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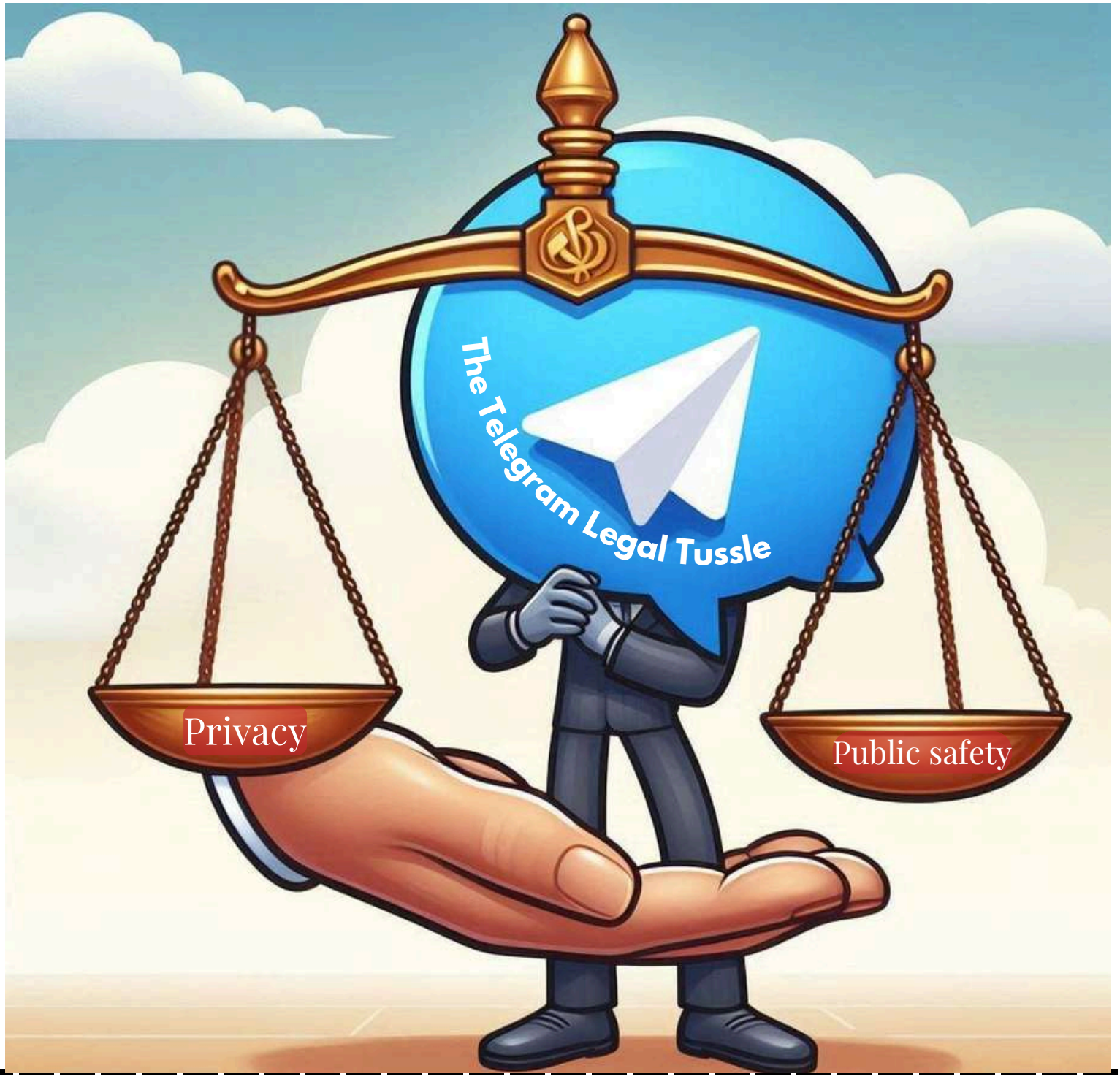

EDITORIAL

P Arun Sugavaneshvar
Founder

Article 227 - To be used sparingly

Article 227 of the Indian Constitution establishes the power of superintendence of a High Court over all other subordinate courts and tribunals within its territory. However, there have been instances where litigants have tried to use this power as an indirect way for appeal or for revision. High Courts have time and again frowned upon litigants who take shelter under this Article merely to delay the legal process.

Article 227 can be traced to the provisions of Section 107 of the Government of India Act, 1915 with the minor addition of superintendence over tribunals as well. In ***Chandrasekhar Singh vs Siya Ram Singh (1979) 3 SCC 118,*** the three-judge bench of the Hon'ble Supreme Court held that the powers under Article 227 cannot be curtailed by the provisions of the Code of Criminal Procedure and further reiterated that the power of judicial interference under Article 227 is not greater than the power under Article 226 of the Indian Constitution.

In ***Surya Dev Rai vs Ram Chander Rai and Others (2003) 6 SCC 675***, the Hon'ble Supreme Court summarized certain guidelines for the scope of interference by the High Court under Article 226 and Article 227 of the Indian Constitution. It further enumerated that Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. A petition under Article 227 is not maintainable against the order of a single Judge of the High Court as the supervisory jurisdiction is intended to be applied only to subordinate courts.

The powers under Article 227 may broadly be exercised in the following circumstances: -
i) where the subordinate court or tribunal has assumed jurisdiction, it does not have
ii) has failed to exercise a jurisdiction it does have, such failure occasioning a failure of justice
iii) the jurisdiction, though available, is exercised in a manner not permitted by law.

It further added that to exercise the power under Article 227, the error must be manifest and apparent on the face of the proceedings, and a grave injustice must have been occasioned thereby. The Supreme Court clearly directed that the High Court, in the exercise of its supervisory jurisdiction, must not convert itself into a court of appeal and indulge in reappreciation and evaluation of evidence.

Article 227 forms part of the basic structure of the Indian Constitution and provides the High Court to cure any patent errors. It is vital that the misuse of Article 227 is checked and the guidelines provided by the Hon'ble Supreme Court are followed strictly to avoid vexatious litigation and unnecessary delay.

LEGAL CRISPS

Botched hair treatments and religious beliefs

-Nithyaparvathy R G

The District Consumer Disputes Redressal Commission (DCDRC) in Hyderabad recently addressed a complaint about a botched hair treatment at a luxury salon in the case of ***Dr. Jasleen Kaur v. Polsani Nikshitha Rao and Ors. (C.C No. 346/2023)***. The complainant, a veterinary doctor from a Sikh family, suffered extreme tangling of her hair after receiving a hair spa treatment. This caused her discomfort and necessitated the need to cut her hair—a significant problem considering her beliefs.

The salon(opposite party No. 2) had marketed that they use the products of opposite party no. 3, a highly luxurious Italian brand imported and distributed in India via 'Sustainable Beauty Private Limited', and the label on the product has the same name. Still, the salon failed to deliver quality care. The complainant said that her hair became matted right after the treatment, causing permanent damage. The complainant, who had lost her religious and personal identity due to the carelessness of others, resorted to voicing her frustration through her own Instagram page. The salon claimed it had repaid the treatment money and that the complainant's acts were defamatory.

However, the Commission determined that the salon did not follow basic protocols and that the staff lacked the necessary training. The Commission held that "...the documentary evidence and the admission of entanglement of hair after the hair spa establishes wilful negligence and default of the service provider (opposite party No. 2). It is noteworthy that a master is vicariously liable for the acts and omissions of his / her servants / representatives / agents."

It also stated, "In the case at hand, it is true that the complainant's hair was damaged after the faulty service provided by the opposite party No. 2 salon. It is also equally true that before filing the complaint, the complainant used the social media platform to tarnish the image of the opposite parties. The same cannot be lost sight of while awarding compensation."

As a result, the DCDRC awarded the complainant Rs 1 lakh as compensation, held the opposite parties Nos. 1 and 2 jointly and severally liable, and ordered them to pay Rs 25,000 towards costs. Ultimately, while the complainant requested Rs 2 crores as damages, the DCDRC determined that Rs 1 lakh was the appropriate compensation for her problems due to this event.

CASE CHRONICLE

Passengers not liable for driver's negligence in accident

-Seethala B

CASE: Sushma vs. Nitin Ganapati Rangole & Others
CITATION: 2024 SCC OnLine SC 2584

In a motor vehicle accident case involving the reduction of compensation due to contributory negligence, the Supreme Court reversed the findings of the Motor Accidents Claims Tribunal (MACT) and Karnataka High Court, which had reduced the claims of the legal heirs of deceased passengers by 50%. The case arose from a 2013 accident where a car collided with a 14-wheeler truck that was abandoned in the middle of the highway without any warning signals, resulting in the deaths of the car passengers, including the driver.

The MACT initially held that the accident was caused by contributory negligence, arguing that the car's driver failed to take preventive measures to avoid the truck, leading to a 50% reduction in compensation. The Karnataka High Court upheld this decision, applying the "rule of last opportunity" and reasoning that the car driver could have avoided the accident had he been more cautious. The appellant-claimants, primarily the legal heirs of the deceased passengers, contested the decision, arguing that the driver's contributory negligence should not affect their compensation.

The Supreme Court ruled that the principle of contributory negligence cannot be vicariously applied to passengers. Citing Union of India v. United India Insurance Co. Ltd. [(1997) 8 SCC 683], the Court emphasized that passengers are not responsible for the driver's negligence and cannot be treated as "backseat drivers." It further noted that vicarious liability does not extend to passengers, and reducing compensation for their legal heirs based on the driver's actions was "prima facie illegal and impermissible."

The Court stated that "**it is established beyond the pale of doubt that the offending truck was parked in the middle of the road without any parking lights being switched on and without any markers or indicators being placed around the stationary vehicle to warn the incoming vehicular traffic.**" These actions were clear violations of the Motor Vehicles Act, 1988, and the Rules of Road Regulation, 1989.

The Supreme Court concluded that the lower courts' findings of contributory negligence against the car driver were based on conjecture, and the 50% reduction in compensation was deemed perverse and unsustainable. The Court awarded full compensation to the claimants without any reduction.

BEYOND THE OBVIOUS

The poison pill

-Sri Sai Kamalini M S

A hostile takeover is a widely discussed topic in Mergers & Acquisitions. A hostile takeover is a phenomenon where the acquirer takes control of the entity or company without the proper consent of the management. They are usually done if the proper and official proposal is rejected. The Companies use various defensive strategies to prevent hostile takeovers. One of the famous strategies is the poison pill.

A poison pill is a defensive strategy companies use to deter hostile takeover attempts. This tactic often involves issuing new shares or rights to existing shareholders, making it more difficult and expensive for a potential acquirer to gain control. By diluting the value of shares or creating unfavourable conditions for the buyer, the target company aims to protect itself from unwanted advances.

The term originated from the idea that the strategy is akin to a "poison" that makes the company less appealing to prospective buyers. Thus, it preserves the company's independence and allows management to negotiate from a position of strength.

One common type is the "flip-in" strategy, which allows existing shareholders (excluding the acquirer) to purchase additional shares at a discounted price, thereby diluting the acquirer's ownership stake. Another variant is the "flip-over" plan, which enables shareholders to buy shares in the acquiring company at a reduced rate if a takeover occurs.

The poison pill gets used only at the discretion of the board of directors. They can also suspend the utilization of the poison pill if there is a friendly takeover. In the case of ***Unocal Corp. v. Mesa Petroleum Co. (493 A.2d 946 (Del. 1985))***, a **Unocal standard was introduced by the Deleware Court.** This acts as a legal standard used to evaluate the validity of poison pills as defensive measures against hostile takeovers. In this standard, the Board should demonstrate that their actions are reasonable in relation to a specific, articulated threat.

Can Telegram balance user privacy with public safety amid legal challenges in India?

-Aditya Menon

Telegram, the encrypted messaging platform, finds itself at the centre of a significant debate about digital privacy and public safety. Founded by Pavel Durov, the platform's strong commitment to user privacy has inadvertently made it a safe space for illegal activities, drawing criticism from governments worldwide. This tension is particularly evident in India, where Telegram is facing a possible ban due to accusations of facilitating serious crimes, including terrorism and child exploitation.

The Indian government has grown increasingly frustrated with Telegram's alleged role in various criminal activities, such as extortion, child pornography, and illegal gambling. In 2023, authorities issued warnings to Telegram for not adequately addressing issues related to child sexual abuse material, exam paper leaks, and stock price manipulation. Despite these concerns, Telegram has been criticized for cooperating with only 20% of law enforcement requests, which has heightened tensions with Indian regulators.

A significant ruling by the Delhi High Court in the case of ***Neetu Singh & Anr. v. Telegram FZ LLC (CS (Comm) 282/2020)*** determined that Telegram channels sharing copyrighted material infringe on intellectual property rights, forcing the platform to provide user data despite its servers being in Singapore. Telegram resisted this request, citing Section 72A of the Information Technology Act, 2000, which penalizes companies for disclosing personal information without consent. However, the court ruled that protecting intellectual property was more important than privacy concerns, setting a crucial legal precedent. The Indian Ministry of Home Affairs and the Ministry of Electronics and Information Technology are now considering a ban on Telegram. Even though Telegram claims to comply with Indian laws, its lack of a physical presence in the country complicates enforcement efforts. Adding to the complexity, Durov’s recent arrest in France has raised more questions about Telegram's legal compliance worldwide. This incident has increased pressure on the platform as it struggles to balance user privacy with legal obligations.

The outcome of this legal battle could significantly impact online communication and privacy. If Telegram is forced to make changes—whether by enhancing content moderation, cooperating more with law enforcement, or altering its encryption protocols—it could lead to a shift in how privacy is viewed and protected in the digital age.

MEET THE TEAM

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