



# ALL INDIA LEGAL FORUM



## Corporate Weekly

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**ALL INDIA LEGAL FORUM**

**Corporate weekly**

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### Forward

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 in 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 perfect case compilation. It's not just for the legal fraternity but for anyone who has an interest in the field of law.

**By Ishita Arora**

**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're glad to be a part of the All India Forum. Here's an introduction to my team:

**Senior Manager:** Ishita Arora

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WHERE LAW MEETS QUALITY

**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.



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**CORPORATE NEWS:****(18<sup>th</sup> and 19<sup>th</sup> MAY)****1. PolicyBazaar fined for sending SMS in violation of IRDAI norms**

Policybazaar Insurance Web Aggregator Pvt. Ltd. had sent an SMS to their customers that the “life insurance prices are set to increase from 1st April save upto Rs 1.65 lakhs by buying Term plan today.” Following this event, the reason was sought from Policybazaar by an email dated 07th April, 2020 by the Insurance regulatory and development authority of India (IRDAI) regarding this. Policybazaar was also directed to prevent this SMS forthwith and to present the rationale of the advertisement. The reply for it was submitted by Policybazaar vide email dated 8th April, 2020. This was allegedly in violation of IRDAI (Insurance Web Aggregators) Regulations, 2017 and IRDA (Insurance Advertisements and

Disclosure) Regulation, 2000 as observed by IRDAI.

Policybazaar claimed that it had sent SMS supported the knowledge and price charts provided by HDFC Life and TATA AIA Life which showed the rise in premium rates for insurance plan from 16th April, 2020 and this was also supported by a lot of facts.

However, it is noted that all Life Insurers didn't increase their premium rates and also the increase was confined only to some life Insurers.

Ergo, the SMS would have created gratuitous anxiety and was completely avoidable.

Therefore, taking the actual fact that the SMS was sent to about ten lakh specific customers of Policybazaar into consideration, the insurance web aggregator Policybazaar was levied a penalty of Rs twenty four lakh based on the number of days the SMS was in circulation i.e. from 15th March, 2020 to 7th April, 2020 for this violation.

**2. Amazon further extends the moratorium on its facial recognition tech being available for police use.**

Amazon.com Inc. has indefinitely extended the pause on police use of its facial recognition software because of its major

glitch of not having the ability to correctly recognize people with dark complexion.

Amazon announced its yearlong pause last June right after experiments showed that the algorithms sometimes flounder to spot people of colour sparked concerns that African Americans could possibly be wrongly suggested as criminal suspects.



Separately, the ACLU tested the software on members of Congress and established that it falsely matched 28 of them with mugshots (photographs taken by the police of someone who has been arrested), disproportionately.

Amazon defended selling Rekognition to law enforcement before, but pressure on the corporate intensified after a January 2019 study by two artificial intelligence researchers who showed that the software made more mistakes when used on people with darker skin, particularly women.

WHERE LAW MEETS QUALITY

## **CORPORATE NEWS**

**(22<sup>nd</sup> AND 23<sup>rd</sup> May,2021)**

**22<sup>nd</sup> May 2021**

### **1. RBI's higher payout to help Govt tide over revenue losses from lockdowns: Analysts**

The reserve bank of India approved the transfer of Rs 99,122 Crore as surplus to the Central government for the accounting period of nine months ended march 31 at the meeting of Central Board of Directors of RBI.



With the change in the Reserve Bank's accounting year to April-March (earlier July-June), the Board discussed the working of the RBI during the transition period of nine months (July 2020-March 2021).

Nature of the arrangement between the government and RBI on the transfer of surplus or profits:

- The RBI isn't a commercial organisation like the banks or other companies that are owned or controlled by the government – it does not, as such, pay a “dividend” to the owner out of the profits it generates.
- Although RBI was promoted as a private shareholders' bank in 1935

with a paid up capital of Rs 5 crore, the government nationalised it in January 1949, making the sovereign its “owner”.

- Thus, the RBI transfer the “surplus” – that is, the excess of income over expenditure – to the government, in accordance the Reserve Bank of India Act, 1934.
- RBI does it after making provision for bad and doubtful debts, depreciation in assets, contributions to staff and superannuation fund [and for all other matters for which].
- The Central Board of the RBI does this in early August, after the July-June accounting year is over.
- RBI does not pay income tax or any other tax to the government, including the wealth tax.

### **2.SBI Q4 profit jumps 80 pc to Rs 6,451 crores on higher interest income, lower provisioning.**



The country's largest lender State Bank of India (SBI) reported an 80.15 per cent

jump in its standalone profit after tax (PAT) of Rs 6,451 crore in the three months to March 2021, aided by higher interest income and lower provisioning for bad loans.

The lender had posted a profit after tax of Rs 3,581 crore in the same quarter of FY20. For the full year, its standalone PAT grew by 41 per cent to Rs 20,410 crore as against Rs 14,488 crore in FY20. Its chairman Dinesh Khara told reporters- “We have further consolidated our performance in the previous quarter (Q4 FY21) both in terms of profitability and asset quality.

We have been able to deliver consistent improvement in all the areas of profitability despite the disruptions caused by the pandemic.

### **3.Sensex zooms 976 pts as financial stocks pump market mood**

Sensex skyrocketed 976 points on Friday, led by gains in index heavyweights HDFC twins, ICICI Bank and SBI as steady earnings reported by key financial stocks lifted investor sentiment.

The 30-share BSE index ended 975.62 points or 1.97 per cent higher at 50,540.48, and the broader NSE Nifty soared 269.25 points or 1.81 per cent to 15,175.30.

HDFC Bank was the top gainer in the Sensex pack, rallying over 4 per cent, followed by SBI which zoomed after the lender posted robust quarterly earnings.



The country’s largest lender reported an 80 per cent surge in standalone net profit at Rs 6,450.75 crore for the fourth quarter ended March 2021, aided by decline in bad loans. On the other hand, PowerGrid and Dr Reddy’s were the laggards.

Further, assumption of second wave of COVID-19 to peak by the end of May or mid of June holds true and adverse impact of second wave should not be felt beyond Q1 FY22, he noted, adding that a visible decline in daily caseload has offered comfort to investors.

Elsewhere in Asia, bourses in Shanghai and Seoul ended on a negative note, while Tokyo and Hong Kong closed with gains.

23<sup>rd</sup> May, 2021

### **1.Rising prices likely to moderate white goods demand: MOFSL**

Rising prices due to high commodity costs is expected to moderate demand for white goods, said Motilal Oswal Financial Services (MOFSL).



At present, copper, plastics, steel, and aluminium form the key commodity inputs for the white goods sector.

In 2HFY21, almost all commodities were at multi-year high levels - copper, steel, aluminium, and polyprop were up 44 per cent, 38 per cent, 22 per cent and 29 per cent, respectively.

According to MOFSL, price increase of 5-10 per cent by companies across most categories have somewhat cushioned gross margins but will dampen the demand.”The primary reasons for this are the large ticket sizes of the product categories vis-a-vis other product categories and the availability of substitutes,” the report said.”

## **2.Start-up business to deliver necessities on the doorstep**

Covid-19 has brought several businesses to its knees. But it has also given small opportunities to hungry entrepreneurs, keen to display their social conscience. With companies declaring a work-from-home model and the novel corona virus pandemic spreading its tentacles, BA graduate Hemlata Kushwaha from Kolkata has taken up the opportunity to provide ‘pick up and drop service’ to take the necessities at the doorstep of the people of the city.

‘Pick up and drop facility’ has become an essential service for consumers all across the country. The service allows one to deliver or receive anything, be it lunch boxes, documents, laundry, items for repair, shoes, stationery and other materials from one location to another from anywhere in their city. It also allows one to buy stuff from beetle shops, supermarkets, pharmacies and home-cooked means making the daily errands easier. Those running a business can also opt for deliveries of office documents as well.



Kolkata based start-up ‘Delivery Pigeon’ - a self-funded start-up - provides ‘same day pick and drop services’ to working professionals, small businesses and senior citizens at their doorsteps within city limits.

Functioning from March 2021, “the start-up currently gets 200 orders per day. The number is steadily increasing due to an increase in Covid cases. We currently operate with more than 180 provider partners all over the city,” said 45-year-old Kushwaha.

Efforts are on to make Delivery Pigeon a key player in the hyperlocal delivery space in Kolkata.

### **3.Hero MotoCorp to resume production at all plants from May 24**

Two-wheeler market leader Hero MotoCorp on Saturday said it will resume production at all its manufacturing plants in India from coming Monday after temporarily shutting operations due to the coronavirus pandemic.



In the beginning of this week, the company had resumed partial operations at its three plants at Gurugram and Dharuhera in Haryana and Haridwar in Uttarakhand.

It had halted operations temporarily at all of its six plants in India in a staggered manner for four days from April 22 to May 2, which was then extended till May 16.

Hero MotoCorp is “gearing up towards a gradual resumption of operations by starting production at all its manufacturing plants in India from Monday, May 24”, the company said in a statement.

“The other plants of Hero MotoCorp in India – Neemrana in Rajasthan, Halol in

Gujarat and Chittoor in Andhra Pradesh, will also start single shift operations from May 24,” it added. Production in single shift had already commenced at three of its plants Gurugram and Dharuhera in Haryana and at Haridwar, Uttarakhand from May 17.



## ARTICALS

### **Analysis on Indian law of indemnity and English law of indemnity**

-Bhoomi Patel

#### **Introduction:**

In general parlance indemnity is an obligation of compensating the loss occurred by promisor himself or any other person. Indemnity is an English word which originated from Latin word 'indemnitas' which means unharmed or suffering no loss. The concept of indemnity has arisen from the case of Adamson v/s Jarvis (1827). Here in this case Mr. Adamson who was auctioneer sale few livestock by the order of Jarvis. After the sale of livestock it comes out that the respondent was not a true owner of those livestock. Now Adamson had to pay damages to true owner but as he was unaware of the fact he was not liable to pay those damages but he compensate the damages to the true owner now plaintiff demand for damages from Jarvis that he paid. So the questions comes out that whether contract of indemnity should implied or expressed.



Expressed contract divided into furthermore two type of contract: oral and written, and implied contract don't required any actions but situations forms the contract. Court held that Jarvis has to pay all the damages to plaintiff Adamson and all the loss/injuries that he has suffered. Because what Adamson did was his obligation as an auctioneer but Jarvis was not an owner so here he is liable for directing Adamson wrongly. So, indemnification is a legal obligation of indemnifier, that he is directly obligated to compensate losses.

#### **Indian law of indemnity:**

In India the contract of indemnity is defined under the Indian contract Act,1872 in section 124. According to that in India very meaning of indemnity is saving some from loses occurred by himself or any other person. In India, contract of indemnity arisen from the case Osman Jamal & sons Ltd v/s Gopal Pursotam. After this case it India got the expressed way of contract of indemnity. In Indian law rights of indemnity holders is defined under section 125

which includes all the damages , all the costs and all the sum which indemnifier have to pay to indemnity holder. In Indian system law of indemnity dealt under substantive law that is Indian contract act,1872 as well as procedural law that is civil procedural code 1908, and matters are dealt in civil court.

### **English law of indemnity:**

In UK law indemnity is defined as saving someone from suffering any loses that also includes all the external causes. In English law after case of Adamson v/s Jarvis it held that contract of indemnity is not just a expressed contract but it is also an implied contract. In UK there are detailed provisions on contract of indemnity. In English law rights of indemnity holder are : right to recover the damages during proceedings, right to recover the cost of a suit initiated or defended on the instructions of indemnifier and right to recover lost in compromise.

### **Analysis:**

- 1) Here as per all the information about both the laws it's clear that English law has a wider view then Indian law because in India they only focuses on a persons who can make loses but in English law it include all the person and all the external factors that includes any natural cause or any accident .
- 2) In English law they not only considered expressed way of contract but they also considered implied contract of indemnity. But in India they only considered expressed contract of indemnity.
- 3) As we know now that Indian law of indemnity and English law of indemnity has almost same rights for indemnifier but in English law there is specifically mentioned that it should be on the instruction of indemnifier.
- 4) Hence for we can say that UK system is more codified and reliable than that of Indian system pertaining to law of indemnity.

Conclusion

### **Conclusion:**

The ultimate analysis of the law of indemnity between India and UK legal system comes out through the given points. Indian system has little narrow scope then that of UK system. In Indian scenario, only human factor is considered for causing loss but in UK system there are several other factors which are considered in the implication of law of indemnity. Any other accident or event is not considered apart from human agency in loss occurred and indemnity concept in Indian system. It can also be said that UK has a special provision for law of indemnity while India does not provide any special provisions for the application of law of indemnity. Even several different judgements have been made in regard to the same context. Therefore we can say that UK system and law is more specific and reliable. Even we can say that Indian provisions for indemnity are very much reliable on UK provisions.

UK system has enhance provisions like indemnity is also considering in some aspects the future chances of causing loss while when we talk about Indian system only the past considerations are done in order to calculate the damages in case of contract of indemnity. In nutshell, this is the clinching analysis of the Indian law of indemnity and England law of indemnity.



## IBC V/S Rights of Unregistered Partnerships

~Harish Sharma

### Introduction:

The Insolvency and Bankruptcy Code, 2016 (IBC) is the bankruptcy law of India which seeks to consolidate the existing structure by creating a single law for insolvency and bankruptcy. The Insolvency and Bankruptcy Code, 2015 was launched in Lok Sabha in December 2015. It was passed by Lok Sabha on 5 May 2016 and by Rajya Sabha on 11 May 2016. No member of an unregistered firm can enforce his rights under the partnership contract against either the firm or any present or past member of it, nor can the firm sue its customers on their contracts. The firm remains liable to be legal action by persons outside it, and cannot entertain a set-off.



It is necessary to address a particular section that is present within the Indian Partnership Act of 1932, that is, section 69(2).

### Section 69 of the Partnership Act reads:

69. Effect of non-registration.

(1) No ensemble to impose a right appear from a contract or honour with by this Act shall be get off the ground in any court by or in the interests of any person prosecute as a partner in a firm against the firm or any individual alleged to be or to have been a collaborator in the firm unless the firm is registered and the person in the interests of is or has been shown in the listing of Firms as a partner in the firm:

(2) No ensemble to impose a right appear from a contract shall be get off the ground in any court by or on in the interests of a firm against any intermediary unless the firm is record and the persons suing are or have been shown in the Register of firms as colleague in the firms.

Through a state alteration, the State of Maharashtra introduced sub-section (2A). This new sub-section read:

(2A) No ensemble to impose any right for the cessation of a firm or for break down

of a deliquesce firm or any right or power to realize the possessions of a liquefy firm shall be get off the ground in any court by or on in the interests of any person suing as a colleague in a firm against the firm or any person alleged to be or have been a partner in the firm, unless the firm is registered and the person suing is or has been shown in the apprehend of firm as a associate in the firm:

Provided that the requirement of enrolment of firm under this Sub-section shall not apply to the legal action or proceedings get off the ground by the beneficiary officer of the deceased associate of a firm for accounts of a deliquesce firm or to realize the property of a deliquesce establishment.

Till the introduction of sub-section (2A), a partner in a establishment could file a legal action for disestablishment of an unregistered associate firm, or for accounts of the dissolved firm, or to recover the properties of the deliquesce firm. With the coming into force of the sub-section in 1985, a partner in an not officially recognized and recorded associate firm in Maharashtra could not file even those types of legal actions. The question regarding the constitutionality of the sub-section was moot to the Bombay High Court, which upheld the section. An appeal was plump for against this judgment before the Supreme Court.

The Supreme Court (Markandey Katju and G.S. Singhvi JJ.) struck down the impeach sub-section (2A) as violative of Articles 14, 19(1)(g) and 300A of the Constitution.

The Court reasoned that not allowing a associate to file a legal action for accounts and recuperation of property essentially disadvantaged a associate of an unregistered firm of his right to property in the firm without any compensation. Therefore, the sub-section was in violation of Article 300A of the Constitution (“No person shall be disadvantaged of his property save by authority of law”).



## 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.



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