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# ITM - Legal Digest

A Monthly Magazine With a Legal Perspective

## From the Desk:

ITM, the brain child of Dr. P. V. Ramana, is a year away from touching the silver jubilee milestone of establishment. The ITM group is the single leading brand spread in various states of India with colleges, institutions and universities in the domain of higher and technical education with varied programmes like Management, Engineering, Hotel Management, Culinary Arts, Fashion design, Bioscience, Law, Executive education, skills development and vocational education. ITM is steadily moving towards fulfilling its vision of becoming a global leader in professional education, whose mission is to impart futuristic and comprehensive education of global standards. We encourage multi-disciplinary inquest and create the practical appreciation of the legal issues being faced by the social participants. Our aim is to produce new wings of legal comprehension to provide the new dimension of understanding of law and to utilize in legal education and practice.

## Foreward:

It is a general belief that legal education is only limited to the legal community and experts. Knowledge of Law is quintessential for the welfare of individual and society at large. ITM believes that "**information is life**" and an informed citizen is the basis of a developing democracy, also a reflection of the legal culture and law of the land. '**Ignorantia Juris Non Excusat**' is a legal principle denoting that ignorance of Law cannot be used as an excuse to escape liability, thus the awareness of law can make an individual to deal with the legal issues and rights. The prime reason of publishing ITM - Legal Digest is to create legal awareness for its readers. Through this magazine, all the readers and stakeholders will get information of legal context.

## Word of the month: "Quid-pro-quo": ("something for something")

It denotes giving of one valuable thing for another. This requirement of mutual consideration, or the exchange of something of value, indicates the sincerity of the parties' intent to adhere to the contract between them. **Quid pro quo** has the same meaning in the law but with varying implications in different contexts.

The 2G scam took place in 2008, indicating a massive collusion between government and corporate interests. A. Raja the then minister for communication & IT from 2007 to 2009 and the main accused in the 2G scam, allegedly manipulated the rules to give in to first come first serve policy for frequency allocation of licenses in favour of selected mobile telephone companies at prices that understated the real market value of the asset virtually gifting away important national assets. On 25th September 2007 a press note was issued by Telecom ministry wherein 1st October, 2007 was declared a deadline for the receiving applications for UASL licenses following which the DoT received a total of 575 applications for licenses from 46 companies. In the month of November the Prime Minister wrote to A. Raja directing him to ensure a fair allotment of 2G Spectrum, Finance Ministry too wrote to the Department of Telecommunications raising objections over the procedures adopted by it, however their demand for review was rejected. On 28th January, DoT decided to issue licenses on a first come first serve basis, preponing the cut-off date to 25th September, 2007 from 1st October 2007. On the same day DoT posted an announcement on its website those who apply for licenses between 3.30 to 4.30pm would be issued licenses in accordance to the policy, companies were given few hours to provide their letter of intents and cheques, those already tipped off by A.Raja were awaiting with their documents and cheques.

Justice G. S. Singhvi in the 2G Spectrum case has mentioned this term. 2G spectrum licenses were priced at 2001 levels to benefit the private players. That was when there were only 4 million cellphone subscribers as opposed to the present 350 million. Hence 2G spectrum licenses allotted in 2001 price is not applicable. These companies should not have been allotted spectrum by the Telecommunication Ministry. But these companies were favoured on the Minister's direction, owing to undue influence of then Telecom Minister. Justice G. S. Singhvi called this was **quid pro quo** wherein national assets were traded in return of bribes. Immediately after acquiring 2G spectrum licenses Swan and Unitech sold their stakes to foreign companies at huge profits. The Supreme Court declared the allotment of spectrum as "unconstitutional and arbitrary" and quashed all 122 licenses issued in 2008.

## De-Jure: "Cyber crimes & Law":

Cyber crime is a criminal act indicating the use of computers as an instrument in furtherance of illegal ends. The growth of technology has accelerated a huge change in all sectors of economy however the misuse of technology in the cyberspace gave birth to cyber crimes at domestic as well as international level. The impact of cyber crimes can range from the crimes committed against an individual and can extend to crimes committed against but not limited an entire nation. The year 2013 saw a steep rise in cyber offences which reportedly rose 122.5% from 2012, sexual harassment and economic crimes being prime motives behind 40% of all cyber offences. Most hacking cases in India were reported from the state of Karnataka, while most sexual harassment cases being reported from the State of Andhra Pradesh and Kerala, Maharashtra having the distinction of being the state with maximum sexual harassment motive cases. Internet and social media being used rampantly as a virtual medium used to sexually harass several

vulnerable women being subject to cyber stalking, obscenity, threatening, sexting, blackmailing, criminal intimidation and dissemination of sexually explicit material containing them. (<http://timesofindia.indiatimes.com/india/Cyber-offences-jump-by-122-in-2013/articleshow/37875575.cms>)

A senior manager of a private company was sentenced to three years in prison for creating a fake Facebook account of a married woman and uploading indecent pictures on it. A 40-year-old woman had approached state cyber cell alleging that unidentified person had created a Facebook profile using her name, address and morphed pictures to defame her. The IP address was traced to complainant's neighbour. He was arrested under Section 419, 469, 471 of IPC and Section 67 of IT Act. He created a Facebook account of the woman and uploaded her morphed images along with obscene as well as false information besides her address.

Phishing is one amongst several economic offenses committed by using computer and internet as a medium and tool. Phishing is an attempt to acquire sensitive information such as usernames, passwords and credit card details by masquerading as trustworthy entity in electronic communication. Phishing emails may contain links to websites that are infected with malware often directing user to enter details at a fake website almost identical to the legitimate one. The sensitive information thus gained can be used against an individual, company and economy at large.

Today, large financial institutions no longer the only ones with the ability to achieve electronic funds transfer transmitting numerous

across jurisdictions at the speed of light, such activities undertaken by criminals/ groups causing large scale extensive money laundering and tax evasion.

Digital technology permits reproduction and dissemination of prints, graphics, sound and multimedia combination on the electronic platform further exploiting the Intellectual Property Rights, Anti Piracy and Copyright laws.

Dependence and proliferation of Economic fund transfer carry associated risks that may result in transactions being intercepted and diverted, if valid credits intercepted electronically as well as physically and the digital information stored on a card are counterfeited.

Large scale terrorism funding has led to exploitation of technology by terrorist organization for carrying out their unscrupulous, illegal, terrorist activities. With several terrorist organizations hacking official website of governmental and commercial organization undertaking and investing substantially in information warfare with an aim of acquiring confidential defense and economic information of nations, which may cause grave threat to the security and secularism of nations.

Thus, cybercrimes are nothing but reflections of crimes prevalent in a society except that they take place on an electronic platform, and in absence of cyber security, solutions and regulation of cyber laws they harbor immense potential to cause large scale damage and destruction to individuals and economies.



## **“Law”gic: “Are women protected in workplace?”**

*“A law does not by itself become a great law, for success depends on implementation.”*

A Safe environment free from sexual harassment is right of every women. Sexual harassment results in violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 (Protection of Life and Personal Liberty) of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment.

Sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- a) Physical contact and advances
- b) A demand or request for sexual favour's
- c) Sexually coloured remarks
- d) Showing pornography
- e) Any other unwelcome physical verbal or non verbal conduct of sexual nature.

In 1997 Vishaka and other women groups filed Public Interest Litigation (PIL) against the State of Rajasthan and Union of India to enforce the fundamental rights of a working women under articles 14 (Right to Equality), 19 (Right to Freedom) and 21 of the constitution of India after the brutal gangrape of Bhanwari Devi a social worker for stopping child marriage.

In 1997, the Supreme Court has passed a landmark judgment in Vishaka case laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment until legislation is passed to deal with the issue.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, came into force on 9th December 2013. The preamble reads "An act to provide protection against sexual harassment of women at workplace and for the prevention, redressal of complaints of sexual harassments and for matters connected therewith or incidental thereto". According to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act the following circumstances among other circumstances, if occurs or is present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment (i) implied or explicit promise of preferential treatment in her employment; or (ii) implied or explicit threat of detrimental treatment in her employment; or (iii) implied or explicit threat about her present or future employment status ; or (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or (v) humiliating treatment likely to affect her health and safety.

In accordance to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act it is the duty of every employer to provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace, also to provide the procedure for resolution and settlement of acts of sexual harassment by taking all steps required.

The Act provides for constitution of Internal Committee and the local committee at the district level for better countering sexual harassment at work place. Recently Indian woman employee of Sri lankan Airlines moved a petition in the Delhi High Court for action against the air carrier for non-implementation of the Vishaka guidelines which deals with cases of sexual harassment at workplaces. The petition seeks government direction to ensure implementation of the Vishaka guidelines as well as provisions of the Sexual Harassment at Workplace Act in all airlines which fall under the jurisdiction of the Civil Aviation Ministry.

The new sexual harassment Act 2013 is enacted exactly on the same terms as the Vishaka Judgment punishable up to five years rigorous imprisonment with / without fine or both. The State functionaries and private and public sector undertakings or institutions shall put in place sufficient mechanism to ensure full implementation of the Vishaka guidelines.

## Forum: "Delay in Justice"

"Justice must not only be done, it must also be seen to be done." Gordon Hewart in *Rex Vs Sussex Justice ex parte McCarthy* (1924)

Speedy trial is an integral and essential part of the fundamental right of life and liberty enshrined in Article 21 of the Constitution of India. Speedy trial is the essence of criminal justice and there can be no doubt that delays in trial by itself constitutes denial of justice. 'Justice delayed is justice denied', if timely justice is not granted to the sufferer it loses its importance and violates the power of basic human rights.

It was held in Sheila Barse V/s Union of India it was held "the right of speedy trial is a fundamental trial implicit in Art. 21 of Constitution of India. If an accused is not tried speedily and his case remains pending before the magistrate or the session court for unreasonable length of time it is clear that his fundamental right to speedy trial would be violated unless, of course, the trial is held up on account of some interim order passed by a superior court or the accused is responsible for the delay in the trial of the cases. The consequence of violation of fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right.

In the public perception it is the judiciary that is mainly responsible for the delay in administration of justice. Judiciary is mostly blamed without appreciating the real reasons, judiciary on its part remains silent and refrains from conveying to the public that certain delays are beyond its control. Amongst the various reasons for delay is the apathy on the part of the police in registering the FIR's and taking up the investigation in the right and earnest manner, wide spread corrupt practices at the police station level affects the timely and qualitative investigations. Many a times police

file the FIR's and charge sheets only after the directions of the court due to genuine or artificial reasons which further delays the process and defeats the process of justice. Defective charge sheets without narration of all relevant of all facts tend to delay the proceeding further often hampering the process of justice.

Absence of some of all the accused, non production of under trials, lack of earnest efforts not being made by police in apprehending and producing the absconding accused further lengthens the process justice.

Lack of witness protection, ineffective case management measures, improper documentation, transfer of judges trying serious offences, trials often held up on account of pendency of quashed proceeding cause's further delays.

One of the important causes impeding speedy disposal of trials is the unjustified adjournments sought by the advocate of the accused to delay the trial defeating the purposes of evidence and with an aim of winning or intimidating the witnesses.

After 12 years in the hit and run case of Salman Khan, in the trial, a witness retracted his police statement in court and said he had not said that the actor had got down from the driver's seat of his vehicle and ran away after the accident occurred in suburban Bandra. Mr. Khan was earlier booked for rash and negligent driving and then charged with culpable homicide not amounting to murder. In 2002, one person was killed and four were injured after the actor's SUV allegedly jumped over a footpath where the victims were sleeping. Police also filed a report that three witnesses were untraceable. Even though the statement before police cannot be taken as evidence, delays in conducting trial and failure on the part of prosecution in producing the witnesses will lapse the justice itself.

In the 221st Report published by Law Commission of India the need for speedy justice was advocated, it was recommended by them that it is necessary that provisions parallel to section 80 CPC be introduced for all kinds of civil suit and cases proposed to be filed by a litigant. The supreme court held in *Bihari Chaudhary Vs State of Bihar* that the object underlying section 80 CPC is to ensure that before a suit is instituted against the government or a public officer, the government or the officer concerned is afforded an opportunity to scrutinize the claim in respect of which the suit is proposed to be filed and if it be found to be a just claim to take immediate action and thereby avoid unnecessary litigation.

According to the 239th Report published by the Law Commission of India while talking about the trials of cases against influential personalities, law commission recommended pre-trial measures defining pro active role of the police in the case registration, investigation, documentation, production of accused and witnesses and overall up gradation of procedural mechanism.

According to the 230th Report published by the Law Commission of India amongst the many judicial reforms to counter the maladies of delay in justice is increase in number of judges in courts and formation of new benches, also increasing the number of days and improving work culture to create a mechanism for facilitation of speedy justice. The report also stresses on the need for justice at easy reach based on the principle of Integrity, virtue, ethic and good governance.

Alternate dispute resolution is a less expensive, less time consuming and a process free from technicalities of Law. Setting up of Fast track court, Evening courts, quasi judicial tribunals, special tribunals, Gram Nyayalas at Panchayat levels can further facilitate speedy disposal justice and better administration of justice.

## Intellectual Property: Pepsico succeeded in the trade mark fight:

The World Intellectual Property Organization (WIPO) has defined Intellectual Property as "Creation of mind, such as, inventions, literary and artistic works; designs; and symbols, names and images used in commerce."

The Trade Mark and Merchandise Mark was passed in India in the year 1958, since then it has been amended several times. Moreover in view of developments in trading and commercial practice increasing globalization of trade and industry it was considered necessary to bring

out comprehensive legislation on the subject, accordingly the trademark bill was introduced in the parliament of India and the "Trade Marks Act, 1999" was passed.

In Sumat Prasad v Sheojanan Prasad, AIR 1972 SC 2488 a trademark was defined as "A mark used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right as the proprietor to use that mark. The function of trademark is to give an indication to the purchaser or a possible purchaser as to manufacture or quality of goods to give an indication to his eye of trade source from which the good come, or the trade hands through which they pass on their way to the market.

According to section 29 of the Trademarks Act 1999, a registered trademark is infringed by a person who not being a registered proprietor or a person using by way of permitted use, uses in the course of trade a mark which is identical with or deceptively similar to the trademark in relation to goods or services in respect which the trademark is registered and in such manner as to render the use of the mark likely to be taken as being used as trademark.

A trade mark is deceptive to another if it resembles that other mark as to likely to deceive or cause confusion in respect of goods or service and which is likely to mislead the public. Infringement of Trademark is a violation of the exclusive right attached to trade mark without the authorization of the trademark owner or any licensees. Infringement may occur when one party, uses a trademark which is identical or similar to

the trademark owned by another party, in relation to products or services which are identical or similar to the products or services which the registration covers.

Recently Delhi High Court in CS(OS) 157/2013 ruled in favour of Pepsico in a trade mark case involving its mineral water brand AQUAFINA. The defendant PSI Ganesh Marketing & Anr used the name ACQUA FIES which is similar to that of ACQUAFINA. It is a unique word adopted and has been exclusively used by the Pepsico since 1994 and introduced it in India as early as 1999. The brand name is well known mark within the meaning of Section 11(8) of Trade Marks Act. It was alleged that defendants brand name confuse the customers and mislead them that it originates from that of plaintiffs and it is gross violation of infringement of copyright and they are malafide and deliberately adopted Pepsico's logo so as to confuse the Pepsicos logo.

Court viewed that the trade mark of the defendants is deceptively similar to the plaintiffs trademark. The use of the word AQUA FIES by the defendants is likely to dilute the distinctive character of the plaintiffs trade mark ACQUAFINA and the same is likely to erode the goodwill and reputation of the plaintiffs among its existing as well as potential customers in the market. Defendants in a malafide, dishonest and an unethical manner encashing upon the goodwill and reputation of the plaintiffs. Hence decree of permanent injunction against the defendant from dealing with the goods having infringed trade mark and damages were awarded to the Pepsico.

## Patent:

Patent is a monopoly granted by statute for a limited term over a new and useful invention that involves inventive step. Invention may either be for a product or a process. The rights enjoyed by owner of the patent are proprietary in nature and the patentee or his agents or licensees have the exclusive right to use and have the benefit of patented invention and or event unauthorized use, during the period of patent protection

The Patents Act 1970 was enacted by the Parliament of India to amend and consolidate the Law concerning Patents it was based upon the comprehensive report prepared by Shri. Justice N. Rajagopal Ayyangar (a former Judge of Supreme Court)

Section 6 contained in Chapter III of the Patents Act 1970 states that an application for a patent for an invention should be made by any person claiming to be the true and first inventor of the invention. Section 9(3) states that where an application for a patent has been made it ought be accompanied by a specification purporting to be a complete specification, every specification shall describe the invention and shall begin with a title sufficiently indicating the subject matter to which the invention relates. According to section 10 (4) every complete specification shall fully and particularly describe the invention and its operation or use and the method by which it is to be performed, every complete specification should disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection.

Chapter II of the Patents Act 1970 describes the inventions which are not patentable. According to section 3(d) the mere discovery of new form of known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process result in a new product or employs at least one new reactant are not inventions under the Patents Act 1970.

The Indian Patent office has refused patent to a US based firm Abraxis Bio Science for anti cancer drug Abraxane, that paves the way to domestic companies to launch affordable versions in the local market. The application was rejected on the ground of lack of inventive steps. One of the main grounds under which the patent was refused is section 3(d) the provision under which Novartis lost protection for the drug Glivec.

The standards for grant of patents for drugs in India are on different footing from other countries. This is because of variety of reasons including socio-economic conditions prevalent in India. Indian Legislature enacted section 3(d) in the Patents Act, 1970 by way of Patent (Amendment) Act, 2005 when product patent for drugs was required to be granted in compliance of Trade-Related Aspects of Intellectual Property Rights. If the standards for grant of patents for drugs and medicines were lowered, it would lead to monopoly of these companies even in other developing and poor countries.

The Supreme Court of India while interpreting section 3(d) of the Patents Act in Novartis case which unambiguously speaks that no patent can be granted for new form of a known substance if it lacks in therapeutic efficacy. Mere minor changes or insignificant alterations made to new form of a known substance will not make it eligible for grant of patent unless it can be proved that its therapeutic efficacy has been enhanced by these changes. Novartis failed to bring forth positive evidence that the new form of the known molecule was capable of enhanced therapeutic efficacy. Supreme Court stated that therapeutic or curative efficacy hurdle needs to be crossed before a drug, which is an improvement over a previous known drug, becomes eligible for patent.

## The Tea Board Challenged ITC Limited for GI:

The Geographical Indication of goods (Registration and Protection) Act 1999 Act is a sui generis act of the parliament of India for the protection of geographical indication in India. The GI tag ensures that none other than those registered as authorized users (or at least those residing inside the geographical territory) are allowed to use the popular product name pertaining to the territory.

The section 1(e) of the Geographical Indications of Goods Act (Registration and Protection) Act 1999 defines "geographical indication" in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating or manufactured in the territory of the country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured good one of the activities of either the production or of the processing preparation of the goods concerned takes place in such territory, region or locality, as the case maybe.

Geographical indication is a name or sign used on certain products which corresponds to a specific geographical location or origin. The use of geographical indication may act as a certification that the product possesses certain qualities, is made according to traditional methods, or enjoys a certain reputation, due to its geographical origin.

The Calcutta High Court in CS No. 250 of 2010 The Tea Board of India holds the famous geographical indication "Darjeeling" and the logo of a woman holding tea leaves, as well as the certification trade mark "Darjeeling" under the Trade Marks Act, in connection with "tea". Tea Board challenged the ITC for infringement and passing off, who is carrying a business of hospitality from naming one of its lounges in the hotel as "DARJEELING LOUNGE", where among the beverages and foods served to its customers, tea is also one of the items which is not necessarily restricted to the one grown only in the district of Darjeeling.

The court has opined that the usage of the term DARJEELING for a lounge does not create a situation where any person with an average intelligence would find it difficult to differentiate between the already existing Darjeeling tea and the lounge DARJEELING. Plus any form of confusion wherein any beverage or food article provided in the lounge might belong to the Tea Board of India is not bound to happen.

## Eco'Law'mics : SAT rejects RIL Plea:

The Securities Appellate Tribunal has dismissed an appeal of Reliance Industries challenging the process followed by the market regulator SEBI refusing to settle the fraudulent trade practice case. Reliance approached the SAT to direct the SEBI to consider the allegations through the consent order by paying a monetary penalty without admission or denial of wrong doing. The alleged violation took place ahead of the merger of Reliance Petroleum with Reliance Industries. Reliance Petroleum was a subsidiary of Reliance industries at that time and allegedly made an illegal gain of Rs.513.12 crore.

SAT ruled that Tribunal has no other option but to dismiss the appeal since section 15JB(4) expressly bars appeal against the order passed in settlement proceedings from April 20, 2007. Section 15JB(4) is inserted to SEBI Act with retrospective effect from April 20, 2007, by Ordinance of 2014 which bars appeal against any Order passed in consent proceedings.

But there is an option of challenging SEBI rejection of consent order and SAT's inability to maintain the appeal before the High Court under writ jurisdiction. The validity of retrospective amendment also can be challenged before High Court. There is also an option of approaching the Supreme Court against the Order of Tribunal requesting them to exercise their extraordinary power.

## EDU-LAW :

Vide petition filed by Orissa Technical Colleges Association against AICTE in SLP(c) 7277 of 2014 in the Order dated 17th April 2014 and amended order dated 9th May 2014, the apex court had instructed the AICTE to commence the approval process of all technical colleges affiliated to universities for the academic year 2014-15 and issue necessary orders within 10 days. In this connection AICTE filed an IA to extend the time as they received 7280 applications from the existing technical institutions out of which 529 applications are pending for consideration thereby to grant additional time to complete the process. In the Order in WP(c): 538 of 2014 filed by Jayamatha College of Engineering Vs Union of India & Ors which is connected to other WP Nos. from 552 to 560 of 2014 in the combined Order dated 26 June 2014, additional one week time was granted to AICTE to complete the process. However in the Order dated 26 June 2014 while referring the Parshvanath Charitable Trust & Others Vs AICTE & ors the referred schedule has erred with the last date of 30 April fixed by Apex Court as the 10th April 2014, and subsequent schedule. However, due to various reasons out of 367 engineering colleges in Maharashtra, more than 150 college names are removed from the revised list of DTE for the CAP process which to be commenced from 13-07-2014 and to be completed by August 2014, which is seems to be breach of the time schedule in the SLP (c) 7277/2012.

## Case of the Month

### Shailaja Finance Ltd. Versus GTM Builders & Promoters Pvt. Ltd. & Another

Consumer Complaint No. 117 of 2014 With Interim Application No. 2748 of 2014

THE HONOURABLE MR. JUSTICE J.M. MALIK, PRESIDING MEMBER & THE HONOURABLE DR. S.M. KANTIKAR, MEMBER

**Petitioner:** Shailaja Finance Ltd.

**Opposite Party:** GTM Builders & Promoters Pvt. Ltd. & Another

Whether the complainant who avails the service of opposite party for commercial purpose can challenge for deficiency in service?

Petitioner who are joint owners/developers of the land filed a complaint against the opposite party to direct to hand over the possession of flats which they booked immediately in a completely finished state and to direct not to create any third party rights with respect to that flats.

The Court held - Consumer Protection Act does not include a person who avails services for any commercial purpose. Petitioner company booked the flats to the business activity. Therefore it will fall in the category of commercial purpose. Therefore petitioner cannot be termed as consumer. The court also explained that the Order of Commission will not resist the complainant to seek remedy before any other appropriate forum or civil court as per law. Petition dismissed.

### Know the Law: Companies Act 2013:

The Companies Act 2013 came into force on 12th September, 2013 after receiving the assent of the President on 29th August, 2013. The Act has replaced the Companies Act 1956 (in a partial manner), the act is divided into 29 chapters containing 470 clauses as against 658 sections in Companies Act 1956 and has 7 schedules.

Here are some of the salient features of Companies Act, 2013:

**Members of Private Company:** The maximum number of member according to the Companies Act 1956 was 50 which has been changed to 200 by the Companies Act 2013.

**One Person Company:** The 2013 Act introduces a new type of entity 'one man Company' a company with one person as its member, apart from forming a public or private limited company. (section 3(1))

**Corporate Social Responsibility:** Act stipulates certain class of Companies to spend a certain amount of money every year on activities/initiatives reflecting Corporate Social Responsibility to improve the Under-privileged & backward sections of Society. (Section 135)

**National Company Law Tribunal:** National Company Law Tribunal and the National Company Law Appellate Tribunal to replace the Company Law Board and Board for Industrial and Financial Reconstruction. They would relieve the Courts of their burden while simultaneously providing specialized justice. (Section 407)

**Mergers and Acquisition:** It simplified procedure for mergers and amalgamations of certain class of companies such as holding and subsidiary, and small companies after obtaining approval of the Indian government. (Section 233) It permits cross border mergers, a foreign company merging with an India Company and vice versa but with prior permission of RBI. (Section 234)

**Independent Directors:** All listed companies should have at least one-third of the Board as independent directors. Such other class or classes of public companies as may be prescribed by the Central Government shall also be required to appoint independent directors. No independent director shall hold office for more than two consecutive terms of five years. (Section 149)

**Prohibition of partnership of persons exceeding certain number:** The maximum number of persons/partners in any association/partnership may be upto such number as may be prescribed but not exceeding one hundred. This restriction will not apply to a Hindu undivided family carrying on any business and an association or partnership, constituted by professionals like lawyer, chartered accountants, company secretaries, etc. who are governed by their special laws. (Section 464).

**Entrenchment of Articles:** Entrenchment of articles of association have been introduced in the new Act. The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with. (Section 5)

**Consolidated financial statement:** The 2013 Act mandates consolidated financial statement for any company having a subsidiary, associate or a joint venture (section 129(3)). It also requires a separate statement, containing the salient features of financial statements of its subsidiary.

**Rotation of Auditors :** This Act provides for rotation of auditors and audit firms in case of publicly traded companies and prohibits Auditors from performing non-audit services to the company where they are auditor to ensure independence and accountability of auditor. (Section 139(4))

**Winding up:** This Act prescribed only two modes of winding up, Voluntary winding up and winding up by the Tribunal (Section 270). This Act does not acknowledge the distinction between members voluntarily winding-up and creditors voluntarily winding- up.

### Expert talks:

Liberalization of Legal Education and introduce ICT at all the level: In National Convention in Judicial Reforms for Fast and Effective Justice it was unanimously and categorically highlighted that present judiciary system is struggling to establish reputation, credibility and respect and suggested to liberalize the legal education.

- a) Amendment of norms of the legal education implementation methodology, by which to increase the quality.
- b) All the courts shall be linked with ICT, where the day to day the court Orders/Judgments.
- c) Establishment centralized case clearing House, where all the orders are converted to digital copies from panchayat level to higher court and kept record. This will be available for the registrars, litigants and Judges, which will help while preparing the issues and arguments, finally the effective and speedy judgments.
- d) A radical changes in legal education with learn and earn & awakening a village / communities / spiritual institution for the overall growth of intellectual capital and growth.
- e) Involve the Academic Institutions to spread the legal education and awareness programs at village level.

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