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## Flames Law Entrance Academy

Monthly Legal Compendium

# THE LEGAL लक्ष्य

# APRIL 2024

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# 1 Hindu Marriage Invalid If Requisite Ceremonies Not Performed, Registration Won't Make Such A Marriage Legitimate : Supreme Court

In a recent ruling, the Supreme Court clarified the legal requirements and sanctity of Hindu marriages under the Hindu Marriage Act 1955.

The Court emphasized that for a Hindu marriage to be valid, it must be performed with the appropriate rites and ceremonies, such as saptapadi (seven steps around the sacred fire) if included, and proof of these ceremonies is essential in case of disputes.

A bench comprising Justices BV Nagarathna and Augustine George Masih observed :

- **Registration only proof of marriage, doees not confer it legitimacy**

The Court stated that while registration of a Hindu marriage under Section 8 of the Hindu Marriage Act facilitates proof of the marriage, it does not confer legitimacy if the marriage was not solemnized according to Section 7 of the Act, which specifies the requirements for a valid Hindu marriage ceremony.

- **Court deprecates marriages of convenience for "practical purposes" without following customs**

The Court underscored the sacred character of Hindu marriage, calling it a sacrament and the foundation of a new family, based on mutual respect and partnership between spouses.

The Court criticized the practice of couples seeking to acquire the status of husband and wife without a valid marriage ceremony and emphasized the importance of marriage as a sacred institution in Indian society. The Court urged young couples to consider the significance of marriage before entering into it, emphasizing that marriage is not a commercial transaction but a solemn event that establishes a relationship between two individuals.

The Court made these observations while hearing deciding a petition filed by a wife seeking transfer of divorce proceedings against her. During the penancy of the case, the husband and wife agreed to file a joint application for a declaration that their marriage was not valid.

They stated that there was no "marriage" solemnized by them as no customs, rites and rituals performed. However, due to "certain exigencies and pressures", they were constrained to obtain a certificate of solemnisation from Vadik Jankalyan Samiti (Regd.) and on the basis of that certificate they sought registration under the Uttar Pradesh Registration Rule, 2017 and a "Certificate

of Marriage" was issued by the Registrar of Marriages.
The Court, after noting that no marriage was solemnized, declared that there was no valid marriage.

**Credit – Live Law**

# 2 For Summoning Accused, Prima Facie Case Made Out From Allegations In Complaint Is Sufficient: Supreme Court

**For summoning of an accused, prima facie case made out on the basis of allegations in the complaint and the pre-summoning evidence led by the complainant is sufficient, the Supreme Court held.**

**Reversing the findings of the High Court and Sessions Court which had quashed the issuance of summons, the bench comprising Justices C.T. Ravikumar and Rajesh Bindal observed that the courts below have erred in quashing the issuance of summons by entering into a mini-trial as if the findings of the conviction or acquittal was to be recorded. The Court clarified that for summoning the accused, a prima facie case made out from the allegations of the complaint is sufficient to order the issuance of summons.**

**As per the complaint, by producing a fake divorce decree of her first marriage on the phone, respondent no.1/woman had made the appellant/man believe that she had divorced her first husband, making her eligible to re-marry.**

**At the outset, the Court observed that the courts below have erred in not taking into account certain facts such as the passing of a forged decree and showing the forged copy thereof on mobile to the appellant, which makes a prima facie case under Section 420 read with Section 120-B of IPC against the respondents to issue summons to them on the allegations of the appellant.**

**The Judgment authored by Justice Rajesh Bindal observed that while quashing the summons to the respondents, the sessions court shouldn't have entered into the appreciation of evidence as if it was deciding the acquittal or conviction of the respondents.**

**Deprecating such an appreciation of evidence at the pre-summoning stage, the court held that a prima facie case was made out for issuing process against the respondents to face trial for the offence punishable under Section 420 read with Section 120-B, IPC, for which they were summoned.**

**The appeal was accordingly allowed. The impugned orders passed by the High Court and the Sessions Court were set aside and that of the Magistrate-issued summons was restored.**

**Credit – Live Law**

# 3 Movie Trailer Not A Promise, Producer Not Liable If Content Shown In Trailer Is Not Included In Film: Supreme Court

**The Supreme Court on Monday (April 22) held that not including the content that was part of the promotional trailer of the movie, in the released movie doesn't amount to a 'deficiency of service' on the part of the movie creators under the consumer protection law.**

**The Bench comprising Justices PS Narasimha and Aravind Kumar decided on a question as to whether there is any 'deficiency' in the provision of the entertainment service that the consumer has availed by paying the consideration through the purchase of a ticket. The complainant alleged that there is a 'deficiency' in the service because what was shown in the movie's trailer was not part of the movie.**

**A plea was preferred by the Yash Raj Films Pvt. Ltd. ("YRF") before the Supreme Court against the NCDRCs order which had found a 'deficiency of services' on the part of YRF for not including the 'Jabra Fan' song in the movie 'Fan' despite being shown in the trailer and directed YRF to pay compensation of Rs. 15,000/- to the complainant.**

**Observing that the promotional trailer does not create any kind of right of claim with respect to the content of the movie, the Court clarified that the payment of consideration to purchase a movie ticket is to enable the viewer to only watch the movie.**

**The Court tested the allegations of the complainant on the parameters of the deficiency of services mentioned under Section 2(1)(g) of the Consumer Protection Act, 1986 where deficiency is when there is a fault, imperfection, shortcoming, or inadequacy in the quality, nature, and manner of performance that is required to be maintained either in terms of law or in terms of a contract.**

**The Court held that there's no deficiency in service because what was alleged in the complaint arose out of the complainant's own expectation that the song would be a part of the movie.**

- **The contents of the promotional trailer not shown in the movie don't amount to 'Unfair Trade Practice'**

**The Court underscored that to constitute an 'unfair trade practice' under Section 2(1)(r)(1) of the Consumer Protection Act 1986, the statements are of the nature which is wilfully made knowingly to be false, or made recklessly without an honest belief in its truth, and made with the purpose to mislead or**

deceive to constitute a false or misleading representation. In addition, a failure to disclose a material fact when a duty to disclose that fact has arisen will also constitute a false or misleading representation.

Testing the parameters of 'unfair trade practice' in the present case, the court held that no case of 'unfair trade practice' is found as the content of the trailer doesn't make any false statement or intend to mislead the viewers.

Based on the above premise, the Supreme Court allowed the appeal and set aside the findings of the impugned order that there is a deficiency of service and unfair trade practice.

**Credit – Live Law**

# 4 Baba Ramdev & Acharya Balkrishna Personally Apologise To Supreme Court, Patanjali Ltd Agrees To Publish Public Apology

**Baba Ramdev, co-founder of Patanjali Ayurved Ltd, personally appeared before the Supreme Court on Tuesday (April 16) and expressed unconditional apology for publishing misleading advertisements and making comments against Allopathic medicines in breach of an undertaking given to the Court.**

**Acharya Balkrishna, the Managing Director of Patanjali, also personally apologised to the Court. Senior Advocate Mukul Rohatgi, appearing for Patanjali, told the Court that they are "ready to give a public apology to show contrition."**

**A bench comprising Justices Hima Kohli and Ahsanuddin Amanullah was hearing the contempt case against Patanjali Ayurvedi Ltd, Acharya Balkrishna and Baba Ramdev in the case over misleading advertisements.**

**In the hearing, the bench personally interacted with Ramdev and Balkrishna and asked why they acted in violation of the undertaking given to the Court.**

**On April 2, the Court had refused to accept the first affidavit of apology filed by Patanjali MD, after noting that it was not unqualified. Last week (April 10), the Court refused to accept the second affidavit of apology filed by Patanjali MD. The Court also noted that Balkrishna and Ramdev had sworn an affidavit with non-existing flight tickets to evade personal appearance before the Court.**

**The Court also come down heavily on the Uttarakhand State authorities for failing to take action against Patanjali under the Drugs and Magic Remedies (Objectionable Advertisements) Act 1954**

**To provide a succinct overview of the recent developments, the Bench of Justices Hima Kohli and Ahsanuddin Amanullah was hearing a petition filed by the Indian Medical Association against Patanjali's advertisements attacking allopathy and making claims about curing certain diseases.**

**In this regard, the Division Bench had previously issued a Contempt notice to Patanjali Ayurved and Managing Director Acharya Balakrishna and Baba Ramdev over its continuing publication of misleading advertisements in breach of an undertaking given to the Court in November last year.**

## Brief Background Of Previous Hearings

**The IMA sought to direct the Centre, Advertising Standards Council of India (ASCI), and the CCPA (Central Consumer Protection Authority of India) to take action against such advertisements and campaigns to promote the Ayush system by disparaging the Allopathic system.**

Back in August 2022, the Supreme Court's Bench led by CJI Ramana issued notice to the above authorities, including Patanjali Ayurved Ltd (the company co-founded by Baba Ramdev.).

Previously, on November 21, 2023, the Court reprimanded Patanjali Ayurved for continuing to publish misleading claims and advertisements against modern systems of medicine. Justice Amanullah went on to issue a stern warning of imposing a cost of Rs 1 Crore in case such advertisements are continued.

"All such false and misleading advertisements of Patanjali Ayurved have to stop immediately. The Court will take any such infraction very seriously, and the Court will also consider imposing costs to the extent of Rs. 1 crores on every product regarding which a false claim is made that it can "cure" a particular disease," Justice Amanullah orally said

Following this, the counsel for Patanjali Ayurved assured that they would not publish any such advertisements in the future and would also ensure that casual statements are not made in the Press. The Court recorded the undertaking in its order.

Given that Patanjali Ayurved continued to publish misleading advertisements regarding medicinal cures, the Court issued notice to Patanjali Ayurved and Acharya Balakrishna (Managing Director of Patanjali) to show cause why action should not be taken against them for the contempt of court.

This direction was coupled with restraining Patanjali Ayurved from advertising or branding its products which are meant to address the diseases/disorders specified in the Drugs and Magic Remedies (Objectionable Advertisements) Act 1954 in the meantime. A detailed story of this hearing and the order passed can be accessed here.

Following this (on March 19), when the Bench was informed that the reply to the Contempt notice was not filed, it went on to pass the direction of personal appearance. The Court did not relent when the Senior Advocate Mukul Rohatgi, who appeared for Patanjali, protested against summoning Ramdev. A detailed story of this hearing and the order passed can be accessed here.

Subsequently, the Patanjali MD filed an affidavit saying that the impugned advertisements were meant to contain only general statements but inadvertently included offending sentences. It was further stated that the advertisements were bonafide and that Patanjali's media personnel was not "cognizant" of the November order (where the undertaking was given before the top Court). However, the court expressed its reservations about this affidavit, calling it "perfunctory" and "mere lip service."

**Credit – Live Law**

# 5 Retrospective Re-Fixing Of Salary And Pension Benefits After Retirement Is Against Law: Madras High Court

The Madras High Court recently set aside an order of the Registrar of Madurai Kamaraj University reducing a former Lab Assistant's scale of pay and subsequently reducing the pension amount.

Justice RN Manjula that after retirement, the employer-employee relationship between the petitioner and the University had come to an end and the University held no authority to re-fix the salary and consequential benefits of the petitioner.

The court also observed that as far as universities were concerned, only a Syndicate had the power to appoint the university and fix their emoluments. Thus, in the court's view, the retrospective re-fixation of salary and subsequent reduction of pension amount based on Local fund audit objection was against the law and liable to be set aside.

The court made the orders on a plea by R Rajamani, who was working as a Lab Assistant at Madurai Kamaraj University. Rajamani had retired from service on November 11, 1988. He had challenged an order from the University Registrar reducing his scale of pay on the basis that it was wrongly fixed. The registrar stated that the Local Fund Audit Department had raised objections and observed that the pay fixation was wrongly made on a higher scale.

Rajamani informed the court that though the pension amount was reduced from December 2023, the impugned order was passed only in March 2024. He added that he was not issued with any prior notice before issuing the impugned order.

The court relied on an earlier order wherein it had observed that Government Order could not superseded by any statutory provisions that govern the service conditions of the employees. The court also relied on the Apex Court order in State of Jharkhand vs. Jitendra Kumar, wherein the Apex Court had held that the right to receive a pension was a right in property and executive instructions could not have a statutory character and could not be called as law.

The court thus set aside the order of the Registrar and directed the University to reimburse the recovered amount with interest within a period of 12 weeks.

Credit – Live Law

# 6 “Right To Life Guaranteed To Everyone”: Punjab & Haryana High Court On Protection Plea By Minor In Live-In Relationship

Observing that merely because petitioners are not of marriageable age it “would not deprive” them of their fundamental rights, the Punjab & Haryana High Court has directed to send a minor girl to the children’s home, who was seeking protection from her relatives along with her 19-year-old live-in partner.

While directing to send her to the children’s home, the Court said that since the girl is a minor “it becomes incumbent upon the Court in its capacity as parens patriae to examine what is best in the interest of the minor.”

The Court further said that “Article 21 of the Constitution of India stipulates protection of life and liberty to every citizen and that no person shall be deprived of his life and personal liberty except in accordance with procedure established by law. As per the Constitutional mandate it is the bounden duty of the State to protect the life and liberty of every citizen.”

The mere fact that the petitioners are not of marriageable age or that the girl is still a minor, would not deprive the petitioners of their fundamental rights as envisaged in the Constitution, being citizens of India, it added.

The Court was hearing a protection plea filed by a 17-year-old girl and 19-year-old boy, stated to be in a live-in relationship, who were apprehending threats from their relatives.

The parties appeared before the Mediation and Conciliation Centre of the High Court so as to interact with each other. However, the girl submitted that she did not wish to accompany her parents.

Without expressing any opinion on the merits of the matter or commenting thereon and in particular the legality of the alleged relationship, the Court directed the SSP to consider the representation made by the petitioners.

In case there is any threat perception to the petitioners at the hands of private respondents, to act in accordance with law and if need be, to provide them interim protection, it said.

Furthermore, the Court directed the Police as the Child Welfare Committee to take all steps detailed in the directions contained in Khuspreet Singh’s case (supra).

While directing to send the minor girl to the children’s home, the Court said, “The Child Welfare Committee constituted under the Juvenile Justice (Care and Protection of Children) Act 2015, shall ensure the well-being of petitioner No.1 in the Children’s Home Sirsa.”

Credit – Live Law

# 7 Cyber Crime | Bank Officials Under An Obligation To Cooperate In Criminal Investigations: Allahabad High Court

**The Allahabad High Court has observed that bank officials must cooperate fully in criminal investigations of cybercrimes.**

**"Bank officials are expected to be law-abiding citizens who are under an obligation of law to cooperate in criminal investigations being conducted by the police," a bench of Justice Ajay Bhanot observed while allowing a second bail plea filed by one Alok Jha, an accused in a case of cybercrime and booked under Section 420, 406, 419, 467, 468, 471, 411 I.P.C. and Section 66D of IT Act.**

**The court's remark came in response to the state counsel's submission highlighting the challenges faced by the investigation agency due to alleged non-cooperation by bank officials.**

**It was asserted that the bank officials were withholding crucial evidence, thereby hindering the progress of justice.**

**Noting that the menace of cybercrime is too self-evident, the Court asked the police authorities to initiate appropriate criminal proceedings against the bank officials who are not cooperating in the investigations.**

**"The police has ample authority under the statute to proceed as per law against persons who withhold evidence or obstruct investigations into the crime. The instructions available with the learned AGA are not satisfactory," the Court added.**

**In a prima facie observation, the single judge further expressed concern over police authorities' lackadaisical attitude and their failure to conduct criminal investigations in a professional and thorough manner. The court highlighted this as a troubling aspect that warrants attention.**

**The Court, further adding that the gravity of the offence does not absolve the police of their responsibility to conduct an efficient and prompt investigation, asked the AGA to obtain instructions from the concerned officials.**

**The Court also recalled that in a recent case, in which the persons who had opened the forged bank accounts were not investigated and their identities were not established, it had expressed its concern regarding the poor investigations in this case.**

**Credit – Live Law**

# 8 Falsely Accusing Spouse Of Extra Marital Relationship, Refusal To Accept Children Constitutes Mental Cruelty: Delhi High Court

The Delhi High Court has recently observed that falsely accusing a spouse of being in an extra marital relationship and denying parentage of the children constitutes mental cruelty.

A division bench comprising of Justice Suresh Kumar Kait and Justice Neena Bansal Krishna said that repudiation of the matrimonial bond and refusal to accept the children, who are innocent victims in the vile allegations made by the spouse, is nothing but the act of mental cruelty of the gravest kind.

"Such scandalous, unsubstantiated aspersions of perfidiousness attributed to the spouse and not even sparing the children, would amount to worst form of insult and cruelty, sufficient by disentitle the appellant from seeking divorce," the court said.

It added that marriage whittles down when sprinkled with accusations on character, fidelity and chastity of the spouse.

The court said that marital bond becomes beyond redemption when the devastating effects of "one-sided barrage of accusations" is topped with rejection of paternity and legitimacy of the innocent children, by their own father.

The court made the observations while upholding a family court order who refused to grant him divorce on the grounds of cruelty by the wife. The parties got married in 2005.

Dismissing the husband's appeal, the bench noted that he had consistently and adamantly raised doubts about the wife's character and claimed that she was having illicit relationship not only with one but many individuals.

However, the court said, that the husband admitted in his cross-examination that he had never seen the wife with any person in an objectionable condition.

"Such deplorable allegations and repudiation of the matrimonial bond and refusal to accept the children, who are innocent victims in the vile allegations made by the appellant, is nothing but the act of mental cruelty of the gravest kind," the court said.

It added that the family court had rightly observed that levelling of disgusting allegations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship, constitute grave assault on the character, honour, reputation, status as well as mental health of the spouse.

**“Such scandalous, unsubstantiated aspersions of perfidiousness attributed to the spouse and not even sparing the children, would amount to worst form of insult and cruelty, sufficient by disentitle the appellant from seeking divorce. This is one case where the appellant has himself committed the wrong and cannot be granted the benefit of divorce. The relentless and incessant nature of the volley of allegations made,” the court said.**

**The bench said that the husband failed to prove any of his allegations made against the wife and that he made vague and general allegations regarding threats to commit suicide and implication in criminal cases.**

**The court observed that it was the wife who was subjected to cruelty and not the husband.**

**Credit – Live Law**

# 9 Patna HC Orders 2 Judicial Officers To Pay ₹200 As 'Token' Compensation To Man For Subjecting Him To Unjustifiable Trial U/S 498A IPC

In a one-of-a-kind order, the Patna High Court has directed two judicial officers of the state to pay compensation of ₹100 each to a man subjected to an unjustifiable trial under Section 498A of the Indian Penal Code (IPC).

The case in question revolved around allegations of harassment and cruelty against the man (revisionist) even though he was not a relative of the husband of the complainant-woman, which is the primary requirement under Section 498A of the IPC.

"As the petitioner (revisionist) was made to suffer a criminal trial which is not maintainable against him and he was compelled to be confined in the correctional home at different points of time. This Court is of the opinion that the petitioner should be compensated since the petitioner was made to suffer the agony and trauma of a criminal trial as well as detention in custody for taking cognizance against him by the learned Magistrate and putting him in trial in a case which is not maintainable against him," a bench of Justice Bibek Chaudhuri observed.

The Court added that the amount of compensation was being fixed as a "token" to remind the concerned Judicial Officers that before taking cognizance and also during judicial inquiry and trial, it is their "bounden and obligatory duty to go through the complaint carefully" and then to take cognizance and proceed against the accused persons in accordance with the law.

The court passed this order on a revision plea moved by a man (Sunil Pandit-Revisionist) challenging the judgment and order of affirmation passed by the Additional Sessions Judge, Samastipur in Criminal Appeal whereby the order of the trial court was affirmed, wherein he was convicted under Sections 498A of the IPC and Section 4 of the Dowry Prohibition Act and was sentenced him to suffer imprisonment for three years and also to pay fine of Rs. 1,000/-

Without going into the merit of the case and the findings of both the trial court and the court of appeal, the High Court found on the perusal of the petition of complaint that the revisionist was not a relative of the complainant woman's husband but only an advisor of other accused persons.

Noting that the revisionist was made to suffer a criminal trial "which is not maintainable against him" and he was "compelled to be confined in the correctional home at different points of time", the Court asserted that the revisionist was entitled to get compensation at the rate of Rs. 100/- each

payable by the Judicial Magistrate, namely, Sri Ramanand Ram, SDJM, Dalsingsarai- Samastipur and Hanuman Prasad Tiwari, Additional Sessions Judge Samastipur.

The concerned judicial officers have been directed to deposit the fine amount in the Criminal Cash Section of the Chief Judicial Magistrate, Samastipur within three weeks.

Lastly, stating that the accused/petitioner could not have been booked for committing an offence under Sections 498A and 4 of the Dowry Prohibition Act, the Court acquitted him of the charges, set him at liberty, and released him from the liability of bail bond.

**Credit – Live Law**

# 10 Dowry Death | Prosecution Must First Show All Ingredients Of S.304-B IPC To Attract Presumption Of Guilt Against Accused: Jharkhand High Court

The Jharkhand High Court has clarified that once all the ingredients of an offence under Section 304-B are shown by the prosecution, only then the presumption of innocence fades, shifting the burden of proof to the accused under Section 113-B of the Evidence Act.

The Division bench of Justices Sujit Narayan Prasad and Pradeep Kumar Srivastava observed, "Being a mandatory presumption on the guilty conduct of an accused under Section 304-B, it is for the prosecution to first show the availability of all the ingredients of the offence so as to shift the burden of proof in terms of Section 113-B of the Evidence Act. Once all the ingredients are present, the presumption of innocence fades away."

"In view of the mandatory presumption of law under Section 304-B IPC/113-B of the Evidence Act, it is obligatory on the part of the prosecution to establish that the death occurred within seven years of marriage. Section 304-B IPC permits presumption of law only in a given set of facts and not presumption of fact. Fact is to be proved and then only, law will presume," the division bench added.

According to the prosecution, informant's daughter Sangita Devi, was married to Sanjay Sao who at the time of marriage took Rs. 60,000 in cash and other articles. However, his demand for motorcycle couldn't be fulfilled. A month later, Sangita Devi was found dead in a well. The trial court convicted the appellant, sentencing them to ten years of rigorous imprisonment for the offence under Section 304(B)/34 of IPC. The present appeal was filed against this decision.

The Appellant argued that no eyewitnesses were present during the incident. Furthermore, it was asserted that the Appellant's conduct indicated their innocence regarding the murder of their wife, especially considering that she was reported missing on the same day from her parental home.

Additionally, it was argued that the judgment of conviction solely relied on the application of Section 113(B) of the Evidence Act, which was not sustainable in the eyes of the law.

Additional Public Prosecutor on behalf of the respondent-State submitted that Section 113(B) of the Evidence Act will be well applicable in the case. Additionally, it was argued that at the time of death, the deceased was in

their marital home, and the accused failed to provide a credible explanation for the circumstances surrounding the death.

The Court, based on the evidence at hand, delineated the following issues:

1.Whether Section 113(B) of the Evidence Act is applicable when a death occurs in the matrimonial home and the deceased's body is found in the nearby well.

2.Whether a conviction under Section 304-B of the Indian Penal Code (IPC), relying on Section 113(B) of the Evidence Act, can be considered justified in the absence of eyewitness testimony, as raised in this case.

To address these issues, the Court referred to Section 304-B of the IPC and Section 113-B of the Evidence Act. The Court underscored that Section 304-B, pertaining to dowry death, was introduced into the Penal Code in 1986, carrying a minimum sentence of seven years, extendable to life imprisonment, and is tried by a Court of Session.

The Court also highlighted the corresponding amendments in the Code of Criminal Procedure and the Indian Evidence Act concerning the trial and proof of this offence. It noted that Section 498-A, introduced in 1983, pertains to a lesser offence, triable by a Magistrate of the First Class and punishable by a shorter prison term.

The Court further noted that the expression 'soon before her death' used in the substantive section 304B, I.P.C. and section 113B of the Evidence Act is present with the idea of proximity text, and no definite period has been indicated and the expression 'soon before her death' is not defined. It said that the determination of the period which can come within the term 'soon before' is left to be determined by the courts, depending upon facts and circumstances of each case.

Upon examination of the facts, the Court determined that the demand for dowry occurred within seven years and was corroborated by witness testimony, thus satisfying the criteria of Section 304B of the IPC.

In light of these findings, the Court reasoned, "This Court, therefore, is of the view that if in such circumstances the Section 113B has been applied while passing the judgment of conviction, the same cannot be said to suffer from error. The ingredient of Section 113B is only said to be applicable if the demand of dowry is attributed individually by the members of the matrimonial house,"

Considering the comprehensive analysis of the trial court, which evaluated prosecution witness testimony and established the applicability of all ingredients of Section 304B, the Court found no error in the impugned judgment and dismissed the appeals.

Furthermore, acknowledging the advanced age of the deceased's parents-in-law, aged 63 and 70, the Court reduced their sentence under Section 304(B)/34 of the IPC from 10 years to 7 years, aligning with the minimum

**punishment prescribed under Section 304(B).**

**Credit – Live Law**

# 11 Hookah As Addictive And Harmful As Cigarettes: Karnataka High Court While Upholding Ban

It is a myth that smoking of hookah carries less risk of tobacco related diseases than smoking cigarettes, the Karnataka High Court said yesterday while upholding a notification issued by the State government banning the sale, consumption, storage, advertisement and promotion of all types of hookah products within the State.

A single judge bench of Justice M Nagaprasanna said the State had rightfully discharged its duty under Article 47 of the Constitution to ensure public health and prohibit intoxicants and drugs that are injurious to public health.

Court added, “Hookah, at public places, is typically used in groups, with the same mouthpiece being passed around. The risk of contracting diseases like hepatitis, herpes is more. It is again a myth that smoking of hookah carries less risk of tobacco related diseases than smoking cigarettes. Hookah contains many of the common toxins as cigarettes. If cigarettes can cause lung cancer or respiratory illness, hookah is catching up to it, as hookah sessions allow smokers for prolonged amount of usage, therefore, they are exposed to high concentrations of toxins. It is a fact that a session of hookah is more harmful than a pack of cigarettes.”

The bench then explained that for consuming cigarettes, an individual need not have a separate apparatus and thus, does not need any service except creation of a smoking zone. However, hookah cannot be consumed unless there is proper apparatus which is provided by the restaurant owners. Hence, it said,

“If hookah requires service that needs to be rendered, it cannot be in the corner of a designated place and apparatus to smoke through hookah cannot be carried in the pocket by the smoker who wants to go into a designated area, smoke and come out. It requires all the overtones of a service, as akin to food and alcohol. If the aforesaid activity is pitted on the amendment to the 2017 Rules [Prohibition of Smoking in Public Places (Amendment) Rules, 2017], what would unmistakably emerge is the prohibition in furtherance of the amendment brought into the Rule, as no service should be allowed in any smoking area or space provided for smoking.”

Court rejected the petitioner’s contention that tobacco is already covered under the COTPA and as such no prohibition can be imposed. It noted that under List-II in the 7th Schedule to the Constitution, State has the power to

make laws relating to public health, industries governed by the State Government and prohibition of certain consumptions as a public policy.

“In certain circumstances State has a duty and an obligation under Article 47 of the Constitution of India to ensure nutrition and improvement of standard of living and public health and also to bring in prohibition of consumption of intoxicating drinks and of drugs which are injurious to health. The obligation under Article 47 is not restricted to intoxicating drugs or drugs only.”

Court further clarified that hookah tobacco uses nicotine which comes within Poisons Act and the Rules framed by the State. “Therefore, no fault can be found with the State Government invoking Poisons Act or the 2015 Rules framed thereunder insofar as tobacco/nicotine found in hookah,” it held.

make laws relating to public health, industries governed by the State Government and prohibition of certain consumptions as a public policy.

## Herbal Hookah

Coming to the contention of restaurant owners to permit herbal hookah, Court pointed that usage of herbal hookah cannot be without molasses which is also a prohibited substance under the Karnataka Prohibition Act, 1961. Thus, it held,

“The submission that it is herbal hookah and the Act does not impose a ban and, therefore, the State cannot impose a ban, on the face of it is unacceptable, as the Act may not have the power to ban herbal hookah but the State under the 2015 Rules and the Prohibition Act, for the purpose of protection of health of the citizens, is empowered to ban the same, invoking the powers conferred under the Constitution itself. Therefore, merely because herbal hookah does not contain tobacco, it does not mean that it is to be unregulated, as the key component is molasses and molasses is regulated.”

Credit – Live Law

# 12 Giving False Information About Educational Qualifications For Marriage Not Cheating; No Grounds For Divorce: Madhya Pradesh High Court

The Madhya Pradesh High Court, while dealing with proceedings arising out of a matrimonial dispute, held that concealing the true educational qualification and lying about it for the purpose of marriage does not constitute the offence of deceiving or cheating as contemplated in Sections 415 and 420 of IPC. The court also highlighted that none of the provisions of the Hindu Marriage Act would cover the said instance either as a condition for the marriage or for granting a divorce.

Justice G.S. Ahluwalia underscored that petitioner no.3/husband failed to prove how the act of his wife, who allegedly gave false information that she has passed Class-12th when she has only passed Class-10th would amount to deceiving or cheating.

Any marriage conducted on the basis of wrong information about educational qualification will not make it a void or voidable marriage within the definitions of Sections 11 and 12 of the Hindu Marriage Act, the court remarked.

The single-judge bench of Justice Gurpal Singh Ahluwalia also took note of the omnibus allegations levelled by the petitioner no.3-husband and relatives against the wife's mother, alleging that the latter is engaged in prostitution. However, the wife's mother was not impleaded in the writ petition despite her character assassination in the course of arguments.

When the court raised this issue with the petitioner-husband and his counsel, it came to be known that no such allegation has been included in the writ petition, though the husband mentioned this detail in his complaint made to the SHO of Mahila Thana, Katni, citing his wife as the source of information.

Initially, the petitioners' counsel tried to withdraw the writ petition after arguing the matter at length. This plea was refused by the court, considering the nature of the allegations made against various persons.

The SHO had earlier reached the conclusion that petitioner no.3 and respondent no.11 are married. However, the complainant-husband's stance that the marriage happened due to the fraudulent conduct of his wife was not approved by the police. No offence was made out necessitating the registration of a case against the wife and in-laws, inferred the SHO. According to the Police, the wife wanted to reside with her husband, though the latter was not interested in residing together.

**The court also discouraged the petitioners' conduct of making general allegations of corruption against the police department because the SHO refused to register a case against his wife for cheating. The court opined that such allegations amount to defamation, which makes it the prerogative of police officials to move forward against the petitioners.**
**As a result, the petition was dismissed with a cost of Rs 25,000/- payable to the registry of the court within one month.**

**Credit – Live Law**

# 13 Although Adultery Is Grounds For Divorce, It Can't Be A Ground To Deny Child's Custody: Bombay High Court

**The Bombay High Court held on Friday that adultery is a ground for divorce but cannot be a ground for denying custody of a child.**

**Justice Rajesh Patil dismissed a writ petition filed by son of a former legislator seeking custody of his nine-year-old daughter from his estranged wife on grounds of adultery.**

**"Adultery is in any case a ground for divorce, however the same can't be a ground for not granting custody", the court observed.**

**The court relied on a January 2024 judgement by the Delhi High Court, which granted custody to a wife despite allegations of her extramarital affair being proven.**

**The petitioner, an IT professional and his wife, a doctor, got married in 2010. They had a daughter in 2015. The wife claimed that she was driven out of their matrimonial home in December 2019. However, the husband claimed that she left on her own.**

**In January 2020, the wife lodged a police complaint against her husband under section 498A of the IPC and a complaint before the magistrate under the Protection of Women from Domestic Violence Act, 2005. The husband filed for divorce on grounds of cruelty. The family court, in February 2023, granted interim custody of the girl to the wife.**

**The custody of the minor daughter remained with the wife from February 24, 2023 till February 9, 2024, for a period of roughly one year. Despite the husband initially complying with the custody order by handing over the daughter to the wife on February 24, 2023, he failed to return the daughter to her mother's residence after a weekend visit on February 11, 2024.**

**He filed an interim application seeking modification of custody arrangements, which was dismissed by the Family Court. Thus, he filed the present writ petition before the high court.**

**The husband argued against the wife's custody, citing alleged discomfort of the minor daughter and the wife's purported multiple affairs.**

**The court emphasized that such claims were yet to be substantiated and could not be a decisive factor in custody matters. "Therefore, based on the allegations, the doubt as to whether the custody can be given to the wife will have no bearing. There is no doubt as held by the various judgments that not a good wife is not necessarily that she is not a good mother."**

The court noted that the wife, a doctor by profession, had arranged for suitable accommodation near the daughter's school. Additionally, the court noted that the grandmother of the child, who resided with the wife, provided additional support in caring for the daughter.

Addressing concerns raised about the daughter's behavior at school, the court questioned why the school authorities communicated with the paternal grandmother, a former legislator, instead of the parents, who were well-educated.

"According to me, the school authorities have no reasons to inform about the issues relating to the minor daughter to the grandmother (who is a politician) when both the parents of the minor daughter are available. So also, one cannot forget that both the parents are well-educated and in fact the mother of the minor daughter is a doctor by profession", the court held.

The court highlighted the paramount consideration of the child's welfare in custody disputes, especially given the daughter's tender age of nine. It underscored the importance of maintaining stability and continuity in the child's environment, especially given her pre-puberty age.

The court noted that the girl's maternal grandmother had been caring for her, and her academic record and participation in extracurricular activities during custody with the mother was commendable. Consequently, the bench directed the petitioner to hand over custody to the wife by April 21.

Credit – Live Law

# 14 Right To Be Identified By One's Name Fundamental To Individual's Identity: Delhi High Court

The Delhi High Court has recently observed that name of an individual is an identity marker and the right to be identified by one's name is fundamental to one's very identity.

"It partakes, therefore, of a primordial necessity, and the Court has, when petitioned in that regard, to ensure that the request, if genuine, is acceded to," Justice C Hari Shankar said.

Referring to the Supreme Court ruling in Jigya Yadav v. CBSE, the court observed the fact that public documents may not tally with the school records of an individual would be of no significant consequence, however, in such a case, CBSE may be permitted to indemnify itself by seeking an affidavit from the candidate concerned, or inserting a disclaimer in the certificate to the effect that the change in name has been made at the behest of the candidate, in the light of public documents produced by him.

The court made the observations while dealing with a girl's plea seeking a direction on the CBSE that her father's name be changed from her Class X and XII marksheets.

Justice Shankar said that the court has to be practical, not pedantic, in its approach while examining the material relied upon by the girl to justify her prayer for change of her father's name in her certificates.

The Court said that it cannot be hyper technical in such matters and start rejecting the prayer for correction merely because of a slight difference in spellings.

Allowing the plea, the court directed the CBSE to forthwith issue fresh Class X and Class XII marksheets to the petitioner girl reflecting the changed name of her father.

Credit – Live Law

# 15 Husband With 75% Disability Can't Be Directed To Pay Maintenance To Estranged Wife: Karnataka High Court

The Karnataka High Court has refused to direct a husband with 75% disability to pay maintenance to his estranged wife and also set aside an order of the execution court which, acting on the plea filed by the wife, had issued an arrest warrant or fine levy warrant against the husband.

A single judge bench of Justice M Nagaprasanna said, "The husband walks with the help of crutches. Therefore, in the considered view of the Court, no direction can be issued to the husband to pay maintenance to the wife/respondent as he is no longer an able bodied man to search for employment and pay maintenance to maintain the wife and the child."

On the floundering of the marital relationship between petitioner and the respondent, the husband preferred a petition seeking annulment of marriage. The allegation of the husband was that the wife had left the matrimonial house on her own volition.

In the said petition, the wife filed an application seeking interim maintenance under Section 24 of the Hindu Marriage Act, 1955. The concerned Court, after hearing the parties, granted the wife interim maintenance of Rs.15,000/- per month in terms of its order dated December 30, 2012. The wife then filed a memo of calculation before the concerned Court in July 2013 claiming arrears to be paid by the husband towards the maintenance so awarded. The concerned Court rejected the memo. This was challenged before the High Court.

During the pendency of the said petition, the husband/petitioner sufferred a stroke resulting in 75% disability, due to which, he resigned from his work. However, on the ground that the husband has not paid maintenance, to recover arrears of maintenance, the wife/respondent initiated execution petition seeking execution of the order of maintenance. The concerned Court then directed the father of the husband to pay arrears of maintenance. When that was not adhered to, a fine levy warrant and arrest warrant are issued against the husband. The same was challenged in another petition before the high court.

The husband contended that he is unable to pay maintenance given his 75% disability, which does not get him any job.

On going through the records the bench noted that wife is qualified and earning. Then referring to the disability certificate issued to the husband, it

said. “If the husband is incapable of earning due to disability, it is highly ununderstandable as to why and how the wife is insisting on payment of maintenance looking at the admitted disability of the husband.”

**Court observed,**

“It is trite that while considering grant of maintenance all the factors will have to be taken note of. Maintenance cannot spring in thin air. The primary factor is whether the husband is an able bodied man to maintain the wife or the child. In the teeth of the disability of the petitioner who also suffers from cognitive dysfunction, the trial Court ought to have allowed the application seeking recall of the order of maintenance and restricted the recall up to the date on which the husband became disabled.”

It added “As the disability happens in the month of December, 2013, by then there was already arrears to be paid by the husband. The Court ought to have taken at least that date into consideration. Today the husband/petitioner is wanting maintenance to himself and not in a position to pay maintenance to the wife/respondent.”

Noting that the memo filed by the wife depicts that as on today, the maintenance that is to be paid by the husband is a whooping sum of Rs.19,04,000 and the duration of maintenance covers the period of disability of the husband right from its beginning till today, except for a few months prior to the husband getting disabled, the court said “If this would be directed to be paid, at the behest of the wife, it would undoubtedly leave the husband/petitioner bleeding, apart from the agony that he is living with of suffering 75% disability.”

Rejecting the contention of the wife that the father of the husband/petitioner has several properties and is able to pay the wife and the child maintenance, the court said “This submission cannot be accepted at this juncture. As the wife is said to be earning and maintaining herself to-day and 24 for the last 10 years there is no maintenance paid; obviously the wife who is qualified is working and earning.”

However, it said “I deem it appropriate to observe that the father of the husband/petitioner should take care of the grandchild’s necessities including her education and other necessities of her career and all walks of life of the grandchild. This is the only relief that the wife/respondent is entitled to, in the case at hand. The claim of the wife for enhancement of maintenance to 70% is, on the face of it, untenable and is rejected.”

It also directed that arrears of maintenance till the date of disability of husband, shall be fulfilled by the father of the husband/petitioner.

**Credit – Live Law**

# 16 Hospitals Can't Insist On Police Complaint As A Pre-Condition To Provide Medical Care To Pregnant Minor: Bombay High Court

**The Bombay High Court recently directed the state government to provide medical care to a 17-year-old pregnant girl who didn't file a police complaint against her partner, also a minor, and was refused treatment as a result.**

**A division bench of Justice GS Kulkarni and Justice Firdosh P Pooniwalla said that hospitals cannot insist that the girl's mother register a police complaint as a condition to receive medical treatment.**

**"The fact situation is clear that relations of the petitioner's daughter with the boy who is also a minor, were consensual. Neither the petitioner in the capacity of a parent nor the petitioner's daughter say's that she is a victim, and in fact she was conscious and aware of her actions, hence they are not desirous of registering any police complaint under the provisions of the Protection of Children from Sexual Offences Act, 2012...Merely for the reason that there is no police complaint, the petitioner's daughter cannot be denied medical aid."**

**The court was dealing with a writ petition filed by the girl's mother seeking access to medical treatment which was denied to her due to the requirement of filing a police complaint.**

**The petitioner's grievance was that medical facilities demanded a police complaint before administering treatment, despite the daughter's refusal to pursue legal action. The daughter asserted that their relationship was consensual. The petition expressed the intention to give the child up for adoption.**

**Advocate Nigel Quraishy for the petitioner submitted that the petitioner sought treatment for her daughter at Sir JJ Group of Hospitals and they have also identified St. Catherine's Home, a shelter home which is ready to accommodate the daughter. The court accepted the statement regarding the shelter home and directed the state officials to facilitate the daughter's admission.**

**Government Pleader Purnima Kantharia stated that the daughter can receive treatment at Sir JJ Group of Hospitals without her identity being disclosed, but sought a formal statement from the petitioner that her daughter does not want to file a police complaint. Kantharia said this needs to be made in the form of an 'Emergency Police Report' (EPR).**

**The court opined that there is no harm in the petitioner presenting an EPR and, that such an EPR can be handed over to the Government Pleader who can keep**

it in a sealed cover. When the need arises, it can be utilized for the appropriate purpose with the prior permission of the Court, the court added.

The court emphasized that denying medical aid based on the absence of a complaint contradicted the constitutional right to healthcare.

“In our opinion, grant of medical aid to any person is a direct concomitant of Article 21 of the Constitution, which guarantees right to life and livelihood which includes the protection of one’s health by making available appropriate medical aid. In a civilized society no person can be deprived of medical aid/treatment, much less in the present circumstances.”

Thus, the court directed the Sir JJ Group of Hospitals to ensure confidentiality and provide medical care to the petitioner’s daughter a pseudonym without mandating a police complaint. It granted the petitioner access to maternity care and delivery services at the hospital and directed efforts to secure independent medical treatment for the daughter.

St. Catherine’s Home was tasked with providing care and cooperation to the petitioner’s daughter until the child’s birth, maintaining confidentiality throughout the process. The court disposed of the petition, keeping open the petitioner’s contentions regarding the child’s adoption.

**Credit – Live Law**

# 17 Mere Mention Of Individual's Name In Suicide Note Can't Be Sole Basis Of Trial For Abetment Of Suicide: Delhi High Court

**The Delhi High Court has observed that the mere mention of an individual's name in a suicide note cannot be the sole basis for prosecuting him or her to face trial or conviction for the offence of abetment of suicide.**

**"Mere mention of the name of certain individual(s) in the suicide note, stating therein that they are responsible for his death cannot ipso facto be the sole basis for putting the accused to face trial or for conviction under Section 306 IPC," Justice Manoj Kumar Ohri said.**

**The court observed that Section 306 of the Indian Penal Code requires a causal link or proximity to be established between the acts of the accused and the deceased committing suicide.**

**"As observed above, the specific act of the accused has to be seen in light of the surrounding/attending circumstances of each case to determine if the same could be attributed as the cause of suicide in the case," the court said.**

**Justice Ohri dismissed a plea moved by a wife whose husband committed suicide allegedly due to harassment by their daughter-in-law, who left the matrimonial home with all belongings, and her parents.**

**After investigation, a final report was filed by the police concluding that no concrete evidence was found except the suicide note linking the accused persons with the alleged offence.**

**A protest petition was filed against the final report by the petitioner. However, the trial court rejected the same.**

**Upholding the trial court order, Justice Ohri said that no material came on record which would show that there was any connection between the deceased and the daughter-in-law and her parents since the day she left the matrimonial home.**

**"A perusal of the undated suicide note would also show that neither any details have been given nor many specific incident has been mentioned, which might have abetted the deceased to commit suicide. The CDR analysis of the deceased also does not indicate any act on behalf of the respondent Nos. 2 to 4 which can be said to have abetted the deceased to commit suicide," the court said.**

**It also took note of the statement of an independent witness who stated that the deceased was under stress due to his own conduct of transferring possession of the house to a stranger.**

**“In the facts of the present case, apart from their name coming in the suicide note of the deceased, no other fact has been placed on record as to show what act was committed by the respondent Nos.2 to 4 leading to the deceased committing suicide,” the court said.**

**Credit – Live Law**

# 18 Husband Demanding Money From Wife's Parents For Maintenance Of His Newly Born Baby Not 'Dowry': Patna High Court

**The Patna High Court has observed that if the husband demands money from the paternal home of the wife for rearing and maintenance of his newly born child, such demand does not come within the fold of the definition of 'dowry' as per Section 2 (i) of the Dowry Prohibition Act, 1961.**

**A bench of Justice Bibek Chaudhuri observed thus while allowing a revision plea filed by a husband challenging his conviction under Section 498A IPC [Husband or relative of husband of a woman subjecting her to cruelty] and Section 4 of the Dowry Prohibition Act 1961 (Penalty for demanding dowry).**

## The case in brief

**The petitioner's (Husband) marriage with the opposite party no.2 (wife) was solemnised as per the Hindu rituals in 1994. Subsequently, they cohabited as spouses, and during their union, three children- two male children and one girl child were born. The girl child was born sometime in the year 2001.**

**The wife alleged that three years after their daughter's birth, the petitioner and his relatives demanded Rs.10,000 from her father to support and care for the girl child. It was also alleged that the wife was tortured for nonfulfillment of the demand of the petitioner and the other marital relations.**

**Challenging his conviction, the Husband moved the HC wherein his counsel argued that the allegation made by the wife against the petitioner (Husband) and other accused persons is general and omnibus in nature and hence, the order of his conviction was liable to be set aside.**

## High Court's observations

**Having heard the counsel for the parties as well as factoring into account the facts of the case, the Court noted that the only issue involved in the instant revision is as to whether any demand for proper maintenance of a child of the parties to a bride by the bride groom and his family members amounts to dowry or not.**

**To answer the query, the Court, examined Section 2 (i) of the 1961 Act (which defines Dowry) to note that the essential element of dowry is payment or demand of money, property or valuable security given or agreed to be given as consideration of marriage.**

**Furthermore, the court noted that Explanation (b) of Section 498A of the IPC**

does not explicitly mention the term ‘dowry’. However, judicial precedents have established that harassment related to fulfilling any unlawful demand for property or valuable security should be regarded within the ambit of the definition of dowry as outlined in Section 2(i) of the Dowry Prohibition Act.

Referring to the Supreme Court’s ruling in the case of Manju Ram Kalita Vs. State of Assam 2009, the Court noted that to establish a charge under Section 498A of the IPC, the prosecution is required to establish that the woman has been subjected to cruelty continuously and persistently or at least in close proximity of time of lodging of complaint.

Considering this context, upon examining the details of the case, the court observed that the wife’s complaint and evidence indicated that the husband demanded Rs.10,000 for the maintenance of their daughter.

Furthermore, the Court noted that both husband and wife belong to marginalized social backgrounds where it is customary practice that daughters stay at their parental home during pregnancy until the child is born, and then the mother and child are usually sent to the matrimonial home when the child is three to six months old, with all expenses during this period being covered by the wife’s family.

In view of this fact of the matter, the Court observed that the demand of Rs. 10K was not made as a consideration of marriage between the complainant and the petitioner, and rather for the maintenance of the girl-child, and hence, the same would not come within the fold of the definition of ‘dowry’ as per the 1961 Act read with Section 498A IPC.

Consequently, the judgment and order of conviction and sentence passed by the lower court was set aside and the revision plea was allowed.

**Credit – Live Law**

# 19 ‘Old Boys Club’ : CJI DY Chandrachud Calls For More Women Representation In Bar Associations

**Chief Justice of India DY Chandrachud on Friday expressed concern over the poor representation of women in elected Bar Associations and Bar Councils in the country despite an unprecedented surge in the number of women joining the bar and establishing thriving practices.**

**Justice Chandrachud, during his address at the Centenary Year Celebration of the High Court Bar Association Nagpur, said that the male office bearers had the responsibility to ensure a fair chance to women lawyers, and urged women lawyers to come forward and contest elections.**

**“It is not enough to remove formal barriers to women lawyers in contesting elections. It is the responsibility of the existing male office bearers to not only encourage female lawyers who stand for elections but also make environment conducive for the women to stand a fair chance. I am optimistic that the HCBA Nagpur will take a proactive measure in this direction. I also urge all women advocates to assert their position in the Bar Association, come forward, contest elections and hold positions of responsibility.”**

**Citing a study conducted in 2021, he said that mere 2.04% of the elected representatives in the 21 state bar councils are women, with no female office bearers. Further, there is only one female member in the Supreme Court Bar Association. Justice Chandrachud attributed this disparity to the old boys club mentality prevailing within the legal fraternity, which often discourages women from contesting elections and holding positions of responsibility.**

**“Contesting elections requires extensive networking, campaigning and soliciting of votes which often leads to the formation and perpetuation of an entrenched old boys club. This environment can act as a significant disincentive for women discouraging them from participating in the elections, let alone engaging in campaigns and successfully winning them.”**

**Highlighting the transformation in the demographics of the legal profession, Justice Chandrachud noted the significant increase in the number of women lawyers practicing across the country over the last few decades.**

**“The number of women lawyers practicing across the country has increased manifold over the last few decades. There was a time where advocates would come to High Court and Supreme court and only see a sea of men. Many female lawyers recall a time when they were the only one in security line for women while there was a long queue for men.”**

Justice Chandrachud referred to recent designation of 11 women lawyers as senior advocates and said that the number of women legal practitioners will keep increasing.

“Recently the Supreme Court designated 11 women lawyers as senior advocates in one go signaling the change in demographic of successful lawyers. In the Nagpur bar, more that 500 out of 3000 members are women. As the demographics are changing in the profession and more young women are entering the field, this number will only increase.”

Addressing the need for proactive measures to address the gender imbalance in elected bodies, the Chief Justice urged existing male office bearers to create a conducive environment that enables women lawyers to have a fair chance at contesting and winning elections.

**Credit – Live Law**

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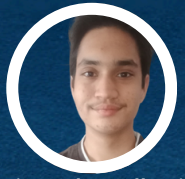

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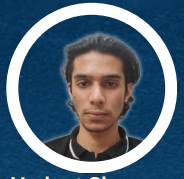

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