

# SOLSTICE

THE SCHOOL OF LAW MAGAZINE  
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DECEMBER, 2021

## UN-INTERNEED #unfiltered LAW REVIEW

Panoramic perspectives on the latest  
legislations



# FOREWORD

Dear SOL Patrons,

The Publication Committee, SOL is elated to present to you the second issue of the second volume of the SOL Magazine SOLstice, this time, in the form of a law review curated by members of the Publication Committee. This issue trysts with numerous debates in law, ranging from the contentious Transgender Act to the much-debated new Information Technology Rules and the intriguing recent consolidation of the labour codes. The members of the Publication Committee have, once again, outdone themselves in creating a wonderful compilation of legal literature that is worthy of following five issues of the new Publication Committee Monthly Newsletter “Thirty: The Legal Gauge” that delivers the latest legal news and updates curated by our members to SOL inboxes each month.

The Committee has always been immensely grateful to our Associate Dean Prof. (Dr.) Saurabh Chaturvedi for rendering unending support to all our undertakings. It is with his encouragement and efforts that the Committee was recipient of the high praise of a feature in our Vice Chancellor’s Chronicle earlier this month. The Publication Committee is also appreciative of the support it has received from our Director, Dr. P.N Mukherjee, its Faculty Mentor Prof. Preethi Kavilikatta, the Student Council of Law, NMIMS Navi Mumbai’s Campus Ambassadors and the Website Team.

A second portion of this issue of SOLstice Volume II Issue II contains a comprehensive Internship Review Segment “Un-Interned” for the benefit of the student community. “Un-Interned” is brought to School of Law by the Publication Committee, SOL in collaboration with the Placement Committee, SOL and the Public Relations Committee, SOL. “Un-Interned” intends to give students of SOL an overview on various experiences that their peers have had while holding internship positions with different organisations in order to promote them to make informed decisions based on their fields of interest in the coming internship seasons.

We wish you a pleasant and enlightening read.

Niharika Ravi  
Editor-In-Chief  
On Behalf of the Publication Committee, SOL

# 04

## Law Review

The Transgender Persons (Protection Of Rights) Act of 2019.

The New IT Rules- A Simultaneous Increase in Accountability and Decrease in Freedom of Speech.

How the Prohibition of Unlawful Religious Conversion Ordinance, 2020 made devastating intrusions on human rights.

With Great Power comes Great Responsibility; the Increasing Need for Realisation by the Media.

New Labour Codes: A seesaw of Employer and Employee Rights in India.

The Insolvency and Bankruptcy Code (Amendment Bill), 2021: Paving the way to a debtor in control model of restructuring.

BIBLIOGRAPHY

# 28

## Un-Interened

### #Unfiltered

# 47

## Editorial Board

**Apex Members**  
**Content Researchers**  
**Reporters**  
**Designers**  
**PR Representatives**

# 51

## Other Publications

**Monthly**  
July 2021  
August 2021  
September 2021  
October 2021  
November

**Solstice Volume 2 Issue 1**

# LAW REVIEW

Panoramic perspectives on the  
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# THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT OF 2019

SAUMYA KRISHNAKUMAR & JASMITA VERMA

Transgender people have struggled for rights for centuries and the rights of transgender persons have been in jeopardy in India since British times. Antiquated and anachronistic British laws have led to wholesale discrimination of the people who were a part of the community.

Even after India received independence from the British and their suppressive rule, people of the transgender community have been subjected to discrimination, harassment and have also been treated as second class citizens in their own country.

## THE TRANSGENDER (PROTECTION OF RIGHTS) ACT, 2019

The Transgender (Protection of Rights) Act, 2019, was passed by the Parliament of India with the intention of protecting the rights of transgender people and their welfare and other related matters. The bill was given assent to by the President of India on December 5th, 2019. It came into effect on January 10th, 2020 following a notice in the Gazette on the same day. In the wake of a series of public protests against the 2016 and 2018 Transgender (Protection of Rights) bills, the 2019 Act has eliminated a number of its analytically criticised provisions.

The provisions of the 2019 Act outlaw transgender discrimination. Similar to the 2018 Bill, the 2019 Act incorporates provisions for all intersex people, hijras, jogtas, and kinnars within its definition of transgender people, trans-men, trans-women, and queer-gender, although these are the last words that are left unspecified. The 2019 Act and the 2018 Bill define a transgender person as someone whose gender does not coincide with the one assigned to them at birth.

Under the provisions of the 2019 Act, a transgender person can apply to the District Magistrate for a "change of gender certificate" which gives them the right to change their gender identities on their respective birth certificates and have all the documents adequately updated. However, similar to the provisions of the 2018 bill, a transgender person can only be identified as a man or a woman after applying for an updated certificate to a District Magistrate, post-sex reassignment surgery limiting the right to self-identification that was vouched for by the landmark 2014 NALSA v. UOI judgment.

The 2019 Act also protects transgender children and hence provides for the concerned provinces and institutions to produce adequate policies to ensure the well-being of all transgender people. Akin to provisions of the 2018 bill, under the provisions of the 2019 Act, transgender children may be separated from their families by Court order. However, unlike the previous bills, the 2019 Act does not provide for the reservation of transgender people in educational institutions and occupations. The 2014 bill provided for 2% reservation at educational institutions and public employment. Further, similar to the 2018 Bill, the 2019 Act provides for penalties for crimes against transgender people, which means imprisonment for a term not less than six months, but which may exceed two years and would also involve a fine. The 2019 Act and the 2018 Bill also provide for the constitution of a National Council for Transgender Persons.

## WHAT DO ACTIVISTS HAVE TO SAY ABOUT THE ACT?

The new law claims to defend transgender rights, but many trans activists believe it accomplishes the opposite. They think it is a major setback for India's already vulnerable transgender community, destroying much of the progress made in recent years. The law comes a little over a year after the Indian Supreme Court decriminalised homosexuality in a landmark judgement.

The Transgender Persons (Protection of Rights) Bill prohibits discrimination against transgender people in areas such as education, employment, and the right to rent or purchase a home. It also grants transgender people the "freedom to self-perceived identity" but compels them to register with the Government if they wish to be labelled "transgender." If a transgender person wishes to be legally recognised as a transgender man or transgender woman, they must provide documentation confirming a change in sex surgery.

Transgender activist Grace Banu called the bill a "murder of gender justice" during a press conference in Delhi the day after it was passed.

The Transgender Persons (Protection of Rights) Act of 2019 was expected to be the culmination of the community's protracted fight to get its rights recognised by parliament. However, transgender activists claim that the Act undermines many of the advances made by the community following the NALSA (National Legal Services Authority) decision in 2014.

The Supreme Court panel had asked for legislation to protect transgender people's rights when it handed down its decision in the NLSA v. Union of India case in 2014. "Non-recognition of the identity of Hijras/Transgender people in various legislations denies them equal protection of the law, and they face widespread discrimination," the bench stated. While the NLSA verdict permitted self-identification of gender, the 2019 Act grants the District Magistrate (DM) the ability to recognise a person as trans. The NLSA ruling also stated that requiring SRS (Sexual Reconstruction Surgery) was unethical and unlawful. Emphasis was given to the importance of gender self-determination to one's individuality and dignity. The 2019 Act, on the other hand, stipulates that in order to identify as male or female, a person must provide proof of surgery before a Magistrate. Activists argue that this provides the DM with a great deal of authority, which might lead to abuse and arbitrariness.

The 2019 Act further codifies discriminatory laws by making sexual assault of transgender people punishable by jail for "not less than six months but which may extend to two years and with fine." whereas the punishment for rape against women under the Indian Penal Code (IPC) is "not less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable for fine."

Furthermore, the 2019 Act, which was intended to prohibit discrimination against transgender people by other persons or entities, has no mention of a sentence for discrimination. It specifies that if a transgender person's immediate family cannot care for them, the individual may be placed in a rehabilitation centre with a Court order that violates Article 21, which ensures the Right to Life and Dignity. The 2019 Act fails to acknowledge transgender people's ability to make their own decisions.



## MISSING KEY PROVISIONS-

The Supreme Court had asked for transgender individuals to be treated like other backward classifications in the 2014 precedent, but such a clause is absent from the bill.

Education and employment protections are also hastily combined under a welfare clause. According to the activists, there is a lack of clarity on whom to contact in the event of discrimination or harassment. There is not a single mention of how a transgender person might seek justice.

Chapter 8 outlines four types of offences, ranging from denial of access to public venues to sexual assault, but stipulates that the sentence cannot exceed two years. Activists contend that this is discriminatory and not sufficient.

## THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) RULES, 2020

On April 18, 2020, the Government published the first draft for the Transgender Persons (Protection of Rights) Rules, 2020, allowing the Government to seek comments and suggestions in this regard from the public.

There was, evidently, a gap between the judgment in the NLSA case and the Transgender Persons (Protection of Rights) Act of 2019. The Transgender Persons (Protection of Rights) Rules of 2020 was an attempt by the Government to bridge this gap and make the Act more effective and worthwhile.

The Ministry of Social Justice and Empowerment seems to have been in a hurry to implement the Transgender Persons (Protection of Rights) Act, 2019, as can be understood from the fact that regardless of the several widespread protests, the Act received the assent of the President on December 5, 2019. Several petitions challenged the Constitutional validity of the Act. Despite this, the Ministry tried to operationalise the Act by publishing the two drafts of its Rules - one released in April 2020 and one in August 2020. On September 25, 2020, the Ministry notified the promulgation of the operation of the Transgender Persons (Protection of Rights) Rules 2020.

One of the first aspects of the Rules is the absence of a definition of discrimination. In the second draft of the Rules published in August 2020, the term 'discrimination' was explicitly defined, and this definition was also appreciated. Regardless of the acclaim it brought, this definition was removed, and the final Rules published in September 2020 did not contain any definition for the term 'discrimination'.





Applicants wanting a revised Certificate of Identity and who have been assisted medically in the gender reassurance process must submit a certificate issued by the Superintendent of Health or Chief Medical Officer of that medical facility to the District Magistrate. The Regional Magistrate is only allowed to verify the documents and cannot order a physical examination, as provided under Rule 6 of the Rules.

It is important to note that Rule 6 uses the term 'medical intervention', as opposed to the term 'surgery' as has been used in Section 7 of the Act. 'Medical interventions' are defined in Rule 2. They include any gender-affirming therapeutic interventions made by a person to facilitate the transition to their self-identified gender, including counselling, hormone therapy, and surgical interventions if any. The Rules attempt to extend the ambit of this matter; it remains to be seen how the provisions of the Act and the Regulations will coexist.

## CONCLUSION

The law alone cannot ensure equality in every sphere. There have to be some more stringent measures taken to implement these said laws, and the Government also has to take some measures to make sure that transgender people are included in the mainstream Indian community.

Since the notification of the Act and the consecutive Rules, there has been no training or sensitisation made available to the District Magistrates, who are the focal point in all the applications. Many District Magistrates are unaware of the duties imposed upon them through the Rules. In addition, the differing criteria in the Act and the Rules is bound to create confusion concerning its implementation. These variations make it difficult for transgender communities to avail the rights guaranteed to them via the specified Act and the rules this article focuses on. However, despite the flaws in the Act, by enacting the Transgender Persons Act, India has taken a step forward towards granting and preserving the identity and rights of transgender persons. The Transgender Persons Act could be considered an indicator that India is moving towards a more open and progressive society such that the people's chances are not limited by their gender. It can be considered that India has made its first step towards reaching the standards of international norms on human rights protection by enacting this statute.

The sole purpose of social welfare legislations should be to protect the rights of the marginalised for whom the social welfare legislation is made for. Therefore, we need to keep in mind that the law cannot change society unless society accepts transgender people as part of the mainstream community. The most critical step of any societal change is the implementation of those changes that the promulgation of the concerned Acts has envisaged. Implementation has to be practised by everyone. It has to be understood by everyone that transgender people are a part of society, and it is illegal, not to mention immoral, to think of them in any other way. Ultimately, it all boils down to education, patience, and, most importantly, legislation to inculcate these values in people, and this Act is an attempt towards the same.

# THE NEW IT RULES- A SIMULTANEOUS INCREASE IN ACCOUNTABILITY AND DECREASE IN FREEDOM OF SPEECH

ANSHITA NAIDU & JWAALAA SURESH

## INTRODUCTION & ANALYSIS

The Ministry of Electronics and Information Technology (MeitY), in February 2021, enacted the 'Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021' which claim to solve the problem of the lack of stringent legislation required to regulate various social media platforms. Despite the many positive aspects of the said rules implemented, many ambiguities and susceptibilities conflict with the basic tenets of Democracy and Constitutional Rights. Further, these New IT Rules also created enormous tensions between the Government and one of the social media giants, Twitter, earlier this year.

The IT Rules, 2021 divided social media intermediaries into two sects: social media intermediary and significant social media intermediary. The rules stress on due diligence of the intermediaries under Section 27 of the IT Act, 2000. The rules state that intermediaries must display personal data and information for their users. The rules further state that a privacy policy must be made that ensures no user displays, uploads, modifies, publishes, transmits, stores, updates, or shares any information against the general public. Any obscene material or any information that shows any person in a bad light will be removed. According to the rules, any information not conforming with the ideals of unity, sovereignty, and nation's integrity will not be entertained, and the account thus will be terminated. The intermediaries must remove unethical information from the platforms as per Section 79(3) of the IT Act. In addition, the intermediaries have to specify the grievance redressal mechanisms and these mechanisms have to accept and revert the complaint. The Grievance Officer must acknowledge this complaint within three days and resolve it within a month. A Chief Compliance Officer along with Nodal Contact Person, and Resident Grievance Officer must be appointed and these intermediaries must publish monthly compliance reports. The rules enabled the first originator of information to be requested in the Court as per Section 69 of the IT Act.



The new IT Rules also regulate the digital news media channels. They give out grievance redressal for the same in three stages: self-regulation by the publishers, self-regulation by the self-regulation bodies of the publishers, and oversight mechanism. The IT rules proposed that digital news media observe Norms of Journalistic Conduct of the Press Council of India, Programme Code under Cable TV Regulation Act. There is also a proposal to involve a self-regulatory body registered under the Ministry of Information and Broadcasting. Furthermore, as per the new IT Rules, the content on OTT Platforms is regulated and classified in terms of age groups and parental control. The Rules also talk about AI Automated Censorship.

The positives of the New IT Rules include the removal of obscene and non-consensual intimate photographs within 24 hours, increase in transparency by mandating publishing of compliance reports, creating a dispute resolution mechanism for removal of dubious content, labelling of content to know whether it is owned, sponsored or both.

On the other hand, there are numerous issues with the IT Rules. The main concern is that digital media is brought under the control of the IT Act without any legislative action. The 36 hours timeline to bring down the content posted by the intermediaries at Government's order hampers the right to a fair recourse in case of any disagreement with the Government. The rules gamble on free speech by making the Government the ultimate adjudicator on the use of offensive speech online.

Until now, the social media platforms implemented end-to-end encryption where the intermediaries did not contain access to view the user's messages. The requirement of traceability imposed by the new IT Rules will hamper the immunity provided to the users as such action will weaken the encryption, thereby reducing the privacy of conversations made by the users which is a violation of Article 21 of the Indian Constitution. It invades the safe space available to the users. The Rules also increase additional expenses for the social media intermediaries to meet the compliances like recruitment of Indian resident Nodal Officers, Compliance Officers, and Grievance Officers. This increase will prove difficult for small digital entities and can open possibilities for various interventions by the Government.

This regulation has a crucial place in the scheme of things, and it proposes to not give a free pass to digital platforms. However, there are laws present to combat any unlawful content in place which require a uniform application. Many issues can be identified with the new rules implemented, but the most pressing one is its implementation without public consultation. The solution to this criticism can be starting the rules afresh. Even if the Government feels that the rules are essential, it should be ensured that they are implemented via parliamentary debates, not by executive rule-making powers. The rules create a vulnerable position for social-media users as they still do not have robust data privacy laws to fortify them. This also highlights the acute requirement for a good data privacy law with these IT Rules.



## CENTRE V. TWITTER

The row between the Centre and the US-based social media giant, Twitter provides us with an insight into the practical application of the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021. The Government and Twitter were engaged in a battle about the Freedom of Expression under Article 19 amid the ongoing farmers' protests against the Centre's three farm laws (now repealed).

Following the violence in New Delhi after the farmers' tractor march on Republic Day earlier this year, Twitter blocked 550 accounts, the majority of which belonged to Khalistan supporters. The Government asked the social media platform to delete accounts and a contentious hashtag, #ModiPlanningFarmerGenocide, which warned of an impending 'genocide' of farmers for allegedly spreading lies and misinformation about the demonstrations and disrupting public order.

However, the micro-blogging website reactivated the accounts and tweets and later refused to reverse its decision, claiming no infringement of its policy. The Centre then served notice on the micro-blogging site after it reinstated more than 250 accounts suspended earlier based on a 'legal demand' from the Government.

As aforementioned, the Ministry of Electronics and Information Technology (MeitY) issued new guidelines for social media companies, streaming platforms and digital publications to make them more accountable for the content they host, with a three-month deadline to comply. However, Twitter time and again failed to comply with the rules implemented.

On May 20, 2021, Twitter tagged Bharatiya Janata Party (BJP) spokesperson Sambit Patra's tweet accusing the Congress party of creating a "toolkit" to defame the present government as "manipulated media". This provoked outrage among BJP members, and the MeitY ordered that the tag be removed pending an inquiry by legal authorities. Twitter refused to remove the tag, which was pinned to the post per its safety requirements.

Following this incident, the Union-Controlled Delhi police arrived at Twitter's headquarters on May 24, 2021, to serve notice to the social media giant, demanding an explanation of the grounds on which the tweet was tagged as manipulated.

Additionally, it was reported that the new IT guidelines had already come into force, but Twitter did not follow them. Twitter then declared its desire to follow the privacy rules while still upholding the freedom of expression and privacy under the law. After the visit by the Delhi police, the corporation expressed worry for the safety of its personnel in India.

The further development of this battle took place through a petition filed by Amit Acharya, a practising advocate in the Delhi High Court and the Supreme Court of India and a user of the platform who claimed that Twitter is a "Significant Social Media Intermediary" (SSMI) as defined under the IT Rules, 2021 and therefore must ensure compliance with the statutory duties imposed upon it by the provisions of these rules.



According to Rule 4(c) of the aforementioned IT Rules, the petition alleged that every SSMI is required to select a 'Resident Grievance Officer' responsible for the redressal and disposal of complaints filed by a user or victim on the platform, among other things. It also contended that Twitter India and Twitter failed to appoint a Resident Grievance Officer, Nodal Officer, or Chief Compliance Officer thereby violating the Rules. The petitioner asserted that as "a subscriber and user of Twitter," he saw allegedly "defamatory, misleading, and inaccurate statements" by two individuals while "scrolling his Twitter on 26th May, 2021." The petitioner then attempted to find the Resident Grievance Officer to lodge a complaint with. However, he could not find any details of the Resident Grievance Officer on the Twitter page, and thus alleged that this was a clear violation of "Sub-Rule 2(a) of Rule 3, which stated that the intermediary shall prominently publish the name of the Grievance Officer and his contact details on its website, mobile-based application, or both, as the case may be."

The petitioner further stated that Twitter and Twitter India had "deprived him of his statutory right to lodge a complaint before the Resident Grievance Officer." He thus prayed that Twitter and Twitter India appoint a Resident Grievance Officer and discharge all other statutory and executive duties under the IT Rules. In its response, the Delhi High Court noted that Twitter was in complete violation of the Information Technology Rules and offered the American social networking company one week as a final opportunity to produce improved affidavits demonstrating compliance.

In the wake of the High Court's decision, both Twitter and the petitioner issued a series of responses, with the social media giant finally notifying the Delhi High Court on August 6, 2021, that it had appointed a full-time Chief Compliance Officer-cum-Resident Grievance Officer and a Nodal Contact Officer in accordance with the IT Rules, 2021. In its answer, the Centre told the Court that compliance had been achieved "seemingly" and that it needed more time to confirm the facts.

The Centre reported to the Delhi High Court on September 24, 2021 that Twitter has appointed a Chief Compliance Officer (CCO), Resident Grievance Officer (RGO), and Nodal Contact Person in line with the approved IT Rules. Consequently, on October 5, 2021, the Delhi High Court dismissed the petition against Twitter India and Twitter Inc for violating the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. (IT Rules, 2021).

It is worth noting that after the Court slammed the social media giant, declaring that it would not provide Twitter with any protection against the repercussions of non-compliance, Twitter told the High Court that while it is striving to comply with the 2021 Rules, it reserves the right to challenge the legality, validity, and vires of the controversial IT Rules.

India is a country with a constitution that lays down the core ideals, values and rules which must be followed by lawmakers whilst making laws for the people. These principles form the crux of every law that is devised under it. One of these is the new IT rules. While the rules may have been drafted with a positive intention, the implementation of the rules could turn malicious in nature as was alleged in the altercation between Twitter and the Centre. Moreover, the fact that the law was passed without public consent violates the core principles of our Constitution.

On the other hand, these rules shield the people from any erroneous or mischievous act by providing forums to complain to thereby increasing accountability and accessibility. They also make strides in increasing transparency which has notoriously been skirted by social media platforms in the past. Overall, these rules have their own pros and cons. Only time will tell which ones will overpower the other.

# HOW THE PROHIBITION OF UNLAWFUL RELIGIOUS CONVERSION ORDINANCE, 2020 MADE DEVASTATING INTRUSIONS ON HUMAN RIGHTS

NIHARIKA RAVI

Laws protecting what is perceived as "vulnerable minorities" from forced religious conversion have been enacted in Orissa, Madhya Pradesh, Arunachal Pradesh, Gujarat, Himachal Pradesh, and Uttarakhand from independence to 2018. These laws have created broad protections from coerced religious conversions and it is only in the 2018 Uttarakhand law that one observes the introduction of forced conversion under the pretext of marriage come to light as a crime. Soon enough, Uttar Pradesh Chief Minister Adityanath advertised in a rally in Jaunpur that his government shall be introducing a new law to curb "love jihad" or the idea that Muslim youth coerce gullible Hindu women to marry them and convert to Islam as a part of a grand scheme. The law is notionally meant to apply to all inter-faith marriages, but the character of its inception and applications defined in this article lead one to contemplate an ulterior motive.

The Uttar Pradesh Prohibition of Unlawful Religious Conversion Ordinance, 2020 has infamously garnered a nickname- the love jihad law. The ordinance was cleared by the State Assembly on November 24, 2020, and was later approved by the governor on November 27, 2020.

The promulgation of the ordinance in UP saw multiple other states following suit even as human rights organisations censured the law for its misogynistic approach, retrospective application, and the inherent tendency of accused persons to face extreme custodial violence.

The law is fundamentally based on the concept of "love jihad" that Time Magazine has called a "baseless conspiracy theory," further quoting Ajay Gudavarthy of Jawaharlal Nehru University who said, "the law serves the dual purpose of regulating Hindu women on one hand and criminalising Muslim men on the other." In fact, research suggests a pattern in claiming forced conversions on the pretext of love- that history from 1920 is repeating itself. In both cases, the Hindu woman's body became a tool to strengthen communal boundaries.

## HISTORY & BACKGROUND

Multiple laws attempting to bar forced conversion have existed in India in the past. Before independence, Rajgarh, Surguja, and Udaipur each had an anti-conversion legislation to their name. Post-independence, "Freedom of Religion Acts" have been passed in six states to curb forced conversions. Contrary to popular opinion, the law in question from Uttar Pradesh was not the first to bar forced conversion on the pretext of marriage. The same was already accomplished by the Uttarakhand Freedom of Religion Act, 2018.

A writ petition was filed challenging the constitutionality of both the UP and Uttarakhand laws. The Himachal Pradesh and Madhya Pradesh laws were added later. While the Supreme Court did not stay the implementation of the laws, it did change its stance on encouraging petitioners first to approach the respective High Courts. The case is presently sub judice.



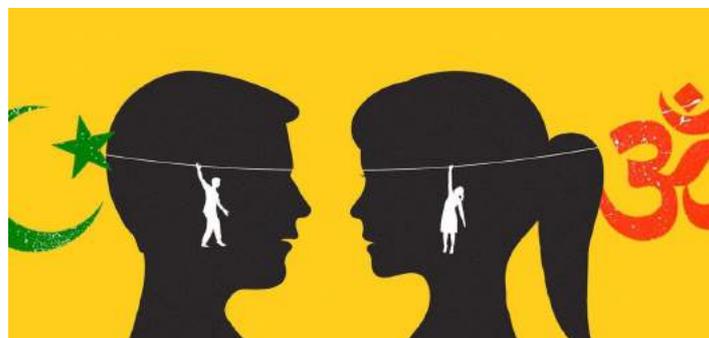
Two kinds of questions of law arise in the face of love jihad laws being enacted in the country—questions relating to the Constitution and those relating to personal laws. These love jihad laws will need to pass both the constitutionality test and the test of personal laws to survive judicial review.

## **DOES THE LOVE JIHAD LAW PASS THE CONSTITUTIONALITY TEST?**

Considering that multiple laws prohibiting forced conversions have existed in our land and that they have seldom survived judicial review, it is of essence to question how this recent love jihad law is different from the previous laws. This answer pulls this subject away from a constitutional debate and pushes it into a personal law controversy.

All the other laws, save for the Uttarakhand one, refer not once to marriage in their anti-conversion stances. They speak generally about coercion, force, fraud, and inducement. Yet, the Himachal Pradesh law was eclipsed as ultra vires to the Constitution in 2009 on grounds that being compelled to provide prior notice before changing religion within a stipulated time period violated Article 14. This judgment shall, along with the 2021 Gujarat High Court judgement staying the Gujarati version of the law, in all probability, play a monumental role in influencing the SC bench in the present case. The Gujarat High Court, in this judgement, had stayed certain provisions of the state's version of the Freedom of Religion Act in order to protect people from unnecessary harassment. The Court opined that the "love jihad" related Sections of the Act shall not merely operate because marriage is solemnised between persons belonging to separate religions as marriages lacking force, allurement cannot all be termed marriage for the purpose of unlawful conversion.

The love jihad laws are nearly identical to the laws in the other states save for the part that includes marriage. However, it is the objective and applications of the laws that have come under fire.



In December, the National Human Rights Commission received a petition that called the love jihad law a "prime example of fear-mongering" that reduces women to "naïve repositories of male honour." The petition said that the notion that adult women must be "saved" from conversion contravenes the spirit of Article 14 and Article 21 of the Constitution. The apex court had earlier stated in the privacy judgment that "privacy recognises the individual's autonomy and the right of every person to make essential choices that affect the course of life. In doing so privacy recognises that living a life of dignity is essential for a human being to fulfil the liberties and freedoms which are the cornerstone of the Constitution." The new love jihad law challenges this interpretation.

Furthermore, the retrospective application of the law grossly violates the provision against ex-post-facto operation under Article 20(1) of the Constitution. It was submitted in the preliminary hearings of the Supreme Court case that people were being "picked up in the middle of weddings on suspicions of religious conversions", and cases of immense custodial violence have come to light.

## **PERSONAL LAWS AND LOVE JIHAD**

The Special Marriage Act was brought into force to bring together Indian nationals professing different faiths in a civil union of marriage. In *Pranav Kumar Mishra v. Govt. of NCT of Delhi*, the Delhi HC held that unwarranted disclosure of matrimonial plans by two adults entitled to solemnise could jeopardise the marriage itself in some cases and that in some cases, parental interference could endanger the life or limb of one of the parties as well.

"Right to privacy is an integral part of right to life," held the Apex Court in *Ram Jethmalani v. UOI*, and the right to secrecy in this context was upheld in the *Evangelical Fellowship Case*. The latter further submitted that questions of religion lie with the Centre under Residuary Entry 97 of Schedule VII of the Constitution; however, the Centre has recently given the states the right to manage these issues. Indeed, matters of marriage and social planning lie in the concurrent list. The love jihad law adheres to these in addition to religion, making a true crossover from constitutional law to the personal law domain. Moreover, the Centre has recently stated that matters of religious conversions are primarily concerning State Governments, further complicating this matter. The Supreme Court will be challenged herein to interpret the seventh schedule in the context of not only the laws in question but also the other freedom of religion acts.

## PRECEDENT REVIEW: THE HADIYA CASE

The Hadiya case is a landmark case in this area that shall probably have much ground to hold in the judicial review of the love jihad laws. Shafin Jahan approached the Supreme Court when the Kerala High Court annulled his marriage with a woman who had converted to Islam after his father-in-law filed a petition alleging that his daughter's conversion was part of a plan to send her to join terrorist conglomerate ISIS. The Kerala High Court called the girl "weak and vulnerable" and susceptible to exploitation, insisting that marriage was the most important decision of her life and that such a decision can only be taken with the active involvement of the parents.

Upon appeal, the right to marry the person of one's choice was held as integral to the Right to Life and Liberty by the Apex Court in the landmark judgment. "The choice of a partner, whether within or outside marriage, lies within the exclusive domain of each individual. Intimacies of marriage lie within a core zone of privacy, which is inviolable," Justice DY Chandrachud wrote.

The bench also stressed that attaining the age of majority entitles one to make their own choices, cautioning courts from assuming the role of *parens patriae* in such cases or assuming the role of a super guardian being moved by the sentiment or egotism of the daughter's parents.

In the Hadiya case, the bench lists the essentials for Muslim marriage, or a *nikah*. The relevant requirements are that both individuals must profess Islam, must have attained puberty, and should not have a prohibited degree of relationship. "The absolute right of an individual to choose a life partner is not in the least affected by matters of faith," the bench appendices in the case, indicating that not only is it the private right of an individual to choose whom they marry, it is also their private right to further amend the religion they profess in pursuit of such marriage or otherwise.

Justice Chandrachud, in this case, upheld the woman's right to choose both partner and religion for herself. Reading this judgment alongside the previous cases pertaining to Constitution, personal laws and their nexus with "forced" conversions and laws pertaining to these, this article puts forth that the gross commodification of women present in the introduction of the aspect of marriage in freedom of religion-state laws which blur the lines between personal laws and personal liberties along with other grave infringements of civil and social rights shall not withstand judicial review.



## CONCLUDING NOTES

Last year, a comment in the Economic and Political Weekly reported that the love jihad law is "against the spirit and practice of the pluralistic, multicultural character of Indian society." The comment also noted that addressing the issue of love jihad laws required a top to bottom revamping of the policing system alongside remedial judicial action and political change.

One perceives that the primary objective of sustaining separate sets of personal laws for different religions instead of integrating them under a Uniform Civil Code is to ensure that the rights of those following all faiths are upheld equally under the diverse Indian State. In this light, enacting laws that encroach upon the private rights of individuals under the political garb of protecting so-perceived "weak" sections of society or "minorities" destroys this objective. The laws in question are indeed faith-blind when considered in a vacuum; however, when understood in the context of the socio-political environment, the fact that legislators of the laws themselves insist on calling these legislations "anti-love jihad" highlights a clear ulterior motive to promote communal tension. Moreover, limited as the literature may be in this new area of law, those who have written academically about the new love jihad legislations have uniformly maintained that the concept of love jihad itself may be a conspiracy theory. This idea was only ratified by the Centre when it refused to legislate a central law in this regard, insisting that there is no definition of love jihad in law.

The love jihad law has negligible fanfare in "non-saffron" states. For instance, the Justice Dharmadhikari Committee recommended enacting such a law in Maharashtra in 2014, but this has not been undertaken in the state, for this report immediately came under fire for playing into a "right-wing agenda" without any basis in legal precedent. Political offices and state parties from states like Rajasthan, Bihar, and Telangana have voiced vehement oppositions to the love jihad law as well.

In conclusion, it is probable that the Apex Court may not find much in contravention of the freedoms guaranteed under Article 25 and 26 when examining the previous freedom of religion acts; however, much is to be questioned with regard to the interactions of the love jihad law with laws governing marriage, and especially inter-religion marriage in India.



# WITH GREAT POWER COMES GREAT RESPONSIBILITY; THE INCREASING NEED FOR REALISATION BY THE MEDIA.

ANSHITA NAIDU

The rapid rise of media as an integral component of human existence has not been without controversies. While the media has played an essential role in today's globalised society, its already expanding sphere of activity has impacted some aspects of human life that have recently come under condemnation.

The media serves as a means of communication between individual citizens and the news. It is responsible for informing all members of society about the ongoing affairs of the world and avoiding the spread of disinformation. By virtue of its vast audience, it has the potential to educate, impact, convince, entertain, and encourage the people of the country. The media must prioritise rational and verifiable information over emotions or personal opinions. The media has embraced its place in all corners of the world as society's borders have widened. One of the challenges that humanity is facing today is the increasing complications caused by the media's assumptions.

Media is deemed to be the fourth pillar of democracy. Right from the onset of the pandemic, the functions of media have increased, and thus, it has been under the spotlight. Moreover, the media has been accused of disseminating fake news and provocative coverage, holding media trials, and breaching individuals' rights to privacy, honour, and reputation. This violates the Fundamental Rights of innocent victims, which raised valid concerns about the media's responsibilities and accountability.

While Indian courts have not directly deemed media trials unconstitutional, it is frowned upon. Article 19(1) of the Constitution guarantees "Freedom of Speech and Expression". This freedom permits the media to interfere and assist people form opinions and perspectives on various matters of national interest; yet, too much interference is a violation of one's privacy and is also a cause for worry.

As no freedom in our Constitution is unlimited and unrestrained, Article 19(1)(2) of the Indian Constitution has shaped this right by underlining grounds for limitations on Freedom of Speech and Expression. Unfortunately, privacy is not considered a valid ground for restricting the Right to Freedom of Speech and Expression. Although the Supreme Court has widened the ambit of Article 21 to include the Right to Privacy, there is no explicit legislation in India that safeguards the Right to Privacy against undue exposure by the media, which includes media trials.

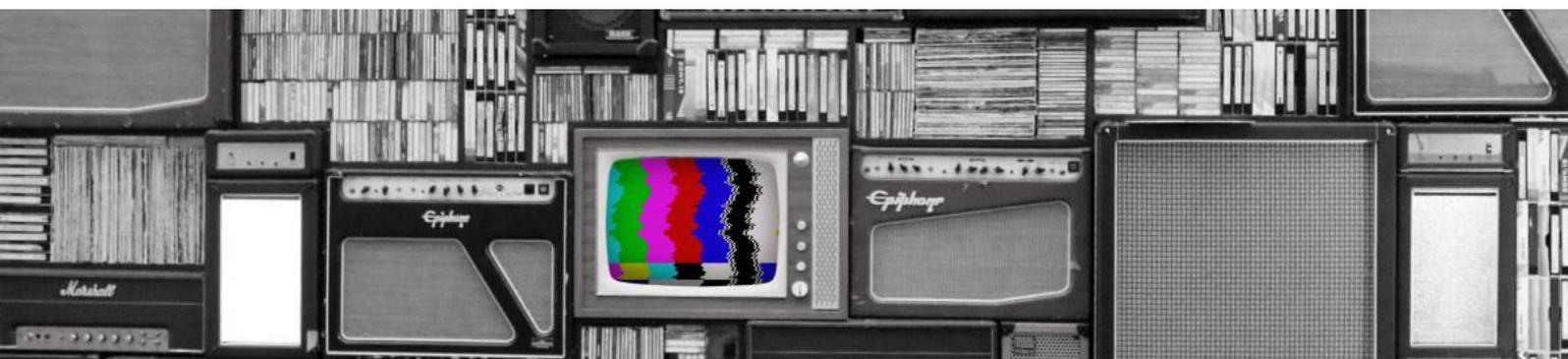
The media is the most influential advocate for free speech and expression, as well as freedom of information. However, due to investigative journalism, the media is sometimes considered the worst offender of privacy. The media must direct itself by the discipline of self-restraint to prevent human rights violations and to avoid further loss of life and other rights.



Media trials frequently cause significant issues because it induces a tug of war between 'free press' and 'free trial', which are two strongly opposing principles. In a democracy, the entire foundation of free media is on individual rights. Trials must be free of all influences/pressures and were regarded as one of the basic tenets of the principles of justice in India. This right is guaranteed under Articles 129 and 215 of the Indian Constitution to all citizens of the nation.

The media strengthens its rights by broadcasting adverse material such as confessions which are instruments or keys that reflect the case's merits. Thus, the most appropriate method to govern the media would be to use the Court's jurisdiction to penalise those who breach the basic code of conduct of law in society. It is believed that without free expression, no justice can be served. As a result, penalisation is a requirement as it will aid in the battle against injustice and oppression.

Furthermore, Freedom of Expression is crucial at all levels of society and Government. As a result, the Government will have the chance to address the concerns of all residents in the country. Because of the fast advancements in information technology, the Government is now significantly more accessible to all electronic media than it was in the past. Though the Right to Free expression is a universally recognised phenomenon, it should not be mistaken with the right to incite violence or hatred.



Media Trials also constitute 'contempt of court' defined under the Indian Constitution and the Contempt of Courts Act, 1971. The act defines contempt as "No publication, which is calculated to poison the minds of jurors, intimidate witnesses or parties or to create an atmosphere in which the administration of justice would be difficult or impossible, amounts to contempt."

Apart from this, there is no statutory regulatory mechanism for the media. They are governed by several self-regulatory bodies, such as the News Broadcasters Association, Broadcast Editors Association and the News Broadcast Federation. Membership is entirely voluntary, and each authority has its own set of guidelines, making it arbitrary.

The media has frequently infringed on individuals' rights to privacy, honour, and reputation. For example, in many scenarios, the accused is declared guilty even before the judgment has been pronounced. As a result, the country's current structure fails to meet the ideals outlined in its Constitution. Therefore there is an urgent need to establish a statutory regulating body that accommodates the objectives and values of the Constitution while also strengthening the role of the media in the world's largest democracy. This regulating authority would not limit the freedom possessed by the media but instead would strengthen media houses' moral and social duty by inculcating more responsibility in them to provide authentic and not fabricated news.

# NEW LABOUR CODES: A SEESAW OF EMPLOYER AND EMPLOYEE RIGHTS IN INDIA

ISHA SINGH, AMISHA UPADHYAY & JASMITA VERMA

The Indian Government's decision to consolidate 29 Central labour laws into four labour codes, namely the Code on Wages, 2019, Code on Social Security, 2020, Industrial Relations Code, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020, has been welcomed by several industry representatives. The move signalled a much-needed step towards reduced complexity and a simpler labour law regime that could benefit both employers and employees.

Any law or regulation enacted in the past must be revisited and updated with changing times and requirements of the society. The Government had a long-standing agenda to codify and consolidate the labour laws to address the prevalent issues and lay the ground for a conducive business environment. The problem came to the forefront as lockdowns due to COVID-19 affected India's economy. The labour market bore disproportionate costs in large-scale layoffs, job losses, and cuts in wages. This exposed the absence of basic safety nets for large sections of the labour force and has forced us to re-evaluate and reform our current institutional framework of labour laws. It has been observed that apart from other issues, the existing laws have neither benefited industries nor workers due to various reasons such as:

- Complexity and plethora of laws: Numerous labour laws, both at the Centre and in states and that too added in a piecemeal manner, has resulted in these laws being ad-hoc, complicated, mutually inconsistent with

varying definitions, and containing outdated clauses. There are multiple laws, each on wages, industrial safety, industrial relations, and social security. For instance, the minimum wage framework has nearly 1,915 minimum wages for various jobs categories across states.

- Poor enforcement of laws: Various studies have observed that labour enforcement in India has been weak and has not protected workers adequately. In a performance audit, CAG noted that the effectiveness of the adjudication process was diluted by various factors, such as

- (i) routine delays by the Government in referring labour disputes for adjudication.
- (ii) delay in disposal of cases
- (iii) delay in the publication of court awards in the gazette and
- (iv) delay in implementation of awards.

Inadequate coverage hiking social issues: Labour laws only covered the organised sector, accounting for just 7% of the workforce. The remaining 93% of the total workforce is informal, which is left uncovered. This includes migrant labour, gig economy workers, taxi drivers, and house helps etc. They are typically very vulnerable and can easily slip back into poverty when faced with contingencies.

- Old laws promoted capital-intensive industries: With restrictive labour regulations, Indian firms find it cost-effective to engage in capital-intensive production instead of labour-intensive industries despite the country's labour abundance (17% share in world population). Thus, India lacks competitiveness in these entry-level labour-



intensive industries and have not grasped its natural comparative advantage.

## WHAT ARE THE LABOUR CODES

The 4 labour codes received the Presidential assent between 2019 and 2020. While the codification exercise primarily focused on consolidation of the labour laws relating to employment conditions, social security, wages and occupational health and safety and working conditions, the exercise has, in this process, also led to:

1. Expansion of the ambit and applicability of some laws
2. Removal of multiple definitions and authorities
3. Transformation of obsolete laws
4. Ease of compliance
5. Rationalisation of penalties and increased focus on the implementation of the law.

A closer look at the codes reveals that while consolidating the national level laws, several new changes were introduced, which are likely to impact employers in India.

### CODE ON WAGES, 2019

The Code on Wages, 2019, was introduced in Lok Sabha on 23 July 2019 and was passed on 30 July 2019. The Rajya Sabha passed the Bill on 2 August 2019. It received Presidential assent on 8 August 2019. It was enacted to amend and consolidate the laws relating to wages, bonuses, and matters incidental. The Code repeals 4 major labour law enactments –

**Aim:** It seeks to regulate wage and bonus payments in all employments where any industry, trade, business, or manufacture is involved.

### CHANGES IN THE CODE FOR WAGES, 2019-

- There has been a removal of such a threshold limit for applicability under the Code on Wages. Hence, the Code shall apply to all employees irrespective of monthly wages.

- **Fixing the minimum wage:** The minimum wages decided by the central or state governments must be higher than the floor wage and be revised and reviewed by the central or state governments at an interval of not more than five years.
- **Overtime Wages:** Employees working in excess of a typical working day will be entitled to overtime wage, which must be at least twice the standard rate of wages.
- **Wage deduction of an employee** (on grounds such as fines, absence from duty etc.) should not exceed 50% of the employee's total wage.
- **Determination of bonus:** All employees whose wages do not exceed a specific monthly amount, notified by the Centre or state, will be entitled to an annual bonus that will be at least: (i) 8.33% of his wages, or (ii) Rs 100, whichever is higher. An employee can receive a maximum bonus of 20% of his annual wages.
- **Prohibition of Gender discrimination:** in matters related to wages and recruitment of employees for the same work or work of similar nature
- **Penalties for an employer for acts such as paying less than the due wages or contravening any Code provision.**

### SOCIAL SECURITY CODE, 2020

At the outset extending social security to the unorganised workforce sector, which includes gig workers and platform workers, the Code aims to consolidate nine laws that primarily focus on resolving the issue of social and maternity benefits that could be availed only by the formal sector before this Code.

With the Code in place, gig and platform workers who do not share a conventional employer-employee relationship or are engaged in hourly/part-time jobs in various categories, including delivery boys, cab drivers, freelancers, project-based workers etc., could now seek ESI benefits against their contribution. Even fixed-term employees and journalists can now avail gratuity on a pro-rata basis from their employers. The tenure for which has been cut down to 3 years from 5 years.



The addition of 'career centre' has been formulated within the Code, which would guide for job vacancies to help generate employment. The same is to be established by the union government.

## WHAT IS ESI?

ESI is Employees' State Insurance, a scheme that aims at providing medical benefits to the Insured person and their family members who have entered into insurable employment.

One of the challenging parts of the Code is the call for an Aadhar based registration to avail the benefits of the schemes. Unfortunately, it poses a barrier since a sizeable informal workforce could go unregistered and unaware of their rights and privileges.

Another noteworthy approach of the Code is to have increased retirement benefits for employees. After implementing the Code, the gratuity will be calculated as 50% of CTC (cost-to-company) and not base salary, which may be lesser take-home salaries of employees.

## INDUSTRIAL RELATIONS CODE, 2020

One of the biggest highlights of the concerned Code is the change in the definition of the term 'employee' to include any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward. This has brought in a uniform and a broader scope for who can be considered an employee. Further, it also alters the definition of 'industry'. A fund has been dedicated to helping the workmen in the event of a layoff. In establishments with multiple trade unions, the Code has established a "single negotiating union." According to Section 14 of the Code, a lone negotiating union must have 51 per cent or more workers as members. Negotiations with the employer will be limited to a single negotiating union.

A remarkable setback to the rights of the employee/union is the compulsory prior notice of 14-days to be provided before a strike. Furthermore, a 50% shutdown or lock-outs by the employee can now be termed a strike.

The right to strike is one of an employee's most essential rights. As a result of this provision, the impact of such strikes will be minimised, and employers will be better equipped to deal with such situations.

## OCCUPATIONAL SAFETY, HEALTH & WORKING CONDITIONS CODE, 2020

A prominent change that this Code brings in is the change in the working hours. The Code now, as to its previous archival counterparts, has prescribed for a weekly cap of 48 working hours- this would imply that an employer, with the consent of the employee, can extend the maximum working hour to 12hrs/day for 4 days a week. With these revised working hours, the Code also mentions that in the event of overtime, the employee's consent is mandated and to be paid twice for such work.

The machinery of the Code aims at providing a wider scope for the appropriate Government to provide for benefit with regards to safety and healthcare of the workforce. When it comes to maternity benefits, the Code has increased such benefits. A yearly health check-up is a must by the employer to all the employees falling under the category at absolutely free of cost. Furthermore, no employee can be appointed without an appointment letter which would facilitate the formalisation of the workplace.

The Code sets up a National Occupational Safety and Health Advisory Board, which is to be authorised by the Union at the Central level and a State Occupational Safety and Health Advisory Board at the state level.

The board would primarily deal with advisory functions on matters related to health and safety standards.



## CONCLUSION

To summarise, many of these acts were archived, but some were framed in the 1980s, necessitating a revision. The Central Government has simplified and given uniformity among all four codes by streamlining the 29 central acts controlling employees and employers. With the new labour codes in place, we could expect a better accommodating environment with special provisions to regulate various industries and establishments, easing the otherwise rigid system. In addition to this, the consolidation has also emerged as a way to bring out constituency when it comes to labour law across the nation, uniform definitions, ease when it comes to compliance and extending the scope of labour laws to incorporate the unorganised sector and to include gig and platform workers.

The four codes, in a nutshell, try to enhance the workplace environment by strengthening the employer-employee relationship, especially when it encompasses the gig and platform workers into the ambit of social security. It provides employees much needed formal recognition. For the first time, benefits such as health insurance, gratuity, maternity leave, disability insurance, and retirement benefits are provided to gig economy workers.

The disruption caused by the pandemic had taken a toll on the informal sector; the Code suggests for a scheme to be funded by the central, state government and by the gig economy aggregator.

With the Code in place, it will act as a catalyst in promoting non-conventional jobs in the market and, subsequently, reduce the burden of traditional long-term employment. In addition, it would enable multiple newer opportunities, which would now be regulated under the labour laws.

"However, the labour codes do have a few hiccups when it comes to the employee's rights, especially the crucial right to strike. Further, the Code does not seek for an implementation route; while having a national minimum wage, it fails to answer the question as to what extent would the states be involved in the process, and the factors for determination for such wages as the standard of living varies from state to state.

The Codes have their ups and downs. But it would be unfair to recognise the positive impact it has on the employees. However, it must not stop us from relentlessly trying to bridge the gap between the pros and cons, which is something the Parliament must observe and fix as soon as possible.



# THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT BILL), 2021: PAVING THE WAY TO A DEBTOR IN CONTROL MODEL OF RESTRUCTURING

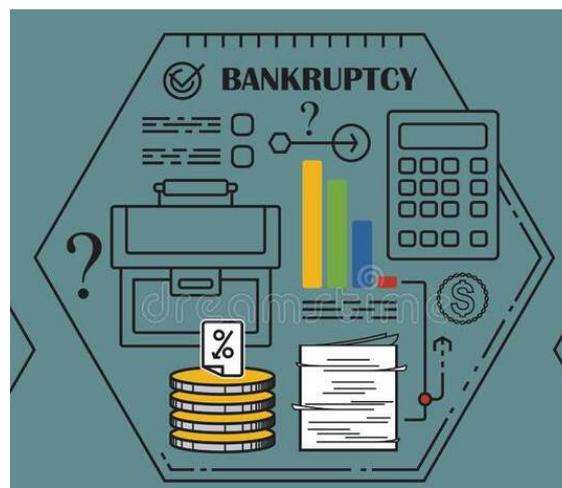
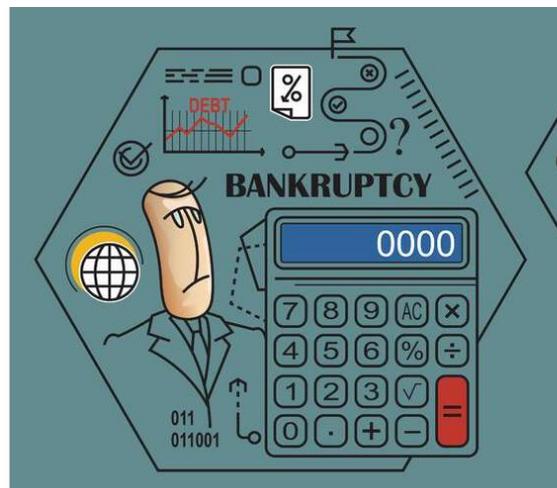
P. NIVRUTHI & NIYATI SHARMA

The Insolvency and Bankruptcy Code, 2016 (IBC) was introduced to consolidate and facilitate easy accessibility of insolvency and bankruptcy laws in India. It was aimed at easing the tedious and complicated process of declaring insolvency in India. The recent IBC Amendment Bill of 2021 was introduced in the Lok Sabha in order to replace the IBC Ordinance, 2021. The Insolvency Law Committee (ILC) recommended these amendments constituted by the Ministry of Corporate Affairs. In March 2021, the ILC recommended a pre-packaged framework within the Code. In lieu of the same, an alternate insolvency resolution process was introduced targeted for the Ministry of Micro, Small and Medium Enterprises (MSMEs) whose defaults extended up to Rs.1 crore. This process is called the PIRP or Pre-Packaged Insolvency Resolution Process.

PIRP is an alternative resolution for MSMEs which can be utilised when the default is at least Rs. 10 lakh. This process is hybrid and allows for the Creditors and Debtors to work in collaboration to resolve disputes. One of the main objectives of this process was to enable rehabilitation. The introduction of PIRP was to provide relief to Corporate Debtors by ensuring that declaring insolvency remains a last resort and to encourage resolution instead. PIRP equally allows the Creditors to have a say in the process, for it requires the approval of at least 66% of the Creditors before the Debtor files an application for the same.

The criteria for filing an application for PIRP are specific:

1. Persons who have undergone PIRP or (Corporate Insolvency Resolution Process) CIRP within three years of the initiation date are barred from filing for this remedy.
2. Persons against whom an order of liquidation under Section 33 of the IBC cannot opt for this process.
3. A Corporate Debtor is eligible to submit a resolution plan under Section 29 A of this Code provided that they sign a declaration to the effect that they will apply this process within 90 days.
4. The members of the Corporate Debtor should have passed a special resolution or at least 3/4th of the total number of partners of the Corporate Debtor, as the case may be, approving the filing of an application initiating the PIRP and that this process will not be used to defraud any person.

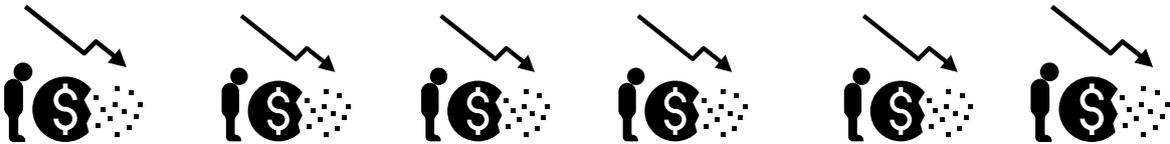


The process for applying for the initiation of PIRP is outlined in Section 54A of the Code. The process begins only after the approval of the adjudicating authority within 14 days. In order to approve the application, there are many requirements that must be checked such as declaration regarding any transaction that falls under the ambit of Chapter III of the Code or under fraudulent transaction laid down in Chapter IV and details of the insolvency professional to be appointed as resolution professional per Section 54A(1)(e) of the Code.

One of the main functions of the adjudicating authority is to declare a moratorium pursuant to the objectives of Section 14 of the Code. This moratorium shall come in effect from the day of such declaration till the date that the PIRP is in place. A vital feature of this declaration is the application of the principle of mutatis mutandis, which means that when comparing two situations or conditions, necessary changes must be made without compromising the primary intent or point of consideration. Another critical function of the authority is to appoint a Resolution Professional as named in the application so long as there are no pending complaints or action against him on the board's recommendations. Lastly, an announcement of the commencement of the PIRP must be made to the public in accordance with the decision of the board after his appointment.

Once the PIRP commences, the resolution plan submitted prior to initiation of the PIRP must be submitted to the Resolution Professional by the Corporate Debtor as a base resolution plan. This base resolution plan will then be approved by a Committee of Creditors (CoC) so long as it does not hamper the rights of any of the corporate debtors. In the event that any such discrepancy is found, the Resolution Professional shall invite alternative resolution plans, which shall once again be submitted to the CoC for approval. The CoC must approve or disapprove of a resolution plan under Section 30 of the Code, based on the Resolution Professional's guidelines and requirements under Section 29 of the Code. If both the prospective plan and the base resolution plan are disapproved, then the Resolution Professional can apply for termination of PIRP. The approval of the base resolution plan requires a minimum of 66% votes. When the adjudicating authority finds that the base resolution plan is satisfactory, it must approve it within 30 days of receiving it and must ensure that the plan so approved by the CoC includes provisions and safeguards to ensure timely and accurate execution. In the case of disapproval or lack of consensus on the resolution plan, termination of PIRP can opt wherein the adjudicating authority shall pass an order of liquidation with respect to Corporate Debtors according to Section 33 (1) and also has the powers to levy the costs of PIRP so far on the company.

PIRP is a new advancement in insolvency and bankruptcy law. It is a step up from CIRP, which was introduced in 2016 alongside the Code. There are minor yet significant differences between these two processes. Firstly, CIRP allows only the Creditors to take the potentially insolvent entity to Court, whereas PRIP allows both Creditors and stressed borrowers to approach the Court and prepare a resolution plan and allows the Debtors to initiate the process, and until a resolution is decided, they retain control of the company. In the CIRP model, the appointment of a Resolution Professional is primarily to gain control of the company and subsequently block any bids by promoters of the company. Secondly, CIRP allows 270 days within which the Resolution Professional must carry out the bidding and resolution. In contrast, in PIRP, the time available is limited to 90 days, within which the resolution process must be submitted to the National Company Law Tribunal (NCLT), following which the NCLT must either approve or reject the resolution plan, and the promoters of the company can bid for the company.



Ever since its introduction, PIRP has been a heavily debated topic. It comes mainly with the apprehension that the existence of CIRP provides sufficient shelter to the Creditors. However, PIRP provides Creditors, along with other stressed borrowers, have a say in the company's course, given that they are the affected party. Moreover, it facilitates speedy adjudication, thereby alleviating the issues of the affected parties in a timely fashion. Further, PIRP will significantly reduce the burden on the NCLT and also makes resolution a much shorter and cheaper process.

On the contrary, it may be argued that although this process emphasises the rights of secured creditors, it pays little heed to operational and transactional creditors, and the former's rights and decisions may overshadow the rights of the latter. Further, PIRP facilitates opaqueness as the Creditors, and the existing management would be the ones submitting the list of alienable assets for sale, thereby providing ample opportunity for mischief. Lastly, in the case of CIRP, the Resolution Professional is appointed immediately, whereas PRIP requires a pre-packaged plan which the NCLT may or may not approve.

The Insolvency and Bankruptcy Code, 2016, is integral to the life and operation of companies. It provides redressal to the distressed, in this case, the Creditors. India as a country heavily relies on MSMEs, and they form the backbone of the Indian economy. The CoVID-19 pandemic has wreaked havoc in the lives of all people and entities alike, and MSMEs are no exception. The fall in consumption coupled with a spike in manufacturing and procuring costs proved to be detrimental to these companies due to which, the implementation of a redressal mechanism that not only weighs the woes of the Creditors but also allows for the Debtors to have a say thereby ensuring that the business overall is also taken care of and not just the Creditors. Moreover, it provides an additional layer of cushioning to the companies and provides a robust and well-thought program instead of one based on a whim.

Further, the Indian judicial system places much emphasis on rehabilitation over any other goal. PIRP bridges the gaps between debtors and creditors by enabling a resolution plan based on restoration by way of consensus and synergy between both parties by also providing equal opportunity for judicial intervention and oversight. Overall, PIRP has the potential to become one of the most sought after processes. The future of PIRP with respect to the Indian economy and the IBC, 2019 remains to be seen.



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## NEW LABOUR CODES: A SEESAW OF EMPLOYER AND EMPLOYEE RIGHTS IN INDIA

1. The Constitution of India, 1949
2. The Contempt of Courts Act, 1971. No. 70, Acts of Parliament
3. Justice K. S. Puttaswamy (Retd.) v. Union Of India, SCC 1; AIR 2017 SC 4161

## THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT BILL), 2021: PAVING THE WAY TO A DEBTOR IN CONTROL MODEL OF RESTRUCTURING

1. The Insolvency and Bankruptcy Code, 2016, No.31, Acts of Parliament, 2016 (India)
2. Gireesh Chandra Prasad, IBC Amendment Bill: What is it for?, LIVEMINT, 28th July, 2021, <https://www.livemint.com/news/india/ibc-amendment-bill-what-is-it-for-11627454980886.html>
3. Upasana Chandrasekharan, The Insolvency And Bankruptcy Code (Amendment) Act, 2021, MONDAQ, September 14th 2021, <https://www.mondaq.com/india/insolvencybankruptcy/1111036/the-insolvency-and-bankruptcy-code-amendment-act-2021>

# UN-INTERNEED

## #UNFILTERED

In collaboration with the Placement Committee, SOL and Public Relations Committee, SOL



# DIVYANSH

2nd year BA/BBA.LLB



"Try to gain knowledge and experience. Meet different advocates that would help to know the job."

## INTERNSHIP

LITIGATION BASED INTERNSHIP

AM Associates

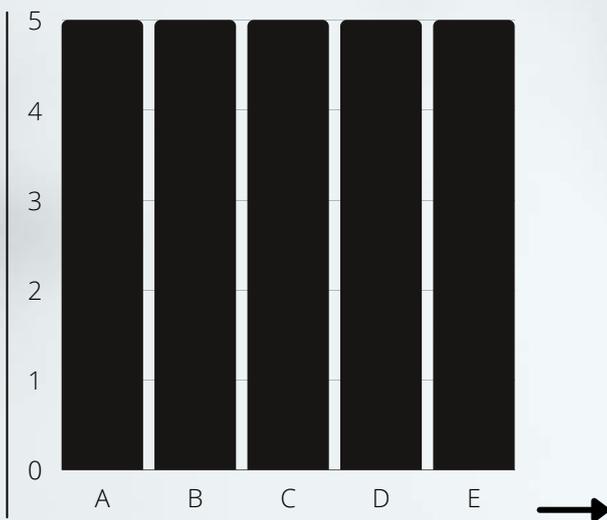
## EXPERIENCE

MODE OF INTERNSHIP - HYBRID

Overall Internship Experience - Very Good

- Received enough training to do the job effectively
- Received sufficient feedback on my performance
- The internship has helped me improve my time management skills/habits
- The internship provided new insights
- The internship as an opportunity for networking was rewarding

OUT OF 5



- A. Felt accepted and welcomed by the co-workers
- B. The right amount of one-on-one time with my supervisor to review my progress
- C. Tasks assigned were relevant to my knowledge of the field and the goals I had for my internship
- D. Overall experience as an intern met my expectations
- E. Would you recommend your place of internship to your peers

## AGREE/DISAGREE

had an excellent relationship with your supervisor/mentor

the internship facilitated the development of 'drafting skills'

the internship facilitated the development of 'research skills'

the internship facilitated the development of 'interpersonal skills'

# SANJANA SARAWGI

2nd year BA/BBA.LLB



"I have not secured enough internships, so I feel I am not the best person to advice."

## EXPERIENCE

MODE OF INTERNSHIP - VIRTUAL

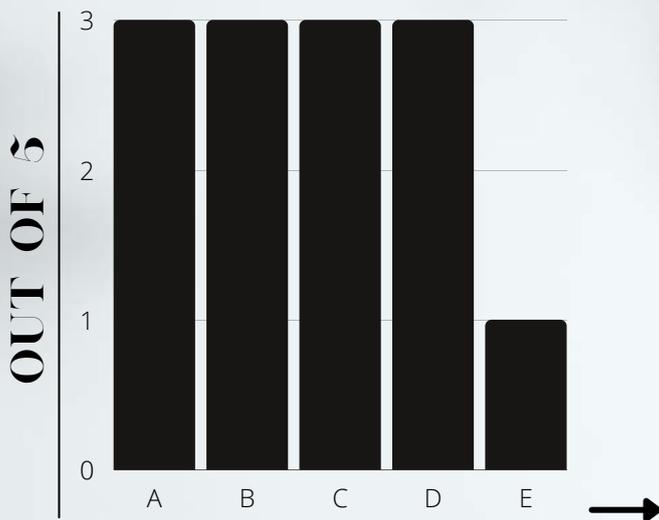
Overall Internship Experience - Fair

## INTERNSHIP

ORGANISATION - NGO, CONTENT WRITING, RESEARCH THINK TANK

Kartavyam

- Did not receive enough training to do the job effectively
- Did not receive sufficient feedback on my performance
- The internship might have helped me improve my time management skills/habits
- The internship provided new insights
- The internship as an opportunity for networking was dissatisfactory



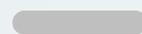
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- E. Would you recommend your place of internship to your peers

## AGREE/DISAGREE

had an excellent relationship with your supervisor/mentor



the internship facilitated the development of 'drafting skills'



the internship facilitated the development of 'research skills'



the internship facilitated the development of 'interpersonal skills'



# SARASA V

2nd year BA/BBA.LLB



"One must give in their 100 percent attention to the work assigned to them. It's worth it. And one must not restrict themselves to the work assigned to them. Internship is an opportunity to test your limits. One must go beyond their comfort zone and explore the possible opportunities available. "

## EXPERIENCE

MODE OF INTERNSHIP - PHYSICAL

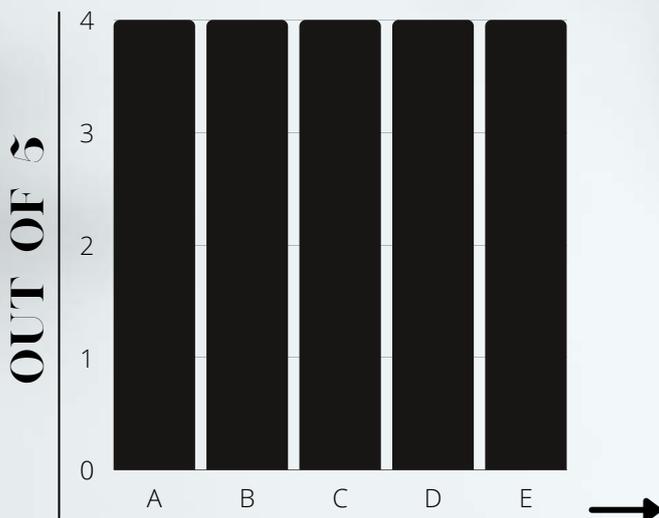
Overall Internship Experience - Excellent

- Received enough training to do the job effectively
- Received sufficient feedback on my performance
- The internship has helped me improve my time management skills/habits
- The internship provided new insights
- The internship as an opportunity for networking was rewarding

## INTERNSHIP

LAW FIRM INTERNSHIP

N. Sundaravadivelu and S.V. Pravin  
Rathinam associates



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- B. The right amount of one-on-one time with my supervisor to review my progress
- C. Tasks assigned were relevant to my knowledge of the field and the goals I had for my internship
- D. Overall experience as an intern met my expectations
- E. Would you recommend your place of internship to your peers

## AGREE/DISAGREE

had an excellent relationship with your supervisor/mentor

the internship facilitated the development of 'drafting skills'

the internship facilitated the development of 'research skills'

the internship facilitated the development of 'interpersonal skills'

# JASLIN OBEROI

2nd year BA/BBA.LLB



"To browse for various opportunities and keep applying to new places in order to intern at a well certified place."

## EXPERIENCE

MODE OF INTERNSHIP - VIRTUAL

Overall Internship Experience - Good

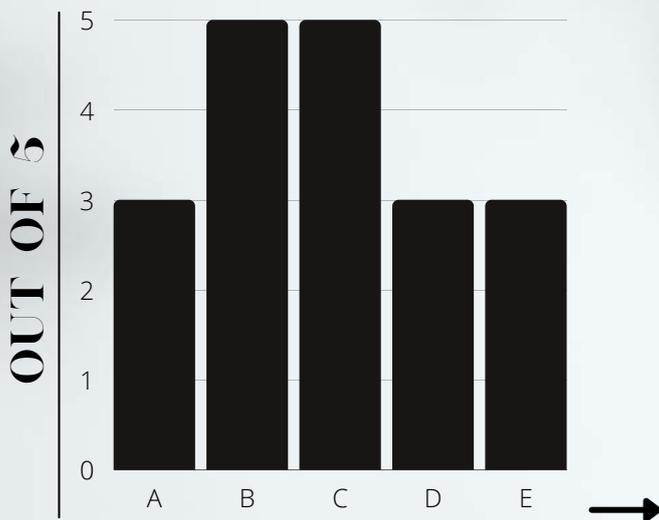
## INTERNSHIP

LAW FIRM INTERNSHIP

Lords of Law

- Received enough training to do the job effectively
- Received sufficient feedback on my performance
- The internship may have helped me improve my time management skills/habits
- The internship provided new insights
- The internship as an opportunity for networking was dissatisfactory

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## AGREE/DISAGREE

had an excellent relationship with your supervisor/mentor

the internship facilitated the development of 'drafting skills'

the internship facilitated the development of 'research skills'

the internship facilitated the development of 'interpersonal skills'

# SIDDHI SAHOO

2nd year BA/BBA.LLB



"Don't just look for a law firm internship intern everywhere you can and explore "

## EXPERIENCE

MODE OF INTERNSHIP - VIRTUAL

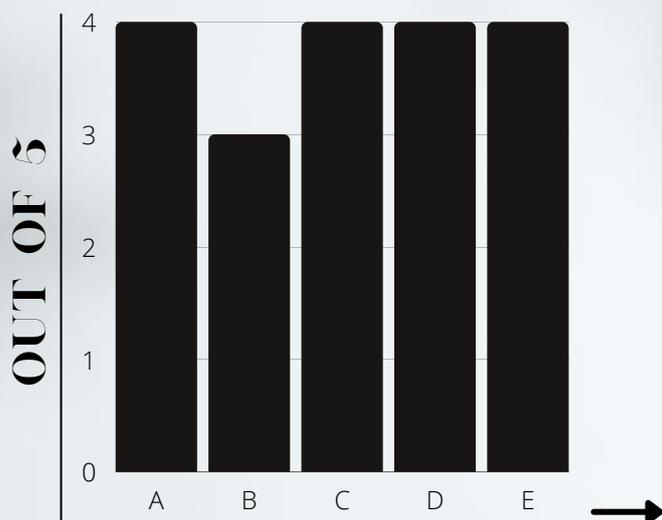
Overall Internship Experience - Very Good

## INTERNSHIP

ORGANISATION - NGO, CONTENT WRITING, RESEARCH THINK TANK

BSK legal, Prof Nikunj Kulshresthra

- Received enough training to do the job effectively
- Received sufficient feedback on my performance
- The internship has helped me improve my time management skills/habits
- The internship provided new insights
- The internship as an opportunity for networking was rewarding



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## AGREE/DISAGREE

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the internship facilitated the development of 'interpersonal skills'

# HRISHIKESH BARVE

2nd year BA/BBA.LLB



"Practical knowledge is more important than theoretical knowledge."

## EXPERIENCE

MODE OF INTERNSHIP - PHYSICAL

Overall Internship Experience - Excellent

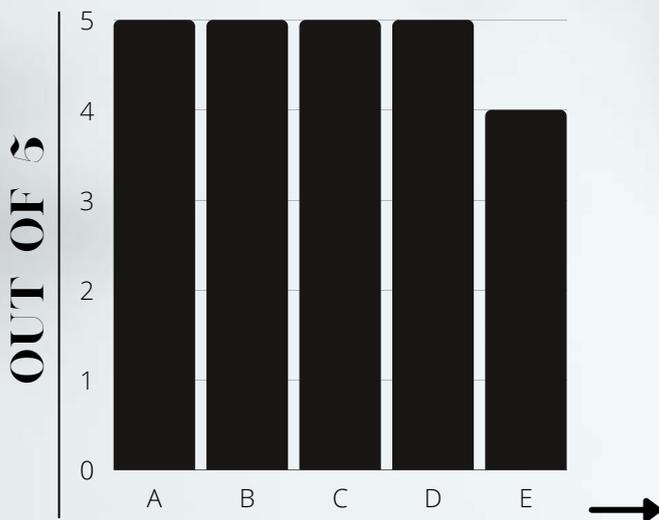
## INTERNSHIP

LITIGATION BASED INTERNSHIP

Hasurkar and associates

- Received enough training to do the job effectively
- Received sufficient feedback on my performance
- The internship has helped me improve my time management skills/habits
- The internship provided new insights
- The internship as an opportunity for networking was Rewarding.

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## AGREE/DISAGREE

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the internship facilitated the development of 'interpersonal skills'

# SAMRUDDHI VARMA

2nd year BA/BBA.LLB



"Choose your firms wisely."

## EXPERIENCE

MODE OF INTERNSHIP - VIRTUAL

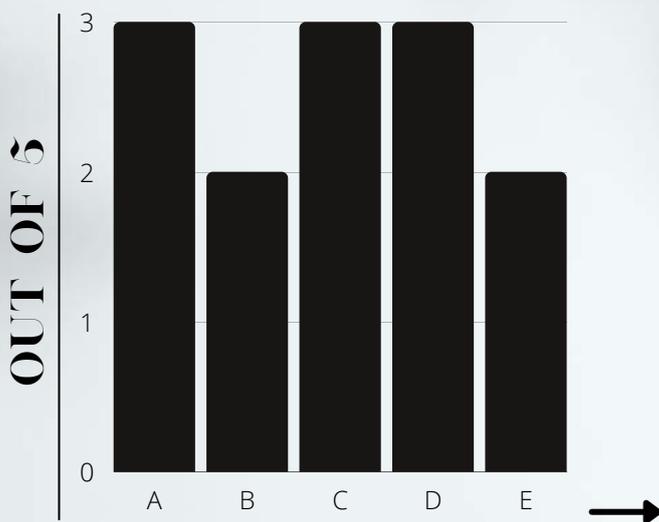
Overall Internship Experience - Good

## INTERNSHIP

LAW FIRM INTERNSHIP

SRG law firm

- Did not receive enough training to do the job effectively
- Received sufficient feedback on my performance
- The internship has not helped me improve my time management skills/habits
- The internship provided new insights
- The internship as an opportunity for networking was neutral



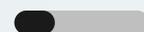
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## AGREE/DISAGREE

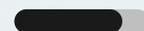
had an excellent relationship with your supervisor/mentor



the internship facilitated the development of 'drafting skills'



the internship facilitated the development of 'research skills'



the internship facilitated the development of 'interpersonal skills'



# PARIDHI AGRAWAL

2nd year BA/BBA.LLB



"Before taking the internship see the background of the company. "

## EXPERIENCE

MODE OF INTERNSHIP - VIRTUAL

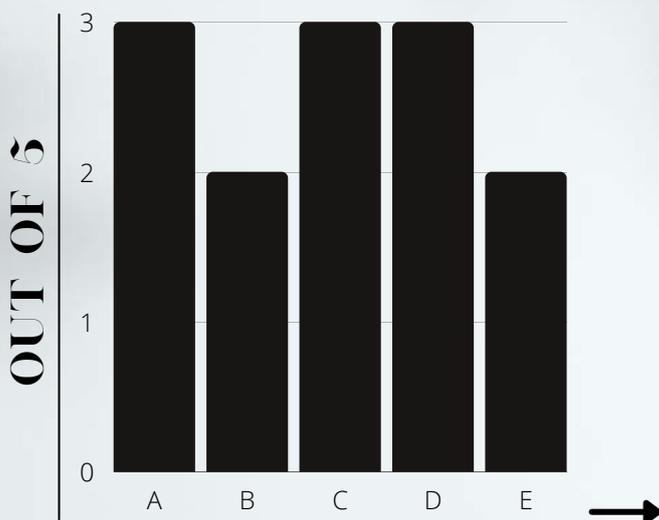
Overall Internship Experience - Good

## INTERNSHIP

ORGANISATION - NGO, CONTENT  
WRITING, RESEARCH THINK TANK

Kartavyam

- May have received enough training to do the job effectively
- Did not receive sufficient feedback on my performance
- The internship has helped me improve my time management skills/habits
- The internship provided new insights
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- E. Would you recommend your place of internship to your peers

## AGREE/DISAGREE

had an excellent relationship with your supervisor/mentor



the internship facilitated the development of 'drafting skills'



the internship facilitated the development of 'research skills'



the internship facilitated the development of 'interpersonal skills'



# NAINJA TIWARI

2nd year BA/BBA.LLB



## INTERNSHIP

ORGANISATION - NGO, CONTENT  
WRITING, RESEARCH THINK TANK

Kartavyam



## EXPERIENCE

MODE OF INTERNSHIP - VIRTUAL

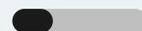
Overall Internship Experience - Fair

- Did not receive enough training to do the job effectively
- Did not receive sufficient feedback on my performance
- The internship has not helped me improve my time management skills/habits
- The internship did not provide new insights
- The internship as an opportunity for networking was dissatisfactory

- A. Felt accepted and welcomed by the co-workers
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- E. Would you recommend your place of internship to your peers

## AGREE/DISAGREE

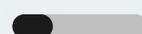
had an excellent relationship with your supervisor/mentor



the internship facilitated the development of 'drafting skills'



the internship facilitated the development of 'research skills'



the internship facilitated the development of 'interpersonal skills'



# SREE HARSHINI KONDURI

2nd year BA/BBA.LLB



"Quality of internship, (things learnt, exposure and overall experience) is more important than number of internships done."

## EXPERIENCE

MODE OF INTERNSHIP - VIRTUAL

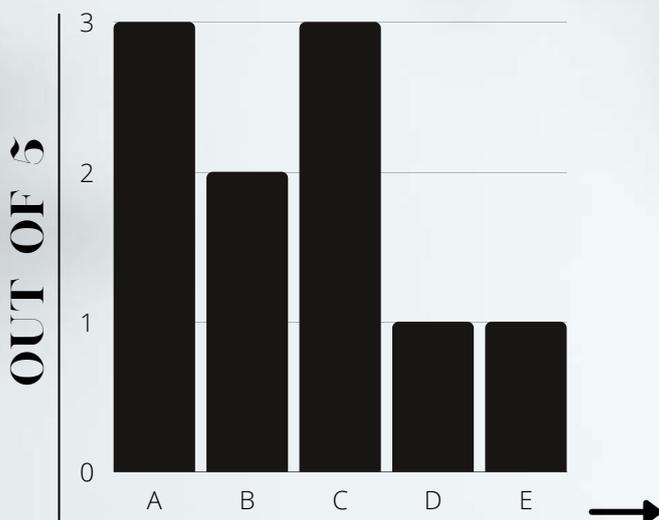
Overall Internship Experience - Fair

## INTERNSHIP

ORGANISATION - NGO, CONTENT WRITING, RESEARCH THINK TANK

Kartavyam

- May have received enough training to do the job effectively
- Did not receive sufficient feedback on my performance
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- E. Would you recommend your place of internship to your peers

## AGREE/DISAGREE

had an excellent relationship with your supervisor/mentor



the internship facilitated the development of 'drafting skills'



the internship facilitated the development of 'research skills'



the internship facilitated the development of 'interpersonal skills'



# SHASHANK SEKURI

2nd year BA/BBA.LLB



"Work hard."

## EXPERIENCE

MODE OF INTERNSHIP - VIRTUAL

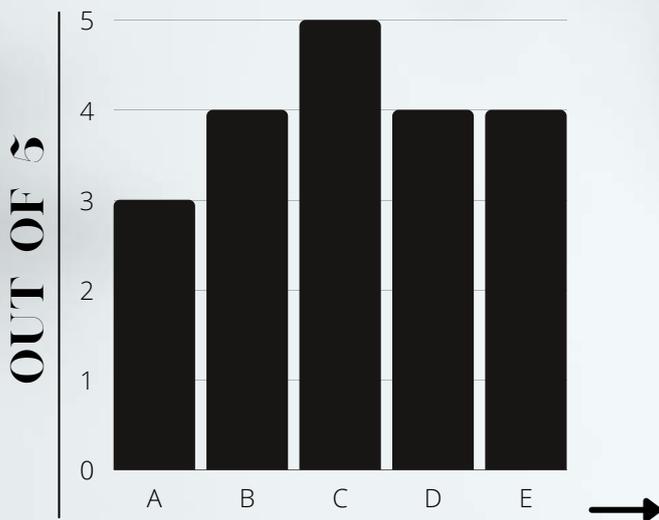
Overall Internship Experience - Very Good

## INTERNSHIP

ORGANISATION - NGO, CONTENT  
WRITING, RESEARCH THINK TANK

Fincrack

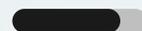
- Received enough training to do the job effectively
- Received sufficient feedback on my performance
- The internship has not helped me improve my time management skills/habits
- The internship provided new insights
- The internship as an opportunity for networking was neutral



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- D. Overall experience as an intern met my expectations
- E. Would you recommend your place of internship to your peers

## AGREE/DISAGREE

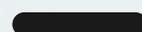
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the internship facilitated the development of 'research skills'



the internship facilitated the development of 'interpersonal skills'





# BHAVYA

2nd year BA/BBA.LLB



## EXPERIENCE

MODE OF INTERNSHIP - VIRTUAL

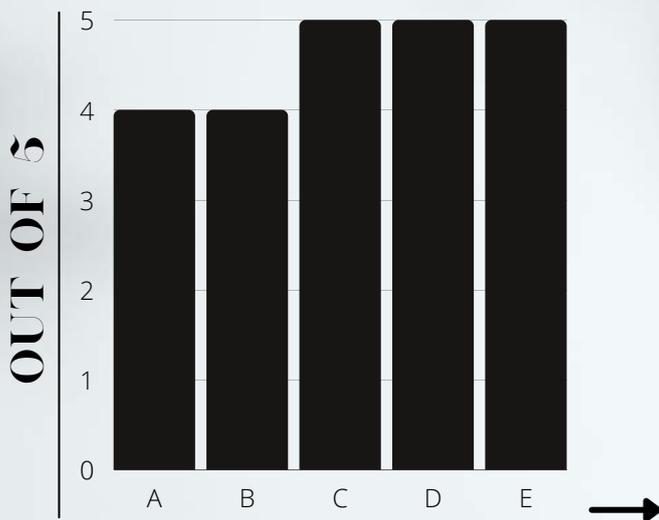
Overall Internship Experience - Excellent

## INTERNSHIP

ORGANISATION - NGO, CONTENT WRITING, RESEARCH THINK TANK

Fincrack

- Received enough training to do the job effectively
- Received sufficient feedback on my performance
- The internship has helped me improve my time management skills/habits
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- The internship as an opportunity for networking was rewarding



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## AGREE/DISAGREE

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# DIPESH NASSA

2nd year BA/BBA.LLB



## EXPERIENCE

MODE OF INTERNSHIP - VIRTUAL

Overall Internship Experience - Very Good

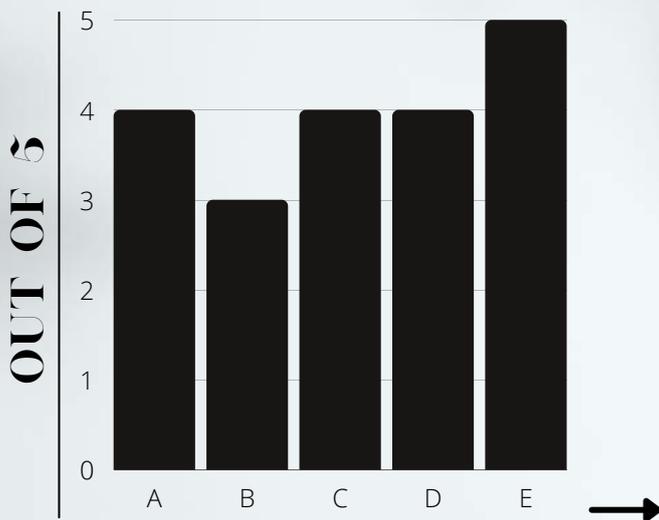
## INTERNSHIP

ORGANISATION - NGO, CONTENT WRITING, RESEARCH THINK TANK

Kartavyam

- Received enough training to do the job effectively
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- The internship may have helped me improve my time management skills/habits
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- E. Would you recommend your place of internship to your peers

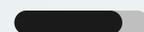


## AGREE/DISAGREE

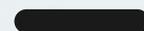
had an excellent relationship with your supervisor/mentor



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the internship facilitated the development of 'interpersonal skills'





# RASHI SHAH

3rd year BA/BBA.LLB



## EXPERIENCE

MODE OF INTERNSHIP - VIRTUAL

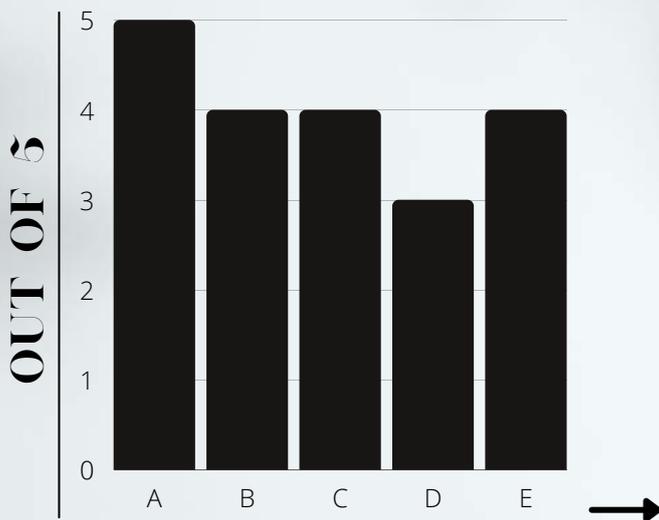
Overall Internship Experience - Good

## INTERNSHIP

LAW FIRM INTERNSHIP

JUS Sahaya Partners

- May have received enough training to do the job effectively
- Received sufficient feedback on my performance
- The internship may have helped me improve my time management skills/habits
- The internship provided new insights
- The internship as an opportunity for networking was neutral



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## AGREE/DISAGREE

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the internship facilitated the development of 'interpersonal skills'

# RITIK JAIN

3rd year BA/BBA.LLB



"Under Advocate Ajay Pal Singh, you can learn a lot. He is a senior Advocate in the Jabalpur Bench of Madhya Pradesh High Court. He has a vast experience in the Constitutional, Civil, and Criminal Matters. I would highly recommend my peers to intern under him if they get the opportunity."

## EXPERIENCE

MODE OF INTERNSHIP - PHYSICAL

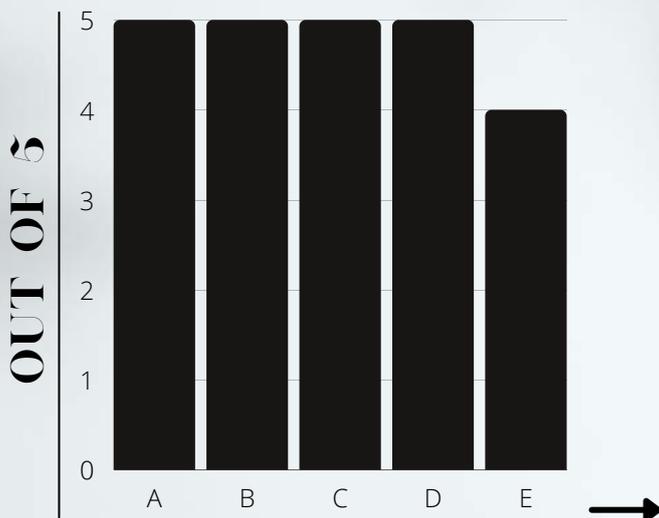
Overall Internship Experience - Very Good

- Received enough training to do the job effectively
- Received sufficient feedback on my performance
- The internship has helped me improve my time management skills/habits
- The internship provided new insights
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## INTERNSHIP

LITIGATION BASED INTERNSHIP

Under Senior Advocate Ajay Pal Singh



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- C. Tasks assigned were relevant to my knowledge of the field and the goals I had for my internship
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- E. Would you recommend your place of internship to your peers

## AGREE/DISAGREE

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the internship facilitated the development of 'interpersonal skills'

# PRANJALI JIRE

2nd year BA/BBA.LLB



"Grab ones that are actually helpful to for you to build your resume."



## EXPERIENCE

MODE OF INTERNSHIP - VIRTUAL

Overall Internship Experience - Good

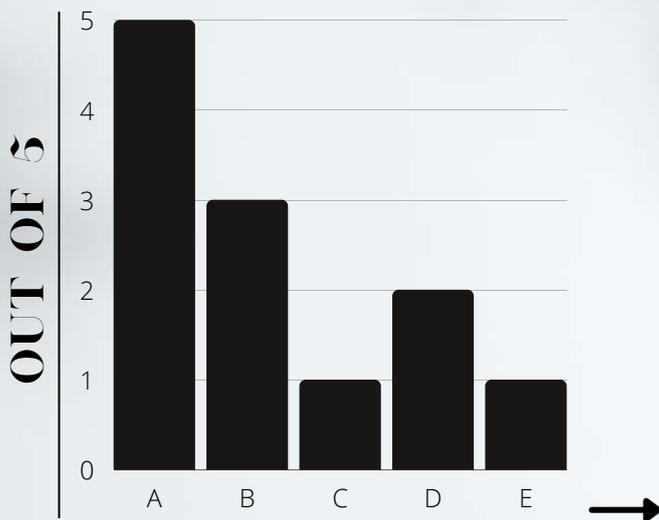
## INTERNSHIP

ORGANISATION - NGO, CONTENT WRITING, RESEARCH THINK TANK

Kartavyam

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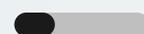


## AGREE/DISAGREE

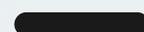
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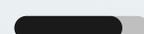
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the internship facilitated the development of 'research skills'



the internship facilitated the development of 'interpersonal skills'



# ANONYMOUS

2nd year BA/BBA.LLB



"If it is possible it would be helpful if we can get more law oriented intership opportunities."



## EXPERIENCE

MODE OF INTERNSHIP - VIRTUAL

Overall Internship Experience - Good

## INTERNSHIP

ORGANISATION - NGO, CONTENT WRITING, RESEARCH THINK TANK

Aashman Foundation

- Received enough training to do the job effectively
- Received sufficient feedback on my performance
- The internship has helped me improve my time management skills/habits
- The internship provided new insights
- The internship as an opportunity for networking was neutral



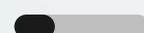
- A. Felt accepted and welcomed by the co-workers
- B. The right amount of one-on-one time with my supervisor to review my progress
- C. Tasks assigned were relevant to my knowledge of the field and the goals I had for my internship
- D. Overall experience as an intern met my expectations
- E. Would you recommend your place of internship to your peers

## AGREE/DISAGREE

had an excellent relationship with your supervisor/mentor



the internship facilitated the development of 'drafting skills'



the internship facilitated the development of 'research skills'



the internship facilitated the development of 'interpersonal skills'



# ANONYMOUS

## 2nd year BA/BBA.LLB



"Don't spend time on internship just to get the certificate but to get the experience. And enjoy your internship. Focus on your work and learning outcomes in the period of internship."



### EXPERIENCE

MODE OF INTERNSHIP - VIRTUAL

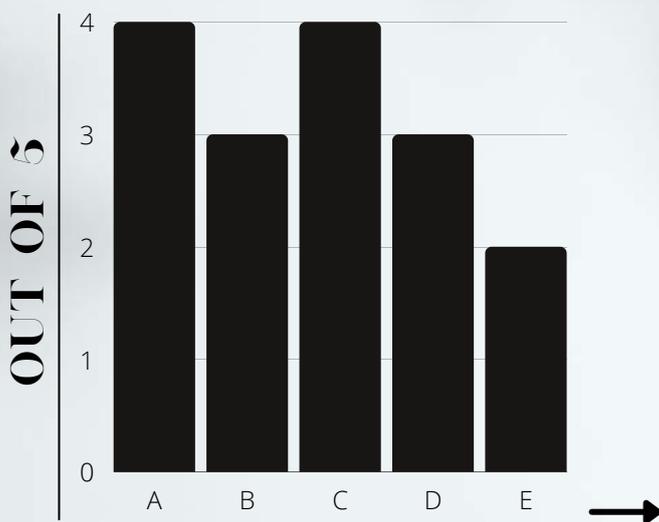
Overall Internship Experience - Fair

### INTERNSHIP

ORGANISATION - NGO, CONTENT WRITING, RESEARCH THINK TANK

Kartavyam

- Did not receive enough training to do the job effectively
- Did not receive sufficient feedback on my performance
- The internship has helped me improve my time management skills/habits
- The internship provided new insights
- The internship as an opportunity for networking was dissatisfactory



- A. Felt accepted and welcomed by the co-workers
- B. The right amount of one-on-one time with my supervisor to review my progress
- C. Tasks assigned were relevant to my knowledge of the field and the goals I had for my internship
- D. Overall experience as an intern met my expectations
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### AGREE/DISAGREE

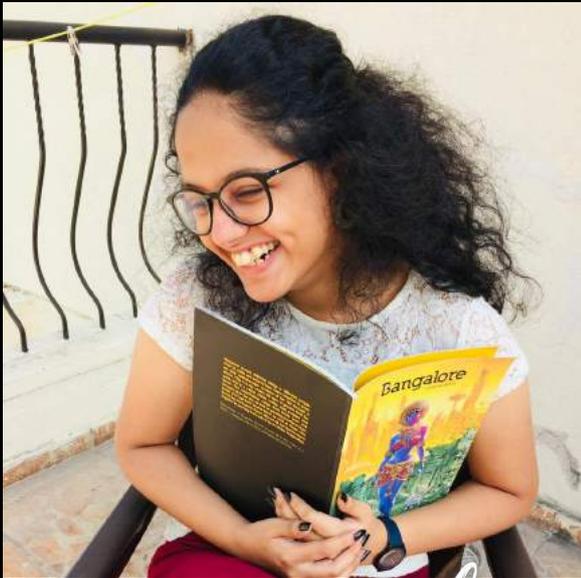
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## PR REPRESENTATIVES

# OUR OTHER PUBLICATIONS

## MONTHLY NEWSLETTERS AND SOLSTICE VOLUME II ISSUE I

ISSUE 1 JULY 2021

### The Legal Gauge

The latest news and announcements

SVKM'S NMIMS School of Law, Navi Mumbai

**IN THIS ISSUE...**

- PSYCHO-EDUCATIVE SESSIONS FOR JUDICIAL FUNCTIONARIES AS A BEACON OF CHANGE
- WHAT DOES THE SUPREME COURT HAVE TO SAY ABOUT SEDIATION?
- ADVOCATES PROTECTION BILL
- PUBLICATION COMMITTEE

**DEAR READERS,**  
Greetings from the Publication Committee of School of Law!

We have been working passionately on our bi-yearly publication SOLSTICE since last year. However, some time to strategize for the second volume, an emboldened executive member suggested that we think about a weekly. The apex was dissent, yet based the idea, and a consensus was drawn, the product of which you frequently hold in your hands today.

We are glad to put forth before you the first edition of "Thirty: The Legal Gauge", our new monthly publication, bringing to you some important and some obscure pieces of legal news from the previous month. In this issue, we look at some important socio-legal developments from the month of June and July 2021 including the judgments of S. Kulkarni and Srinivas C. Committee of Police Judgment from the Madras High Court, the new Lokpal Bill, Draft Regulation Bill, the Advocates Protection Bill that has gained traction in the legal community, and more!

We introduce to you our three departments, the reporters, the content researchers, and the designers, who have worked in tandem to bring Thirty to you.

Happy Reading!  
Niharika Ravi  
Co-Editor

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July 2021

ISSUE 2 AUGUST 2021

### The Legal Gauge

The latest news and announcements

SVKM'S NMIMS School of Law, Navi Mumbai

**IN THIS ISSUE...**

- PREVENTIVE DETENTION LAWS IN INDIA - AN INSTRUMENT OF DESPOTISM FOR THE EXECUTIVE?
- PEGASUS SPYWARE: A GOVERNMENT PERSONA?
- KERALA HIGH COURT MAKES BIG STRIDES IN FEMINIST JURISPRUDENCE
- Women & War

**PERSONAL DETAILS CANT BE DISCLOSED UNDER RTI: DELHI HC**

The Delhi High Court dismissed an RTI appeal that was seeking information such as the address and father's names of the candidates that have been appointed as the multi-tasking staff at the Kashtrapati Bhavan. The Court upheld that such information will lead to an unwarranted breach of privacy and thus, cannot be revealed under the Right to Information Act. The division bench of Chief Justice D N Patel and Justice Jyoti Singh stated that the Right to Information is subjected to certain limitations. Section 8 of the RTI Act categorically mentions that personal information that has no relation to any public interest or welfare cannot be supplied. The RTI Applicant had filed an appeal against the judgement given by Justice Pratibha Singh, who had dismissed the writ petition and had imposed a fine of Rs. 25,000 for concealing the fact that his daughter had appeared for the same exam. The Delhi High Court stated that it was in full agreement with the reasons given by the single judge. Advocate Anurag Althawala, central government's standing counsel, informed the court that five out of six details that had been sought had already been provided to the applicant, and the remaining one regarding the personal details of the candidates had been denied.

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August 2021

ISSUE 3 SEPTEMBER 2021

### The Legal Gauge

The latest news and announcements

SVKM'S NMIMS School of Law, Navi Mumbai

**IN THIS ISSUE...**

- Supreme Court reiterates factors to be considered in cases of Medical Negligence
- Punjab & Haryana HC asks if age of majority in all matters should be revised
- OBC Bill: Key things to know about the bill that seeks to undo SC's quota order
- Special Issue on Marital Rape and the Law

**Dear Readers and Patrons,**

We, the Publication Committee of School of Law welcome the new batch of 2021 to SOL with our third issue of "Thirty: The Legal Gauge" which brings the latest news and announcements to your NMIMS inboxes each month. We have been writing numerous articles on the legal goings-on in India and the World over the past two months, but this, our third issue, was set to be something special- a special issue on one of the most contentious socio-legal debates of our times: Marital Rape.

Please behold an edition that encompasses a condensed yet most far-reaching analysis of the strides India and the World have made in marital rape-related jurisprudence in the past century or two. Our researchers, writers, and designers have outdone themselves to bring to you this month's Thirty with a special theme alongside the most compelling legal news from the past month.

Wishing you a most enlightening read.  
Niharika Ravi  
Co-Editor

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September 2021

ISSUE 4 October, 2021

### The Legal Gauge

The latest news and announcements

SVKM'S NMIMS School of Law, Navi Mumbai Publication

**In this issue...**

- The Result of Seeking Virtual Hearing as a Norm is to Envisage that the Building, where we sit should be Closed Down - The Supreme Court
- Kerala Sessions Court Holds Man guilty for Murder by Snake Bite in a first-of-its-kind case
- Does the Essential Defense Services Bill Violate Employer's Right to Freedom of Speech and Expression?
- Is the Medical Termination of Pregnancy (Amendment) Act, 2021 progressive enough?

**Dear Readers,**  
Greetings from the Publication Committee of School of Law!

We are elated to have invited a brand new apex body this month, comprising of third year students Nirvulhi Pappaswami, Anshita Naidu, and Ensha Tskale who shall now be receiving the duties of Reporting Editor, Co-Editor, and Creative Editor respectively. They have worked alongside our content researchers, reporters, and designers to create this month's Thirty.

The past month has been an exciting one for the legal fraternity, with judgments dealing with a myriad of issues from the jurisdictional bounds of the NCI and Lok Adalat to complex rights issues in the Karnataka High Court judgment on the right to be benefited and the right to be benefited. The Ultra verdict had us all on our toes as a Kerala Court dealt with the complex interpretational challenges posed by a case of murder by snake bite.

This eight-pager explores them all, and then some. We encourage you to peruse.

Wishing you luck,  
Niharika Ravi  
Editor-In-Chief

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October 2021

ISSUE 5 NOVEMBER 2021

### SOLSTICE

VOLUME-II ISSUE-I

**FACES OF JUSTICE**

PUBLICATION COMMITTEE · 2021

SVKM'S NMIMS School of Law, Navi Mumbai

**IN THIS ISSUE...**

- NCERT drops Transgender inclusion manual
- HIV+ Sex Workers likely to 'pose danger to society': Bombay Sessions Court
- 'No anticipatory bail to an absconder' - SC
- What amounts to an attempt to rape? A distinction between 'Preparation' and 'Attempt' to commit rape
- Tribunals Reforms Bill, 2021: To be or Not to be

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Solstice  
Volume II Issue I

ISSUE 6 NOVEMBER 2021

### The Legal Gauge

The latest news and announcements

A School of Law, NMIMS Navi Mumbai Publication

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**Dear Readers and Patrons,**

In the case of, Preeti Shankar Prasad V. State of Bihar JT 2021 (10) SC 410, the Supreme Court opined that the prerequisite while granting anticipatory bail should be based on the nature of the accusation made rather than the allegations made arising out of a business transaction. In other words, a person deemed to be a proclaimed offender or absconder is not eligible for anticipatory bail.

In this case, an FIR was lodged against an absconder under S. 406, 407, 468, 506 of the Indian Penal Code, 1860. The Trial Court, while hearing the case, refused anticipatory bail on the grounds laid down in S. 82 and 83 of the Code of Criminal Procedure, 1973. However, when they approached the High Court, the High Court granted anticipatory bail to the absconder by merely looking at the aspect of a business transaction that was struck down by the Apex Court.

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November 2021