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EDITORIAL

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When lawyers turn rogue- the misappropriation of client funds situation

The ability of lawyers to turn the fortunes of a case is real and cannot be understated. The Bar Council rules clearly set out that there is a fiduciary relationship between a client and an advocate, and the same shall be given the protection of the law. It is also **true that a small population of advocates bring down the trust that clients place through unethical practices and conduct their work in a manner that brings disrepute to the legal system.**

The BCI rules in the **advocate's duty to clients** list out various requirements chief among which include: - **i) Full and frank disclosure to the client and upholding the interest of the client, ii) Not to disclose the communications between the client and himself, iii) To keep proper accounts, iv) Not to bid or transfer property which is the subject matter of any suit, appeal or other proceedings in which he is in any way professionally engaged, v) Not receive interest in actionable claim. These rules are placed due to the nature of engagement and the access to information that an advocate has that places him in an advantageous position.** However, there are circumstances when the lawyers turn rogue and misuse client data and even misappropriate client funds.

Section 35 of the Advocates Act, 1961 prescribes various punishments for misconduct of advocates including reprimanding, temporary suspension or even removal of the advocate from the rolls. Section 38 provides for appeal to the Supreme Court by any person aggrieved by the order of the Disciplinary Committee of the Bar Council of India.

In the case of ***Harish Chandra Tiwari vs. Baiju 2002 (1) SCR 83***, the appellant, an advocate who was enrolled with the Bar Council of Uttar Pradesh misappropriated the money due from the State to the client in a land acquisition case. The respondent filed a case before the State Bar Council where the advocate further fabricated documents before the disciplinary committee of the State Bar Council as if he and the respondent had arrived at a compromise. The Supreme Court ordered the advocate's name to be removed from the rolls of the Bar Council and barred him from practising before any court in the country.

In ***Rajendra Pai vs Alex Fernandes (2002) 4 SCC 212***, the appellant had been accused of soliciting work, opening bank accounts under false identities and withdrawing compensation provided for land acquisition to the clients. The Supreme Court suspended the advocate for 7 years from practicing for professional misconduct.

Despite the many legislative safeguards and precedents by courts, it is up to us lawyers to set high professional standards that bring us the respect that is appropriate for the legal profession. It is time to appropriate than misappropriate. Godspeed.

LEGAL CRISPS

The pill behind the curtain: Will India lock away emergency contraception and women's right to choose?

-Adithya Menon

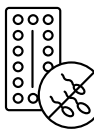
In a move that has ignited a fierce debate over reproductive rights and public health, India is contemplating significant changes to its regulations on emergency contraceptive pills (ECPs). **The Central Drugs Standard Control Organisation (CDSCO)**, India's top drug regulator, is weighing a proposal to reclassify these medications from over-the-counter to prescription-only status.

The potential policy shift comes at a time when India, the world's most populous country, grapples with complex issues surrounding family planning and women's health. Currently, ECPs containing 0.75 mg of Levonorgestrel are available without a prescription. The proposed amendments to the Drugs and Cosmetics Rules of 1945 would require a doctor's prescription for access to these medications. Proponents of the change argue that it would enhance medical oversight and potentially reduce irrational usage of ECPs. However, critics warn that the proposed regulations could have far-reaching consequences.

The debate is unfolding against a backdrop of constitutional protections for reproductive rights in India. In the landmark case ***K.S. Puttaswamy (Privacy-9J.) v. Union of India (2017) 10 SCC 1,*** the Supreme Court of India established that reproductive choices fall within the ambit of personal liberty under Article 21 of the Constitution. This position was further reinforced in subsequent rulings emphasizing that reproductive choices encompass both the right to procreate and to abstain from procreation. Additionally, in ***Suchita Srivastava v. Chandigarh Admn., (2009) 9 SCC 1***, the court explicitly recognized the concept of reproductive autonomy.

In the case of ***X v. Health & Family Welfare Department, 2022 SCC OnLine SC 905,*** the Supreme Court noted the biases of doctors and recognized that sometimes Registered Medical Practitioners (RMPs) deny abortions due to social stigma around unmarried women and premarital sex. The Supreme Court urged RMPs not to create obstacles for pregnant individuals and to respect their bodily autonomy. However, this is not always followed in spirit. Although the issue of ECP access is distinct from abortion, it should be viewed within a similar context of stigmatization of sexual activities.

With no final decision yet announced, the debate continues to simmer. For now, millions of Indian women wait to see if their access to emergency contraception—and with it, a measure of control over their reproductive futures—will change. The outcome of this deliberation will likely have far-reaching implications for India's reproductive health landscape, potentially reshaping the intersection of healthcare, women's rights, and constitutional protections in the world's largest democracy.



Who is authorized to use the term “National”?

-Seethala B

Ensuring only authorized bodies use the titles such as “National” to prevent misuse, the Bar Council of India issued a notification dated **15th October 2024[BCI: D:5386/2024].** This notification addresses the below-mentioned issues:

Framework Governing the Use of Specific Terms

The **Emblems and Names (Prevention of Improper Use) Act, 1950** prohibits the unauthorized use of terms such as "India," "Indian," "National," "Bharat," "Bharatiya," or "Rashtriya" to prevent the false impression of government endorsement. **Section 3** of the Act restricts individuals and organizations from using these terms for professional or commercial purposes without prior Central Government approval, and **Section 4** prohibits entities from registering names that violate these provisions.

Misuse and Misleading Practices

In recent years, there has been a noticeable increase in the use of the above mentioned terms in legal events such as "**National Moot Courts**" or "**All India Moot Court Competitions**," without government approval, creating the illusion of national importance. This practice misleads participants and sponsors, giving a false belief that the events hold official or government recognition.

Bar Council of India’s Statutory Authority

The Bar Council of India (BCI), as a statutory body, holds the legitimate right to use these terms due to its national mandate in regulating legal education. Events organized by the BCI, such as "National Moot Court Competitions," reflect its authority at the national level.

Restrictions on Other Entities

Universities, private institutions, and other entities cannot use these terms without explicit government permission. National Law Universities (NLUs) may use "National" if they formally intimate the government before hosting such events, maintaining transparency. Government law departments may also use these terms when their events align with national character.

Consequences of Non-Compliance

Entities using these terms without authorization may face:

- **Revocation** of BCI recognition or approval
- **Legal action** under the Emblems and Names (Prevention of Improper Use) Act, 1950
- **Disqualification** from hosting future competitions or similar events & loss of privileges granted by the BCI.

The BCI emphasizes that only recognized national bodies like NLUs and government-affiliated law departments can host such national events when it reflect such character.

Directive for Compliance

The BCI directs all educational institutions, trusts, and organizations to stop using these terms without government approval. Compliance with the Emblems and Names Act, 1950 is mandatory, and violations will attract legal consequences.

CASE CHRONICLE

Does a language channel promote cultural heritage?

-Nithyaparvathy R G

Case title: Sindhi Sangat Vs Union of India
Citation : D No. 43504/2024

The Supreme Court of India dismissed a petition that sought the establishment of a 24-hour Sindhi language channel on Doordarshan, aimed at preserving the cultural heritage of the Sindhi community. The petition was filed by the Sindhi Sangat, an NGO advocating for linguistic rights.

Senior Advocate representing the petitioner argued against the territorial policy used by Doordarshan for launching language channels. She contended that since Sindhis are a scattered refugee community without a designated state, applying territoriality as a criterion for broadcasting was unreasonable. She also pointed out that Sindhi is recognised as an official language in India under the Eighth Schedule.

The Supreme Court's bench stated that Article 29 of the Indian Constitution does not allow individuals an absolute right to demand a dedicated channel for their language. The court stressed that language preservation is vital but does not require an exclusive channel.

The Chief Justice stated that Article 29 of the Constitution does not give linguistic minorities the right to demand a separate channel for their language. The Court emphasised that preserving language, culture, and script under Article 29 does not imply an absolute or indefeasible right to demand the state establish particular resources, such as a 24-hour channel.

The Court stressed that there are other ways to preserve linguistic and cultural heritage, such as promoting language education, supporting cultural institutions, and raising public awareness via different platforms. While public broadcasting can help preserve languages, especially in rural areas, the Court stated that other forms of communication and outreach, particularly for urban and semi-urban people like the Sindhis, may be more beneficial. The bench stated that the Sindhi community is primarily business-oriented and lives in cities; thus, other kinds of cultural promotion may be more appropriate than a specialised television channel.

The Court eventually dismissed the petition, stating that its ruling was restricted to the precise prayer addressed and should not be interpreted as a larger statement about preserving linguistic heritage. The court ruled that while the state is responsible for safeguarding linguistic diversity, it is not obligated by constitutional mandates to meet every specific demand for language preservation.

BEYOND THE OBVIOUS

CSR Assessment vs. EIA Assessment

-Sri Sai Kamalini

Global warming and other concerns that impact the environment have been considered serious threats to life, and the government and independent parties have taken various steps to preserve the environment. The corporations and companies that meet certain thresholds have been mandated by the Companies Act of 2013 for Corporate Social Responsibility.

Corporate Social Responsibility(CSR) Assessment and Environmental Impact Assessment (EIA) often get confused with each other; however, there are various differences between both assessments. The CSR assessment's main goal is to calculate the effectiveness of the CSR projects by the Company. In contrast, EIA focuses on predicting the environmental consequences of the Company's proposed projects before they are approved. The EIA is usually conducted during the project planning phase before construction begins. It is a pre-requisite for obtaining environmental clearance.

The Companies Amendment Rules on the 21st of January 2021 mandated CSR assessment for companies with a Corporate Social Responsibility obligation of INR 10 crore and projects of INR 1 crore or more. The report has be to attached to the Annual Report and the impact assessment must be completed within one year of the completion of the project. The Environment Impact Assessment, on the other hand, is governed by the Environment Protection Act of 1986 and the guidelines established by the Ministry of Environment, Forest and Climate Change.

Corporate Social Responsibility Impact Assessments and Environmental Impact Assessments aim to promote accountability and sustainability within corporate practices in India, however they differ significantly in their objectives, regulatory frameworks, scopes, timing, and methodologies and it is important to understand such differences.

MEET THE TEAM

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