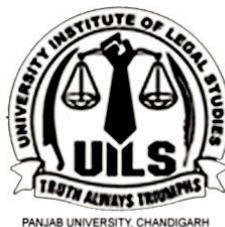


ISSN: 2229-3906

**JOURNAL OF UNIVERSITY
INSTITUTE OF LEGAL STUDIES**



VOLUME VIII, 2014



UNIVERSITY INSTITUTE OF LEGAL STUDIES

PANJAB UNIVERSITY, CHANDIGARH

**JOURNAL OF UNIVERSITY INSTITUTE
OF LEGAL STUDIES**

Patron

Professor A.K. Grover

Vice Chancellor, Panjab University

Editor

Professor Sangita Bhalla

Director, University Institute of Legal Studies

Co-editors

Dr. Meenu Saihpal

Dr. Ajay Ranga

Dr. Anupam Bahri

Editorial Board

Dr. Jasmeet Gulati

Dr. Amita Verma

Dr. Jasneet Walia

Dr. Karan Jawanda

Ms. Anju Choudhary

All Copyright © reserved with University Institute of Legal Studies, Panjab
University, Chandigarh

INDEX

S.No.	Title	Contributors	Page No.
1	The Principle of Open Justice in India: An Appraisal	Prof. (Dr.) Sangita Bhalla	1-20
2	Justification to Intellectual Property Rights: Jurisprudential Reflections	Prof. (Dr.) Rattan Singh Dr. Shiva Satish Sharda	21-41
3	WTO Agreement on SPS and TBT: The Indian Experience	Prof. (Dr.) Rajinder Kaur Dr. Rashmi Kumar Rita	42-64
4	Attempt to Suicide: Need to Humanise the Law	Prof. (Dr.) Gurpreet Pannu	65-77
5	International Labour Code and Social Dialogue on Contract Labour: The Challenges and Resolutions	Prof. (Dr.) Jaspal Singh Bhupinder Kaur	78-94
6	Inclusive Growth in India: Quantitative and Qualitative Issue	Dr. Gulshan Kumar	95-106
7	Constitutional Tenets and Triple Talaq: An Analytical View	Dr. Pawan Kumar	107-125
8	Strengthening Role of Mediation in the Settlement of Consumer Disputes: A Desired Step	Dr. Tejinder Kaur	126-141
9	The Paris Agreement: Shaping the Climate Agenda	Dr. Varinder Singh	142-158
10	Harmonious Relationship Executive, Legislature and Judiciary: The Essence of Democracy and Good Governance	Monika Negi	159-172

S.No.	Title	Contributors	Page No.
11	Importance of Sex Education in Family Life and Self Development Programme	Dr. Anupam Bahri	173-191
12	Impact of Western Concepts : Live-In-Relationships on Indian Society	Dr. Jaimala Shashi Bhushan	192-204
13	Cry of a Girl Child: The Need for Stringent Law	Dr. Virender Negi	205-217
14	Tribunalisation of Justice in India: An Overview	Dr. Jasneet Kaur Walia Parvinder Kaur	218-233
15	Legal and Ethical Quandaries in IVF: Women's Human Right Concern	Dr. Harmeet Singh Sandhu Shikha Dhiman	234-252
16	Prasar Bharti Act: A Triumphant Tale of Freedom of Speech Versus Censorship: A Discourse on History	Supreet Gill Sidhu Naina Khanna	253-274
17	DNA Profiling: Issues and Challenges	Anju Choudhary	275-290
18	Irretrievable Breakdown of Marriage as a Ground of Divorce: An Analysis with reference to Hindu Marriage Act 1955	Nancy Sharma	291-303
19	Agricultural Biotechnology Regulatory System for an All Encompassing Bio-Safety Authority	Sabina Salim	304-323

THE PRINCIPLE OF OPEN JUSTICE IN INDIA: AN APPRAISAL

Prof. (Dr.) Sangita Bhalla*

Abstract

In the contemporary world of human rights and individual dignity, open justice has emerged as a multilayered and multifaceted general principle of highest order, as a symbol of judicial accountability and transparency qua accused's right to fair trial. This paper is an attempt to analyse the functional aspects of this principle in constitutional, legal and judicial framework of India, tracing its roots and developments in some of common law jurisdictions especially through the public's right to know and the publicity of court proceedings. Our Supreme Court in its landmark "Sahara" judgment has urged the lower judiciary to apply the test of "necessity" and "proportionality" to balance the competing right of the public to know and have access to trials as against the right of the victim and that of the accused to confidentiality. The author tries to establish that principle of open trial is not as absolute and rigid as to mean that everyone who seeks fit shall in all cases be permitted to attend criminal trials. Because there are many cases where the character of the charge, the nature of the evidence by which it is to be supported, the motives to attend the trial and regard to public morals and decency would entail that at least some persons be excluded from hearing and witnessing the evidences of human depravity which the trial must necessarily bring to light. Even the Supreme Court of United States in trilogy of its decisions namely Gannet, Richmond Newspaper and Globe Newspapers clarified that exclusion of the press and public to criminal trials shall not infringe the constitutional rights, if such exclusion is made by the trial judge, for cogent reasons, to protect the right to a fair trial. The stipulation of an open trial is primarily for the benefit of the accused: that the public may monitor he is fairly dealt with and not unjustly condemned. The presence of interested spectators may keep his triers keenly alive to their professional responsibility. This requirement could be fairly observed if, without partiality or favouritism a reasonable proportion of the public is allowed to attend, notwithstanding that those whose presence could be of no service to the accused and who would only be drawn thither by an impious curiosity, are excluded.

Keywords: Open Justice, Freedom of Press Publicity, Judicial underpinnings.

* Director, University Institute of Legal Studies, Panjab University, Chandigarh.

JUSTIFICATION TO INTELLECTUAL PROPERTY RIGHTS: JURISPRUDENTIAL REFLECTIONS

Prof. (Dr.) Rattan Singh*

Shiva Satish Sharda**

Abstract

Innovation is the new idea of producing independent inventions by experimentation, investigation and mental activity involving something which is useful and not previously known or existing. Intellectual property rights are the issues of global concern now. They are the bundle of rights of the creation of one's mind, both artistic and commercial. It plays a significant role in increasingly broad range of areas, ranging from internet to health care to nearly all aspects of science and technology as well as art and literature. These intellectual property rights are the key factors for economic growth and advancement in the highly upgraded technology sector. If different kinds of properties are given various protection then there comes the need to protect the intellect property of an individual. Various theories and philosophies have been propounded by various scholars in order to safeguard these rights of the people.

WTO AGREEMENTS ON SPS AND TBT: THE INDIAN EXPERIENCE

Prof. (Dr.) Rajinder Kaur*

Dr. Rashmi Kumar**

Rita***

Abstract

Sanitary and Phytosanitary (SPS) Measures are not outcome of new global agricultural trade but initiate with Uruguay Round and streamlined in World Trade Organisation. The objectives of SPS Measures are applied with the objective to ensure the protection of human, animal and plant life. India has made an effort to ensure the implementation to through various legislations and institutions. There are certain areas in which India faces difficulties to export food products. The research paper is divided into five parts. The first part of the paper introduces the SPS Agreements and highlights the priority areas of SPS. The second part of the paper deals with implementation of Trade Barrier Treaties (TBT) and SPS and it further differentiates between TBT and SPS. The third part of the paper deals with the legislation and policies events in India to comply with SPS agreement. The forth part of the paper discusses the problem faced by India while export of food products and it also discusses the detail of policy case on SPS agreement with US. The concluding part of the paper highlights the shortcomings along with the suggestions to ensure transparency in WTO system.

Keywords: Sanitary and Phytosanitary, Trade Barrier Treaties and Food Safety Measures.

ATTEMPT TO SUICIDE: NEED TO HUMANISE THE LAW

Prof. (Dr.) Gurpreet Pannu*

Abstract

Life is a stage with one entrance but many exits. Among those, suicide is one exit having a long ancestry. The act of suicide is forbidden in Khoran and the Holy Bible. The common belief among Hindus is that a person who commits suicide will not attain “Moksha” and his Soul will wander around, haunting and tormenting people. In recent times, attempted suicide, though a failed act has gained more importance (than the suicide, a successful act) since it is considered as an offence and is punishable under Section 309 of Indian Penal Code. A lot of conflicting opinions have generated on the desirability of retaining or deleting Section 309 of Indian Penal Code because of some contrasting judgments given by our Courts. Article 21 of the Constitution of India is a provision guaranteeing protection of life and personal liberty and by no stretch of the imagination can extinction of life be read to be included in protection of life. By declaring an attempt to commit suicide a crime, the Indian Penal Code upholds the dignity of human life, because human life is as precious to the State as it is, to its holder and the State cannot turn a blind eye to a person in attempting to kill himself. Another set of people are of the opinion that the Section 309 of Indian Penal Code is cruel and irrational because it provides double punishment for a troubled individual whose deep unhappiness had caused him to try and end his life. In India there are innumerable cases wherein religious ascetics fast to death without State intervening and are not punished though such acts amount to attempt to suicide.

Keywords: Attempted Suicide, Suicide and Types of Suicide.

* Professor, Department of Law, Punjabi University, Patiala.

INTERNATIONAL LABOUR CODE AND SOCIAL DIALOGUE ON CONTRACT LABOUR: THE CHALLENGES AND RESOLUTIONS

Prof. (Dr.) Jaspal Singh^{*}

Bhupinder Kaur^{**}

Abstract

The law is a technique for regulation of social power and the labour law is chiefly concerned with this elementary phenomenon of social power, the principal purpose of which is to regulate, to support and to restrain the power of management and the power of organised labour. The national labour law and practice does, of course, provide its own sanctions, administrative, penal, and civil, and their impact should not be undermined, but in labour relations, legal norms cannot often be effective unless they are backed by social sanctions such as regional politico-economic theories of societies, universal norms set out by collective bodies of international community and co-current of social dialogue. The term 'Contract Labour', herein this research paper, means labour engaged through an intermediary for the user enterprise i.e. labour engaged through contractors, jobbers or temporary work agencies involving triangular employment relationships. Although the contract labour system has been prevalent all over the world since ages but it is particularly after the globalization of economies that there has been immense increase in use and abuse of contract labour system. The system now has become a tool for exploitation of feeble labour class in terms of low remuneration, no employment security, lack of social security, poor health and safety measures and weakened collective power of negotiation. It is in this context that this research paper endeavours to critically analyse the state of affairs in the arena of international labour standards set out by international community and the outcomes of interactions between interested social partners to address to the issues and problems of contract labour, in particular, the future challenges and the consequent resolutions which may be helpful in solving the problem in hand.

Keywords: Contract Labour, International Labour Code and Social Dialogue.

* The Principal, Khalsa College of Law, Amritsar.

** Research Fellow, Department of Laws, Guru Nanak Dev University, Amritsar.

CONSTITUTIONAL TENETS AND TRIPLE TALAQ: AN ANALYTICAL VIEW

Dr. Pawan Kumar*

Abstract

Muslims and Hindus follow their own religious practice without any restrictions subject to law of the land regard to their personal laws. Triple talaq was prevalent among Indian Muslim community which has also been a subject to controversy and debate since few years .Triple Talaq is a form of divorce which was practiced in India whereby a Muslim male can divorce his wife by pronouncing the word 'Talaq' three times in one sitting and thereby immediately divorcing and breaking all the matrimonial relations with immediate effect even without assigning any reason to his wife. On 2017, the Supreme Court of India has declared the Triple Talaq as unconstitutional and also asked the Government to make an appropriate law to ban such a practice.

Keywords: Talaq-ul-biddat, Talaq-ul-sunnat and Triple talaq.

STRENGTHENING ROLE OF MEDIATION IN THE SETTLEMENT OF CONSUMER DISPUTES: A DESIRED STEP

Dr. Tejinder Kaur*

Abstract

The introduction of ADR mechanisms in the Indian justice system has raised great expectations and hopes in the minds of the litigants for a more satisfactory, acceptable and early resolution of their disputes. Mediation is touted to be one of the most referred ways of dispute resolution in the near future. Mediation presents a unique opportunity for dispute resolution with the involvement and participation of all the parties and their advocates. There has been a growing feeling that consumers do not get quick redressal and framework available is lagging behind. The Ministry of the Consumer Affairs issued a draft which discusses the proposed amendments to the Consumer Protections Act, 1986 which includes the process of mediation by inserting a new Section 2(1)(ja) which means the process by which a mediator appointed by the National Forum or a State Forum or a District Forum, as the case may be, mediates the dispute between the parties to the complaint/ appeal made by the application of the provisions as specified under chapter IV of the Act and in particular by facilitating discussion between parties directly or by communicating with each other through the mediator, or by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute. In this paper an attempt is made to analyze how mediation under the aegis of courts can speed up the process and will prove a cost-effective and constructive solution.

Keywords: Consumer, Consumer Dispute Redressal and Mediation.

THE PARIS AGREEMENT: SHAPING THE CLIMATE AGENDA

Varinder Singh*

Abstract

The adoption of the Paris Agreement is a milestone in international climate politics and brings years of near deadlock negotiations to a conclusion. The Agreement creates a global process of engagement, follow-up, regular stock-take exercises and cooperative action. On the one hand, it represents a step forward, overcoming the many divisions that had marked the Kyoto area: between developed and developing countries, between industrialized nations inside the Protocol and those outside, and between those supportive of market mechanisms and those that vehemently opposed them. On the other hand, individual country contributions fall short of the overall climate goal, and the risk is that the Paris Agreement remains a shell without sufficient action and support. It thus remains to be seen whether the Paris Agreement is the right framework through which to address the collective action problem of climate change.

Keywords: Climate Change , Greenhouse Gases and United Nations Framework Convention On Climate Change.

HARMONIOUS RELATIONSHIP EXECUTIVE, LEGISLATURE AND JUDICIARY: THE ESSENCE OF DEMOCRACY AND GOOD GOVERNANCE

Monika Negi*

Abstract

In a true democratic system, the three organs of the government i.e. executive, legislature and judiciary have to work in cooperation and coordination with each other. The purpose of functioning should be only one, the common good and social welfare of the nation. No doubt clash between these organs is unavoidable some times in exceptional situations. The best solution to avoid this encroachment in other's sphere of activity is maintaining harmonious relation among them and solving the conflict in best possible interpretation of the constitution so as to bring harmony in these three organs.

Keywords: Constitution, Independent Judiciary and Separation of Powers.

IMPORTANCE OF SEX EDUCATION IN FAMILY LIFE AND SELF DEVELOPMENT PROGRAMME

Dr. Anupam Bahri*

Abstract

Sex means being 'male or female'. It is one of the divine endowments to human beings. It is the instrument for seeing an indispensable function in the life of the race. Therefore it should be treated with reverence. Sex is natural and wholesome in the context of the family. It is a part of growth, of personality and love. Sex appeal is the attraction that draws the male and female to each other. It is the basis for their intercourse and consequent pregnancy and child birth, the processes which are vital for human relationships and existence. As part of love, sex is an expression of the desire to find meaning and fulfilment in another person and make him/her centre of kindness and affection for the basic happiness of human living. Awareness of sex is the most significant factor necessary to lead a secure life. Usual educational practices are very simple to learn, but we cannot consider sex education on the same line. It comprises of physiological, psychological and social issues, especially when we think of including it as a part of academic syllabus. As these complications occur, a question may arise in the mind of people about the need for sex education providing to the children. While children reach teenage level, lack of sex education may lead the way to their unusual behaviour. If not corrected at the exact time, it may generate problems of immature misbehaviours in these children's life.

Keywords: Child Abuse, Sex and Sex Education.

IMPACT OF WESTERN CONCEPT: LIVE-IN RELATIONSHIP ON INDIAN SOCIETY

Dr. Jai Mala*

Shashi Bhushan**

Abstract

In India, there exist only one kind of relationship or social union between unrelated male and female that is termed as “marriage” which is more of a sacrament and a divine concept and is practiced as a ritual since ages. In general practice, the elder people of the two families rather than the young couple decides these relations. However, with the advancement of the society or with the awareness among the young generation this concept is losing its divineness. From the last few years the young generation is influenced by a western concept i.e Live –in –Relationship: where the young couple can live together without performing the rituals of marriage. Increasing instances of live-in relations in India has started affecting Indian culture and society. Such impacts are visible in the form of change in attitude of younger generation towards centuries old norms and values of Indian family system and institution of marriage. In this paper, researchers will try to explore the impact of such live in relationships on concept of marriage, on Family relations, society, Aged people, partners and children born out of such relations etc.

Keywords: Family, Live-in-Relationship and Marriage.

CRY OF A GIRL CHILD: THE NEED FOR STRINGENT LAW

Dr. Virender Negi*

Abstract

The parameter of civilized society is the value and respect being given to the women in that society. The main pillar and strength of humanity is the women. But it's the irony of Indian society that the worth of feminism is degraded to that level at which even the survival of women itself is at risk now. The brutal practice of killing a girl child in mother's womb is a shame on humanity.

Keywords: Chorionic Villi, Female Foeticide and Ultrasonography.

TRIBUNALISATION OF JUSTICE IN INDIA: AN OVERVIEW

Dr. Jasneet Kaur Walia*

Parvinder Kaur**

Abstract

The tribunal system in India has come a long way since independence to the present day. The changes in the tribunal system have been visible as can be seen from the pre-independence era to the post- independence era, especially in the light of the Constitutional 42nd Amendment Act as well as landmark cases like Sampath Kumar, L.Chandra etc. Though the reasons for setting up tribunals are relevant but the system faces a lot of problems. So, this paper proceeds to analyze the tribunalisation of justice in India, its problems and to suggest measures in order to improve the tribunal system in India.

Keywords: Rule of Law, Separation of Power and Tribunalisation

LEGAL AND ETHICAL QUANDARIES IN IVF: WOMEN'S HUMAN RIGHT CONCERN

Dr. Harmeet Singh Sandhu*

Shikha Dhiman**

Abstract

The growth of the humanity, the various aspects of fertility and infertility, the public blame towards the infertile couple specially the woman who were the victims of all centuries. The religious dogmas that have governed or influenced some major aspects of reproduction in society, aroused extensive discussions, at least in modern times, on the issues, as the right of every couple to have children, in what circumstances, until when or how many. In order to curb the problem of infertility, many assisted reproductive techniques have come into existence. In vitro fertilization, one of the upgraded forms of assisted reproductive techniques has opened up many sort of new ways to treat various forms of infertility.

Keywords: Embryos, Fertilization and Offspring.

PRASAR BHARTI ACT: A TRIUMPHANT TALE OF FREEDOM OF SPEECH V. CENSORSHIP: A DISCOURSE ON HISTORY

Supreet Gill Sidhu*

Naina Khanna**

Abstract

India takes immense pride in being perceived as one of the progressive countries that promote equality, and reckons that Freedom of Speech and Expression is one of the pillars that hold its democracy together. However, it is both sad and ironic that despite having given this freedom to its citizens at the dawn of Independence, the political leaders of our country never made sincere efforts to free its media from the control of the government. One witnesses a glaring lack of commitment towards the cause of granting autonomy to Radio and Broadcast, despite it being touted as a dream of our Late Hon'ble Prime Minister Pt. Jawahar Lal Nehru. Once Mr. Nehru came to power he did very little to fulfill his promise and even his successive governments, after his sad demise, never really made any serious attempts to pass a law which would establish the position of Indian Broadcasting as a independent and unbiased organisation. This paper seeks to find answers to the above questions by tracing the history of long drawn battle between the media and successive governments to push the propaganda of autonomy of Akashvani.

Keywords: Broadcasting, Censorship and Constitution.

DNA PROFILING – ISSUES AND CHALLENGES

Anju Choudhary*

Abstract

DNA (Deoxyribonucleic Acid), a unique code which allows scientists to identify an individual to the exclusion of others; which is found in all bodily fluids, tissues, blood, saliva, semen, hair, bones and other organs of the body. DNA is the master molecule of life and controls the growth and development of every living being. The use of DNA profiling is increasing all over the world to solve the puzzle of crime, where no direct evidence is available. Approximately sixty countries have built DNA profiles, which mostly consist of DNA data of convicted criminals. Such a database not only helps to stop repeat offenders, but also improves the administration of criminal justice system through accuracy of matching profiles. Presently, in India, there is no such law which specifically deals with profiling of DNA and its admissibility in court of law except few provisions in Criminal Procedure Code and Indian Evidence Act.

Keywords: Criminal, Deoxyribonucleic Acid and Profiling.

IRRETRIEVABLE BREAKDOWN OF MARRIAGE AS A GROUND OF DIVORCE: AN ANALYSIS WITH REFERENCE TO HINDU MARRIAGE ACT 1955

Nancy Sharma*

Abstract

Marriage and family are considered to be the foundation of stable society .But it is believed that the self oriented and individualistic advance of the individuals in society have brought a lot of changes in the frame of mind of individuals predominantly in well established institution of marriage in which now a marriage is no longer is taken as indissoluble union or eternal .When the Hindu marriage act 1955 was passed, the grounds of divorce were limited and could be sought only under compelling circumstances .But later due to occurrence of changing circumstances, divorce provisions also went into significant changes Earlier in Hindu marriage act 1955, the divorce provisions were mainly based on the fault or guilt or offence theory and consent theory and both these theories possesses their own challenges. Therefore a need arises to introduce such a ground known as irretrievable breakdown of marriage ground based on breakdown theory in which if any spouse or both feel that if a marriage is broken down beyond any possibility of repair then it should be dissolved.

Keywords: Divorce, Irretrievable Breakdown of Marriage and Marriage

AGRICULTURAL BIOTECHNOLOGY REGULATORY SYSTEM FOR AN ALL ENCOMPASSING BIO-SAFETY AUTHORITY

Sabina Salim*

Abstract

The Biotechnology Regulatory Authority of India (BRAI) bill has been introduced in the Lok Sabha amid huge protests by opposition parties. It has been in controversy due to its proposal of an easy single window approval mechanism for GM crops in India. The Bill proposes to promote the safe use of modern biotechnology by enhancing the effectiveness and efficiency of regulatory procedures and provide for establishment of the Biotechnology Regulatory Authority of India to regulate the research, transport, import, manufacture and use of organisms and products of modern biotechnology and for matters connected therewith or incidental thereto. The paper is a critical analysis of the proposed law. Keeping in view the more significant sustainability issues related to agricultural biotechnology, this paper concludes that despite the obvious, substantial benefits that agricultural biotechnology can confer on society, India needs to develop its regulatory process to ensure a balance of interests and to clarify liability rules governing the use of agricultural biotechnology. These reforms should provide both bio-safety and public support for the agricultural biotechnology industry.

Keywords: Bio-safety, Biotechnology and Genetically Modified Organisms.