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EDITORIAL



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Article 20(3)- Time for the Supreme Court of India to end the debate

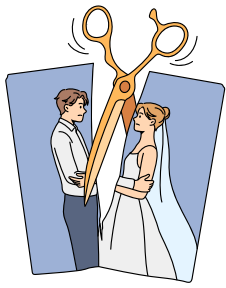
Article 20(3) of the Indian Constitution has been a cornerstone of criminal jurisprudence, navigating the fundamental rights of an accused while ensuring the deliverance of justice. It protects a person against self-incrimination. Article 20(3) primarily works against testimonial compulsion. Recently, the ED (Enforcement Directorate) submitted its arguments against granting bail to Mr. Arvind Kejriwal, the Delhi Chief Minister, in the Delhi liquor policy case. It stated that Mr. Arvind Kejriwal is non-cooperative, not providing passwords to access his mobile devices, not answering questions related to the authenticity of digital evidence shown to him, and not cooperating with the investigation process.

The Karnataka High Court in ***Virendra Khanna Vs. State of Karnataka (2021 SCC Online Kar 5032)*** and another held that the accused shall provide passwords and access to the data on an electronic device of an accused to prosecution, and the same shall not get hit by Article 20(3). The Kerala High Court, in the case of ***Dileep Vs State of Kerela (2022 SCC Online Ker 621)***, echoed a similar view.

The Supreme Court, while interpreting Article 20(3) in the case of ***Selvi Vs State of Karnataka (2010 7 SCC 263)***, held that narcoanalysis and brain mapping tests invade the mental privacy of the accused and, as such, it is violative of Article 20(3). In ***State of Bombay vs Kathi Kalu Oghad (AIR 1961 SC 1808)*** and Others, an 11-judge bench of the Supreme Court used the test of alterability to exclude fingerprints and handwriting and signature specimens from the scope of Article 20(3) as they are not like personal testimony. In ***Kanchan Bedi vs Gurpreet Singh Bedi (2003 IAD Delhi 252)***, the Delhi High Court held that a DNA test to ascertain the child's parentage did not violate Article 20(3).

It is pertinent to note that the Malimath Committee constituted in 2000 recommended an alternative that the court be granted authority to interrogate the accused and interpret an unfavourable inference if he or she refuses to answer. Criminals have habitually exploited the nuances of criminal jurisprudence for a long time. It would be most welcome if the Supreme Court of India lists all permissible enquires under Article 20(3).





LEGAL CRISPS

Diverse reasons for Divorce

-Anoushka Samyuktha. A

The escalating divorce rates in India are indicative of more extensive societal transformations that are shaped by elements including evolving societal perspectives on marriage, shifting gender roles, economic empowerment, and urbanization. Various reasons for divorce include changing societal dynamics, the changing perception of marriage as a lifelong commitment, migration, legal awareness, increased cost of living, and the impact of social media, etc. The parties' religious affiliations and personal legal systems influence the divorce laws in India to a certain extent. **The Hindu Marriage Act 1955** regulates Hindu marriages. **Section 13** of the aforementioned legislation delineates the grounds for a contested divorce. Specific requirements for a divorce by mutual consent are outlined in **Section 13B**. Other acts, including the **Special Marriage Act of 1954** (applicable to couples of diverse religions), the **Divorce Act of 1869** (pertaining to Christians), and **The Parsi Marriage and Divorce Act of 1936** (pertaining to Parsis), contain comparable provisions.

As per the Hindu Marriages Act, the waiting period for divorce is 6 months before the order. But recently, in ***Shilpa Sailesh v Varun Sreenivasan, 2023 SCC OnLine SC 544***, it was held that the waiting period is unnecessary when the parties are unwilling to continue their marital relationship. **Art 142 of the Constitution** gives power to the Supreme Court to dissolve marriages by mutual consent. Divorce, although signifying the dissolution of a marital union, also indicates an individual & determination to pursue personal fulfilment and contentment. A comprehensive strategy is necessary to tackle the root causes of marital discord, encompassing social, economic, and legal interventions that foster enduring and healthy relationships.





Construction Arbitration

-Nithyaparvathy R.G

According to the Accounting Standard (AS), a construction contract is expressly negotiated to build an asset or a group of interdependent or closely related assets in terms of their design, technology, function, or final goal or use.

Construction arbitration is a type of Alternative Dispute Resolution designed for the construction industry. As an alternative to the traditional court system, it entails bringing a construction-related issue before an impartial, independent third party—an arbitrator or an Arbitral Tribunal—for a legally enforceable ruling while considering the particular difficulties of the construction sector. The parties typically prefer construction arbitration to resolve disputes because it provides them with procedural flexibility, secrecy, and the opportunity to appoint subject-matter experts as arbitrators.

Various parties, including owners/employers, architects, designers, contractors, and subcontractors, are typically involved in construction arbitration. Each party operates under different contractual terms, and some may even have a separate dispute resolution clause.

The Hon'ble Supreme Court reaffirmed in ***NTPC Ltd. v. M/s Deconar Services Pvt. Ltd. (2021 SCC OnLine SC 498)*** that the courts must yield to the arbitrator's potential opinion and not sit in appeal over the arbitral judgement.





CASE CHRONICLE

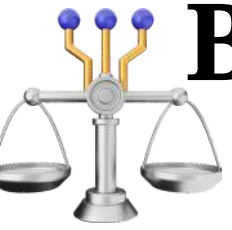
The Conundrum of Dynamic Effect in Trademark Registrations: In Light of *Dr. Reddy's Laboratories Ltd. v. Fast Cure Pharma, 2023*

-Kamali A.N

Can an applicant file a trademark rectification before any High Court? The Delhi High Court recently ruled in the case of *Dr. Reddy's Laboratories Ltd. v. Fast Cure Pharma, C.O.(COMM.IPD-TM) 8/2023*, that a trademark rectification can be filed in any High Court where the dynamic effect of trademark registration can be felt. In a nutshell, the laboratory filed a petition alleging that FCP's mark "RAZOFAST" infringes on the petitioner's mark "RAZO". Here, the petitioner's RAZO mark, used to identify the active pharmaceutical ingredient in rabeprazole, has been allegedly copied by the defendant in the RAZOFAST mark despite the same product and retail outlets catering to the same customer class. Thus, the petitioner is seeking the cancellation, rectification, and removal of the RAZOFAST mark from the Register of Trademarks.

The court underwent the triple identity test, including deceptive similarity of marks, goods identity, and availability, which is satisfied in this case. The defendant's use of RAZO as a prefix in RAZOFAST indicates an intent to pass the product as plaintiff. The issue arises: whether the high court has the power over the TM Registry to exercise the territorial jurisdiction of a rectification petition under **Sections 47 or 57 of the TMA, 1999**. The court said that the registrar who could exercise jurisdiction under Sections 47 or 57 would undoubtedly be the registrar, and the High Court that exercised such jurisdiction would not only be the high court having territorial dominion over such a registrar, but also any high court within whose jurisdiction the petitioner experiences the dynamic effect of the registration. Further, the court ruled that applications under Section 47 or Section 57 of the TMA, 1999, and **Section 124(1)(ii)** are maintainable before the High Courts and also in High Courts where the dynamic effect of the impugned registration is felt.





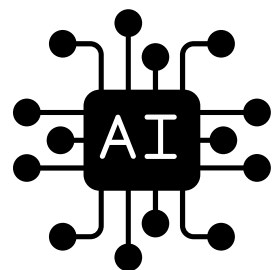
BEYOND THE OBVIOUS

Intervention of AI in the legal domain

-Sri Sai Kamalini M S

The progress of Artificial Intelligence (AI) in the legal domain is not just a trend; it's a revolution. This surge is particularly pronounced in India, with AI projected to contribute a staggering USD 957 billion (approximately 15% of the current gross value added to India's economy) by 2035. The AI software market is also on a rapid rise, expected to reach USD 126 billion by 2025, up from USD 10.1 billion in 2018. AI is not just a tool; it's a catalyst for change, finding applications across various sectors, including healthcare, agriculture, and education, and enhancing their potential. In February 2021, the NITI Aayog released an "Approach Document" outlining principles for responsible AI development. Narrow AI, which addresses specific challenges typically requiring domain experts, is the focus here.

Broader ethical implications related to Artificial General Intelligence (AGI) or Artificial Super Intelligence (ASI) are not considered. Challenges in regulating AI include algorithm decisions, and appropriate legislation can help address these concerns. For instance, labour or employment law provisions can prevent arbitrary workplace job replacement by AI systems. In India, AI is projected to contribute a staggering USD 957 billion (approximately 15% of the current gross value added to India's economy) by 2035. The AI software market is also on a rapid rise, expected to reach USD 126 billion by 2025, up from USD 10.1 billion in 2018. Legal professionals leverage AI-powered tools for contract review, legal research, predictive analytics, and document automation tasks. These technologies are not just passive aids; they actively streamline workflows, enhance decision-making, and improve access to justice.



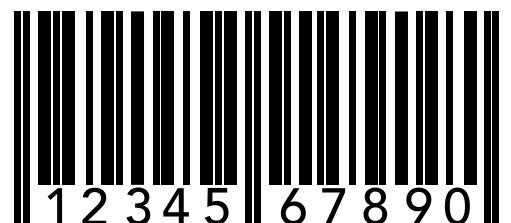


How to get Barcodes for products in India ?

-Seethala B.

Barcodes are the backbone of product identification and tracking, ensuring their uniqueness and enabling error-free monitoring of online manufacturing counts and product data. In India, barcodes are responsible for issuing solely with **GS1 India**, a non-profit organisation established by the Ministry of Commerce and Industry. GS1 India is the exclusive authority that allocates standardized barcodes for products in the country. To maintain uniqueness and standardization, registered suppliers are assigned the code '890' to manage the global supply chain. This code, in conjunction with ten other digits, distinguishes products and preserves their uniqueness. GS1 India also holds a trademark for the barcode '890' to prevent infringement, underscoring its role in maintaining the integrity of the barcode system.

In the case of **GS1 INDIA vs. GLOBAL BARCODES SL & ORS., [CS Comm 147 of 2020]** the issue of trademark infringement and deceptive practices surrounding the use of barcodes with the '890' code was raised before the Delhi High Court. GS1 India, as a vigilant protector of trademark rights, filed a case against Global Barcodes SL, a company based outside India, for issuing barcodes with the '890' code, which is reserved for GS1 India's certification. The Court, recognising the importance of trademark protection, held that Global Barcodes SL's actions amounted to infringement of GS1 India's registered trademark and were deceptive to consumers regarding the quality and origin of products. As a result, the Court issued a permanent injunction against Global Barcodes SL, decreed damages to be paid to GS1 India, and ordered ISPs to block or take down the infringing websites, providing a reassuring stance against trademark infringement.



Women's Reproductive Autonomy and Bodily Integrity



-Sowmiya R K

The Supreme Court has interpreted the **Medical Termination of Pregnancy (MTP) Act, 1971** and Rules in a purposive manner to uphold an unmarried woman's right to safe abortion in the case of ***X Vs The Principal Secretary Health and Family Department & Another (SPECIAL LEAVE PETITION (CIVIL) No 12612 of 2022)***. The case involved an unmarried woman from Manipur who sought to terminate her pregnancy at 24 weeks gestation.

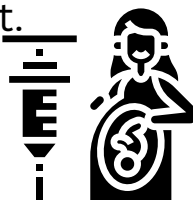
The Court held that Rule 3B of the MTP Rules, which specifies categories of women eligible for abortion between 20-24 weeks gestation, cannot be construed in a restrictive manner to exclude unmarried women. It noted that the expression "change of marital status" in Rule 3B(c) should be given a purposive interpretation.

The Court emphasized that the 2021 amendments to the MTP Act replaced the term "husband" with "partner" in Explanation 1 to **Section 3(2)**, indicating parliamentary intent to extend the law's applicability beyond just marital relationships to unmarried women as well.

The Court placed its main issue within the ambit of fundamental right to reproductive autonomy and bodily integrity under Article 21 of the Constitution. Relying on precedents in ***Suchita Srivastava Vs Chandigarh Administration (2009) 9 SCC 1*** and ***Justice K.S. Puttaswamy Vs Union of India (2017) 10 SCC 1***, it affirmed that a woman's decision to procreate or abstain from procreation is a facet of her personal liberty, privacy and dignity. Forcing an unwanted pregnancy would violate a woman's inviolable right to bodily integrity and aggravate mental trauma, detrimental to her physical and mental health protected under **Article 21**.

The Court reiterated that reproductive rights extend to all women, regardless of marital status, drawing from its earlier rulings upholding live-in relationships in cases like ***S. Khushboo Vs Kanniammal (2010) 5 SCC 600***.

On the above premises, the Supreme Court ordered the All India Institute of Medical Sciences (AIIMS) to constitute a medical board to assess if the petitioner's pregnancy could be terminated without risk to her life, and to allow the abortion after obtaining her consent if the board permitted it.



MEET THE TEAM



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