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EDITORIAL

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A career of lost privileges- the woman lawyer's dilemma

A woman lawyer's credibility is always under scrutiny. **She must work twice as hard to be taken half as seriously as her male counterpart.** Young women lawyers frequently report being mistaken for clerks or administrative staff, despite being fully qualified legal professionals. In courtrooms across India, women lawyers often fight battles that extend far beyond legal arguments. They confront casual sexism from senior lawyers, patronizing attitudes from colleagues and peers, constant need to prove their competence and subtle (and sometimes not-so-subtle) discrimination.

Before 1923, women were not allowed to practice as a lawyer. It is **only after the passing of the Legal Practitioners (Women) Act, 1923 women were permitted to practice.** ***Regina Guha vs Unknown [35IND. CAS.925]*** was the first case instituted to fight for a woman lawyer's right to be enrolled and practice. We have come a far way from that moment in history, but still, many gender stereotypes fail to wither and fade. In an article titled "Are Women in Litigation Disproportionately Affected by Mental Health Concerns? Unpacking the Intersection of Women, Litigation, and Mental Health" by Karuna Krishan Thareja, the author highlighted that **Supreme Court advocate Ms Indira Jaising urged the Supreme Court to issue a handbook providing guidelines to male colleagues on interacting with women in the legal profession to tackle gender stereotyping in the Bar and court pleadings and arguments.**

According to the report submitted by SCO (Supreme Court Observer) as of 1st August 2024, only 14 percent of sitting Justices across High Courts in India are women. According to the former Chief Justice of India, NV Ramana, "The representation of women in the judiciary is not a matter of charity but of right."

The legal profession requires extraordinary commitment, which becomes exponentially **more challenging for women where one needs to balance professional aspirations with family expectations, manage societal pressures of marriage and motherhood, navigate workplace discrimination and deal with late-night work requirements in a society that treats women's mobility at night as problematic and dishonourable at times.** There needs to be a conscious and educated awareness amongst male lawyers to understand the circumstances that surround women lawyers and their duty to provide a supportive ecosystem for the growth of inclusivity and fairness in the legal fraternity.

A woman lawyer's career success is more than an individual success; it is transforming an entire professional ecosystem, one case, one argument, one naysayer at a time.

LEGAL CRISPS

Laws governing abandoned treasures at Sea

-Seethala B

The discovery and ownership of abandoned treasures at sea are governed by a combination of international conventions, national laws, and maritime principles. Under the **United Nations Convention on the Law of the Sea (UNCLOS), 1982**, coastal states hold sovereignty over historic shipwrecks found within their Exclusive Economic Zone (EEZ) or Territorial Waters, and artefacts older than 100 years are regarded as part of the state's "cultural heritage." Additionally, the **UNESCO Convention on the Protection of the Underwater Cultural Heritage, 2001** aims to preserve underwater artefacts, emphasizing protection over commercial exploitation and prohibiting unauthorized removal or sale of such treasures. On the national level, countries have their own laws to regulate the discovery of treasures at sea. In India, the **Antiquities and Art Treasures Act, 1972 (AATA)** governs the excavation and export of artefacts of historical significance, requiring permits for their retrieval and trade. Under this act, the state owns antiquities found within Indian waters, and individuals or entities must seek permission to remove or sell such items. The Indian **Maritime Zones Act, 1976** also plays a role, establishing Indian jurisdiction over its territorial waters, including shipwrecks and treasures found within them.

A notable example of the complexities surrounding underwater treasures is the discovery of the **Titanic** wreck in **1985**. Despite being considered an international heritage site, the Titanic has been subject to numerous legal battles over salvage rights. The U.S. government, along with international bodies, has insisted on preservation, while salvage companies have sought to recover artefacts for commercial purposes.

In the U.S., the **Abandoned Shipwreck Act, 1987** gives states the rights to shipwrecks within their waters, prioritizing preservation over private ownership. When it comes to ownership, the **Law of Salvage** allows treasure hunters to claim a reward for recovering items but does not grant ownership, whereas the **Law of Finds** permits ownership if the treasure is abandoned. However, under international conventions and Indian heritage laws, state and cultural preservation interests often take precedence over private claims, limiting commercial exploitation.

These laws create a complex legal landscape, balancing the interests of treasure hunters with those of the state and cultural preservation, ensuring that underwater treasures are managed responsibly.

Women's safety and regulation in India's ride-hailing sector

-Nithyaparvathy R G

Over the last decade, India's online cab aggregator sector has grown exponentially. The convenience and accessibility of these platforms contribute to their growing user base. However, the safety and security of consumers using their services, particularly women, is becoming a significant worry.

The regulation of app-based taxi services in India has changed drastically, especially since adopting the Motor Vehicle (Amendment) Act, 2019. This legislation intended to regulate the operational framework for ride-hailing companies such as Uber and Ola, which had previously operated with minimal regulation. It defined an aggregator as "a digital intermediary or market place for a passenger to connect with a driver for the purpose of transportation". The act requires aggregators to follow safety measures, including driver certification and vehicle tracking systems. The Central Government then established the Motor Vehicle Aggregator Guidelines 2020, which govern the business practices of transport aggregators or app-based taxi services. These guidelines attempt to ensure that aggregators are accountable and responsible for the activities that they carry out. They include several measures that provide these platforms extensive control over their drivers' operations.

In ***X v. Internal Complaints Committee (WRIT PETITION No.8127 OF 2019 (GM-RES))***, the victim sought relief under the POSH Act. The term 'aggrieved woman' under the Act has been specifically defined to cover women of any age, whether or not employed by the specific institution. Thus, even a female consumer who has been sexually harassed by an employee at a particular company may seek protection under this law.

The fundamental question in the Karnataka High Court case was whether the cab driver could be considered an 'employee' of Ola and hence liable under the POSH Act. While Ola maintained that it was only an aggregator and that the driver was a third-party contractor, it was difficult to avoid the POSH Act's broad definition of an employee. The Act applies to many kinds of employees, "whether regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer....". This broad definition reflects the legislative objective to guarantee that employers do not avoid their responsibilities by claiming any direct link with their employees. In this case, after determining the nature of the driver's relationship with the platform based on the subscription agreement and other circumstances, the Court decided that the driver meets the description of 'employee' and is thus subject to POSH Act proceedings.

CASE CHRONICLE

Protecting the well known trademark- “Lego”

-Sri Sai Kamalini M S

Case: LEGO Juris A/S Vs. Gurumukh Singh and anrs.
Citation: (T)OP(TM) Nos.190 & 191 of 2023

The High Court of Madras ruled in favour of LEGO Juris A/S in two trademark rectification petitions ((T) OP (TM) Nos.190 & 191 of 2023) against Gurumukh Singh, Iqvinder Kaur, and Kamal Preet Kaur, trading as LEO FOODS. LEGO, the renowned toy manufacturer, filed the petitions to cancel LEO FOODS' registered trademarks "LEGO CUTEHEART" and "LEGO COFFYBOND" for confectionery products.

The court determined that LEO FOODS' use of the LEGO mark infringed upon LEGO Juris A/S's prior, distinctive, and well-known trademark. The court also found that LEO FOODS' adoption of the LEGO mark was dishonest. Although LEGO's well-known trademark status was granted during the proceedings, the court recognized LEGO's entitlement to protection based on its application date and Section 11(2) of the Trade Marks Act, 1999.

The court acknowledged that **while the companies operate in different trade channels, both target children as consumers. The near-identical adoption of the LEGO mark, including style and colour, increased the likelihood of confusion among children who might perceive LEO FOODS' confectionaries as LEGO products.** The court rejected LEO FOODS' argument that their registration under Class 30 for confectionaries allowed them to use the LEGO mark. The court emphasized that registration under different classes is for the Trade Marks Registry's convenience and does not constitute a defence against infringement or passing off.

The court also dismissed LEO FOODS' claim of conducting a thorough trademark search, pointing out that they only searched for the LEGO mark within the confectionary industry, indicating bad faith. The court cited the case of ***R.Gopalakrishnan v. M/s.Venkateshwara Camphor Works (2000(4)CTC222),*** highlighting that when an intention to deceive is found, it is likely that the intention has been or will be effective. Ultimately, the court ordered the removal of LEO FOODS' "LEGO CUTEHEART" and "LEGO COFFYBOND" trademarks from the register.

BEYOND THE OBVIOUS

Who owns what? The mystery of benami transactions in India

-Adithya Menon

Imagine owning a property worth crores, but your name is nowhere in the records. The property changes hands, and wealth grows, but the real owner stays hidden. This is the world of benami transactions, where the true owners remain in the shadows while others act as legal proxies. In India, such transactions have long been associated with black money, corruption, and a lack of financial transparency. The term benami has been central to Indian property and financial law but remains undefined within the legislative framework. Despite its importance, neither the Benami Transactions (Prohibition) Act of 1988 nor its 2016 Amendment provides a clear definition of the term. Instead, they describe benami transactions, assuming a general understanding of the concept. In simple terms, benami refers to transactions or properties held in someone else's name, often to disguise the true ownership, making it difficult to trace financial dealings and enforce property rights.

Over the years, India's legal system has worked to combat benami transactions through legislation. The Benami Transactions (Prohibition) Act of 1988 banned benami transactions, with limited exceptions, and imposed strict penalties, including imprisonment without the need to prove intent. However, its effectiveness was hindered by enforcement challenges and unclear definitions. To address these, the Benami Transactions (Prohibition) Amendment Act of 2016 expanded the scope by including "arrangements" and broadening exemptions, such as transactions in the names of family members or fiduciaries. It introduced harsher penalties, including up to seven years of imprisonment and fines of 25% of the property value, though it also allowed the government to exempt certain religious and charitable trusts, raising concerns over potential misuse.

In ***Union of India & Anr. vs. M/s Ganpati Dealcom Pvt. Ltd. (Civil Appeal No. 5783 of 2022),*** the Supreme Court ruled the retrospective application of the amendments unconstitutional. It held that penalties could not apply to transactions made between 1988 and 2016, describing such enforcement as "manifestly arbitrary." However, this decision faced a reversal in 2024 when a bench led by Chief Justice DY Chandrachud issued an interim verdict, recalling the 2022 ruling. This allowed the Income Tax Department to review cases under the amended provisions, pending a final judgment. Over the years, Indian courts have played a crucial role in shaping the legal understanding of benami transactions.

Similarly, in ***Thakur Bhim Singh v. Thakur Kan Singh ([1980] 3 SCC 729),*** the court examined a dispute over land ownership, where the defendant claimed to be the true owner while the plaintiff sought legal ownership. The court carefully analyzed documentary evidence and other relevant factors, ultimately ruling in favour of the plaintiff, reinforcing the need to substantiate ownership claims in benami disputes.

The fight against benami transactions is a fight for transparency in a system where the truth is often hidden. As the laws evolve, they send a clear message: no matter how deep the shadows are, every hidden transaction will eventually be uncovered.

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