

LAWBY WRITES

Mandatory medical facilities in schools and colleges- Bombay HC





EDITORIAL



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The ordeal of hiring and retaining competent legal talent

As difficult as legal work is, finding a suitable legal professional to carry it out is more complicated. Every lawyer and law firm have differing fees based on various parameters, chiefly the complexity of legal work, their ability and experience, area of operation, client affordability and personal reputation. Sometimes, even law firms, despite their time in the field, fail to hire good legal talent.

Vahura, a leading legal professional recruitment and placement organization, undertook the Best Law Firms to Work study in 2022, which revealed that out of the 1450 lawyers surveyed from over 300 law firms across India, around 50 per cent of them are not considering a long-term position at their current firms. Attrition rates are usually quite high of almost 20 to 25 percent in law firms. Recently, the National head of Competition Law Practice at Trilegal, Nisha Kaur Oberoi, joined JSA with her entire team. There is a silent war for getting the best legal talent amongst many top law firms. The big MNC's are not far behind as they are willing to dole out crores as compensation for top legal talent to become their General counsel (GC) or Chief Legal Officer (CLO).

There is also this never-ending pay disparity debate between litigation and corporate hires. The recent shift that can be observed in young law students passing out of law colleges is to choose corporate role as opposed to traditional litigation as the pay in corporate roles are much more stable with 10- 15 percent regular increments. There is also a firm belief among young law students that a master's degree from reputed international and national law colleges almost guarantees entry into big law firms.

The small law firms and individual practitioners who make lesser revenue in comparison to big law firms find it difficult to retain talent after a point as the learning does not match with the earnings after a point of time. Hence there is a huge floating population of young lawyers that they train who eventually leave for bigger law firms and opportunities. Probably such small firms must blend or collaborate with bigger firms in Tier 2 and Tier 3 areas to increase visibility and maximize revenues. Quiet hiring as a strategy is also picking whereby young lawyers are trained into future roles. There is a well-known saying that if you are good at something, never do it for free. Hiring top legal talent is getting expensive and this begs the question: What kind of profiles are the head hunters watching lately?





LEGAL CRISPS

Mandatory medical facilities in schools and colleges

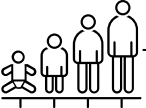
-Seethala B

The Bombay High Court has mandated that all educational institutions in Maharashtra must provide proper first aid and medical facilities for students and staff within their premises. This ruling originated from the case of ***Surekha Luxman Sonovane vs State of Maharashtra (WP/5257/2017)***, where the petitioner's daughter Tejuswini, a final year student at a College in Mumbai's Kandivali area, collapsed in her classroom, hit her head on a bench, fell unconscious and was rushed to a nearby hospital where she was declared dead due to haemorrhage. The petitioner pointed out the lack of medical or first aid facilities within the college premises, stating that critical time was lost in rushing her daughter to the hospital from her classroom on the sixth floor. She urged the Court to mandate basic medical facilities in schools and colleges.

The college refused the allegations, stating it had paid Rs. 50,000 to the student under the mandatory student insurance policy scheme, paid Rs. 1,30,000 towards the hospital expenses and refunded all fees paid by the petitioner for the three year course duration. Justices Nitin Jamdar and Milind Sathaye emphasized the necessity of immediate medical response facilities in educational institutions, especially in larger cities, where students and staff spend significant time away from home. The Court highlighted the inadequacy of ad-hoc emergency responses, which can lead to fatal delays.

As a result, the State Higher and Technical Education Department issued a circular on July 10, 2024, mentioning the directives for schools and colleges. These include **compulsory student insurance, first aid rooms, medical training and collaboration with local doctors for on-call services**. Additionally, the Court issued directives for effective compliance, including wide publication of the Circular, a helpline for reporting non-compliance and a similar circular from the Education Department, Government of Maharashtra within a month.





Bone ossification test

-Nithyaparvathy R G

Bone formation, also known as osteogenesis, is a process of bone formation. Bone age is determined by ossification tests, which are predicted based on the fusion of joints in the human body between birth and twenty-five years of age, though this varies slightly depending on the person.

Age is determined through medical experts when there is no birth certificate or matriculation certificate. The ossification test is the primary method used to determine age. A bone ossification test is performed to determine the age of the victim or accused on the day of the incident.

This test is relevant in situations involving juveniles since the Juvenile Justice Act (Care and Protection of Children), 2015, makes particular provisions for children who are in conflict with the law and children who require protection and care. An ossification test has the same evidence value as expert opinions under Section 45 of the Evidence Act, 1872.

In ***Ramdeo Chauhan v. State of Assam (2001) 5 SCC 714***, it was held by the Supreme Court that: “The statement of the doctor is no more than an opinion, and the court has to base its conclusions upon all the facts and circumstances disclosed on examining of the physical features of the person whose age is in question ... In this vast country with varied latitudes, heights, environment, vegetation and nutrition, the height and weight cannot be expected to be uniform.”

In ***Rishipal Singh Solanki vs The State Of Uttar Pradesh (CRIMINAL APPEAL NO.1240 OF 2021)***, the court ruled that while the respondent claimed juvenile status, ossification tests are insufficient for age determination, particularly for individuals over a certain age, emphasizing the need for concrete documentation to confirm age. The decision emphasizes the importance of rigorous evidence evaluation while arguing for the dismissal of the appellant's appeal.





CASE CHRONICLE

Let the punishment fit the crime

-Sowmiya R K

The recent Supreme Court Judgement in the case of ***Amit Rana @ Koka & Anr. vs. State of Haryana Criminal Appeal No. of 2024 (Arising out of SLP (Crl.) No.14705 of 2023)*** is based on the legal doctrine "***Culpa Poena Per Esto***" - **let the punishment fit the crime**. In this case, the attempt to murder resulted in the complainant suffering an injury that led to paralysis. The Trial Court punished the accused with an imprisonment of 14 years, and the High Court confirmed the judgement of the Trial Court.

In this case, the Court interpreted Section 307 of the Indian Penal Code, 1860 (IPC)/ Section 109 of Bharatiya Nyaya Sanhita, 2023 (BNS), which deals with attempt to murder, for applying this maxim.

1. Attempt to murder causing death: Punishable by imprisonment up to 10 years and fine.
2. Attempt causing hurt: Punishable by life imprisonment or, as mentioned in the first part.
3. Attempt by life convicts causing hurt: Punishable by death.

Given this severe consequence, the case falls under the second part of THE Section. Upon examination, it's evident that when a victim suffers hurt, as described in the second part, the Court can sentence the convict to life imprisonment. However, if the Court decides not to impose life imprisonment, the only other option, as per the provision, is to apply the punishment specified in the first part of Section 307, IPC. By limiting the sentence to the statutorily prescribed maximum, the Court ensures proportionality between the offence and punishment. This interpretation provides clear guidance for lower courts in similar cases, promoting consistency in sentencing.

This judgment also clarified that Section 307 of (IPC) establishes that for the offence of attempt to murder to be applicable, it is not necessary for the victim to have sustained any physical harm. Attempt to murder is composed of two essential elements: the mental intent (Mens rea) and the physical act (Actus reus) aimed at committing murder. It's crucial to note that the actual infliction of bodily injury or the successful completion of the murder is not an indispensable condition (sine qua non) for the offence to be constituted.





BEYOND THE OBVIOUS

Advantages and disadvantages of Conglomerate merger

-Sri Sai Kamalini M S

A Conglomerate Merger is a merger in which two entities that are entirely unrelated and work in distinct industries merge for various reasons. The main advantage of this merger is the diversification of the business, which might interest shareholders. There is also less risk associated due to more diversification in some instances. However, there are various disadvantages to these mergers. The main issue would be the difference in cultures and the working due to different industries. This might create governance issues and difficulties in adapting and transitioning to change. The management might also spend a lot of money due to expansion.

There are various real-life examples of conglomerate mergers worldwide, both successful and unsuccessful. In 2017, **Amazon purchased Whole Foods for \$13.7 billion**, marking its entry into the grocery sector. This merger allowed Amazon to leverage its online retail expertise alongside Whole Foods' physical store presence. Alphabet's acquisition of Nest in 2014 for **\$3.2 billion** provided a foothold in the Internet of Things (IoT) market. Nest's smart home technology complemented Alphabet's software and data analytics capabilities, allowing innovative product development.

The success of the conglomerate merger depends on the aftermath of the merger and the efforts taken by the entities for the transition due to the merger. Thus the companies have to take appropriate steps to make the transition easy.



MEET THE TEAM



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