


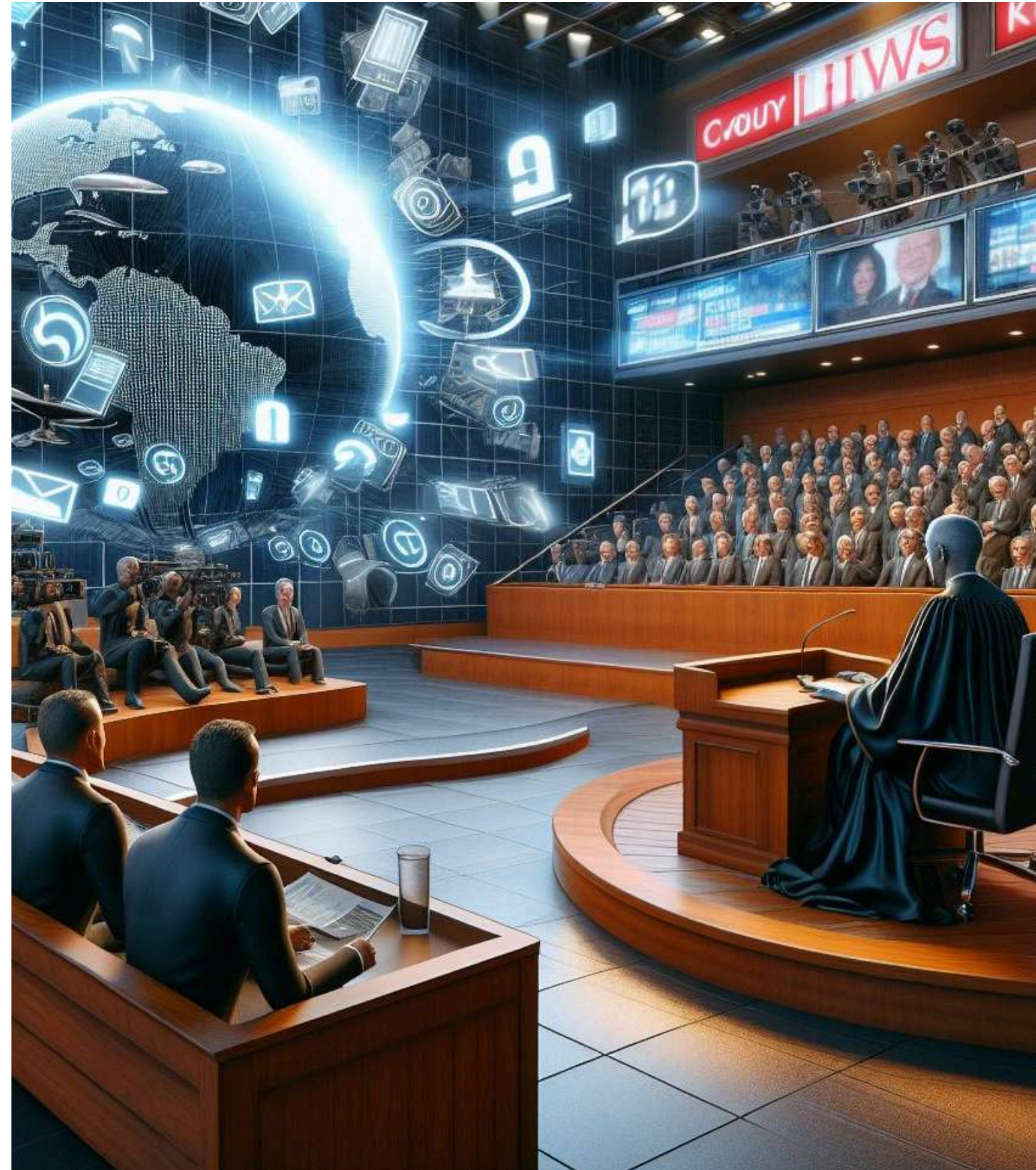


May, 2024   
Vol 7

# LAWBY 26

FROM THE HOUSE OF ORIGIN LAW LABS

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# EDITORIAL



Arun Sugavaneshvar  
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## Why Data Theft Can Cost Rs.250 Crores for Companies in India? Is the Government Liable Too?

Data theft statistics in India for 2023 is quite alarming. As per the report from the Data Security Council of India (DSIC) Indians faced over 400 million cyber threats last year.

Cyber Security researcher Jeremiah Fowler uncovered an unprotected database containing 12 million diagnostic medical records of patients linked to Radcliffe Labs in India. In June 2023, the CoWIN portal was hacked, and data relating to COVID testing and vaccination status of Indian citizens were published on various forums including Telegram. This included personal data such as name, age, gender, Aadhar number.

The Digital Data Protection Act, 2023 specifies a penalty of Rs.250 crores for any lapses in data protection to companies. Companies must adopt best practices to protect data from external hacks as well any unauthorised data usage by employees. Companies must ensure that critical or sensitive data must be encrypted and access to the same must be limited to a few individuals. It would be best to incorporate anti-downloading and anti-copying software to further protect data. Proper installation of firewalls and software that alerts as soon as a breach is found helps mitigate the issue of data theft. It is vital to conclude a strong employment agreement that clearly focuses on confidentiality or a non-disclosure clause along with a non-solicitation clause.

The Information Technology Act, 2000 provides for punishment of various cybercrimes and specifically under **Section 72** provides for imprisonment of 2 years or a fine of one lakh if they disclose data breaching confidentiality and privacy of a person. **Section 405 and section 408** of the Indian Penal Code,1860 provides for criminal breach of trust that attracts an imprisonment of upto 3 years. In the case of ***Awadesh Kumar Parasnath Pathak vs State of Maharashtra and another (2024 SCC OnLine Bom 1074)***, The Bombay High Court held that while the IT Act is a special law addressing cybercrimes, it does not exclude the application of IPC where the IT Act does not adequately cover certain offences.

Rs. 250 crores as a penalty seems quite steep with ever increasing challenges for running a business. It is to be understood that the government intends to ensure best in class protection and has hence placed Rs. 250 crores as a negative reinforcement technique. However, is the Government liable too when its websites are breached one wonders?





# LEGAL CRISPS

## Hostels are advertised as “Second Homes” Do we pay GST for our homes now?

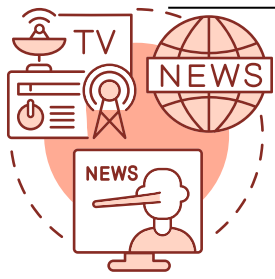
-Anoushka Samyuktha A

Recently, there has been an increase in the number of people migrating from their hometowns to different cities for employment as well as education. Especially after the Covid 19 lockdowns have been lifted, the inflow of people to the big cities has increased. This has gradually increased the number of hostels in cities. There has also been a hike in the prices of these hostels and private accommodations. But what about the GST? Hostels can be classified into two: educational institutions and private accommodations. The hostels provided by the educational institutions to its students are not liable to pay the GST. But what about the private hostels?

Private hostels have a profit motive, and it is necessary to obtain a Shop and Establishment license to run a private hostel. So, this looks like a clear reason for GST to be charged. But, according to Notifications 12/2017, the services by the way of renting of residential dwelling for use as residence shall be exempt from paying GST.

In ***Sri Sri Sri Kishore Chandra Singh Deo v. Babu Ganesh Prasad Bhagat (1954 AIR 316)***, the Supreme Court stated that residence is a place where one eats, drinks and sleeps, and the hostels are primarily used for the same purpose and therefore comes under the category of residence. Similarly, in ***Taghar Vasudeva Ambrish v. Appellate Authority for Advance Ruling, Karnataka & Ors (W.P. No. 14891 of 2020)***, it was held that a private hostel falls under the purview of a residential dwelling. Therefore, it is clear that paying guest accommodation (PG) or Private Hostels are exempted from paying GST.





# Media Trial

-Nithyaparvathy R.G

One of the foundations of Indian democracy is the judiciary. The goal of the judiciary is to ensure that the law is applied fairly and smoothly throughout the country. The legal system undoubtedly safeguards citizens' rights. As the Constitution guarantees, everyone must have an equal opportunity to represent themselves in court. The primary goal of the judiciary is to administer justice fairly, free from any form of social or political influence.

Conversely, media trials wield significant influence over public opinion, which can sway judges and potentially disrupt the legal system. These trials, deemed a direct form of contempt of court under **Section 2(c) of the Contempt of Court Act, 1971**, prohibit the media from expressing any opinions or viewpoints on pending cases.

Both must complement each other instead of attempting to take the place of one another. The media is responsible for reporting the incident, but the accused also has a right to protection while criminal investigations are underway. Both organisations must ensure that information is only acquired and disseminated to the public after a careful investigation, assessment, and inspection. In ***Nilesh Navalakha v. Union of India (2021 SCC OnLine Bom 56)***, the Court set rules for the first time regarding how news media and publications should cover court cases.

The Court published several guidelines, some of which are as follows:

- The victim's right to privacy and dignity must always be upheld.
- It is inappropriate to release the case's sensitive information to the public.
- The admission or confession given in the presence of an investigator cannot be published. Interviews with any parties involved are prohibited while the lawsuit is pending.





# CASE CHRONICLE

## Liability of Advocates in COPRA

-R K Sowmiya

In the case of Bar of Indian Lawyers through its president **Jasbir Singh Malik Vs D. K. Gandhi Ps National Institute of Communicable Diseases and Anr. [2024 INSC 410]**, the Supreme Court of India has unequivocally ruled that legal services rendered by advocates to their clients do not fall within the purview of the Consumer Protection Act, 1986 (re-enacted in 2019). This judgement settles the long-standing debate surrounding the applicability of consumer protection laws to the legal profession. The apex court's decision stemmed from a batch of appeals challenging a National Consumer Disputes Redressal Commission (NCDRC) order that held complaints alleging service deficiency against advocates to be maintainable under the Consumer Protection Act.

The Court analyzed the legislative intent behind the Consumer Protection Act and concluded that the statute was enacted to safeguard consumers from unfair trade practices and unethical business conduct but did not encompass professions or services rendered by professionals.

The Court also recognised the sui generis (unique) nature of the legal profession, distinguishing it from other professions due to its distinct role in upholding the rule of law, protecting citizens' rights, and maintaining the independence of the judiciary. This recognition underscores the legal profession's distinctive character and the need for a tailored regulatory approach.

Finally, it was held that the relationship between an advocate and a client falls within the ambit of a "contract of personal service," which is explicitly excluded from the definition of "service" under the Consumer Protection Act.

The judgment also highlighted the comprehensive regulatory framework established by the Advocates Act, 1961, and the Bar Council of India Rules. This existing regulatory framework was sufficient to address such concerns without invoking consumer protection laws.

Importantly, the judgment does not grant absolute immunity to advocates from civil or criminal liabilities arising from professional misconduct. Instead, it affirms that such issues are best addressed within the existing regulatory framework established by the Advocates Act and the Bar Council of India Rules. This reiteration of the Court's faith in the existing regulatory framework provides reassurance about the profession's governance and its ability to address professional misconduct.



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# BEYOND THE OBVIOUS



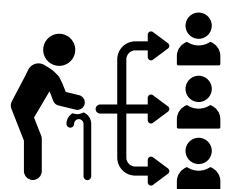
## Inheritance tax in India

-Sri Sai Kamalini M S

Estate tax, or inheritance tax, is a term that refers to the levy imposed on transferring property or assets from a deceased individual to their legal heirs. In India, the inheritance of property from parents and other elders in the family through a will is a common practice. It's intriguing to delve into the historical context and note that there is currently no tax on inheritance according to current law. However, in the past, specifically until 1985, inheritance tax was a common practice in India. This tax was later abolished as a measure to promote economic growth and simplify the process of taxation, marking a significant shift in our tax policies.

There are ongoing and lively debates about whether to reintroduce the inheritance tax in India. One group of people supports it, arguing that it could help reduce economic disparity. On the other hand, there are those who oppose it, pointing out that the deceased has already paid taxes for the property, and this could lead to double taxation. This current debate adds a layer of complexity to the understanding of inheritance tax in India.

It's important to note that while there is no inheritance tax, a tax is levied if the inherited property is a source of income. After inheritance, the heir becomes the new owner and must properly declare and pay taxes if there is any income from the property. There might also be capital gains or losses if the legal heir chooses to sell the property subsequently after inheritance. However, it's equally important to be aware of the gift tax in India. Expensive gifts from relatives, if they exceed fifty thousand rupees in monetary value, and if the immovable property extends a stamp duty of fifty thousand, are taxed under **Section 56 of the Income Tax Act**. The gift will be considered as income from other sources, providing a comprehensive understanding of the tax implications of such transactions.





# Smell marks in Trademarks

-Seethala B

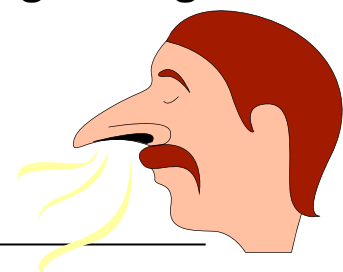
Non-traditional trademarks, like smell marks, cater to senses beyond sight and face challenges in registration worldwide. While the TRIPS Agreement doesn't grant protection, it doesn't bar it. In India, the registration of smell marks, also known as scent marks, encounters significant hurdles due to the requirement that trademarks must be graphically represented. This complexity arises because smells could be more easily depicted visually, underscoring the gravity of the challenge.

Section **2(1)(zb)** of the Trademarks Act, 1999, defines a trademark as graphically represented, hindering unconventional marks like smells. Even the **Indian Draft Manual of Trade Marks 2015, which** recognises non-traditional trademarks, including scent marks, mentions that scent marks do not meet the requirements as **Rule 2(1)(k)** clarifies that "graphical representation means the representation for goods or services in paper form."

The Manual of Trademarks 2015 adopts the Sieckmann criteria from the European Court of Justice, which requires scent marks to be clear, precise, self-contained, easily accessible, intelligible, durable, and objective. These criteria are stringent and demanding to meet when it comes to scent.

**SPECIAL SMELL MARKS:** The World Intellectual Property Organization (WIPO) considers 'Attar' (traditional perfume) and 'Agarbattis' (incense sticks) **Traditional Cultural Expressions** (TCEs). One of the recognised brands, The Attars of Kannauj, now known as 'Kannauj Perfume,' was registered as a Geographical Indication in 2009, as Kanauj is also known as "the Perfume Capital of India."

Despite the challenges, smell marks could be registered in India if they meet the graphical representation requirement and pass the Sieckmann criteria. However, the practicality and feasibility of registering smell marks still need to be determined.



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# MEET THE TEAM



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