

LAWBY WRITES



[DISCLAIMER]

PROFANITY ≠
OBSCENITY

APPLICATION OF COMMUNITY
STANDARD TEST BY
DELHI HIGH COURT

A regular read
when my law
life sucks big
time

Retrospective
application of
BNSS provisions
for accused
individuals with
intellectual
disabilities

Does
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society come
under the ambit
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EDITORIAL



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Founder

A regular read when my law life sucks big time

I recently had a difficult and uncomfortable conversation that lasted almost an hour with a regular client where the true weight of being misunderstood came to the fore. The issue was on the topic of fees, where the client felt that we had overcharged them for a contract based on their financial muscle than on the true value of the work. I, for one, believe that the client was given a reasonable quote as they are regulars in my office. The legal marketplace is unlike others and is uncommon as the legal acumen and credibility of the legal professional are factors that influence legal fees. The determination of the fee is based on certain variables.

A fee is charged based on the work involved, the skill of the legal professional, and his or her standing. A close point to bear in mind is also the affordability of the client. It puzzled me as to wonder whether our value had diminished in any way or are we providing sub-par services? I suspect the question of why a lawyer charges a particular price can never be fully answered to the satisfaction of the client. However, the conversation made me lose my peace and wonder whether such pursuits in law are all worth it. Whether even after a decade in the field, one still has to prove their worth and value for even a contract documentation.

It has been my usual practice to lean on the writings of great men and women whenever I feel lost or when I need to seek counsel for assurance of that which I already know. One such piece of writing I almost reached out to is from the book **“BEFORE MEMORY FADES”**-an Autobiography of Mr. Fali S. Nariman. The particular chapter I am referring to is titled **“LESSONS IN THE SCHOOL OF HARD KNOCKS”**. The ever- eloquent Mr. Fali Nariman has done all lawyers and law students a great favour by giving us his nuggets of wisdom summarizing the brutality of the profession. He further advocates for a balanced and ethical outlook on the profession.

Despite several pointers given by Mr. Fali, the ones that resonate with me are as follows:-

1. Parkinson’s law (work expands so as to fill the time available for its completion)
2. Don’t count your chickens before they hatch (never be too cocksure of winning cases)
3. Leave your anger- and all the vitriol that goes with it-outside the courtroom
4. Learn to lose with dignity

It would be my pleasure to recommend fellow lawyers and young law students to take refuge in the words of Mr. Fali Nariman when they are tested in the field and have lost a little hope and passion to continue. He clearly delves into the various emotions and resilience needed to accept the worries thrown by the legal profession. I have been re-energized to help another client manoeuvre the legal labyrinth and find justice. I am a lawyer and this is what I do. May the lessons in the School of Hard Knocks guide us all.





LEGAL CRISPS

Retrospective application of BNSS provisions for accused individuals with intellectual disabilities

-Nithyaparvathy R G

The Kerala High Court, in the case of *VI Thankappan v State of Kerala & Anr (2024:KER:67342)*, has ruled that an accused with Alzheimer's who is unable to defend himself in a trial is entitled to the protection provided by the Bharatiya Nagarik Suraksha Sanhita, 2023(BNSS).

According to the law, if an accused turns out to be of unsound mind and, hence, incapable of making a defence, the court must postpone the proceedings against him. While dealing with this case, the court ruled that the **BNSS laws must be applied retrospectively to any actions commenced before 1 July 2024**. When compared to the requirements of the CrPC, **the Court determined that the BNSS gives protection not just to people of unsound mind but also to people with intellectual disabilities**.

“It is the right of the accused to have a fair trial as provided under Article 21 of the Constitution, which is sacrosanct of criminal jurisprudence. Therefore, if the provisions of the Sanhita are not extended retrospectively in cases where the accused person is affected by any intellectual disability of such a degree that renders him incapable of making his defence, there would be a failure of fair trial.”

“A conjoint reading of the Mental Healthcare Act and the relevant provisions in the Sanhita indicates that the Legislature has given a wider canvass to the phrase ‘incapability of making defence’ by incorporating the term “intellectual disability”. While enacting the Sanhita, the Legislature has noted the definition of the term “mental illness” provided in the Mental Health Care Act, 2017.”

The Court defined dementia as a progressive loss of mental capacity, which involves the loss of intricate brain functions over time. The Court held that “It is a form of mental disability that may affect the capacity of an accused person to participate in judicial proceedings effectively. The ‘intellectual disability’ referred to in Section 368 of the Sanhita includes Alzheimer’s Dementia if it is in such a stage in which the accused person is incapable of making his defence. Therefore, I am of the view that a person suffering from ‘Alzheimer’s Dementia’, which is of such a degree that renders him incapable of making his defence, is entitled to the protection contained in Chapter XXV of the Code and Chapter XXVII of the Sanhita.”





CASE CHRONICLE

Does cooperative society come under the ambit of ‘consumer’?

-Seethala B

The National Consumer Disputes Redressal Commission (NCDRC), presided by Dr. Inder Jit Singh, ruled that a cooperative society should be considered a consumer under the Consumer Protection Act, 2019 if its primary intent is not commercial. This was established in the case of ***Jadar Group Coop. Jin Mill Limited Vs. Prakashchandra Suthar [F.A. No. 833/2015]***.

In this case, a cooperative society registered under the Gujarat Cooperative Societies Act, 1961, was involved in collecting cotton from its members, processing & converting it into bales, and selling them without a profit motive. The society ordered a Hydraulic Automatic Revolving Double Box Press from M/s. Vishwakarma Engineering Works but received a lower-capacity press instead. Despite full payment and repeated requests, the manufacturer did not replace or rectify the press. The society filed a complaint with the State Commission of Gujarat, which dismissed the complaint, stating that the society was engaged in business activities and “Appellant cannot be covered within the definition of ‘consumer’ as specified in the Act.” The society then appealed to the National Consumer Dispute Redressal Commission (NCDRC), New Delhi.

The NCDRC emphasized that if the primary purpose of a transaction is not profit-making but personal or for self-employment, the buyer qualifies as a consumer. The NCDRC set aside the State Commission’s order, and stated that “main objective of a Co-operative Society is the common welfare of its members through self help and collective efforts and not to earn profit”... **“the Appellant Society is not engaged in commercial activities. The State Commission went wrong in concluding that Society is not a Consumer under the Consumer Protection Act.”**





BEYOND THE OBVIOUS

What is a community standard test?

-Sri Sai Kamalini M S

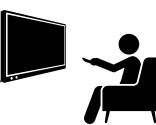
The entertainment industry has developed greatly due to the boom of OTTs, but keeping obscene content in check has become a major issue while regulating the contents. The community standards test is a legal framework used to assess whether certain materials, particularly those deemed obscene, are acceptable within a given community. This test has evolved significantly over time in India.

There are three main considerations while applying this test:

- Whether the average person, applying contemporary community standards, would find that the work appeals to the prurient interest.
- Whether the work depicts or describes, in a patently offensive way, sexual conduct as defined by applicable state law.
- Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

In the recent case of ***Apoorva Arora & Anr. Etc. Vs. State (Govt. of NCT of Delhi) & Anr(Criminal Appeal NO(s). /2024 (Arising out of SLP (CRL.) NO(s). 5463-5464/2023)*** where the episode of the series “College Romance” was under fire for using profane language and the Learned counsels argued that the “alleged portions are vulgar, vulgarity does not equate to obscenity. Mere words cannot amount to obscenity unless they involve lascivious elements that arouse sexual thoughts and feelings, which is not the effect of the scenes in the present case”.

The community standard test was applied in this case, and it was held that there was no case of publication or transmission of material containing sexually explicit acts or conduct, as provided under Section 67A of the Information Technology Act,2000 was made out even though vulgar language was used.



MEET THE TEAM



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