions and precedent is called
- 10 According to this doctrine, a law is invalid only to the extension of the inconsistency with relevant Fundamental Rights.
- 11 Supreme Court in a recent landmark Judgement said "Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification". This decision was delivered after it was appealed from the High Court.
- 12 The minimum number of parliamentarians required to initiate the NO-Confidence Motion against the Cabinet of ministers.
- 15 The original Petitioner in the recent Right to Privacy judgement was a Retired Justice of this High Court.
- 17 The doctrine which would not apply to the post constitutional laws governed under Article 13(2).
- 18 The Muslim Women (Protection of Rights on Divorce) Act, 1986 was an aftermath of this landmark Supreme Court Judgement.
- 19 He was the author of the landmark High Court Judgement which acted as a catalyst to the declaration of 1975 Emergency.
- 20 The appeal that lies from a single judge bench to divisional judge bench of the same High Court.

DOWN

- 1 This Constitutional Amendment reduced the voting age from 21 years to 18 years.
- 2 The Constitution (One Hundred and First Amendment) Act, 2016

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- added an article in part of the constitution.
- 3 Fundamental Duties in our Constitution is derived from this country's Constitution.
 - 5 The legal principle of determining points in litigation according to precedent.
 - 6 This theory renounces Supernatural Authority and views nature of laws based on judicial decisions.
 - 7 The doctrine that grants inherent power to the state by which it protects the people who are unable to protect themselves.
 - 9 The power entrusted in the legislature to propose amendments and make revisions to the Constitution.
 - 13 The Commission which was established to examine the relationships and balance of power between Centre and Public Law.
 - 14 The Commission that was established to "identify the socially or educationally backward classes" of India.
 - 16 Supreme Court guidelines concerning Sexual Harassment at Work place.

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CONTACT US

For any queries, insights, feedback, contributions, suggestions and advice, kindly write to us at publiclawbulletin@gmail.com. We eagerly look forward to hear from you.

Feel free to reach out to our Student Editors at:

Saranya Mishra

V B.A.LL.B.

ILS Law College, Pune

randomlyexisting@gmail.com

Varad S. Kolhe

IV B.A.LL.B.

ILS Law College, Pune

kolhevarad27@gmail.com

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