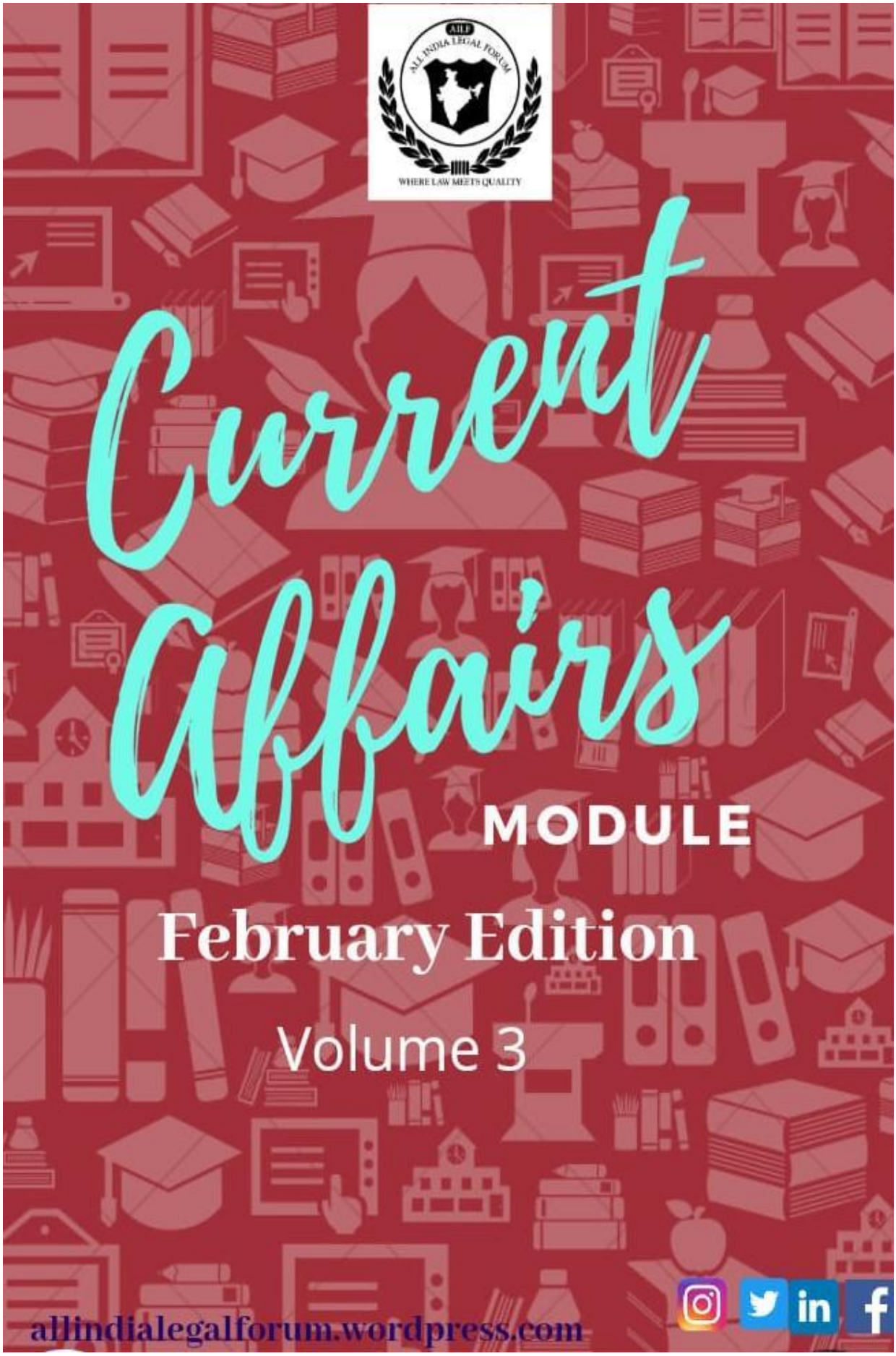
AILF
ALL INDIA LEGAL FORUM
WHERE LAW MEETS QUALITY
Current Affairs
MODULE
February Edition
Volume 3
allindialegalforum.wordpress.com

FOREWORD

More has been said about the writing of lawyers and judges than of any other group, except, of course, poets and novelists. The difference is that while the latter has usually been admired for their writing, the public has almost always damned lawyers and judges for theirs. If this state of affairs has changed in recent times, it is only in that many lawyers and judges have now joined the rest of the world is complaining about the quality of legal prose. My best wishes to all these student contributors, for their future endeavours.

My best wishes and assurance to the readers that this will add a lot to the knowledge after reading this Judiciary notes. It is not just for the legal fraternity but for anyone who has an interest in the field of law.

- By Vrinda Khanna, Associate, All India Legal Forum

PREFACE

May there be Peace in Heaven, May there be Peace in the Sky, May there be Peace in the Earth, May there be Peace in the Water, May there be Peace in the Plants, May there be Peace in the Trees, May there be Peace in the Gods in the various Worlds, May there be Peace in all the human beings, May there be Peace in All.

PEACE, PEACE, PEACE.

Our age-old culture prays for peace and happiness for one and all. Family is the first and oldest social group. It has played an important role in the stability and prosperity of the civilization. Almost everything of lasting value in humanity has its roots in the family. Peace and harmony in the family are important for the all-round development of children. This Compilation of Judiciary notes by All India Legal Forum is aimed at bringing about desired sensitivity in all duty holders. We are glad to be a part of the All-India Legal Forum. Here is an introduction to my team:

- **Patron- in-Chief**: Aayush Akar
- **Editor-in-Chief**: Shubhank Suman
- **Senior Manager**: Vrinda Khanna
- **Manager**: Shree Latha Sampat
- **Researchers**:
    - Elamathy. S
    - Yash Sharma
    - Aastha Miglani
- **Editor**: Snehal Bhatia

DISCLAIMER

Team AILF India has made all efforts to summarize the Judiciary notes retrieved from AIR and SCC. In some cases, the team has tried to summarize cases from the available sources as they could not find original ones.

INDEX

Sports News

- **ISL 2020-21: Mumbai City FC thrash Odisha 6-1, set up Winners Shield clash with ATK Mohun Bagan**

Indian Super League 2020-21: Mumbai City FC came up with an emphatic 6-1 win as they set up a cracker for the League Winner Shield with table-toppers ATK Mohun Bagan.

HIGHLIGHTS

- Bipin Singh hat-trick, Ogbeche double help Mumbai City crush Odisha 6-1
- Mumbai City FC made sure they gave themselves a chance for the League Winners Shield
- Mumbai will take on ATK Mohun Bagan in their final league game this weekend.

The equation for the Indian Super League League Winners Shield is clear. A win for Mumbai City FC in their final game against ATK Mohun Bagan, and they take home the title and with it, a spot in next season's AFC Champions League group stage. Anything else and it will be Bagan celebrating.

After the Kolkata side failed to grasp their chance to win the League Shield against Hyderabad FC, Mumbai completed the other side of the equation at the GMC Stadium on Wednesday, with a dominant 6-1 victory over Odisha FC.

After Odisha had taken a shock early lead through Diego Mauricio (9'), Mumbai hit back hard through goals from Bartholomew Ogbeche (14', 43'), Bipin Singh (38', 47', 86) and Cy Goddard (44'). The match was the highest-scoring game of the season and Mumbai had the biggest-winning margin yet. The timely return to form ended a three-game winless run for Sergio Lobera's side.

Yet, when the match started, it appeared as if Mumbai would continue their wretched form. Early on, Odisha were awarded a penalty when Ahmed Jahouh fouled Mauricio in the box. The latter stepped up and ensured that Odisha had an unlikely lead, despite Amrinder getting a hand to the ball.

But Mumbai was not behind for long. Just five minutes later, Jahouh made amends for his mistake by finding Ogbeche off a freekick. The Nigerian made no mistake, heading it in and restoring parity.

- **Pink-ball Test: Can't blame the pitch - Graeme Swann hits out at England approach after 112-all out on Day 1.**

India vs England: Visitors England were bundled out for 112 inside two sessions on Day 1 of the pink-ball Test and former spinner Graeme Swann criticised their approach to playing spin at the Narendra Modi Stadium.

HIGHLIGHTS

- England were bundled out for 112 in their first innings on Day 1.
- Axar Patel picked up 6 wickets as England struggled against spin.
- England came in after the big loss in Chennai with their mindset completely gone: Gavaskar.

Former England off-spinner Graeme Swann questioned England's bating approach against spin as they were bundled out for 112 in less than 2 sessions on Day 1 of the pink-ball Test against India at the Narendra Modi Stadium. England's innings lasted just 48.4 overs as Axar Patel and R Ashwin ran through the vistors' batting unit.

Graeme Swann said the Motera pitch was certainly not an easy one to bat on but that one cannot blame the pitch as England needed to bat better against the two Indian spinners. **Axar Patel picked up** his 2nd successive 5-wicket haul in Tests cricket as he used his arm ball and the ones that turn to great effect to plant doubts in the England batsmen's minds. R Ashwin picked up 3 wickets as England struggled to read the line of the ball on a pitch that offered assistance to the spinners.

- **India vs England, Pink-ball Test Day 1: Live Updates**

The likes of Ben Stokes, Jonny Bairstow, Zak Crawley, Ollie Pope and Jofra Archer played for the turn when there was not much as the ball that went with the line proved to be their undoing. Speaking to Star Sports at the dinner break, Graeme Swann pointed out that Ben Foakes showed the way by playing for the straight ones and leaving the ones that turned to beat him and miss the stumps.

"India bowled superbly, Axar bowled very well. Interestingly, when you watch these wickets, very few were caused by the ball spinning. A lot of it is by balls that have gone straight on. Axar got 6 wickets there. England must go to the change room and think about what they could have done differently. Ben Foakes played spin well as he played as if every ball was going to go straight on. The odd one that turned missed the stumps," Swann said.

"You can't blame the pitch; it is what it is. England have turned out and they got a turning pitch. They have got to expect it as they have been vulnerable on a turning pitch. Some of the

dismissals were like rabbits stuck in the headlights, stuck in the crease. They need to be more proactive. It's tough as a batsman but England have to do better," he added.

- **Chennai Test defeat affected England's mindset: Gavaskar.**

Young opener Zak Crawley top-scored with a fifty but none of the other batsmen were fluent as they failed in their attempts to survive the spin threat. England lost their last 7 wickets for just 32 runs as the two spinners picked up 9 wickets.

Former India captain Sunil Gavaskar pointed out that the mammoth 317-run defeat in Chennai has had a major impact on England's mental approach to playing on turning pitches.

"You have to credit Axar Patel for the way he has used the odd ball that straightens. Ashwin and Axar were superb.

"England came in after the big loss in Chennai with their mindset completely gone. Their mindset is 'can we survive?' and they are not looking to score runs. And on such a surface, you are not going to be able to survive where the odd balls are turning and the odd balls are going straight through," Gavaskar said.

- **India vs England: Ben Stokes applies saliva to ball by mistake, umpire sanitises it after warning the bowler.**

England all-rounder Ben Stokes was seen applying saliva on the ball by mistake and was then warned by umpire Nitin Menon and the ball was immediate sanitised.

HIGHLIGHTS

- The incident took place at the end of the 12th over.
- Umpire Nitin Menon sanitised the ball before it was used again.
- The ICC had banned the use of saliva to shine the ball due to the Covid-19 pandemic in June last year.

On Wednesday, in the third Test match between India and England, all-rounder Ben Stokes was seen applying saliva on the ball by mistake.

Stokes was then warned by umpire Nitin Menon for his mistake and the ball was immediate sanitised. The incident took place at the end of the 12th over and the umpire could be seen speaking to the all-rounder.

The International Cricket Council ICC had banned the use of saliva to shine the ball due to the Covid-19 pandemic in June last year.

As per the new regulations, a team can be issued up to two warnings per innings but repeated use of saliva on the ball will result in a five-run penalty to the batting side.

Whenever saliva is applied to the ball, the umpires have to clean it before play recommences.
Team India on Wednesday bowled England out for 112 runs in the first innings of the third Test at the Narendra Modi Stadium and ended Day 1 at 99/3 just 13 runs behind the visitors. England were outplayed by the spin attack from Ravichandran Ashwin and Axar Patel, with the two spinners taking 9 of the 10 wickets on the day. The England first innings lasted only. Axar Patel bagged his second five-wicket haul (5/37) and became only the third Indian bowler to take a 5-wicket haul in his first two matches. He had made his debut in the previous Test match in Chennai and taken a five-for over there as well.

- **India vs England: Team India fans troll Kevin Pietersen over 'toss jeeto match jeeto' remark**

Former England captain Kevin Pietersen took to social media to post a message in Hindi soon after Joe Root won the toss where he said that he hoped this was not a 'toss jeeto match jeeto' pitch.

HIGHLIGHTS

- England were outplayed by the spin attack from Ravichandran Ashwin and Axar Patel
- The England first innings lasted only 49 overs as they were bowled out for 112.
- Axar Patel bagged his second five-wicket haul in consecutive Tests on Wednesday.

On Wednesday, soon after England skipper Joe Root went on to win the toss, former England captain Kevin Pietersen took to the social media to post a message in Hindi.
He wrote "Oops India , Asha karta hoon ki yeh, toss jeeto match jeeto wala wicket na ho."
The reference was to the fact that with the pitches in India being flat, the team that bats first has an advantage over the other. The results of the first two Tests in Chennai also have been won by the team that went on to win the toss.
England won the toss in the first Test and aided by Joe Root's double-century went on to post a mammoth score in the first Test. In the second Test, India won the toss and rode on Rohit Sharma's 161 to get a substantial lead in the first innings.
But on Wednesday at the Narendra Modi Stadium, Team India bowled England out for 112 runs in the first innings and soon Pietersen was trolled by the supporters of the home team.

- **Pink-ball Test: Contrasting reactions from Joe Root, Virat Kohli as 3rd umpire overrules Ben Stokes catch**

India vs England, pink-ball Test: The 3rd umpire's decision to overrule a catch from Ben Stokes as early as the first over of Stuart Broad led to some drama as England, including their captain Joe Root, were not happy with the call.

HIGHLIGHTS

- Ben Stokes did not look happy after his catch was overturned by the 3rd umpire.
- Virat Kohli was seemingly surprised at England's claim for the catch.
- Replays showed Stokes failed to collect the ball cleanly from Shubman Gill's edge

The opening day of the Pink-ball Test between India and England at the Narendra Modi Stadium in Ahmedabad as India spinners ran through the England batting order in less than 2 sessions. A frustrated England side came up with a rare showcase of emotions as they had a Ben Stokes's catch overruled by the third umpire early in the Indian innings.

England were bundled out for 112 after **Axar Patel picked up** a 6-wicket haul in only his 2nd Test, this time in front of his home crowd at the marvellous Motera stadium. England, hoping for an early breakthrough nearly had one when Shubman Gill poked at one from Stuart Broad in only the 2nd over of the match. The ball flew low to Ben Stokes at 2nd slip and England players, including the all-rounder, claimed the catch.

However, the on-field umpires wanted to send the decision upstairs and check if a clean catch was taken. The soft signal was out but the 3rd umpire overruled the decision without taking a lot of time to check the replays.

Contrasting reactions from India, England camps

The replays showed that the Stokes had grassed the ball with no part of his finger underneath the new pink cherry. As NOT OUT was flashed on the big screen, there were contrasting reactions from the two camps.

While Virat Kohli seemed surprised at England's appeal, Joe Root, Stuart Broad and Ben Stokes were not able to believe that the soft signal was overturned. Joe Root had a lengthy chat with the on-field umpires as he went back to his fielding position shaking his heads. Broad kept having chats with the umpires even after he completed his over.

Former India captain Sunil Gavaskar, speaking on-air, said there was no doubt that Stokes failed to collect the catch cleanly.

"There was conclusive overwhelming evidence that the ball touched the ground," Gavaskar said.

India went to the dinner break at 5 for 0, trailing England's first innings total by 107 runs. Earlier in the day, Axar Patel picked up his career-best figures of 6/38. Axar made best use of the conditions on offer as he planted doubts in the minds of the England batsmen with a few that spun and others that went straight with the arm.

R Ashwin picked up 3 wickets and Ishant a wicket in his 100th Test as India dominated the first 2 sessions on Day 1 after England won the toss and opted to bat.

- **Axar Patel 3rd India bowler to pick 5-wicket hauls in his first 2 Tests after Hirwani, Nissar**

England tour of India 2021: Indian spinner Axar Patel, who made his debut in the second Test of this series, has bagged his second five-wicket haul in only his second Test match.

HIGHLIGHTS

- Axar Patel has bagged his second five-wicket haul in only his 2nd Test match.
- Axar claimed his maiden five-wicket haul on his debut in the 2nd Test match against England.
- Only Narendra Hirwani and Mohammad Nisar had achieved this feat for India.

Indian spinner Axar Patel, 27, has bagged his second five-wicket haul (5/37) with the dismissal of Stuart Broad in the second session on day one of the ongoing 3rd Test against England in Ahmedabad. By doing so, the 27-year-old spinner has become only the third Indian bowler to take a 5-wicket haul in his first two matches.

The first one to do so was former India pacer Mohammad Nisar, who made his debut in June of 1932 and achieved this feat in his second Test which was in the month of December in the year 1933.

Former Indian leg spinner Narendra Hirwani in 1988 was the second Indian to have achieved the feat. The former India cricketer, who made his Test debut in January 1988 against West Indies bagged claimed two eight-wicket hauls in that game. He featured in the second Test match of his career in the month of November, against New Zealand in the same year of his debut. Hirwani had bagged a 6/59 in that home match, in Bengaluru, which India had won by 172 runs.

- **IND vs ENG, 3rd Test: Live in Ahmedabad, Day 1**

Axar claimed his maiden five-wicket haul on his debut in the 2nd Test match, in Chennai, against England in the ongoing home series. In that game, Axar became the 9th Indian player to take a five-wicket haul on Test debut and only the second left-arm spinner after Dilip Doshi to take a five-for in his debut Test. Dilip Doshi was the first left-armer to take a five-for on debut at the same venue against Australia in Chennai in 1979.

Additionally, a total of nine wickets were bagged by spinners alone. Apart from Axar Patel's 5 wickets, Ashwin bagged 4 dismissals. The other wicket was claimed by Indian pacer Ishant Sharma, playing his 100th Test. This is the greatest number of wickets by spinners in an innings

of a Day/Night Test. The previous record was held by West Indies as spinner Devendra Bishoo alone had bagged 8 wickets against Pakistan, in Dubai, in 2016/17

National Political News

- **Rahul Gandhi sounds poll bugle in Kerala, slams BJP, Left government**

The Congress on Tuesday sounded the poll bugle in Kerala with the party organising a mammoth rally in which leader Rahul Gandhi launched a scathing attack on Kerala's ruling LDF and BJP government at the Centre over various issues including the contentious farm laws and the rise in fuel prices.

The Wayanad MP also asked why the BJP was not attacking the CPI(M)-led government and "going soft on cases against the CM's office."

- **BJP leader Rakesh Singh arrested in drug seizure case.**

The police on Tuesday night arrested BJP leader Rakesh Singh from Galsi area of West Bengals Purba Bardhaman district in connection with his alleged involvement in a drug seizure case, a senior officer said.

His two sons were also arrested by the Kolkata Police's narcotics section for stopping its personnel from entering the residence of the BJP state committee member in the port area of the city, he said.

- **Exhausted last attempt to give UPSC amid pandemic? Supreme Court says no extra chance.**

The Supreme Court on Wednesday dismissed a plea seeking an extra chance to appear in the UPSC civil services exam by aspirants who have exhausted their last attempt last year amid the COVID-19 pandemic. A bench headed by Justices AM Khanwilkar said that it is dismissing the plea filed by a civil services aspirant for an extra chance to the candidates who had exhausted their last attempt in examination held in October 2020 citing difficulties faced in preparations due to the pandemic.

On February 9, the Centre had told the top court that it is against granting one-time relaxation on age limit to UPSC civil service aspirants, including those who had exhausted their last attempt in 2020 exam amid the COVID-19 pandemic, as it will be discriminatory to other candidates.

It had said that the candidates who gave their last attempt examination in October 2020 would get one more chance this year provided they are not age barred.

- Repeal farm laws or will march to Parliament with 40 lakh tractors: Rakesh Tikait to Centre.

Issuing a threat to the Central Government, Bharatiya Kisan Union(BKU) leader, Rakesh Tikait on Tuesday said if the three laws are not repealed, the farmers will march to the Parliament on 40 lakh tractors.

Speaking at a farmers' rally in Sikar in Rajasthan, Tikait said, "Our next call will be for a march to Parliament. We will tell them before marching. This time it will not be just 4 lakh tractors, but 40 lakh tractors will go there if farm laws are not taken back."

Tikait also demanded that a new law should be enacted ensuring minimum support price for farmers.

- **UP budget: Akhilesh Yadav says expectations of the poor and farmers' not met.**

Samajwadi Party president Akhilesh Yadav panned the budget presented by the Uttar Pradesh government on Monday, saying expectations of the poor and the farmers' were not met.

The Adityanath government presented a₹5.5 lakh crore budget for 2021-22 in the Assembly with a target of making Uttar Pradesh self-reliant. With the Assembly election a year away, the budget includes new schemes of ₹27,598 crore.

International Political News

- **Bill in Congress to scrap 'one-China' policy, resume relations with Taiwan.**

Two top Republican lawmakers have introduced a legislation in the House of Representatives calling for the US to resume formal diplomatic relations with Taiwan and end the outdated and counter-productive one- China" policy.

The US maintained normal diplomatic relations with the government in Taiwan until 1979, when then-President Jimmy Carter abruptly cut off formal ties with Taipei and recognised the Communist regime in Beijing. China on other hand, views Taiwan as a rebel province that must be reunified with the mainland, even by force.

- **Israel accused of 'inducing panic' in Persian Gulf.**

Iranian authorities have induced Israel of ‘inducing panic’ in Persian gulf while rejecting the country’s claim that Tehran was involved in the blast abroad an Israel owned ship. The ship was sailing out of the Middle East to Singapore on February 26.

- **Ex-French president Nicolas Sarkozy sentenced to jail for corruption.**

The 66-year-old was sentenced to a one-year prison term for offering to pull strings to help a magistrate land a prestigious job in return for a favour —although the French legal system means he is unlikely to serve jail time. His lawyer and the court official were also convicted. Former French President Nicolas Sarkozy’s chances of returning to office suffered a blow after he was found guilty by a Paris court of corruption.

- **House raises child tax credit to $3,000, but only for a year.**

The House’s American Rescue Plan increases the child tax credit for 2021 to $3,000 per child ages 6 to 17 and $3,600 annually for children under 6. The enhanced payments, which specifically cover teens who are 17 for the first time, would start to phase out for individuals earning more than $75,000 a year or $150,000 for those married filing jointly.

- **Facebook bans Myanmar’s military accounts after deadly coup.**

Myanmar’s military has been banned from using Facebook and Instagram with immediate effect. Events since the February 1 coup, including deadly violence, have precipitated a need for this ban. We believe the risks of allowing the Tatmadaw on Facebook and Instagram are too great. Military-controlled state and media companies will also be blocked from the two

social media platforms, while army-linked commercial firms will not be able to run advertisements.

Miscellaneous News

1. What is Registration of Births & Deaths Act, 1969 invoked by Uttarakhand Govt. to declare missing persons in Chamoli disaster as 'dead'.

In the aftermaths of the Chamoli disaster in Uttarakhand (February 7), the Health Department of the State has, under the directions of the Centre, decided to declare those missing in the tragedy, as "dead."

Bodies of 69 persons have been recovered (out of the total 204 people missing) while 135 are still missing.

Following this notification (of declaring rest of the missing people as "dead"), the government has invoked the relevant provisions of Birth & Death Registration Act, 1969, under which the designated government officer will issue death certificates of the missing people to their family or relatives.

The notification stated,

> *"In normal circumstances, the birth and death certificates are issued to a person at the place where he is born or died. But in exceptional circumstances, like the Chamoli disaster, if a missing person is possibly dead beyond all possibilities of being alive but his body is yet to be found, in that case the authorities could declare him dead by issuing the death certificate to his family members after a required inquiry."*

For the purpose of issuing death certificate, the government has divided the missing people in three categories.

> *"The first category has the residents of the area near the site who went missing from the site. The second has those from other districts of state who were present at the site while the third category comprises tourists or people from other states who were present at the site.*"
>
> *"Under the process, family members will have to submit an affidavit regarding the missing person along with all the necessary details to the designated government officer concerned who will then issue the death certificate after proper inquiry. This will help in settling compensation for the families of those missing."*

2. India's first woman prisoner, Shabnam to be hanged: Minor Son seeks mercy from President.

The son of a death row convict in Uttar Pradesh's Amroha has appealed to President Ram Nath Kovind to commute her death sentence, seeking "forgiveness" for his mother convicted of murdering her family in 2008.

"I love my mother. I am making an appeal to the President that her death sentence is commuted. It is up to the President to forgive her. But I have faith," Mohammed Taj was quoted as saying by news agency ANI.

According to the agency, Taj has been living with his custodian parent Usman Saifi in the Sushila Vihar colony in Bulandshahr.

Shabnam, a school teacher, and her lover Saleem were sentenced to death for sedating seven members of her family and slitting their throats on April 14, 2008. Among the dead was a 10-month-old child, who was strangled. Shabnam's family was against her relationship with Saleem, a Class 6 dropout due to the difference in their social and economic status.

Shabnam and Saleem were arrested within days of the murders and were sentenced to death by the trial court in 2010, which was upheld by the Supreme Court in 2015. Their mercy plea was rejected by Rashtrapati Bhavan and the Supreme Court also turned down their review petitions in January last year, saying that Salim had "meticulously executed the killing after Shabnam administered sleeping pills in tea".

The death warrant about the date and time of hanging has not been issued by Amroha court. Authorities in jail in Mathura are preparing for the possibility she may be ordered to be hanged soon. Shabnam could be the first woman convict to be hanged after Independence if the death sentence is carried out as expected by jail officials.

More than 750 men have been sent to the gallows and only eight of them during the last two decades, data compiled by the research organisation Project 39A of National Law University, Delhi shows. There were nearly 404 death row convicts as of December 31, 2020, figures compiled by the group show. A 2016 survey had indicated there were only 12 women on death row.

3. Special Marriage Act and anti-conversion Ordinance: Cause and effect relationship, judgment by Allahabad High Court, and a few suggestions

Though the Special Marriage Act and the so-called "love-jihad laws" seemingly operate in different fields, there is an uncanny cause and effect relationship between them.

The judgment dated January 12 passed by the Allahabad High Court is historic in many ways. It is the first judgment which dealt with and tried to iron out the legal asymmetry which had

crept into the *Special Marriage Act (SMA), 1954* with the passage of time. It has brought the SMA in tune with the present times and also with the recent judgments by the Supreme Court. Though the Court was dealing with a habeas corpus petition, which has a limited scope, the Single Judge did not let him be bogged down by procedural niceties and decided a challenging issue concerning constitutional rights of individuals and their right to make personal choices without intervention of the State.

In its judgment, the Court held Section 6 and 7 of SMA to be directory in nature and that it will be optional for couples to have the notice of their marriage published. In case they choose against publication of notice, then the marriage officer shall proceed to solemnize their marriage, the Court held.

Even the Supreme Court is seized of similar matter. On September 16, 2020, it issued notice in a petition filed by Nandini Praveen, a law student from Kerala, challenging Sections 6(2), 6(3), 7, 8, 9 and 10 of the Special Marriage Act primarily on the ground that these sections violate the right to privacy of marrying couples.

On January 6, the Supreme Court issued notice in a petition challenging the constitutional validity of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance and the Uttarakhand Freedom of Religion Act. However, it declined to entertain a transfer petition filed by the Uttar Pradesh government seeking transfer of cases pending before the Allahabad High Court challenging the Ordinance.

From the public discourse of the leaders in these states, it can unmistakably be made out that these laws have primarily been enacted to stop inter-religious marriages.

Though SMA and the so-called "love-jihad laws" seemingly operate in different fields, there is an uncanny cause and effect relationship between them. SMA was enacted as a secular law which allows any two persons to marry regardless of caste or religion, but the provisions are such that a marriage can take place only with the approval of the respective families of the couple. The mandatory publication of notice to marry and 30 days waiting period for objections from the general public affords sufficient time to the parents as well as vigilante groups to ensure that a marriage does not take place. While making all the personal details of the couple public, the 30 day wait also takes its toll on the life and liberty of the couple.

On the other hand, if one partner agrees to convert to the religion of the other, then the marriage can be solemnized as per the rites of that religion within a few hours and that is a perfectly valid marriage. Given the nature of provisions of the SMA, inter-faith couples are virtually left with no choice but to convert in order to marry. Now, the motive of the governments is to foreclose even this mode through the enactment of these laws. The State of Himachal Pradesh

already has a similar law, while the States of Haryana and Madhya Pradesh are in the process of enacting a similar law.

Right to privacy and right to marry.

- A nine judge Bench of Supreme Court in its judgment in ***KS Puttaswamy v. Union of India*** held the right to privacy is a fundamental right of citizens of India and thus propounded a new Constitutional jurisprudence. In the very next year, the Supreme Court added new dimensions to the right to privacy. In ***Navtej Singh Johar vs. Union of India***, it held that consensual homosexual sex between two adults is not illegal. In *Joseph Shine vs. Union of India,* it struck down Section 497 of the Indian Penal Code and decriminalized adultery. These judgments gave a sense to the citizens that India has entered into a new era of personal freedom, where the State shall have minimal interference in the matters of personal choice and discretion.
- Further, in ***Shakti Vahini v. Union of India*** **(2018)** and ***Shafin Jahan v. Ashokan KM*** **(2018),** the apex court held that the right of two adults to get married is recognized under Articles 19 and 21 of the Constitution.

Allahabad High Court judgment

- The judgment by the Allahabad High Court strikes at the root cause which forces inter-faith couples to take the conversion route. Whatever the political rhetoric may be, the fact is that these youngsters are drawn towards each other for reasons which have nothing to do with religion. The directions given in the judgment, if implemented properly, will render the entire effort of obsessively promulgating and enforcing "love-jihad laws" futile and inter-faith couples will be free from the trap being laid by the governments.
- The Uttar Pradesh government, which has followed its Hindutva agenda with missionary zeal, may not let go of the things so easily and there is a good chance that the judgment will be challenged before the Division Bench and the matter may finally end up in the Supreme Court.
- It is in this context the *prima facie* observations of Chief Justice of India SA Bobde, while issuing notice in the petition filed by Nandini Praveen, become relevant. He had said,

  "Your plea is that this is a violation of the privacy of the couples. But imagine if children run away to get married, how the parents would know about the whereabouts of their children? If wife runs away, how would the husband come to know?

For example, if one or both persons intending to get married have run away from their respective spouses, should it be kept secret by the marriage officer, who has an obligation under law to inquire into the legitimacy of the alliance by inviting objections from the public by putting up the information on the notice board? The moment that provision is deleted, it could lead to abuse of existing marriages. You must also suggest a solution."

4. **Section 21 of Insolvency & Bankruptcy Code: Supreme Court provides purposive interpretation to exclude ex-related parties from CoC.**

   This decision is a game changer inasmuch as it reduces the scope of unscrupulous parties staking a claim in the CoC based on collusive transactions.

   - The Supreme Court in *Phoenix Arc Private Limited v. Spade Financial Services Limited*, recently decided an interesting and pertinent issue under the Insolvency & Bankruptcy Code, 2016 (IBC). The issue was related to the interpretation of Section 21 of the Code, which provides for constitution of the Committee of Creditors (CoC).
   - Section 21(2) provides that the CoC shall comprise all financial creditors. However, the proviso to Section 21(2) states, inter alia, that a financial creditor shall not have the right of representation, participation or voting in a CoC meeting if it is a related party of the corporate debtor.
   - The Supreme Court was called upon to decide whether the status of a related party is to be tested in "*praesenti*" or whether it relates back to the transaction through which the financial debt was incurred.

Brief factual background

The case presented a rather peculiar and convoluted factual matrix. The corporate debtor was controlled by Mr. X. Mr. X had a very close associate, Mr. A, who held numerous positions in Mr. X's group of companies, and had a long-standing relationship with Mr. X. Interestingly, it was Mr. A who had initially incorporated the corporate debtor with his own capital and continued to control it for a substantial period of time. Mr. A later transferred control of the corporate debtor as well as the directorship to Mr. X.

Around the same time, Spade and AAA, the companies floated by Mr. A entered into various transactions, inter-corporate deposits and MOUs which had the effect of the corporate debtor borrowing money from Spade and AAA. During the relevant transactions with Spade and AAA, Mr. A held the position of Consultant or Strategic Advisor to the corporate debtor, and later became the Group CEO of the Mr. X Group of Companies.

Thus, despite such a convoluted arrangement, it can easily be appreciated that both Mr. and Mr. X were intricately related in the business of the corporate debtor. Further, both Spade and AAA had deeply entrenched financial interests in the corporate debtor owing to Mr. A. All the formal relationships were severed prior to the commencement of the Corporate Insolvency Resolution Process (CIRP).

Supreme Court's decision

The Supreme Court returned a specific finding that AAA and Spade were related parties within the meaning of Section 5(24) of the IBC at the time when the alleged financial debt was created. In this context, the Supreme Court answered various issues based on the peculiar facts of the case.

However, it was faced with an obstacle in the form of literal interpretation of the proviso to Section 21(2). In order to get over this difficulty (rightly so), the Supreme Court relied on the purposive interpretation of the proviso. Hence, it held that in case the related party financial creditor divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating in the CoC and sabotaging the CIRP, the first proviso to Section 21(2) will be applicable.

The way forward

Balanced view: The Supreme Court was presented with two extreme views – the literal view and the purposive view. However, it has rightly chosen the middle path by stating that the default rule under the first proviso to Section 21(2) is that only those financial creditors that are related parties *in praesenti* would be debarred from the CoC. However, those related party financial creditors that cease to be related parties in order to circumvent the exclusion under the first proviso to Section 21(2), should also be considered as being covered by the exclusion.

Commercial transaction is 'debt' and not collusive/fraudulent debt: This decision mandates another level of check to ascertain whether an actual financial debt by an independent creditor stands against the corporate debtor. In doing so, the purported debt and its circumstances must be examined.

Attending circumstances become important: To know the true nature of transactions entered into between financial creditors and the corporate debtor, it is imperative that the status, influence, and inter-relationship amongst the parties must be examined, inter-alia, for the period the transactions were entered into. In this regard, the close relationship of key managerial persons is also quintessential.

Purposive interpretation of IBC provisions: In consideration of the above case, purposeful interpretation of S. 21(2) and S.5 (24) of the Code must be done by lifting the corporate veil,

to see the real actors and beneficiaries behind the transactions. Therefore, the rigour ought to be much more as the resultant impact of a related party on the CoC would consequentially impinge upon the procedural integrity and compromise the commercial wisdom of the CoC.

Need for amendment to IBC or the regulations: Since this decision now provides an additional check, it is imperative for the resolution professional to verify the antecedents of the debt and the status of the parties to the transactions. Similar to the requirement of tendering an affidavit of compliance with Section 29A, perhaps the regulations can be amended to mandate that all financial creditors shall disclose the degree of relation with the corporate debtor and the commercial nature of the transaction on an affidavit.

Finally, this decision is a game changer inasmuch as it reduces the scope of unscrupulous parties staking a claim in the CoC based on collusive transactions while escaping the first proviso due to fraudulent devices. This is also a rare decision by a court where an economic legislation has been interpreted to introduce an additional rigour which was not present in the text of the provision. As such, it has the effect of furthering the object of the IBC and also benefitting the banking industry.

5. UBER drivers are "workers" entitled to minimum wage, paid annual leave, other workers' rights: UK Supreme Court

The Court has rejected Uber London's stance that the drivers are not "workers" and that they are independent contractors with Uber as their booking agent.

In a significant ruling, the Supreme Court of the United Kingdom (UK) has ruled that Uber drivers are 'workers', **rejecting** Uber London's stance that the drivers are only independent contractors with Uber as their booking agent (**Uber BV and others v. Aslam and others)**.

6. Upholding Sanctity of Arbitral Process

Courts ought to be very circumspect in interfering with the arbitral process, especially when exercising their powers under Articles 226 and 227 of the Constitution.

A three-judge bench of the Supreme Court, recently, reiterated that Courts ought to be very circumspect in interfering with the arbitral process, especially when exercising their powers under Articles 226 and 227 of the Constitution.

In its judgment titled Bhaven Construction through ***Authorised Signatory Premjibhai K. Shah v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd. & Anr. [2021 SCC OnLine SC 8],*** the Supreme Court has once again affirmed that, the mandate of the UNCITRAL model law on arbitration, as reflected in the preamble to the Arbitration and Conciliation Act, 1996 (Act) is to provide a "unified legal framework for the fair and efficient settlement of disputes" in which the supervisory role of Courts is minimal. As a practitioner, one hopes that this dictum

is universally followed as that will bolster our attempts as a nation to make India a major hub for commercial arbitrations.

In this decision, the Supreme Court also shed light on various other legal principles but those are best appreciated if brief facts involved in the case before Court are first noted.

In Bhaven Construction, the parties had entered into a contract under which the appellant was to manufacture and supply bricks to the respondent. The said contract included an arbitration clause, which stipulated that the arbitration would be conducted in accordance with the provisions of the Indian Arbitration Act, 1940 or any statutory modification thereto. Disputes arose between the parties and the appellant issued a notice seeking appointment of the sole arbitrator as stipulated in the contract.

The respondent replied to the said notice for appointment and contended that in light of the fact that the State of Gujarat had passed the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 (the Gujarat Act), the disputes between the parties could be adjudicated only in accordance with the aforesaid statute. The respondent also contended that the appellants claim was time-barred.

Despite the respondent raising the aforesaid contentions, the appellant, in keeping with the contractual provisions, appointed a sole arbitrator. The respondent preferred an application under Section 16 of the Act, challenging the sole arbitrator's jurisdiction, which application the arbitrator rejected in keeping with his powers under the said section. Against this rejection order, the respondent preferred a 'Special Civil Application', under Articles 226 and 227, before the High Court of Gujarat which was dismissed by the Single Judge.

The Single Judge held that in light of the decisions in ***Konkan Railway Corporation Limited v. Mehul Construction Company [(2000) 7 SCC 201]*** and ***SBP & Co. v. Patel Engineering Ltd. [(2005) 8 SCC 618]*** a petition under Articles 226 and 227, against the order of the arbitrator, was not maintainable and could not be entertained. The Single Judge confirmed that the only remedy available to the respondent was to wait till the award was passed by the sole arbitrator and challenge the same under Section 34 of the Act.

Aggrieved, the respondent preferred a Letters Patent Appeal before the High Court of Gujarat. Whilst allowing the appeal, the Division Bench held that the contract between the parties was a "works contract" and would be governed by the Gujarat Act, and the appellant could not have appointed a sole arbitrator.

The Division Bench further held that the appellant could not contend that as the arbitrator had already been appointed and exercised his powers, the only recourse open to the respondent

would be to challenge the ***award under Section 34 of the Act***. Against such order of the Division Bench, the appellant had approached the Supreme Court.

Upon hearing the parties, the Supreme Court framed for itself the question "whether the arbitral process could be interfered under Article 226/227 of the Constitution, and under what circumstance?"

In answering the above, the Court noted that the Act was a code in itself and, as stipulated in the non-obstante clause in ***Section 5,*** the intention of the legislature was to adopt the ***UNCITRAL Model Law and Rules***, so as to reduce excessive judicial interference. The Court further observed that the Act itself laid-down the procedure and forum for the appointment of an arbitrator to be challenged, and the framework of the Act left minimal scope for extra statutory mechanisms of adjudication. Whilst making such an observation, the Court clarified that a legislative enactment could not curtail a Constitutional right.

However, it observed, placing reliance on the case titled ***Nivedita Sharma v. Cellular Operators Association of India [(2011) 14 SCC 337]*** that petitions under Article 226 could not be entertained as a matter of course, especially when a statutory forum was created by law for redressal of grievances and provided the aggrieved person an effective alternative remedy. Consequently, a writ petition, under Articles 226 and 227 should not be entertained ignoring the statutory dispensation.

The Court thus held that the power of a judge, to exercise discretion permitting judicial interference beyond the procedure established under the enactment, must be exercised in "exceptional rarity, wherein one party is left remediless under the statute or a clear 'bad faith' shown by one of the parties". The Court opined that this high standard was in terms of the legislative intent to make arbitration "fair and effective."

It would also help to note that the Supreme Court has previously, in the case of ***Michigan Rubber (India) Ltd. v. State of Karnataka*** [(2012) 8 SCC 216], held that "court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

> **(i) Whether the process adopted, or decision made by the authority is mala fide or intended to favour someone;** or whether the process adopted, or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"? and
>
> **(ii) "Whether the public interest is affected"?**

The Court held that, if the answers to the above questions are in the negative, then there should be no interference under Article 226. Separately, the Court has previously in the case of ***Kerala State Electricity Board & Anr. v. Kurien E. Kalathil & Ors.,*** also noted that interpretation of contracts was not amenable to writ jurisdiction [AIR 2000 SC 2573].

The three-judge bench also referred to the observations made in M/s. Deep Industries Limited v. Oil and Natural Gas Corporation Limited [(2019) SCC Online SC 1602], in which the Supreme Court had dealt with the interrelation between section 5 of the Act and Article 227 of the Constitution, to hold that the statutory mandate of the Act provided for only "one bite at the cherry."

However, it could not be lost sight of that Article 227 being a Constitutional provision was unaffected by section 5 of the Act. Thus, whilst a petition under Article 227 could be filed against a judgment allowing or dismissing first appeals under section 37, the High Court should be "extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated…so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction."

The Supreme Court also noted that in the case before it, the respondent had not been able to show exceptional circumstances or "bad faith." And in any event, the arbitrator had passed a final award, which award itself was under challenge and pending in separate proceedings, under section 34 of the Act, and hence the Supreme Court concluded that the High Court "should not have used its inherent power to interject the arbitral process at this stage."

Notably, the Court observed that arbitrations are modelled upon time limitations and referred to the "principle of unbreakability" as laid down in ***P. Radha Bai v. P. Ashok Kumar*** [(2019) 13 SCC 445], to opine that if the "Courts are allowed to interfere with the arbitral process beyond the ambit of the enactment, then the efficiency of the process will be diminished."

In conclusion, Supreme Court's decision in Bhaven Construction once again makes clear that under the jurisprudential doctrine of kompetenz-kompetenz, the sole arbitrator or an arbitral tribunal is empowered to adjudicate on, and determine, its own jurisdiction. This is statutorily enshrined in Section 16 of the Act and thus any challenge to the jurisdiction of the arbitrator or tribunal would, in the first instance, necessarily have to be determined by the arbitrator or tribunal themselves and can only subsequently be challenged in proceedings under Section 34 upon the passing of a final award.

In this case, the Apex Court has also noted that the arbitral process is modelled upon time limitations and the sanctity of the process or the timeline should under no circumstances be

compromised by a party adopting filibuster tactics of initiating parallel proceedings. One is hopeful that, going forward, this three-judge bench decision will act as a deterrent for unscrupulous litigants who attempt to undermine the legitimacy of arbitration as an effective dispute resolution mechanism and will stop regarding it as just being an alternate process.

After all, in the words of **William Howard Taft, the 27th president of the United States (1909–1913) and the tenth Chief Justice of the United States** (1921–1930), the only person to have held both offices, ***"The development of the doctrine of international arbitration, considered from the standpoint of its ultimate benefits to the human race, is the most vital movement of modern times. In its relation to the well-being of the men and women of this and ensuing generations, it exceeds in importance the proper solution of various economic problems which are constant themes of legislative discussion and enactment***.

ABOUT ALL INDIA LEGAL FORUM

All India Legal Forum (AILF), the brainchild of several legal luminaries and eminent personalities across the country and the globe, is a dream online platform which aims at proliferating legal knowledge and providing an ingenious understanding and cognizance of various fields of law, simultaneously aiming to generate diverse social, political, legal and constitutional discourse on law-related topics, making sure that legal knowledge penetrates to every nook and corner of the ever-growing legal fraternity. AILF also houses a blog that addresses contemporary issues in any field of law. We at AILF don't just publish blogs but we also guide the authors when their research paper is not up to the mark.

AIM OF AILF

Legal Education is regarded central in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial. All India legal Forum aims to bring out a platform to provide resourceful insight on law-related topics for the ever-growing legal fraternity. Through ambitious and studious legal brains across the country, AILF aims at providing valuable contributions on developments in the legal field and contemporary assessment of issues, putting forward quality legal content for the masses. We provide constant legal updates and make quality law notes available for law students across the country.

PEOPLE BEHIND AILF

The biggest asset of AILF is our team of more than 400 law students across the country to tackle basic problems which a legal researcher encounters in day to day life. Putting forward the basic tools and ideas needed for researching and drafting, AILF seeks to help and encourage people to write research papers efficiently and effectively. AILF is not just a blog but a platform to make legal research effortless and undemanding. We at AILF consider dedication and determination as ultimate requisition to be a good researcher and we thrive to instill these values.

AILF
ALL INDIA LEGAL FORUM
WHERE LAW MEETS QUALITY

www.ailf.in