

# LAWBY WRITES



The peculiar case of online law courses and the BCI approval- Kind attn. all law students

Who owns the treasure you find in India? A Guide to the Indian Treasure Trove Act of 1878

Interpreting Section 52A: Procedural challenges in narcotic evidence handling

Delhi High Court grants bail to Lava MD in a money laundering case

Crowdfunding rules in India



# EDITORIAL



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## The peculiar case of online law courses and the BCI approval- Kind attn. all law students

Online law courses are being attended by many law students these days to improve their resume value in the eyes of potential employers. The landscape of legal education in India is undergoing a remarkable transformation, with online learning emerging as a powerful catalyst for change. It is also pertinent to note that the traditional method of learning has not uplifted the skills of lawyers and law students, prompting them to search for alternative options. As technology reshapes traditional educational paradigms, the Bar Council of India (BCI) finds itself at a critical juncture, balancing innovation with the preservation of rigorous legal standards.

The Bar Council of India through its notification BCID-0468-2024 (LE Circular-06/2024)- Comprehensive Implementation of Legal Education Reforms, Mandatory Guidelines, Norms & Rules of Legal Education dated 20.05.2024 clearly instructs all universities to obtain regulatory approval failing which it would initiate legal action. The relevant extract from the notification are as follows: **“.....As per the order of the Hon'ble Supreme Court of India dated 29.08.2019 passed in Writ Petition (Civil) No.1510 of 2018, titled as Vinit Garg Vs. University Grants Commission and as per the earlier order of Hon'ble Supreme Court of India dated 03.11.2017 passed in Civil Appeal Nos.17869-17870, arising out of SLP No. 19807-19808/2012 in the case of Odisha Lift Irrigation Corp Ltd. Vs Ravi Shankar Patro & Ors., the Hon'ble Supreme Court has held that an University has to obtain permission from the concerned regulatory body for initiating/starting, opening and conducting any distance learning course/s.....”**. Moreover, UGC has informed, Law has been included in the list of subject areas, where programmes are not permitted to be offered in open and distance learning mode and online mode in Higher Education, as per provision 2(z)(a) of UGC(ODL Programmes and Online Programmes) Regulations, 2020( as amended).

Applying the same principle, private institutions offering online law programs and claiming to be online law schools would soon land in trouble if they do not get the blessings from BCI to offer such courses. The notification by BCI also informs that BCI does not recognise such courses completed by law students without its approval. It is relevant to note that some institutions get approval from NSDC(National Skill Development Corporation) for some of the courses they offer. It is vital to note that many students are providing testimonials approving the effectiveness of such online courses they have taken up and the consequent ease in hiring they have witnessed. All these could well be true but it is high time the BCI makes rules to approve online courses and should promise a fair hearing to all involved to verify if such courses are crafted well to sincerely help law students improve their professional standards.

As technology continues to reshape our educational landscape, the BCI stands as a crucial guardian, protecting the integrity of legal education while embracing the transformative potential of digital learning.

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# LEGAL CRISPS

## Who owns the treasure you find in India? A guide to the Indian Treasure Trove Act of 1878

-Aditya Menon

Imagine hiking through the forest or exploring an old site, only to find a chest filled with ancient coins, sparkling jewellery, or valuable artefacts. The excitement of discovering treasure might feel like a dream come true. However, before you celebrate, you need to understand the legal rules that come with such a discovery. If you don't follow the proper procedures, your find could lead to legal trouble under the Indian Treasure Trove Act of 1878.

The Indian Treasure Trove Act has been in force since 1878. It establishes the legal framework for handling discovered treasure in India, Pakistan, and Sri Lanka, defining "treasure" as any valuable item hidden in the soil or attached to it. The Act aims to balance the interests of the finder, landowner, and government, requiring finders to notify the "Collector" of the treasure's nature, value, and location if it exceeds ten rupees. Finders must also deposit the treasure in a government treasury or provide security for its future production. The Collector initiates an inquiry to identify the rightful owner and publishes a notice for claims, allowing disputes to be settled in civil court. Section 14 mandates claimants to file a lawsuit within one month, with the Collector dividing the treasure between the finder and claimant if successful. If no lawsuit is filed or all claims are rejected, the treasure is awarded to the finder, and the Collector can auction it or adjust the shares. The Act also imposes penalties on finders who fail to report treasure, including forfeiture of their share, imprisonment, or fines, as per Section 20, with similar penalties for landowners who help conceal the treasure.

In ***Re: Mala Naicker And Anr. vs Unknown (1914) 27 MLJ 477***, two poor labourers were convicted under the Treasure Trove Act for finding treasure while working under their employer's direction. The court ruled they were "finders," clarifying that failure to deposit the treasure due to circumstances should not incur penalties. It reduced the fine on one accused due to their poverty but upheld the conviction. Similarly, in ***Abdul Hussain vs The Government of Tamil Nadu (1994) 2 MLJ 252***, a petitioner was convicted for failing to notify authorities after finding treasure on his property. The court quashed the government's confiscation order and ruled in favour of the petitioner, directing payment of his share. In the ***State of Tamil Nadu vs Poovan Chettiar (AIR 1997 MADRAS 312)***, plaintiffs discovered 360 silver coins and claimed ownership, arguing the treasure was hidden by their ancestors. The court ruled they retained ownership, as the treasure was not hidden and was unknown to them, and the Treasure Trove Act did not apply.

While finding hidden treasure can be thrilling, it's important to remember that it comes with legal responsibilities. The Indian Treasure Trove Act reminds us that any valuable discovery involves following specific steps. So, if you ever stumble upon treasure, make sure to report it to the authorities to avoid any legal problems.





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# Interpreting Section 52A: Procedural challenges in narcotic evidence handling

-Nithyaparvathy R G

Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) requires proper handling and disposal of seized narcotics and psychotropic substances. It enables the identification and disposal of substances based on their hazardous properties and storage restrictions. It requires law enforcement officers to create a complete inventory of confiscated things, including descriptions, quantities, and identifying marks. In addition to any representative samples obtained, this inventory must be certified by a Magistrate to confirm its correctness. This procedure ensures that inventories, pictures, and samples taken are considered primary evidence in court hearings, reinforcing legal standards related to drug enforcement and public safety. Adherence to these regulations is vital, as failure to comply might compromise the credibility of evidence in court, potentially resulting in acquittals in drug-related cases. Section 52A protects evidence from being mishandled or misused in narcotics prosecutions.

In ***Narcotics Control Bureau v Kashif., SLP(Crl) No. 12120/2024***, the central point of discord was the interpretation of Section 52A of the NDPS Act, namely whether the initial sampling of confiscated narcotics should take place on the spot or in the presence of a magistrate. The Solicitor General, representing the NCB, contended that Section 52A only applies to pre-trial drug disposal and does not invalidate the on-site sampling procedure established by Standing Order 1/88. He emphasised the need for immediate sampling to avoid doubts of evidence tampering. In contrast, the respondent's advocate contended that Section 52A expressly demands the presence of a magistrate during sampling, citing Section 52, which requires the immediate presentation of confiscated objects to a magistrate for disposal. This disagreement emphasises the ambiguity in the NDPS Act and the necessity for the Supreme Court to clarify the correct interpretation of Section 52A. While acknowledging the impracticality of the Magistrate's presence at each initial sampling, the Supreme Court ruled that seized samples of narcotic drugs or psychotropic substances under the NDPS Act must be sent to the laboratory within 72 hours.





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# CASE CHRONICLE

## Delhi High Court grants bail to Lava MD in a money laundering case

-Seethala B

**CASE- Hari Om Rai v. Directorate Of Enforcement**

**CITATION- 2024:DHC:8972**

The Delhi High Court, on November 20, 2024, granted bail to Hari Om Rai, Managing Director of Lava International Ltd., in a money laundering case linked to Vivo Mobile Communication Co. Ltd., China. The Enforcement Directorate (ED) alleged that Vivo fraudulently established group companies in India without disclosing true ownership and transferred funds abroad, generating proceeds of crime. Mr Rai was accused of aiding Vivo in concealing ownership details, providing logistical support, and facilitating fund transfers to Labquest Engineering Pvt. Ltd.

Mr Rai's legal team argued there was no direct evidence against him. They claimed the funds transferred to Labquest were loans repaid with interest before the alleged offences occurred. They also stated that the invitation letters issued to Chinese nationals were part of an exploratory joint venture between Vivo and Lava, which did not lead to fruition. The ED countered, alleging Mr. Rai's active role in money laundering, influencing the witnesses and tampering with evidence. The agency claimed Lava's invitation letters allowed Chinese nationals to forge documents, open bank accounts, and acquire Director Identification Numbers. It further alleged that Labquest was a front for Vivo to establish its Indian operations and that Mr Rai was involved in fund arrangements for Vivo India's incorporation.

While granting bail, the court observed that **"the accused in a money laundering case cannot be equated with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, etc."** The court stated that there was no sufficient evidence presented by the ED to substantiate its claims and noted that other co-accused in the case had already been granted bail.





# BEYOND THE OBVIOUS

## Crowdfunding rules in India

*-Sri Sai Kamalini*

The landscape of crowdfunding in India is evolving, driven by the need for startups and small businesses to access alternative funding sources. The Securities and Exchange Board of India (SEBI) plays a crucial role in regulating this sector, particularly as it seeks to protect investors while fostering innovation in fundraising methods. Crowdfunding can be broadly categorized into three types: donation-based, lending-based, and equity-based.

Donation-based crowdfunding is currently the most prevalent form in India, allowing individuals to raise funds for various causes without the expectation of financial returns. This model has been especially significant for non-profits and community projects, where contributors support initiatives out of goodwill rather than for profit. In contrast, lending-based crowdfunding connects borrowers with lenders through online platforms. This model has gained traction but operates under a different regulatory framework established by the Reserve Bank of India (RBI).

The RBI mandates that peer-to-peer lending platforms must register as companies and meet specific financial criteria, ensuring a level of oversight that protects both lenders and borrowers. Equity-based crowdfunding, however, remains a contentious issue in India. While the concept is recognized globally as a viable means for startups to raise capital by offering shares to a large number of investors, Indian regulations impose significant restrictions. **Under the Companies Act of 2013, private placements are limited to 200 investors per fiscal year, and advertising such offerings is prohibited. This creates a legal grey area for crowdfunding platforms that attempt to facilitate equity investments, as compliance with these rules is challenging when using public platforms.** To address these concerns, SEBI has proposed new guidelines aimed at regulating crowdfunding activities more effectively.

These proposed norms stipulate that only SEBI-registered entities can operate crowdfunding platforms. Companies seeking to raise funds through these channels would be limited to raising up to ₹10 crore annually and must ensure that only accredited investors participate in such activities. Accredited investors include institutional investors and high-net-worth individuals who meet specific financial criteria. Additionally, the guidelines propose that retail investors' contributions be capped at ₹60,000 or 10% of their net worth to mitigate risks associated with crowdfunding investments. Furthermore, entities with significant turnover or those already listed on stock exchanges are barred from utilizing crowdfunding as a means of raising capital.



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# MEET THE TEAM



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