

## LAWBY WRITES



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# EDITORIAL



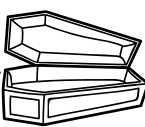
P Arun Sugavaneshvar  
Founder

## Where can we bury the leaders?

Great leaders are never forgotten. It is on the shoulders of such great beings a lot of history rests. Mahatma Gandhi was laid to rest at the Raj Ghat. Dr.B.R.Ambedkar was laid to rest at Chaitya Bhoomi. Similarly great men and women of their times are remembered by creating a memorial around their place of burial or cremation. Every year millions of tourists pay homage and learn the life of such inspiring souls. Now the question arises: How does the law discern as to which leaders deserve a memorial and who don't? There is no clear answer to this.

We may have also come across State honours and 21-gun salute accorded on the death of important individuals who have contributed to the nation. A State funeral is mandatorily held on the demise of dignitaries holding high public offices like the President, Vice President, Prime Minister, Speaker, Cabinet Minister, Chief Justice, Governors and those notified by the Ministry of Home Affairs, Government of India. It must be appreciated that demised organ donors in many states receive full state honours now. In the absence of any guidelines, the discretion of the State Government is final. Sachin Tendulkar's coach, Ramanand Achrekar, who was also a Padma Shree awardee, was not given State Honours and this was hugely criticized. Actress Sridevi, a Padma Shree awardee, on the other hand, was given State Honours. There are no rules mandating State Honours for a Padma Shree awardee. It is generally based on public sentiment and Government's discretion. However, a Bharat Ratna awardee is accorded full State Honours on their demise.

The Madras High Court, in its full bench judgement in ***Jagadeeswari Vs. B. Babu Naidu (2023 SCC OnLine Mad 4773)*** held that any burial conducted in places not registered or licensed as "burial grounds" after the implementation of Tamil Nadu Village Panchayat (Provision of Burial and Burning Grounds) Rules 1999 would be in violation of Rule 7(1). They further ordered that in such cases, the bodies must be exhumed and buried in the appropriate designated places. It is prudent to remember that the erstwhile five-time Chief Minister of Tamil Nadu, Dr. M. Karunanidhi, was buried in the Marina beach next to his mentor, C.N. Annadurai, only after direction from the Madras High Court as the then-ruling ADMK Government denied permission to bury him in the Marina beach. It was brought to the notice of the Hon'ble Court that Chennai Corporation had already declared Marina as a burial ground through a council resolution dated August 22, 1988 under the Chennai City Municipal Corporation Act, 1919.





# LEGAL CRISPS

## Parental rights of a oocyte donor

- Seethala B

The Bombay High Court, in the case of ***Shailja Nitin Mishra v. Nitin Kumar Mishra and Anr. (2024:BHC-AS:32264)***, held that “sperm/oocyte donor shall not have any parental right or duties in relation to the child.” This was established as the petitioner sought custody and visitation rights to her twin daughters after her application was rejected by the Trial court. The petitioner and respondent 1 were legally married but could not conceive naturally due to medical issues. They opted for altruistic surrogacy, with the petitioner’s sister donating eggs. The twin daughters were born through this process in 2018. After a marital dispute between respondent 1 and the petitioner, respondent 1 moved away with the daughters, leading the petitioner (mother) to seek custody & visitation rights of the children.

Respondent 1 argued that the petitioner’s sister, as the egg donor, should be considered the biological mother. However, the Court noted that under the Surrogacy Agreement and the National Guidelines for Accreditation, Supervision, and Regulation of ART Clinics in India, a sperm or egg donor has no parental rights. The Court emphasized that the daughters born through ART are legally considered the children of the petitioner and respondent 1.

The Court found that the rejection of the petitioner’s application was erroneous and granted her interim access and visitation rights. She could also visit her daughters every weekend and have phone/video calls twice weekly. The Court also directed both parties to avoid causing emotional trauma to the children and instructed the Trial Court to resolve the custody application within 6 months.





# Sim swap blunder and cybercrimes

-Nithyaparvathy R G

## Case: Dilip Kr Jaiswal v Vodafone Idea Ltd and Anr. (Cyber Case No 03/2023)

In February 2023, the petitioner got a text message to their business-allocated phone number indicating that their SIM replacement would be accepted in 30 minutes. As a result, the SIM stopped working. As the firm or its workers did not make the request, a complaint was filed, resulting in the issuance of a duplicate SIM with the same number.

Upon receiving an identical message in March 2023, the company took a decisive step. It refused to accept a duplicate SIM card and discontinued using the number. This proactive measure was taken after the number was deactivated once more. A few days later, the business's accounting team discovered a fraudulent transaction worth around ₹70 lakh, further confirming the company's suspicion of foul play.

The business then froze its accounts. Complaints were made with the Cyber Crime and Economic Offences Wing and the Joint Commissioner (Crime). During a bank account review, the petitioners identified a fraudulent transfer of around ₹2.63 crore in addition to ₹70 lakh. This prompted another complaint. Following the complaints, around ₹59 lakh were retrieved from the transaction of ₹70 lakh.

The adjudicating authority noted that the transactions could only have been validated with OTP sent to the registered mobile number. According to the facts on record, an impostor named Mohammed Ashfaque requested a new SIM card via email.

It determined that Mohammed Ashfaque was not an authorised signature nor a representative of the petitioners. The authority determined that Vi processed the request without due diligence. It was reported that no attempt was made to confirm the request for SIM change with the original owner of the SIM and number, except for the text message with a 30-minute window. It further stated that as per the Department of Telecommunications' regulations for swapping/replacing/upgrading SIM cards, proof of identity documents must match those on file with the service provider.

Also, the authority stated that Rule 8 of The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 includes provisions to ensure that a corporate body uses adequate security methods and processes to protect sensitive and personal data. It concluded that there was insufficient evidence to support Vi's compliance. The authority also identified a violation of Rule 3 of the Information Technology (Intermediaries Guidelines) Rules. It ruled that Vi's failure to fulfil obligations under the IT Act resulted in unlawful losses for the complainant. As a result, it found that Vi was obligated to pay compensation under the Act. The petitioners sustained a total loss of ₹3,33,64,284, with ₹59,01,000 recovered. The authority directed Vi to pay the remaining amount, ₹2,74,63,284, as compensation.





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# CASE CHRONICLE

## Mere failure to obtain a favorable order by the Advocate does not amount to offence- Karnataka HC

-Sowmiya R K

The Karnataka High Court has delivered a significant judgment in ***K.S. Mahadevan v. Cyprian Menezes and Another (Writ Petition No. 54069 of 2017)***, establishing that clients cannot file cheating cases against advocates for unfavourable court outcomes. This ruling clarifies the interpretation of Sections 406 and 420 of the Indian Penal Code, 1860(IPC) in the context of legal representation.

The Court held that the mere failure to obtain a favourable order does not constitute an offence under Sections 406 (criminal breach of trust) or 420 (cheating) of the IPC. The Court emphasized that an advocate's duty is to present the best case, not guarantee specific results.

The judgment quashed proceedings in C.C. No. 2541/2017 arising from PCR No. 30/2017, along with the cognizance order dated 06.02.2017. The court deemed these criminal proceedings an abuse of the legal process, finding no sustainable grounds in the complaint.

This ruling has significant implications for interpreting professional misconduct in legal practice. It distinguishes between an advocate's professional obligations and the unrealistic expectations of guaranteed outcomes. The Court's decision aligns with the principles of The Advocates Act, 1961, which governs professional conduct without criminalizing unfavorable case results.

Furthermore, the judgment reinforces the sanctity of the advocate-client relationship as defined in the Bar Council of India Rules. It protects advocates from potential harassment through criminal proceedings, ensuring they can perform their duties without fear of unjust repercussions for court decisions beyond their control.





# BEYOND THE OBVIOUS

## What constitutes predatory pricing?

-Sri Sai Kamalini M S

Predatory pricing in Indian law is primarily governed by the Competition Act of 2002, which prohibits practices that harm competition in the market. Section 4(b) of the Competition Act, 2002 defines predatory pricing, which involves pricing goods or services below the price fixed by the regulations to eliminate competition and have an unfair advantage. The Competition Commission of India (CCI) has established that the entity must hold a dominant position in the relevant market for a practice to be classified as predatory pricing.

This principle was underscored in the case of ***Reliance Jio Infocomm Ltd. v. Bharti Airtel Ltd. (AIRONLINE 2018 DEL 3113)***, where the CCI, as the authoritative body, dismissed allegations of predatory pricing against Jio, stating that it did not possess a dominant market position at the time of its pricing strategies, which included offering services below cost to gain market entry.

Additionally, the CCI's ruling in ***Transparent Energy Systems Pvt. Ltd. v. TECPRO Systems Ltd. (Case No. 09 of 2013, CCI)*** outlined key factors for determining predatory pricing, including pricing below cost and the intent to eliminate competition. The legal framework emphasizes that merely offering low prices does not constitute predatory pricing unless it is accompanied by a clear intent to harm competitors and the ability to recoup losses once competition is eliminated.



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# MEET THE TEAM



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