

# The Legal Gauge

The latest news and announcements

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Navi Mumbai Campus



## 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, come time to strategize for the second volume, an enthusiastic executive member suggested that we think about a weekly! The apex was daunted, yet loved the idea, and a compromise was drawn, the product of which you figuratively 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 months of June and July 2021 including the landmark S. Sushma and Seema v. Commissioner of Police judgment from the Madras High Court, the new Lakshadweep 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

## Psycho-Educative Sessions for Judicial Functionaries as a Beacon of Change Madras HC Paves the Way for Securing the LGBT Community

The Indian Judiciary shoulders the responsibility of upholding its citizens' rights and liberties. Far from the controversial Suresh Kumar Koushal Judgement, the Madras High Court in the landmark judgement *S.Sushma and Seema Vs Commissioner of Police, Chennai, and Ors.* not only protects the freedom of LGBTQIA++ couples but also addresses the pressing need for a change in Judges' approach towards dealing with sensitive cases involving the LGBTQIA++ community.

The petitioners, friends pursuing Bachelor's degrees in the Tamil language, felt their camaraderie blossom into romance, much to the dismay of their family members. Upon gaining knowledge of the same-sex relationship, the families strongly opposed the affair and the couple eloped to Chennai to protect themselves and start a new life. The petitioners then managed to secure accommodation and protection with the support of NGOs. Meanwhile, the parents of the petitioners filed missing person complaints. Apprehending the threat to their safety, the petitioners approached the Madras High Court and sought relief.

High Court vide its Order dated 28-04-2021, had requested for the counselling of the parents and for a report to be submitted before the Court. The Counselling Psychologist's report revealed that there was no substantial or marked change noticed in the attitude of the parents during the second counselling session. The Bench itself went under counselling sessions with various counsellors and professionals to understand the lives and perspectives of the Community. The shattering of his prejudices was an arduous process for Justice A.Venkatesh for he had never encountered anybody belonging to the LGBT community. After realising his bias towards the community, the Hon'ble judge then interacted with different people belonging to the community to gain better insight and understanding the diversity and discrimination amongst the people of his own country. He further addressed the compelling need for strict laws by the legislative authorities for the LGBT Community to protect them from harassment, social and mental torture and from prohibiting any kind of activities to change their sexual orientation through means such as black magic or undergoing medical operations. He also spoke about the strong need for a change in the cultural approach towards the LGBTQIA++ Community.



The judgement laid down guidelines including the closing of a missing person complaint upon receipt of information of them belonging to the community without any harassment, enlistment of NGOs and Community based groups which have sufficient expertise in handling the issues faced by the community which shall be published on the official website of the Ministry of Social Justice & Empowerment (MSJE) along with their contact details and the services they offer which are to be revised periodically, maintenance of confidential records of people who approach the NGOs which is to be provided to the concerned Ministry bi-annually, and sensitization programs to help accustom people to the community and help reduce and rid their biases and changes made to short stay homes and "Garima greh" (shelter home for trans persons) to accommodate any and every member of the community who require shelters or homes. The MSJE shall make adequate infrastructural arrangements in this regard, within a period of 12 weeks from the date of receipt of copy of this order in accordance with the judgment.

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This judgement is a celebration and a breath of fresh air for the community for it recognises the cultural and societal role in the discrimination of the members of the community and realises the role of the executive in harnessing such prejudices, further demonstrating the role of the Judiciary in upholding the rights and liberties of the community and to interpret the law to mould it in accordance to protect the rights of the community. The issues plaguing the treatment of the community are not new, and the decriminalisation of Section 377 should award such citizens all the rights that other citizens are inherently conferred with. Achieving normalcy by way of live-in relationships, marriage and “coming-out” openly must be the norm and this cannot be achieved without a collective and constant effort by all the three aforementioned parties. Counselling of judges to rid any prejudices may contribute to achieving the same as was proven by Justice Venkatesh. However, making this counselling compulsory and linking it to judgeship will infringe the rights of the judges. We must strike a balance between encouraging the Judges to undergo psycho-academic sessions and making it compulsory.

Lastly, it is paramount for the Judiciary to be proactive and vigilant to safeguard the members of the community from any further struggle and to minimise violations as much as possible. To quote Justice A.Venkatesh, “There are many branches on the tree of life. There is no one way to be, and there is room for everyone to be who they are.”



## Executive Reluctance in Rejecting the Outlawed Section 66A

The Supreme Court outlawed the controversial Section 66A of the Information Technology Act in the landmark Shreya Singhal case in 2015. Five years thence, an Apex Court bench headed by Justice Ramesh Sinha has issued direction to the Mathura Senior Superintendent of Police to submit an affidavit on why a case was registered under this Section. The Court, harried over the filing of FIR in lieu of this outlawed section, reminded the state about the Supreme Court order in a case filed by People’s Union for Civil Liberties and directed all the High Courts to send copies of the 2015 judgement to all the district courts within eight weeks.

The Court castigated the State for not taking corrective measures or directing its officers to not register FIRs for offences that have been declared unconstitutional. Similar instances occurred in January 2021 where the Karnataka High Court imposed a cost of Rs. 10,000 on two police officers for registering an FIR under this section and in 2017 where the UP police had filed an FIR under the unconstitutional provision as well.

The Court expressed its displeasure by saying that regardless of the reminders issued by the court, there appears to be no regard for the same and that the situation remains as earlier and the section is treated like it is well in force.



## Linking Vaccination to Jobs is Illegal: Manipur High Court

In response to a PIL filed in the Manipur High Court challenging a notification by the Home Department of the Government of Manipur issued on 30th June 2021, a 2 Judge Bench of Chief Justice Sanjay Kumar and Justice KH. Nobin Singh has ruled that linking one’s employment to getting vaccinated is illegal and ultra vires the Constitution. The notification stated inter alia that while opening public spaces, they will maintain public health safety and prioritise the opening of such spaces where employees and workers are vaccinated against the CoVID-19 Virus. The Government stated that such a clause would apply to MGNREGA job card holders, Government employees, and those who were working on Government and Private Projects.

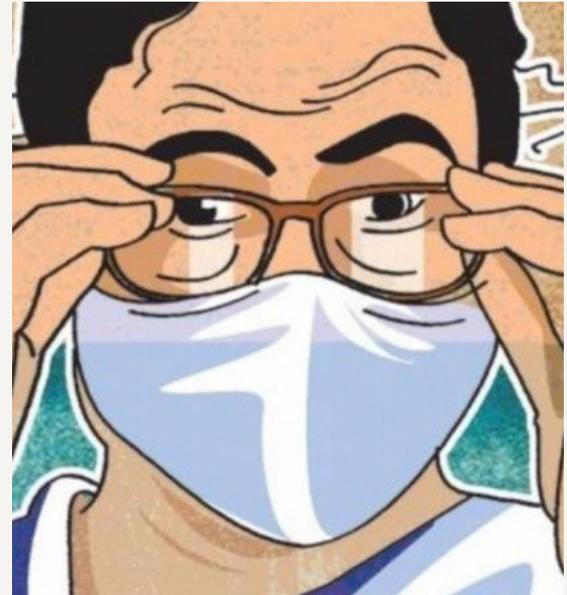
The Court held that the government’s attempt at making vaccination a precondition for employment violated the fundamental rights of citizens like Article 19 and Article 21 of the Constitution. They further said that the tussle between public health safety and one’s liberty cannot trample their right to choose and that any such order forcing the administration of vaccine goes against the fundamental purpose of the vaccine. The Hon’ble Court has set aside the notification until the next hearing date and has asked the State Government to file a reply.

## West Bengal Post-Poll Violence

A report on post-poll violence submitted that there were over 15,000 incidents of violence in West Bengal. To look into the matter, a seven-member panel of the National Human Rights Commission (NHRC) was constituted, which submitted its report to the Calcutta High Court.

A five-judge bench headed by Acting Chief Justice Rajesh Bindal observed that in the violence, a number of people would have suffered and that the 'state has failed to create an atmosphere that could build confidence of the sufferers to return back to their homes.' The Hon'ble Court also took notice of the actions of Police authorities, which failed to register the victims' complaint, hence concealing the acts committed. It was further noted that post-poll violence in the state was prima facie verified.

The Hon'ble High Court granted time till 31st July to the State Government of West Bengal to submit its reply in response to the report submitted by the NHRC.



## What does the Supreme Court have to say about Sedition?

The recent statement made by Chief Justice N. V. Ramana that the misuse of the sedition law by authorities prima facie violates the fundamental rights freedom of speech and liberty sends a firm message to the Centre.

Section 124A of the IPC defines Sedition as, 'Whoever by words either spoken or written or by signs or by visible representation attempts to bring into hatred or contempt, the government established by law; or whoever by the above means excites or attempts to excite disaffection towards the government established by law, has committed the offence of sedition. The offence is punishable with imprisonment for life.' The provision is often used as a tool to suppress opposition and jeopardise free speech.

The Chief Justice's remark acts as a significant signal to the government amid the rise in public criticism of the Union using the sedition law to suppress protest, dissent, and trample free speech. Numerous petitions have been filed emphasising how draconian the present law is in its inherent form. The Chief Justice's remark opens a window of revisiting the Hon'ble Supreme Court's decision in the case of Kedar Nath v. Union of India, 1962.

Kedar Nath v. Union of India, 1962: The Supreme Court upheld the constitutionality of sedition law. Furthermore, the court in an attempt to limit the scope of the mentioned law made it essential that such an act must be accompanied by incitement or call for violence, mere criticism of the government cannot be termed as sedition. Seven principles were laid down specifying circumstances wherein sedition would not be applicable.

The CJI also made a reference to the steep rise in the reporting but low conviction rate in matters pertaining to sedition. In 2019, 93 cases were on the ground of sedition as compared to the 35 cases that were filed in 2016. The same constitutes a 165% increase, having a conviction rate as low as 3.3%. The CJI's remark comes in support after many other renowned judges of the Supreme Court have publicly signified their disapproval of the sedition law. Flagging the misuse of sedition law during the pandemic against people seeking help on social media platforms, Justice D.Y Chandrachud said, "it is time to define the limits of sedition". Justice L. Nageswara Rao and Justice U.U. Lalit, both dealing with sedition law, have noted and upheld the right of every journalist to use its platform to critique the government for the benefit of people at large through legal means.

In a recent plea filed by a retired Army officer challenging the constitutionality of Section 124A of IPC. The Supreme Court noted that the legislation reflects the colonial hangover which after 75 years of Independence might not be necessary. The Court has agreed to examine the constitutional validity of Section 124A of IPC.



## Sulli Deals: A Conspiracy to Silence Objections against Islamophobia

On the evening of July 4, Afreen Fatima took part in an online discussion on the persecution of Muslims in India. Her phone was bombarded with texts as soon as she finished her session, alerting the 23-year-old student activist that she had been 'put up for sale' on a bogus online auction.

It was subsequently discovered that she was not the only one to suffer this ordeal. Without their knowledge, photographs of more than 80 other Muslim women, including students, activists, and journalists, had been posted on an app called 'Sulli deals'. The platform's founders advertised "deals of the day" in which users could claim a "Sulli" — a derogatory term used by right-wing Hindu trolls for Muslim women.

GitHub, which hosted the app, removed it in response to public outrage and criticism. "We suspended user accounts following the investigation of reports of such activity, all of which violate our policies," a GitHub spokesperson told Al Jazeera via email. "GitHub has longstanding policies against content and conduct involving harassment, discrimination, and inciting violence."



On July 8, the Delhi Police registered a police complaint (first information report) after the Delhi Commission for Women (DCW) and the National Commission for Women called for an investigation into the matter following days of outrage largely by Muslim women online.

A statement, signed by several renowned women's rights activists including Pratiksha Baxi, Ayesha Kidwai, Uma Chakravarty, Ghazala Jamil and Kavita Krishnan, among many others, reads that "this is a conspiracy to target women by creating a database of those Muslim women journalists, professionals and students who were actively raising a voice on social media against right wing Hindutva majoritarianism. The intention is to silence their political participation."

Hana Mohsin Khan, a commercial pilot who also featured on "Sulli Deals", has formed a WhatsApp group and has titled it "Solidarity", which includes over 20 of the targeted women and has strongly stated that all women are supporting each other and won't let this go so easily.

## No Protection to be Provided in the Name of Free Speech for Deliberate Attacks Against a Religious Community.



The bail plea of a 19 year old boy was rejected by a Gurugram court for allegedly making communal speeches against the Pataudis. The accused has allegedly made comments urging the abduction and killing of girls from a particular religious community at a gathering attended by Haryana BJP spokesperson and Karni Sena president Suraj Pal Amu.

It must be recalled that the accused is the same individual who fired at anti-CAA protestors near Delhi's Jamia Millia University last year and was granted bail after his family assured the court that he was 'repentant' and had been 'misled.'

The Haryana Court in a strongly worded order said that "its conscience was utterly shocked" on viewing a video recording of the incident, and that it is the need of the hour in the Indian society to tackle "these kind of persons who, if given a chance, would organize a mass murder to kill innocent lives based on their own religious hatred."

The court was also of the view that "such kind of people are actually disturbing the secular character of our nation and are the biggest impediment to nation building ... the common man is under constant threat of violence in the name of religion, caste etc."

The argument of the council of petitioners that 'free speech' and 'freedom of expression' meant controversial and incendiary comments, such as those allegedly made by the accused, were acceptable, was also slammed by the court and in response to that the court declared that "freedom of speech is an integral part of any democratic country, however, this freedom has reasonable restrictions. None can be allowed to ignite fire just because he has freedom of speech and can direct hatred towards a particular group or religious community."

The court also reminded the police and state government of their constitutional duty to ensure that people of India, regardless of their religion, creed, or caste, do not feel unsafe and that such hate-mongers do not freely roam the streets without fear.

# LEGISLATIVE LIMBO

## Advocates Protection Bill: A Strive Towards Protection of the Officers of Court

An effort made by the Bar Council to secure the rights of the indispensable pillars of the justice delivery system against activities of anti-social elements

The recently released Advocates Protection Bill is an attempt by the Bar Council of India to curb many incidents of assault, intimidation, criminal force that take place with advocates and act as an impediment in the performance of their professional duties which eventually renders the advocates to provide inadequate professional services to their respective clients.

It was on 2nd July 2021 that the draft of the Advocates Protection Bill was issued by the Bar Council of India. This proposal came in agreement with a report submitted by a seven-member committee constituted by the Bar Council in the wake of all the attacks encountered by the advocates and their families.

Most significant objective of this Bill is to guarantee the protection of the advocates by removing obstacles in discharge of their performance. It also specifies a variety of issues that hinder the performance of the advocates' professional duties. One of these factors talks about how assaults, abductions, intimidation, and continuous threats against activists are on the rise and how the government should shoulder the responsibility of safeguarding the activists against threats to their security as a result of their work.

This bill also aims to implement the Eighth Congress of the United Nations on Crime Prevention and Offender Treatment (1990) as this congress approved the 'Basic Principles on the Roles of Lawyers' as one of its agendas of which India was a part of. These basic principles imply for the government to look after the safety of the advocates so as to ensure the fulfillment of their obligations.

Flagging the impediments to the advocates' performance of their duties, this proposed law contains within itself a total of sixteen sections proposed to make certain that the officers of the court carry on their duties fearlessly. It is pertinent to note that the definition of the term 'advocate' under Section 2 of the Advocates Protection Bill has been kept identical to the definition mentioned under the Advocates Act of 1961 which provides for an advocate to be a lawyer in any role as provided by the act.

The actions plaguing the treatment of advocates have also been defined in the bill, under the term 'acts of violence'. Acts of violence encompasses all acts performed against the advocates with the aim to undermine the process of an unbiased and just litigation.

These 'acts' are basically actions that can either affect the advocates' living and working conditions or cause property loss or damage such as threats, harassment, coercion, assault, malicious prosecution, criminal force, harm, hurt, injury etc. The bill provides for all offences mentioned under 'acts of violence' to be cognizable and non-bailable.

The Advocates Protection Bill also manages to secure provisions for punishment and compensation under Sections 3 and 4. As per the Bill, whoever commits or abets the commission of an act of violence against an advocate will face punishment of imprisonment of six months which may be extended to five years. That person will also have to pay a fine of minimum Rs 50,000 and maximum Rs 1 lakh for the primary offence. But fines can reach up to Rs. 10 lakhs for consecutive offences. The Bill also authorizes the Court to compensate advocates for the wrongs they have suffered.

According to Section 11 of the Bill "No Police Officer shall arrest an Advocate or investigate a case against an Advocate without the explicit direction of the Chief Judicial Magistrate". The law in the bill also recommends that advocates be entitled to police protection under investigation by the court. This thus provides protection against wrongful arrests and prosecution to the advocates.

It is further noted that Section 12 of the bill states that "if any public servant with investigative or arrest power under the CrPC is found in possession of or using in his investigation any privileged communication or material that can be shown to have been obtained from an Advocate, it is presumed that such privileged communication or material was obtained by coercion". Advocates are sometimes inappropriately questioned about privileged conversations with their clients in order to aid in the investigation of alleged wrongdoing. This provision helps in the preservation of confidentiality which is to be maintained between advocates and their respective clients.

Another major element of the draft bill is a provision related to Social Security. In unforeseen circumstances such as natural calamities or epidemics, the Bill suggests that the state and federal governments develop procedures to give financial support to all underprivileged advocates in the nation and further states that every month, a minimum of Rs.15, 000 must be provided to the advocates.

# What Triggered Controversy in Lakshadweep?

Recently, the Draft Lakshadweep Development Authority Regulation, 2021, for the creation of a Lakshadweep Development Authority (LDA) was notified in public domain and opposed by the people of Lakshadweep.

In another skew of bills, three proposed bills have been a subject of dissent from the public over certain provisions -

- The Prevention of Anti-Social Activities Regulation (PASA)
- The Animal Preservation Regulation, and
- The Panchayat Regulation.

Section 3 of the PASA empowers the administrator on his satisfaction to direct detention of any person without making such an order public for a period of 1 year in the name of public interest. It is argued that the same would be misused to suppress any form of protest or agitation.

The Animal Prevention Regulation, if implemented would ban cow slaughter which is seen as a communal act than a welfare one, as 96.5% of the population of Lakshadweep belong to Muslim community.

The Panchayat Regulation disqualifies anyone who has more than two children to be elected to gram panchayats.



## Editor Speaks

### COVAX, Equity, and the Pandemic

How equitable distribution of vaccines has come to be an unprecedented challenge despite altruistic initiatives

The pandemic has wreaked havoc and left chaos and destruction in its wake; indeed, it has been a challenging year and a half across the world. That is, perhaps, what they mean when they call this pandemic a great equaliser; for what is greater in equating the mogul living in the mansion in the First World and our very own migrant labourer if not the fear of death? Yet, the pandemic's role as an equaliser remains controversial, for the developed world has won time and again during the pandemic: from access to availability of healthcare professionals, hospitals, life-saving drugs, vaccines, and affordable treatment, it is the developing and the under-developed nations that have borne the brunt of the pandemic, perhaps at the benefit of the developed world.

#### THE COVAX INITIATIVE

I was deeply intrigued by the COVAX system when I first read about it last year. COVAX, on paper, seems to be the epitome of a global collective conscience and a sincere effort in creating an equitable distribution system for vaccines across all nations irrespective of the status of their economies. "With a fast-moving pandemic, no one is safe, unless everyone is safe," aptly reads WHO's initiatives-introducer page on COVAX. The CEPI-GAVI-WHO-UNICEF partnership has committed to deliver vaccine doses for at least 20% of each country's population by managing vaccination portfolios to end the acute phase of the pandemic and rebuild fallen economies. GAVI describes COVAX as one of the three pillars of the Access to COVID-19 Tools (ACT) Accelerator launched in April 2020 to streamline global pandemic response by bringing together a comprehensively wide range of stakeholders including governments, manufacturers, scientists, global health organisations, civil society, the private sector, and philanthropic organisations.

Continued...



# AN AMBITIOUS GOAL WITH DISHEARTENING CHALLENGES

“It [COVAX] is the only truly global solution to this pandemic because it is the only effort to ensure that people in all corners of the world will get access to COVID-19 vaccines once they are available, regardless of their wealth.”

COVAX aims to make two billion doses available by the end of this year to protect high risk populations and front line workers across the world. COVAX evidently aspires to be a lifeline for low-income nations who cannot afford bilateral deals with vaccine giants while simultaneously supporting high-income nations who chose not to make such deals. Since COVAX supplies vaccines equitably, they also supply to high-income nations who have made bilateral deals with manufacturers, insisting that they do not believe in demonising these countries.

Nonetheless, a major challenge to COVAX’s noble initiatives has been that COVAX itself was introduced considerably late. “Rich” nations like the United States and many European countries had placed advanced orders for hundreds of millions of doses to be delivered directly to them upon approval by this time. The US government, for instance, signed deals worth over \$6 billion with numerous companies under their “Operation Warp Speed.” India and Indonesia are among the few middle to low income nations having signed bilateral deals. Money and “national interest” certainly and strongly combat COVAX’s hope for equity in vaccine distribution in this manner and others, for history seems to be repeating itself; In 1996, a cocktail of antiviral drugs revolutionised HIV treatment in the west but reached Africa, the most affected continent, only 7 years thence. Similarly, the H1N1, though arguably cry wolf, nevertheless reflected the richer countries’ attitude, in that they shall always prioritise vaccinating their own citizens first, unbeknownst of the fact that the risk of infection pervades the global village unless each global citizen is vaccinated.

Even so, if they do not care about populations other than their own, why should rich countries negotiate with COVAX for greater good if they can afford to make millions of dollars’ worth bilateral deals? COVAX aspired to encourage the richest nations as signing up to it may be like an additional insurance policy in case these countries had invested all their eggs in the wrong baskets. Investing in COVAX would guarantee vaccines for 20% of the population as COVAX investments are further directed to production of twelve distinct vaccines, and large investments from these nations are used to subsidize those who cannot pay. It remains to be seen whether this strategy is effective, for from Nature to Science, each journal has applauded COVAX’s optimism, yet been critical of whether its goals shall be realised to the fullest extent.

## THREATS MOVING FORWARD

The vaccine distribution divide is now ubiquitous in our post-pandemic reality. COVAX’s vision to make vaccines at least partly universal, especially for vulnerable populations and frontline workers, and at least in keeping with a semblance of equity, now lie somewhat shattered as the aforementioned “rich” countries return to status quo whilst developing and underdeveloped nations tryst, not just with the virus, but also with accessibility and availability challenges. It remains to be seen whether open borders to unvaccinated nations birth further threats to vaccinated populations in the world as COVAX struggles to vaccinate a mere 20% of the most unvaccinated nations.



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