

# THE IJLPP NEWSLETTER

The latest news and updates from legal and policy world

IN THIS ISSUE

## CONSTITUTION OF COMMITTEE OF EXPERTS TO SUGGEST DATA GOVERNANCE FRAMEWORK

In the wake of recent data infringement disputes, the government has finally realized the urgency of the need of data protection law in India. The Central government had constituted a Committee of Experts under the Chairmanship of Justice B N Shrikrishna, former judge of the Supreme Court of India to deliberate over the need of data protection framework in India. The Committee had submitted its report in July 2018 and had also submitted Personal Data Protection Bill.

Now, the central government has decided to constitute another committee of experts to suggest data governance framework under the Chairmanship of Co-founder of Infosys, Shri Kris Gopala Krishnan. The Committee will specifically be dealing with the protection of non-personal data. The terms of reference of the Expert Committee as mentioned in the Notification of Ministry of Electronics and Information Technology are as follows:

1. To study various issues relating to non-personal data
2. To make specific suggestions for consideration of the Central Government on Regulation of Non-Personal Data

In the light of the constitution of the said expert committees, it can be hoped that India will soon have a legislation on data protection which has become almost indispensable for any modern state in the light of current digital revolution.

## PEOPLE'S TRIBUNAL ON ASSAM NRC

Various human rights organizations and campaigns had organized People's Tribunal at Indian Society of International Law, Delhi on "Contested Citizenship in Assam:

Constitutional Processes and Human Cost" on 8th September 2019. The jury of the tribunal comprised of former Supreme Court Judges, Justice Madan B Lokur and Justice Kurian Joseph; Former Delhi High Court Chief Justice, Justice A P Shah; Professor Faizan Mustafa (NALSAR VC) among others.

The People's Tribunal observed that, "judiciary's insistence on setting deadlines for the NRC Process in Assam has increased pressure on the people involved. The exercise has spawned a humanitarian crisis and there are no scenes of the crisis abating."

The tribunal also expressed concern over the working of the foreign tribunals in Assam. The Tribunal observed that the foreign tribunals are not independent in their work and are greatly influenced by the executive.

After the release of the final draft on NRC on 31st August 2019, there have been voices all over the country raising concerns over the defects in the final draft and the ambiguity as to the future steps of the government in implementing the NRC. If the government decides to strip the people excluded from the NRC from their citizenship or to reduce the number of rights available to them, it will give rise to various human rights issues.

## PUBLIC SAFETY ACT IN JAMMU & KASHMIR

After the abrogation of Article 370 of the Constitution granting special status to Jammu & Kashmir and the subsequent bifurcation of the state into two union territories on 5 August 2019, J&K has been under complete communication blackout. Immediately after the said abrogation, over 50 Politicians in the state were put under house arrest. According to news media reports, although there are no official counts but almost 4000 people have been detained in J&K since August 5 and out of them, almost 300 have been detained under the Public Safety Act, including the former Chief Minister of J&K, Farooq Abdullah. The

said Public Safety Act has been described as a draconian law as it gives power to the government to detain person above 16 years without trial for up to 2 years.

The Act was originally introduced with the objective of preventing the smuggling of timber and keeping the smugglers "out of circulation", however it has been blatantly misused by the various governments in J&K over the past decades. The order for detention under Public Safety Act can be issued by Divisional Commissioner or District Magistrate for any person who is acting in a manner prejudicial to the security of the state. Even the reasons for the detention need not mandatorily be disclosed if the authorities feel it against the public interest to do the same.

The reasons for calling the Act draconian include its vague grounds for detention, no mandatory requirement to disclose the reason for the detention and the absence of judicial review of the detention. The Act has constantly been used to shut the voices of dissent including journalists, human rights activists and the same is being witnessed at present.

#### **ADB SLASHED INDIA'S GROWTH FORECAST FROM 7% TO 6.5**

**F**ollowing weaker growth in the first quarter due to a slowdown in consumption and investment activities that hit manufacturing and service sectors, the Asian Development Bank slashed its growth forecast for India for fiscal 2019-20 to 6.5% from 7% projected in July.

In an update to its flagship Asian Development Outlook, 2019, ADB said proactive policy interventions along with a recovery in domestic demand and investments will likely see the economy pick up to 7.2% in 2020-21.

Indian businesses have been battling demand slowdown and liquidity crunch, which resulted in economic growth rate cooling to a six-year-low of 5% in the June quarter, while private consumption expenditure was at an 18-quart-low of 3.1%.

"India will remain as one of the fastest-growing economies in the world this year and next year as the government continues to implement policy reforms and interventions to strengthen economic fundamentals," said ADB chief economist Yasuyuki Sawada.

#### **THE MOTOR VEHICLES (AMENDMENT) ACT 2019**

**R**ecently, the parliament passed the Motor Vehicle (Amendment) Act 2019 which came into effect from 01 September 2019. The Act has drastically increased the fines with an objective of ensuring better implementation of the traffic rules. However, much hue and cry has been there due to the increased fines.

The Amendment Act is based on the recommendations of the Group of Transport Ministers of States. The Act has been resulted into almost tenfold increase in the various penalties under the Act and the central government has further notified that these penalties will be increased by 10% every year on April 1. Besides penalty, the Act also includes imprisonment for various offences. Speed racing has been made punishable with imprisonment up to three months (at the first instance, for subsequent convictions, it can extend up to 1 year). In case of offences by juveniles, the guardian or owner of vehicle shall be deemed to be guilty and can be imprisoned for a period extending up to 3 years.

However, the legislation has not received a nationwide acceptance. Various state governments are still to implement the amended Motor Vehicle Act. Punjab and Madhya Pradesh have said they will first study the act and then decide whether to implement it or not. On the other hand, states like Gujarat have though implemented the Amended Act; have reduced its effect by reducing the amount of various penalties

#### **GOVERNMENT OF INDIA BANS E-CIGARETTES**

**T**he Union cabinet gave nod to the Prohibition on E-Cigarettes Ordinance, 2019 on 18 September 2019 making the consumption, manufacture, import, export, transport, sale, distribution and advertisement of e-cigarettes a cognizable offence punishable with imprisonment up to 1 year or a fine up to Rs 1 Lakh or both on the first offence and imprisonment up to 3 years and a fine up to Rs. 5 Lakhs on subsequent convictions. Even the storage of e-cigarettes has been made punishable with imprisonment up to 6 months and a fine of the tune of Rs. 50,000 or both. The decision was taken following the recommendations of Group

of Ministers headed by the Finance Minister, Nirmala Sitharaman.

The ban was put in view of the impact the e-cigarettes are having over the youth of today, Nirmala Sitharaman said in a press statement. She backed the decision of the Union government by citing a report which says that there has been a 77% increase in the sales of e-cigarettes in USA due to student consumption.

Prior to the said executive order, e-cigarettes were already banned in 15 states (including Punjab, Karnataka, Uttar Pradesh, Kerala etc) and one union territory of India (Puducherry).

Once the said ordinance is promulgated by the President of India, the holders of e-cigarettes stocks must declare them and must deposit the stock at the nearest police station.

#### **FOR THE FIRST TIME IN THE HISTORY OF INDIAN SUPREME COURT, SINGLE BENCH TO HEAR BAIL, TRANSFER PETITIONS**

In view of the burden on the Supreme Court and its recent expansion, the Supreme Court has recently notified Supreme Court (Amendment) Rules, 2019 which provides for the appointment of a single judge bench by the Master of the Roster (Chief Justice of India) to urgently hear and decide petitions dealing with bail (in cases of offences punishable with imprisonment up to 7 years) and transfer of cases. Any other category of cases which is to be dealt by the single judge bench can be notified by the Chief Justice of India. The said notification has been issued by the Supreme Court exercising its power under Article 145 of the Constitution of India. By the said amendment, the Supreme Court has provided for insertion of proviso to Rule 1, Order VI of Supreme Court Rules, 2013.

According to 2013 rules, the CJI had the power to appoint one or more judges to hear all matters of an urgent nature during summer vacations or winter holidays.

#### **RIGHT OF ATHEISM IN INDIA**

Atheism, i.e. the sect which challenges the very existence of god, has always been a point of controversy in India which has a number of religions co-existing with each other. However recently, the Madras High Court bench comprising of Justice S Manikumar and Justice

Subramonium Prasad upheld the right to atheism by rejecting a PIL which sought to remove atheistic inscriptions under the Periyar Statues in Trichy. The Court observed that people have the right to propagate ideas of questioning the existence of god.

The words in questions are:

“There is no god, no god, no god

Those who preached god is fool

Those who spread god rogue

Those who pray god are barbarians”

The PIL was filed on the ground that Periyar only preached about the self-respect and not atheism but the Madras High Court bench in its judgment has cited various references in which Periyar can be seen to be referring to the right of atheism.

The Court held that, “If the petitioner has a constitutional right under Article 19 to express views on religion and existence of god, the members of Dravidar Kazhagam and their followers have the right to disagree from the same.”

#### **CONSTITUTIONAL VALIDITY OF SECTION 125 CrPC CHALLENGED BEFORE THE SUPREME COURT OF INDIA**

Recently, a writ petition has been filed before the Supreme Court of India by one Vivek Bhatia challenging the constitutional validity of section 125 CrPC providing for maintenance to wife (including a divorced wife) on the ground of violation of the right to equality under art 14 and 15 of the Constitution of India. The writ petition has been filed pursuant to the order of the family court of Dehradun in which the judge ordered the petitioner to provide maintenance to his wife on the ground that though unemployed he is physically and mentally healthy to earn a livelihood. The petitioner has contended that the law was put in place since earlier the women used to relinquish their property rights after marriage. Since now they have been given property rights, there is no longer need for the law to be gender specific. He argued that in his case, the maintenance has been awarded only on the ground that he is capable of earning even though he is unemployed currently due to the shutdown of jet airways. On the other hand, his wife is an English graduate though not working. Thus, due to the gender specific nature of the law, the husbands who are in genuine need of maintenance are unnecessarily burdened with providing maintenance to their wives even if the wife is capable of earning.

In support of his claim, the petitioner has cited Matrimonial Causes Act, 1973 of United Kingdoms and various US laws with respect to the maintenance which are completely gender neutral. In the light of the Joseph Shine v Union of India, it will be interesting to see the route followed by the Indian Supreme Court in dealing with gender specific laws.

### **CAN A MUSLIM MINOR GIRL WHO HAS ATTAINED PUBERTY BE ALLOWED TO MARRY THE MAN OF HER CHOICE?**

**R**ecently, a plea has been filed in the Supreme Court by a muslim minor girl aged 16 years praying that she should be allowed to live with her husband. The Allahabad High Court has declared the marriage void on the ground that the girl was not of legally marriageable age (18 years) and had ordered her admission to a shelter home in Ayodhya after she refused to live with her family. The plea has been filed on the ground that according to the Muslim law, once a girl attains puberty (15

years of age generally), she is competent to marry. The applicant has cited the much celebrated 2018 judgment of Supreme Court in Shafin Jahan v Ashokan in which the Supreme Court declared attainment of puberty as one of the preconditions of a valid muslim marriage.

Similarly in 2012, a Delhi High Court Bench of Justice R Ravindra Bhat and Justice S P Garg had also decided that, "according to Mohammedan law, a girl can marry without the consent of the consent of parents once she attains the age of puberty and she has the right to reside with the husband even if she is below the age of 18".

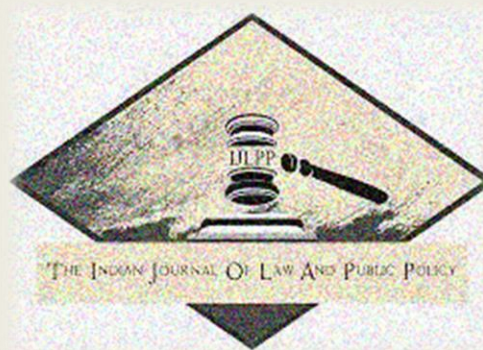
Thus, in view of previous judgments of the Supreme Court as well as the Delhi High Court, although the girl can be allowed to live with her husband, it raises serious issues with respect to the implications of such permission over the physical and mental health of the girl.

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