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EDITORIAL



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Protecting Minors Online- why the law can't do much

Almost everyone is a social media addict. It is slowly ruining the mind and probably taking away precious time meant for living. What was meant to be a pastime has now become the main event around which a few billion lives on Earth revolve. Parents are having a difficult time reasoning with minors to reduce their screen time. According to a 2021 study by the National Commission for Protection of Child Rights (NCPCR), 37% of Indian children aged 10-14 use social media regularly. **The content available on Instagram, YouTube Shorts, Snapchat and various other social media platforms have caused severe disruption, flooding young minds with unrealistic social standards.**

The Australian government has recently passed a bill calling for a ban on social media for citizens under the age of 16. The bill is introducing the term “age-restricted social media platforms” into the Online Safety Act and this covers platforms including TikTok, Facebook, Snapchat, Instagram, X and Reddit. **The hugely criticized move comes in response to concerns about the mental health impact of social media on young people, including issues surrounding body image, bullying, sex, violence and other harmful content.** In India, a huge population of youngsters are into online gaming for hours, where the government should mandate some gaming platform regulations such as parental consent for in-app purchases, time restrictions for minor users and mandatory content warnings.

India's Digital Personal Data Protection (DPDP) Act of 2023 regulates the use of social media by children under 18 years of age. **Section 9 of the DPDP Act, 2023, requires all data fiduciaries, which includes websites, platforms, browsers, OS providers, etc., to do verifiable parental consent if they are processing data of a user who is below 18 years of age.** It is also pertinent to note that Companies cannot track children's online behaviour and cannot involve in direct targeted advertising at children as per the Act.

Section 79 of the Information Technology Act, 2000 lays down conditions under which Internet Service Providers (ISPs) or intermediaries are exempt from culpability for offensive content uploaded by a third party. It mandates the intermediaries to perform “due diligence” and to take immediate action on the orders of the courts or the government or its agencies to utilize the safe harbour provision.

It is literally impossible to gatekeep social media and its usage by youngsters. It would be best to monitor the compliance of legal regulations under the DPDP Act and other relevant statutes and **educate the parents and children with the fervent hope that both of them are able to listen above all the social media noise.**



LEGAL CRISPS

Laws governing theme parks

-Seethala B

Theme parks offer excitement and entertainment, but has the responsibility to operate within stringent legal frameworks to ensure safety, environmental sustainability, and ethical practices.

Safety regulations are paramount in such establishments. The Factories Act, 1948, and the Indian Standard Code for Amusement Rides Safety (IS 15475 Part 3: 2004) mandate detailed safety protocols for ride operations and maintenance. The Bureau of Indian Standards (BIS) further enforces upkeep protocols, ensuring rides meet safety benchmarks. Compliance with the Disaster Management Act, 2005, is also essential for risk mitigation during emergencies.

Environmental laws, such as the Environmental Protection Act, 1986, require theme parks to conduct environmental impact assessments, manage natural resources responsibly, and follow pollution control and waste disposal norms. These regulations are crucial as parks occupy large areas and consume significant resources.

Consumer and labour laws ensure accountability and worker welfare. The Consumer Protection Act, 2019, holds parks responsible for safety lapses, while labour laws like the Minimum Wages Act, 1948, and the Employees' State Insurance Act, 1948, protect workers' rights.

However, certain incidents have exposed gaps in compliance. In 2016, a trial run of the "**Disco Dancer**" ride at Kishkinta Amusement Park, Chennai, resulted in a 50-foot fall, killing one worker and injuring nine others due to a mechanical failure. Similarly, in 2012, Afia Magh, a 20-year-old air hostess from Nagaland, lost her life at EVP Theme Park in Chennai when an "**Octopus ride**" malfunctioned. The Madras High Court, in the case of ***E.V. Perumal Samy Reddy & Ors. vs. State Rep. & Anr. (Crl.O.P. No. 22742 of 2013)***, awarded Rs. 25 lakhs in compensation to her family in 2015.





New Legal Aid Guidelines by Supreme Court

-Nithyaparvathy R G

Case title: Ashok Versus State of Uttar Pradesh

Case No: CRIMINAL APPEAL NO. 771 OF 2024

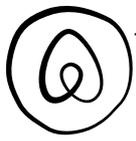
The Supreme Court of India overturned a death sentence when the trial court failed to protect the appellant's right to legal representation and a fair trial.

It **highlights that the right to legal aid is a fundamental right guaranteed by Article 21 of the Indian Constitution.** The Court underlines that providing legal aid is more than just a charitable act; it is the State's responsibility to ensure equal access to justice.

The judgement establishes certain **guidelines for assuring the provision of effective legal aid:**

- a. Courts must ensure that accused individuals have adequate legal aid.
- b. To guarantee a fair trial, public prosecutors must notify the Court when an accused does not have legal representation.
- c. Public prosecutors should ask the Court to postpone proceedings until unrepresented accused persons can obtain legal aid.
- d. Public prosecutors must assist in recording the accused's statements and flag any omissions that could jeopardise the trial.
- e. Unrepresented accused are entitled to free legal aid from the remand stage onwards, including bail applications.
- f. Courts must advise accused individuals of their entitlement to free legal representation at all stages of the proceedings and, if necessary, appoint legal aid advocates.
- g. Only experienced advocates (minimum ten years) should be appointed as legal aid advocates in events involving potential life or death sentences, with new advocates receiving training.
- h. State Legal Services Authorities must supervise legal aid advocates in order to ensure regular and prompt court attendance.
- i. The accused should be represented by the same legal aid advocate throughout the trial unless there are compelling grounds to do otherwise.
- j. In challenging matters, the Court may assign a senior advocate rather than a normal legal aid advocate to provide more effective representation.
- k. Article 21 of the Constitution ensures an accused person's right to defend himself and have a fair trial; a lack of efficient legal aid violates this right.
- l. Legal aid must be effective and delivered by qualified advocates; insufficient representation breaches the constitutional right to quality legal aid.





CASE CHRONICLE

Airbnb India found liable in booking cancellation dispute

-Sri Sai Kamalini M S

Case title: Airbnb India Pvt. Ltd. vs. Mr. Varun Mirchandani

Citation: FIRST APPEAL NO.- 486/2023

The Delhi State Consumer Disputes Redressal Commission dismissed an appeal by Airbnb India Pvt. Ltd. concerning the cancellation of a booking made by Mr. Varun Mirchandani. The Commission upheld the District Commission's earlier order, ruling that Airbnb India was liable for the cancellation and Mr. Mirchandani qualified as a 'consumer' under the Consumer Protection Act, 2019.

The Commission addressed several key issues:

- **Definition of 'Consumer':** The Commission referred to **Section 2(7) of the Consumer Protection Act, 2019, to establish that Mr. Mirchandani, who paid for accommodation through Airbnb's online platform, was a consumer.** This was because he availed a service for consideration, which he had paid in advance.
- **Privity of Contract:** The Commission acknowledged the existence of a direct contractual relationship between Mr. Mirchandani and Airbnb India. Airbnb's role as a service facilitator through its online platform created an enforceable contract. By accepting payment, Airbnb undertook the responsibility to ensure the booking's successful execution.
- **Airbnb Ireland's Role:** Airbnb India argued that Airbnb Ireland, the relevant entity for Indian users, should have been included in the case. The Commission rejected this, stating that Airbnb India's active role in facilitating bookings and handling payments made it a service provider under the Consumer Protection Act.
- **Liability of Intermediaries:** **The Commission highlighted Section 2(42) of the Consumer Protection Act, 2019,** which recognizes the liability of intermediaries that facilitate services. Airbnb India's involvement in managing listings and payments meant it could not avoid liability.

The Commission concluded that Airbnb India's admitted role in assisting Indian customers with global bookings and the subsequent cancellation of Mr. Mirchandani's confirmed booking justified the District Commission's decision to entertain the complaint.





BEYOND THE OBVIOUS

When lawyers down their tools: A conundrum of Justice

-Adithya Menon

Lawyers are often seen as the pillars of the legal system, champions of justice, and defenders of rights. Yet, the image takes a dent when these very champions resort to strikes, bringing the wheels of justice to a grinding halt. It's a perplexing scenario that raises fundamental questions about the legal profession's role and responsibility in a democratic society.

The right to strike, for many professions, is a cornerstone of labour rights, enshrined under the umbrella of freedom of association. But when it comes to lawyers, does this right hold the same weight? The answer, unfortunately, is a resounding no. The Indian judiciary has consistently maintained a firm stance against lawyer strikes, deeming them illegal and unconstitutional.

Landmark judgments, like *Ex-Capt. Harish Uppal v. Union of India (2003) 2 SCC 45*, have unequivocally declared lawyer strikes illegal. The Supreme Court, in this case, decreed that lawyers have no right to engage in strikes or call for boycotts, not even symbolic ones. The court further stated that even a "token strike" is forbidden. While acknowledging the right of lawyers to express their dissent, the court emphasized that such actions cannot infringe upon the fundamental right of citizens to a speedy trial, a right enshrined in Article 21 of the Constitution.

The Bar Council of India (BCI), tasked with upholding the standards of professional conduct and etiquette, has a crucial role to play in ensuring lawyers don't resort to strikes. The Supreme Court, in *Common Cause a Registered Society v. Union of India (2018) 5 SCC 1*, unequivocally stated that the BCI must take stringent action against any lawyer association that calls for a strike -the sanctity of the legal system.

The consequences of lawyer strikes are far-reaching and detrimental to the judicial system. Frequent strikes lead to delays in trials, adding to the already burgeoning backlog of cases. This denial of access to justice not only erodes public faith in the legal system but also results in a significant loss of taxpayer money. While the ban on lawyer strikes is justified, addressing the root causes of these strikes is equally crucial. The Law Commission of India's 266th report recommends creating an Advocate's Grievance Redressal Committee in each district, led by a judicial officer, to address lawyers' issues. It also suggests that High Courts issue a circular under Article 235 to streamline grievance resolution. Such mechanisms could significantly improve the legal system's efficiency.

Lawyer strikes are a conundrum that requires a nuanced approach. While the right to strike might be a fundamental right for many, it cannot supersede the fundamental right of citizens to a fair and speedy trial. The legal profession must prioritize the delivery of justice over individual grievances. Effective communication, ethical conduct, and robust grievance redressal mechanisms are crucial to ensuring that lawyers uphold the sanctity of the legal system they represent.



MEET THE TEAM



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