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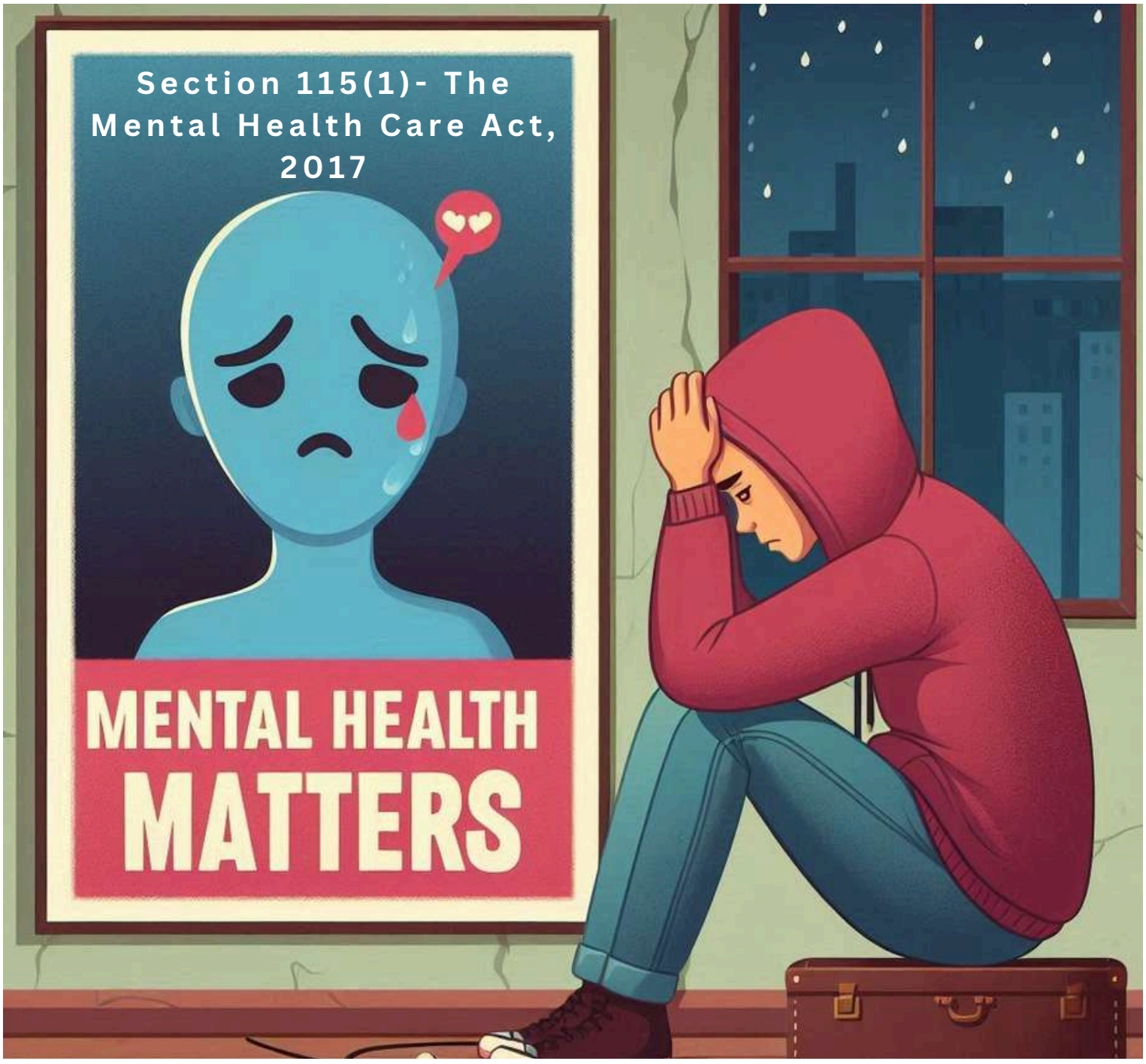
FROM THE HOUSE OF ORIGIN LAW LABS

Aug, 2024
Vol 22

LAWBY WRITES



How can we correct young minds without corporal punishment? We Can't?

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EDITORIAL

P Arun Sugavaneshvar
Founder

How can we correct young minds without corporal punishment? We Can't?

"Fear of corporal punishment obscures children's awareness of the compassion underlying parent's demands" - Marshall B Rosenberg

No one is born a criminal. Only circumstances make them one. The necessity and behavioural conditioning to follow law and order amongst citizens stems from the fear of being punished. If we believe everyone listens to their conscience and would stay a saint, anarchy will rule and laugh at us, punishing us for being naive. The idea is not to deny the sinner a chance to reform but, with precision, to learn who is deserving of that chance and make a distinction among the sinners.

The young minds of children are highly impressionable. The legislative safeguards have tried their best to protect them from the perils of the world with little success. The eligibility age for accessing certain websites has not stopped children from watching sexually explicit content. **On July 7th, 2024, three minor boys in Andhra Pradesh molested and murdered an eight-year-old girl and dumped her body with the help of their relatives in the Mucchumarri Lift Irrigation canal in Nandyal district.** What could have caused such young boys to do such a depraved act? The negligence of proper parenting or the failed education system?

Section 17 of the RTE Act, 2009, prohibits corporal punishment. It prohibits any form of physical or mental harassment. Whoever contravenes such provisions is liable to face disciplinary action under applicable service rules. Section 23 of the Juvenile Justice Act, 2015 punishes any person in charge of the juvenile if they cause physical harm or neglect the juvenile for an imprisonment of 6 months. Section 75 of the Juvenile Justice Act, 2015 punishes any person causing cruelty to children with rigorous imprisonment of up to 5 years, and if the child is physically incapacitated or becomes mentally unfit due to such cruelty, then the rigorous imprisonment is up to 10 years.

Ambika S. Nagal Vs State of Himachal Pradesh, 2020 SCC OnLine HP 666, the Hon'ble High Court held that "**whenever a ward is sent to school, the parents must have said to give an implied consent on their ward being subjected to punishment and discipline**". The Hon'ble Kerala High Court in ***Rajan Vs Sub-Inspector of Police WP (Crl.) No.220 of 2014***, quashed an FIR against a teacher under Section 482, holding that "**the nature and gravity of the corporal punishment inflicted by the teacher would determine as to whether he can be proceeded under penal provisions."**

There is no way to ascertain what constitutes a reasonable degree of punishment. Just as criminal law prescribes the harshest of punishments to the rarest of the rare cases, one has to be guided by the severity of the child's offence. Sparing the rod will definitely spoil the child. However, knowing when to take the rod and when to just have a friendly chat to change an erring youngster could make all the difference.

LEGAL CRISPS

Applicability of Section 498A in case of Non-relatives

-Sowmiya R K

The Bombay High Court (Nagpur Bench), in the case of ***Vaishali Janbaji Gawande vs. State of Maharashtra (Criminal Application (APL) No.622 of 2020),*** has elucidated that non-relatives, girlfriends or alleged paramours cannot be charged under Section 498A of the Indian Penal Code, 1860.

Section 498A IPC specifically states:
"***Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine."***

The court quashed proceedings against the applicant, who was charged under Section 498A IPC despite not being a relative of the complainant's husband. Section 498A is specifically applicable to "the husband or the relative of the husband of a woman" who subjects her to cruelty.

The Court noted that "As the charge-sheet is filed against this applicant, who is not the relative and only because allegations are made that the husband of the non-applicant No.2 is having extra marital affair with this applicant, the charge-sheet filed against her which is illegal, according to law."

The mere allegations of an extramarital affair do not warrant charges under 498A against a non-relative.

Mental Health Act, 2017 vs Indian Penal Code, 1860

- Seethala B

The Bombay High Court, Nagpur Bench, in the case of ***Shital Dinkar Bhagat v. State of Maharashtra (2024:BHC-NAG:8633-DB),*** dealt with a case where a woman police constable attempted suicide due to a failed romantic relationship with a married colleague named Yuvraj Uike. The incident occurred when the applicant, after learning that her colleague was on leave, blamed all police and injured herself with a knife at the police station. The learned counsel for the applicant argued that her actions were driven by emotional stress caused by the unrequited love affair and, therefore, she should not be prosecuted under Section 309 of the Indian Penal Code,1860(IPC).

The court referred to **Section 115(1) of the Mental Healthcare Act, 2017 (MHA, 2017),** which creates a presumption that anyone who attempts suicide is under extreme stress. This section has an overriding effect on Section 309 of the IPC, meaning that such individuals should not be tried or punished for the offence of attempting suicide unless the prosecution can prove otherwise.

The court emphasized that MHA, 2017 was designed to prevent the penalization of individuals who, under the burden of severe mental stress, attempt to take their own lives. The applicant's injury was viewed as a clear result of her mental distress, aligning with the presumption set forth by MHA, 2017. Consequently, the court ruled that the applicant could not be imprisoned for the offence under Section 309 of the IPC, and the FIR against her was quashed.

CASE CHRONICLE

The Kopiko Conundrum

-Nithyaparvathy R G

Case: Inbisco India (P) Ltd. v. CCE, Excise
Citation: Appeal No. 11320 of 2017

Kopiko is a glucose and hard-boiled sugar confectionery. Officers from the Zonal units of the Directorate General of Central Excise Intelligence began investigating the classification of 'Kopiko', and correspondingly, two Show Cause Notices were issued. According to the show cause notices, "Kopiko (cappuccino and espresso varieties)" was classifiable as "preparations with a basis of extracts, essences, concentrates, or with a basis of coffee" under the First Schedule to the Central Excise Tariff Act, 1985, and is subject to 12% ad valorem plus education cesses and that the appellant has misclassified items under Chapter Heading 1704 9090 as "sugar confectionery not containing cocoa," leading to paying a lesser amount of Central Excise Duty.

The Commissioner of Central Excise Ahmedabad imposed a tax demand of Rs. 3,64,53,794 alongside applicable interest and a penalty of Rs. 36,45,379 under Section 11 AC(1)(a) of the Central Excise Act, 1944. Therefore, the appellant filed an appeal against the impugned order.

After reviewing the ingredients and formula used in the production of Kopiko, the Tribunal determined that it was clear that Kopiko contained 1.57% flavour coffee, while the majority of the ingredients were refined sugar (33.06%), liquid glucose (41.41%), water (12.5%) and other ingredients (11.81%).

The flavour coffee was used to give flavour just to the extent of 1.57% and did not contribute to the core product, confectionery. As a result, Kopiko's preparations cannot be classified as "preparations with a basis of extracts, essences, concentrates, or with a basis of coffee" since they are not based on coffee. Also, the Tribunal resorted to the General Rules for Interpretation of the Central Excise Tariff Act, 1944. It stated that, even under Rule 1, categorisation should be established based on the wording of the heading. After reviewing both titles, 1704 and 2101, the Tribunal concluded that sugar-boiled confectionery was expressly provided under 1704 9090. Therefore, the appellant's goods were classified more specifically as "sugar confectionery". Thus, the **Tribunal decided that the appellants' product Kopiko was correctly classified as "sugar confectionery not containing cocoa" rather than "preparations with a basis of extracts, essences, concentrates, or with a basis of coffee"**.

BEYOND THE OBVIOUS

Can a gym trainer be held liable for excessive training under Consumer Protection Act, 2019?

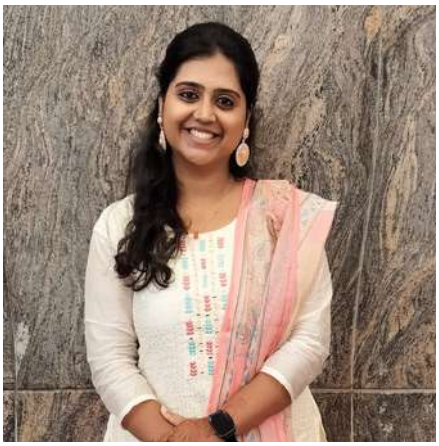
-Sri Sai Kamalini M S

The gyms have gained a lot of traction, and people have started giving importance to fitness, especially after the pandemic. There are specific gyms with unqualified trainers, which poses a problem for the trainees. One such case was ***Simranjeet Singh Sindhu vs Manager, Raw House Fitness and Anr. (Appeal No. 161 of 2024).*** The complainant joined the respondent's gym by paying a necessary membership fee. The complainant contended that the trainer started training him with strenuous exercises on the third day, which led to excessive muscle strain. The complainant also started suffering from **"Rhabdomyolysis"**(the breakdown of muscle tissue that leads to the release of muscle fibre contents into the blood due to muscle injury), which doctors confirmed.

The terms and conditions of the gym's contract also state that the gym will not be liable for any kind of injury, disability, death, loss, or damage that occurred on the premises. The complainant blamed the gym and also mentioned that their contract's terms and conditions were one-sided. The complainant contended that the actions of the gym amounted to unfair trade practice and deficiency in service and filed a complaint against the gym and the trainer in the District Consumer Disputes Redressal Commission, Chandigarh ("District Commission"). The District Commission ruled in favour of the complainant and asked the gym to repay the membership fee of Rs. 4050/- to the Complainant along with Rs. 7,000/- compensation for deficiency in service. There was no appearance from the gym or the gym trainer. However, the complainant was unsatisfied and filed an appeal with the State Commission.

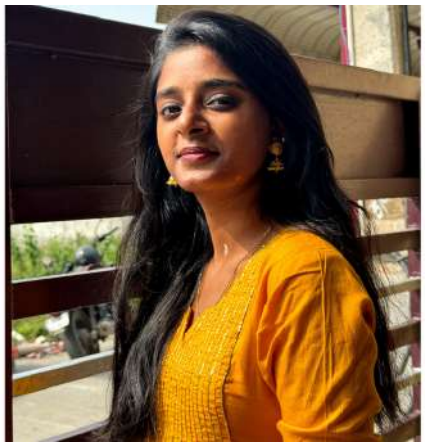
The gym trainer did not appear before the State Commission, but the gym argued that the Complainant's symptoms were due to dehydration and general weakness, and the gym trainers had the proper certification. The State Commission went through the records and held the gym liable, and it also mentioned that the terms and conditions of the membership agreement were one-sided, which would absolve the gym from all the liability. The appeal was partially accepted and the respondents were directed to refund ₹4,050/- with interest, pay ₹25,000/- in compensation, and cover ₹7,000/- in litigation expenses.

MEET THE TEAM



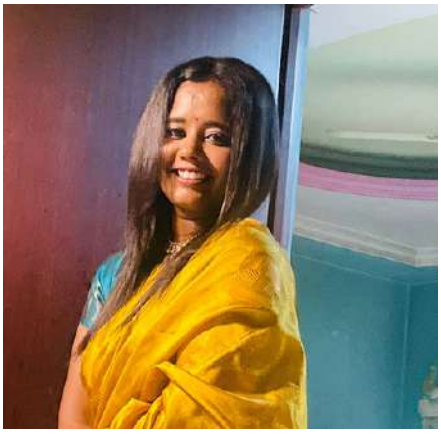
Nithyaparvathy R G

Legal Consultant



Seethala B

Legal Consultant



Sowmiya R K

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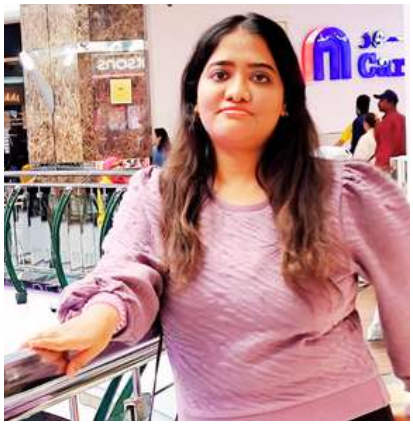

Sri Sai Kamalini M S

Legal Consultant