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EDITORIAL

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Dear Lawyer Friends, Let Us Learn to be Happy

"A jury consists of twelve persons chosen to decide who has the better lawyer" – Robert Frost.

Law is an exceptionally competitive field with much to lose for both on a personal front as well as professional front. I know not one lawyer who is happy with the demands of the profession. They love the field and are passionate about delivering justice but not the workings of the justice delivery system.

Washington Post recently came out with an article "Want to be happy, then don't be a lawyer" where they outline lawyers being chronically unhappy given the work stress and toxic nature of the work life imbalance.

It is alarming to note that as per National Institute of Health 2023 study on mental health among lawyers where they studied 13000 lawyers across USA, 28 percent had depression, 21 percent had alcohol abuse and 19 percent reported anxiety.

The most basic reason a lawyer is stressed is the nature of the profession. We deal with people's problems and make it our own. The notable features of a lawyer's life include late night working hours, heated arguments at courts, limited or no time to eat in peace, slow career growth, demanding seniors, office politics, inconsistent pay and competition from peers. Working six days or even the entire week with no promise or surety of earnings causes frustration and constant worry.

It would be advisable for lawyers to take regular breaks from their crazy work schedules and catch up with some old habits and friends that make them happy and read books instead of briefs.

Since there are no fixed work timings, I use scheduled breaks. I call happy minutes every day, and I don't attend calls from clients or juniors, but I listen to my favourite music or binge on some series on OTT platforms. Not everyone is that gifted to demarcate hours of their time, but one can start trying, even if it is for 15 minutes. No one is that busy anyway.

It's time you create your own. What's your favourite pastime now? Do your own thing that calms you or makes you uncontrollably laugh. Learning to be happy might require lawyers to redesign their work lives, but it is worth it.

Stay happy, folks.

LEGAL CRISPS

Tobacco in itself is terrible, so how about when it is sold to kids?

-Anoushka Samyuktha A

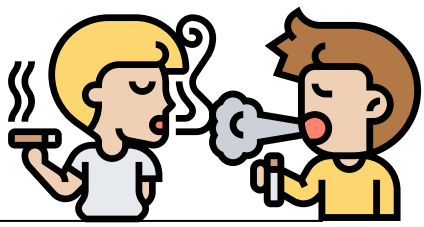
It is common knowledge that alcohol and tobacco have been an enemy of human health for a very long time now, and all the steps to curb and control their use are just on paper and don't seem very practical. In the current year, the revenue from cigarette sales in India has been recorded as approx. USD 13 billion. This number is expected only to increase.

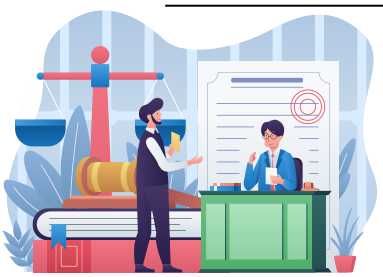
Now, there are concerns arising as to children or underage persons smoking cigarettes without any restrictions. The online sale of cigarettes has been a significant game changer as it doesn't require the age of the person ordering these cigarettes. Recently, the Punjab High Court, in the case of ***Tejaswin Raj through his guardian, v. Union of India and Ors,*** issued a notice to online food delivery platforms such as Blinkit (Zomato), Instamart (Swiggy), etc., to regulate the sale of tobacco products on these online platforms to minors or underage persons.

The petition in itself was a PIL filed by a 15-year-old student who claimed that these online platforms are selling tobacco without any restrictions when compared to the sale in retail shops. This violates the WHO Framework Convention on Tobacco Control, which India is a party to. It prohibits the sale of tobacco to persons under the age of 18.

This is also explicitly mentioned in **Section 6(a) of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.** The government has drafted a Bill to amend this Act and increase the legal age for tobacco consumption from 18 to 21 years.

Controlling online sales will be a tedious task, but it is necessary. Just clicking on a pop-up that asks, "Are you over 18?" will not serve the purpose. The Act must be implemented in its most accurate senses, and strict actions should be taken in case of non compliance.





Letter Patent Appeal

-Seethala B

A Letter Patent Appeal is a procedural step between intra-courts that allows a petitioner to challenge a single judge's decision before a larger/different bench of the same court. For instance, an appeal from a single judge to a 3-bench High Court. This legal recourse was introduced in 1865 with the establishment of High Courts. The time limit for this type of appeal is ***30 days,*** which extends to ***90 days*** if the appeal is filed against a High Court order in the Supreme Court. To file a Letter Patent Appeal, the certified copy of the judgement and the decree appealed from, along with the copy of the certificate granted by the High Court, need to be submitted. The Letter Patent Appeal is applicable only to the orders/judgments provided under Article 226 of the Indian Constitution, which deals with the power of the High Court to issue orders/writs. **Clause 15 of the Letter Patent** restricts intra-court appeal against a judgement under **Article 227** of the Constitution.

It's important to note that in arbitration cases, the letter patent appeals are not maintainable as per **Section 37 of the Arbitration and Conciliation Act 1996**. This was clarified in the case of ***Conros Steels Pvt.Ltd vs Lu Qin(Hong Kong) Co.Ltd. [LAWS (BOM)-2014-11-119]***.

However, In the context of the Trademarks Act of 1999, letter patent appeals are maintainable when it is a rectification of a trademark petition as stated in the case of ***Resilient Innovations (P) Ltd. v. Phonepe (P) Ltd. [2023 SCC OnLine Del 2972]***. The Delhi High Court held that letter patent appeal is maintainable against a single judge's order on rectification application and also clarified that such orders are governed by the statutory powers of the Trademarks Act and are not traceable by the ordinary original civil jurisdiction of High Courts. In Civil cases, **Section 100A of the Civil Procedure Code 1908,** bars Letter Patent Appeal against a judgement of a single judge.

CASE CHRONICLE

The Sanctity of Hindu Marriages

-Sowmiya R K

In the case of ***Dolly Rani Vs Manish Kumar Chanchal, TRANSFER PETITION (C) NO(S). 2043/2023,*** the Supreme Court has reinforced the sacrosanct nature of marriage ceremonies under Hindu law. The court emphatically stated that unless the requisite customary rites and rituals under **Section 7 of the Hindu Marriage Act, 1955** ("The Act"), like saptapadi are performed, a marriage cannot be considered solemnised or complete under the Hindu Marriage Act, 1955.

Sub-section (1) of Section 7 of the Act deals with ceremonies for a Hindu marriage. For a Hindu marriage to be considered "solemnised," it must be conducted with the required rituals and formalities as prescribed by the relevant customs and traditions. The use of the word "solemnised" implies that the marriage ceremony must be carried out in a formal and ceremonial manner, adhering to the established norms and procedures. If these ceremonial requirements are not fulfilled, the marriage cannot be regarded as "solemnised" under the Act. Additionally, Section 7(2) specifies that in cases where the saptapadi—the sacred act of the bride and groom taking seven steps together before the sacred fire—is a part of the rites and ceremonies, the marriage is considered final and legally binding at the moment the seventh step is taken.

The Supreme Court ruled that the necessary ceremonies must be carried out for a marriage to be recognised under the Act. If a dispute occurs, documentation of the ceremonies' performance is required. According to Section 7 of the Act, a Hindu marriage cannot be established until the parties have experienced this ritual. Moreover, merely issuing a certificate by an organisation in the absence of the necessary ceremonies does not establish any marital status for the parties or a marriage under Hindu law.

The Court further held that even though the parties may have met the requirements for a legally recognised Hindu marriage under **Section 5** of the Act, there would not be a legally recognised Hindu marriage in the absence of a "Hindu marriage" as defined by Section 7 of the Act, or the solemnisation of such a marriage. Under the terms of Section 8 of the Act, the Marriage Registration Officer is not permitted to register a Hindu marriage if there isn't a legitimate Hindu marriage.

BEYOND THE OBVIOUS

Vol Dire Test

-Nithyaparvathy R.G

The competency of a witness is a precondition for administering an oath or affirmation. It is a question different from his credibility when he was sworn in or affirmed. In assessing a person's competency, courts frequently look at their intellectual capacity and comprehension to see if they can reasonably and intelligently recount what they saw, heard, or did on a given occasion.

The vol dire test was established to determine the child's competency to be a witness under the conditions outlined in **Section 118 of the Indian Evidence Act 1872**. The child may be asked questions outside the scope of the case details, such as their name, father's name, or place of residence. If the court is satisfied with the answers to the questions and the child's ability to understand and answer them rationally, the child may be allowed to testify.

Mental Agony due to delayed construction

-Sri Sai Kamalini M S

Case: Melvin Victor De Poures Versus M/S Poomalai Housing Private Limited

Building a home has become a complex task, particularly after the pandemic. Many construction projects have experienced delays, causing significant inconvenience to homeowners. In a recent case, the builder was constructing the Poomalai Avantikaa project in Pallavaram Taluk, Chennai, and the homeowners had entered into an Agreement with the builders. A key clause in this Agreement stipulated that the builder would provide compensation of Rs. 10 per sq. ft. per month in the event of construction delays. However, the completion timeline was extended due to the pandemic, and the builders failed to respond satisfactorily. In response, the homeowners sent a legal notice but received no reply. As a result, they filed a complaint with the Tamil Nadu Real Estate Regulatory Authority (TNRERA), a government body that oversees the real estate sector in the state, highlighting the legal implications of the situation. The TNRERA, after considering the case, mentioned that there would be mental agony and inconvenience if the construction was not completed on time, and they expected a timely completion. Hence, TNRERA provided a compensation of Rs. 200,000 for mental agony and inconvenience and an additional Rs. 50,000 for litigation costs and was directed to pay it within 90 days.

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