

CONDUCTING ELECTION DURING PANDEMIC

COVID-19 HAS NOT BEEN LESS THAN A NIGHTMARE FOR US. IT HAS CREATED HAVOC IN ALMOST ALL SPHERES OF LIFE.

For Instance - Elections. What is possible to live in a democracy without having an Elected Government? Many State Assemblies are having elections due in this year and also some states have conducted bye-elections in such gruesome conditions. The recent case of Maharashtra where Uddhav Thackrey became the Chief Minister without being elected either as an MLA or an MLC could have raised the question of rationality and the practices of government formation. Any member needs to become a member of either house of bi-cameral legislature or in case single house then State Legislative Assembly member within a period of six months otherwise he cannot continue in the designated post.

Election Commission earlier postponed the elections indefinitely under Article 324 of Indian Constitution and section 153 of The Representation of the People Act, 1951. Had it been the case of double application of Article 164(4) would not have been possible because Supreme Court in *S.R. Chaudhary v. State of Punjab and Others* had declared that it would be tantamount to sub-version of principle of representative government.

Article 171 (3) and Article 171 (5) empowers Governor to nominate any individual with special knowledge or practical experience in the fields of literature, social service, science, art, co-operative movement. Election Commission took a big responsibility in organizing elections to State Legislative Council during pandemic which have also proved as a litmus test on the capabilities of the Election Commission. However, State Legislative Council elections were to be a cakewalk for election commission as it has the necessary experience and the guidelines instruction will be easy as the number of people casting their votes will be very limited, even lesser than the President's election. Instead we should take an example of South



Conducting Elections During Pandemic

Korea which has been an inspiration as it has conducted National elections with a population of around 44 million voters with the maximum voter turnout in 28 years possible. The major cause of concern is the upcoming elections in states of Bihar and West Bengal which are some of the most populous and backward states with a large proportion of poverty and malnutrition. If any breakout of the deadly virus happens during polling, then the state machinery does not have strong enough infrastructure to handle even half the possible number of cases. Thus, it is in itself a big cause of concern. According to the rules, Rajya Sabha and the State Legislative Council's elections can be postponed indefinitely but this is not the case with State Legislative Assemblies as it can be postponed for 6 months only. Also we should understand that postponement is not an option as it leads down the spirit of democracy. We need to cope up with the deadly circumstances and try to innovate for such future situations. A fool-proof plan like that of South Korea is necessary and needs to be proposed as soon as possible by the election commission for this purpose. It can include the following points-

- Disinfecting Polling Centers
- Voters must follow social distancing norms
- They should use PPE Kits like mask, hand gloves etc., for both voters and officers
- Mandatory temperature checks at all the booths
- Separate booth for person with higher temperatures than 99.5 degree Fahrenheit
- Covid patients can give a postal ballot

- Postal ballots for old age people so that they do not have to come in contact with the mass population to cast their vote.

Self-Quarantine voters will also be allowed to cast their vote after 6 p.m. or at special times

These provisions need to be strictly followed and with **modification of India specific nature as the population of South Korea is even less than the single state of Bihar (5.5 crore vis-a-vis 9.9 crore of Bihar)** it can also consider proxy voting for older voters and quarantined patients, postal ballot and mobile voter boxes etc., can all be explored with the due deliberation on its ill usage possible as there are chances of getting a wrong poll due to such new changes. But this is a debatable topic.

Election commission should stick to its goal - "no voter should be left behind" irrespective of whether it is a chronic crisis or any other pandemic. As it is rightly said that need is the mother of invention.



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A BITTER REALITY OF 21ST CENTURY: THE PLIGHT OF *LGBTQ*



People around the world face inequality and execution because of who they are and how they look. People behavior forces them to think that they are odd and different. Article 1 of the Universal Declaration of Human Rights states that "All humans are born free and equal in dignity and rights." When a baby is born, it's very difficult to predict the new born baby's gender at the first stance. Gradually as they grow, their dressing sense, way of speaking, walking etc., make us conclude their gender as a boy or girl, but we often neglect those people who are part of the nature but society hesitate to consider them as its part - The LGBTQIA Community.

When there is any special occasion, we often invite them to shower their blessings as god's messenger but on the other side, we treat them as unprivileged. This dual aspect rightly makes hypocrite. While Article 15 prohibits discrimination on the basis of religion, race, caste, sex and place of birth. The Supreme Court clearly affirmed that these non-discriminatory practices also apply in regard to LGBTQIA Community but

they still face challenges in education sector, workplaces, public dominance and for a better life.

In 2001, an NGO namely the Naaz Foundation filed Writ Petition in Delhi High Court for decriminalizing section 377 of Indian Penal Code for the LGBTQ community, if two adults of same gender indulges in consensual sexual activity at private place. In 2009, the Hon'ble Delhi High Court decriminalized homosexuality but this decision was overruled by the Supreme Court of India in 2013. In 2018, after years of waiting and bearing the societies cruel comments a landmark judgement came in the case of *Navtej Singh Johar and Others v. Union of India* for decriminalizing the consensual intercourse between the LGBTQ Community. It was further ruled out that this section violated their fundamental right under article 21 of the constitution which protects right to privacy and right to live with dignity.

Recent judgment of the Supreme Court won't be able to

change the public morality very easily. As we all know marriage is a sacred bond between two individuals. Legalization of their marriage will give them an assurance about their acceptance at least in the eyes of law if not in the society.



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HINDI “THE DIMINISHING LANGUAGE”

We are living in the 21st century and we all want development but not by losing our culture, heritage and language. Due to increasing popularity of “English Language” we all are losing our mother tongue “Hindi”. It feels sad to say that the people who speak “Hindi” called stupid. Is this true that the people who speak English are well-educated and others are uneducated? Almost 53.6 % of Indian population speaks “Hindi” and though it is our national language, still it is not used as official language except in Parliament. Another reason behind diminishing of Hindi Language is that there are no formal business activities, scientific research, engineering and medical education etc., were never conducted in Hindi.

The European multinational corporations publish their annual reports in multiple languages but in India it was only published in English. The British people just gave a language but we made it as a trend. There are many people whose mother tongue is English and they don't know to speak.



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Any language would never die because it was suddenly stop spoken by the native speaker as similar it is happening with Hindi Language in India. Still the time remains and the people must strive to preserve and the need of hour to protect Hindi Language. In India, people having good knowledge of many colloquial and Indian languages but do not have good command over English language, than it would be impossible to achieve success in professional life. Many people are suffering from unemployment just because they don't know English. We must become aware on it and give our best to save the language.

FAKE ENCOUNTERS AND RELATED LAWS



Fake encounters involve killing of the person in custody by the policemen without a proper code of conduct and rule of law. Encounter is not a new concept and the policemen were involved in it since ages. Petitions were filed under Right to Information (RTI) Act, 2005 before the National Human Rights Commission and it was amused to found that total 1782 cases of fake encounters were reported between 2000 - 2017. Out of which total 794 cases were from Uttar Pradesh that amounts to around 44.77% of the total encounters reported during these 17 years' time.

In one of the recent cases, the police personnel told media that the accused who was in custody got off the car and tried to snatch away the pistol, thereby the police personnel responded by defending themselves and in turn killed the accused to prevent further devastating situation between the two parties. Sounds quite filmy but this is what the police said in the statement. “Every human being has the right to life; the law should strive to protect the bright of an individual.” Clause 2 of Article 14 of International Covenant on Civil and Political Rights (ICCPR) clearly says that every accused shall be considered as innocent until otherwise guilty is proven. Section 96 and 100 of Indian Penal Code, 1860 provides right to private defense. It clearly states that no offence is made out if any act is done in

response to self-defense but that should be an appropriate step and should not exceed the limit.

Clause 3 of section 300 of Indian Penal Code comes into picture when public servant exceeds its limit and causes death while acting for advancement of justice and which they believe as lawful and mandatory for discharging his duty without any ill-intention and then they will not be liable for murder. The wider scope has been given to the person making arrest under section 46(2) of the Criminal Procedure Code, it also provides the power to cops to use force to make arrest of the person.

Fake encounters are just a mockery of rule of law and proper implementation of laws. Our Criminal Justice System should make immediate reforms and it can be concluded that encounters in a civilized society can never be an alternative to the process of conviction through trial.



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DETERRENT AND RETRIBUTIVE EFFECT OF DEATH PENALTY

One of the approaches by which the viability of the prevention of death penalty is tried, is by experimentally building up that capital punishment has an impact of failure. After numerous long researches and discussions among stakeholders, professionals, and scholars, an overall accord has now risen that there is no proof to recommend that capital punishment has a deterrent impact far beyond its lower punishment in the hierarchy that is life imprisonment.

The debate on the efficacy of deterrence gained momentum with a study by Isaac Ehrlich, which was published in 1975, in which Ehrlich found a unique deterrent effect of executions on murders. The study claimed that each

execution saved up to eight innocent lives. The Supreme Court of India in Bachan Singh cited Ehrlich's research and gave it extensive value.

To survey Ehrlich's investigations which connected prevention from capital punishment, a Panel was set up by the National Academy of Sciences in United States, led by (Nobel Laureate) Lawrence Klien. In its Report, submitted in 1978, the Panel presumed that the accessible investigations give no helpful proof on the impact of the death penalty.

The Indian Supreme Court has disapproved the revenge based approach of retribution. In Deena v. Union of India, the Court ruled that “the retribution involved in the theory tooth

for tooth and an eye for an eye” has no place in the scheme of civilized jurisprudence. More recently, in Shatrughan Chauhan v. Union of India, the Supreme Court ruled that retribution has no constitutional value in India. It held that an accused has a de-facto protection under the constitution and it is the court's duty to shield and protect the same. It further held that such protection extends to every convict including death convicts. Along these lines, the Supreme Court has unmistakably perceived that conviction on the idea of retribution as a defense for does not pass constitutional scrutiny. The Court has additionally emphasized that “the retributive hypothesis has had its day and will never again become substantial.”

In Bachan Singh, the court also observed that, “retribution in the sense of society's reformation can be regarded as one of the worst of crimes” and therefore the court did not preferred the eye for an eye approach when it comes to heinous crimes resulting in death penalty.



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INTERVIEW WITH MS. DIVYA MALCOLM: PROPRIETOR MALCOLM & MALCOLM

ADV. DIVYA MALCOLM has an experience of 14 years as a practicing advocate. Her expertise includes forest issues, townships, acquisition of agricultural lands, tribal lands, Special Economic Zones (SEZs) and Internal Complaints Committee member.

Q. Ma'am how would you like to introduce yourself to the readers?

A. Well, I would genuinely like to be known for my work and as the lawyer who takes on the responsibilities of her clients so that her clients can sleep well at night.

Q. Ma'am could you tell us a bit about your journey from being a partner at Kochhar's & Co. and then being a proprietor of Malcolm & Malcolm, how has the journey been so far from the Kochhar's to your own thing?

A. It's absolutely wonderful. Because we are hardly six months old and we have completed transactions, if I were to total up all the area, so far, we have completed transactions with respect to properties of over 80 acres in less than six months. So it has been very exciting. And it's amazing how everybody has come forward to help us and help Malcolm and Malcolm. Some of these contacts who have come forward, when I met them, I was an intern. So they go all the way back to 2006. And then I feel so overwhelmed and touched and, you know, it's good that we are having this interview, so that I can pass on the benefit of all these years of experience to the students because I am personally amazed at the number of people who have got in touch with me from my internship days.

Coming back to your point about the journey from being a partner in a tier one legal 500 Law Firm, to having my own office, it's truly been wonderful, honestly. And as I said, I would have never imagined that in less than six months, I would nearly complete 70 to 80 acres of assignments.

And every day, you're able to do a lot of creative things when you are on your own, when absolutely independent. So we launched our newsletter, which was appreciated by everybody and we do a lot of webinars that is very important, and I would, infact say, this is something which I learned from the students the importance of webinars, we got a lot of assignments because somebody attended our webinar, somebody says that, yes, this is a firm, and these people know their job, and took us on board.

Q. That is great! Apart from that, ma'am, I wanted to ask, that your expertise is actually pretty unconventional because it is, of course, Real Estate Law. So what made you think out of the box and choose an area like real estate, because this is not what every other lawyer deals with, it's very unconventional, and people don't know much about it. So what made you think out of the box and choose this as the area of interest?

A. For that, we'll have to go all the way back to 2006. I got my Sonos in 2006. And at that time, real estate was doing fairly well. There were a lot of townships that were being launched in Maharashtra, alone in Puna region especially. So that's how I got the opportunity of doing title due diligence of agricultural properties, you know, 100 acres at a stretch, because the requirement of setting up any integrated township is minimum land parcel of 100 acres and these 100 acres should be continuous. That's why I got into environmental matters, tribal matters, man having restrictive tenures.

So, that's how I got into it and to tell you the truth these subjects fascinated me immensely. In college, I remember all of us hated land laws; we completely hated the land laws and revenue codes. May be because back in college, we were not able to apply laws to practical situations.

Also, there are a lot of lawyers who aspire to be m&a lawyers, corporate lawyers, but somehow, there is a dearth of good lawyers in real estate. Maybe the students don't think it's glamorous enough. But it's a wonderful and fascinating field. And, as I said, the advantage of real estate is, you know, you can be a tier one firm and yet you need a real estate vertical, you can be a start up like Malcolm and Malcolm and still earn in tries on the real estate mandate.

Q. It's of course a field where students can choose to make a career, that's what it is, because ma'am very less people in this country know these unconventional things like maybe the real estate laws, construction law, and construction arbitration. In case students get to hear that real estate can be a good option, they would start focusing more on the real estate laws and land laws, so that in the future, they can make a career out of it?

A. Yes, because whether you are an individual or a corporate, at some stage or the other, you're going to either rent out a property, purchase a property, acquire a property, mortgage a property, there is not a single person who hasn't had a real estate need in his life. So therefore, according to me, it should be the natural choice of most students and just that, and maybe we need to come forward and bridge the gap between practice and academics. Also, internationally, everybody has a lot of regard for our students, our professionals, but there's only one criticism that we Indians cannot apply laws and procedures to practical situations and come up with pragmatic solutions. So I think that is one gap that all of us will have to sort of plug.

Q. Ma'am, what according to you are the essentials that every law student should focus on and practice in the law school life. For a better career, what should be the essentials that every student should focus in their law school life?

A. Well, as I said, initially, I interned at a place and I left that particular office because I looked at how the associates were being treated and genuinely, it scared the daylights out of me. But my best breaks were given to me by these associates, wonderful, wonderful lawyers with whom I'm in touch today. Then as I progressed in my career, I was able to feel professional development is very important. When we hire, there are a couple of things we don't expect, especially for freshers to come with a specialization. So sometimes we decide to groom them as per their liking. But what we really look at is, whether their first principles in law are in place, so that is what I think the students need to focus on.

Because, you know, a lot of emphasis is laid on knowing the sections, rights, knowing the articles, knowing the section number, but each and every branch of law has certain basic principles. And that is why maybe I like property law so much, if you look at the transfer of property act, for example, it has evolved on principles of equity. So when we study laws, you know, sometimes it's better to

take a step back and focus on the scheme of things, and somewhere we'll be able to decipher the framework which holds all these sections and provisions together. So, I would request students to do so, somehow when they study, it's very difficult at their stage unless they have an excellent mentor.

So that is one thing I would like students to make sure that they get a grasp of the basic principles in law, and also work on their language, communication skills, English language, presentations. So you may be very good at your studies, but if you're thinking of competing and especially in a place like Bombay, presentation and good English carries a lot of weight. And when I say good English, I don't mean very complicated vocabulary.

Q. That's great ma'am. Also, last question, how was your association with Indore Institute of law, you were one of our guests for our drafting competition. So how was your experience with the institution?

A. I'm completely amazed by the Institute; I met your director and Dean, Dr. Manpreet Kaur at a networking event.

It was so impressive, because I think it was a networking session of professionals, almost everybody was either from a corporate, or from a law firm and you were the only Institute there. And I think that just shows a sudden vision, because you need to be visible. For instance tomorrow, if a partner receives a CV from a student of Indore Institute of Law, immediately we are able to make a connection. And then we know that this is the curriculum, this is what you guys do. I would know personally, that you had a session on drafting, you had a competition on drafting, which Brian Garner, who is a leading light internationally on the topic of drafting, he, as I mentioned, back then to, he had been telling in his books and convincing universities to introduce drafting as a subject at least, at senior levels.

So it just goes to show your vision and yes, I completely would have liked if somebody, if a lot of colleges undertake these kinds of outreach.

I was amazed to meet you all at a networking session in Bombay. And then when you guys decided to have a competition, let alone on drafting, that was a great step. We hear a lot of people doing a lot of work in terms of having a moot court, but not drafting and when you step into the profession, you realize that there is a lot of work in the non litigation sector. In most corporates the day to day practice area is that of compliances, non litigation, drafting, especially banks. May be in the project financing, we have so many banking and finance sectors, where you would hardly be expected to go to the court.

So, yes, for this reason, it's incredible what your institute is doing for the students, because then when we see you, amongst others than it is easier for us to reach out to you. That competition on drafting was a brilliant idea!

Interviewed by **Mr. Litson K. Stephen,**
Corporate Relations Officer, Indore Institute of Law

CURRENT AFFAIRS FEBRUARY, 2021

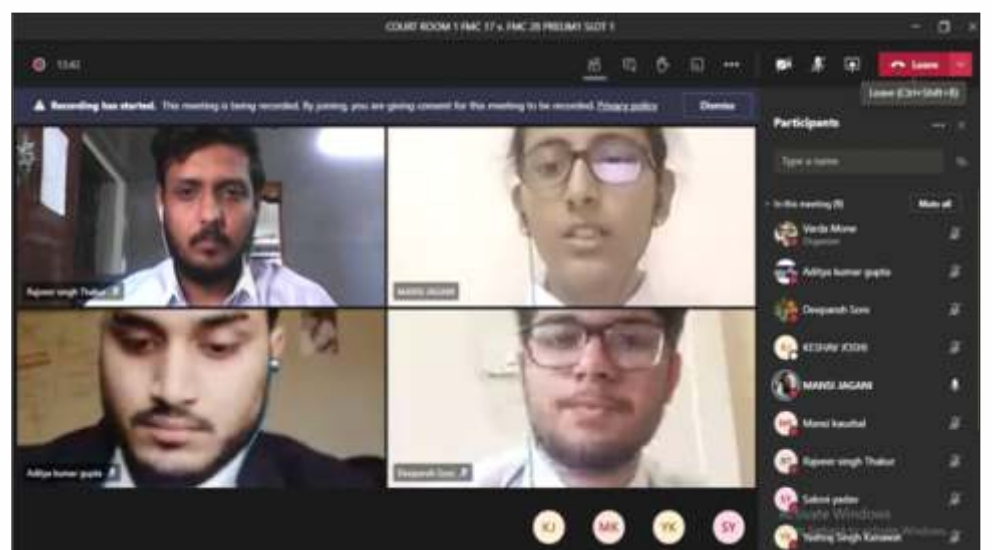
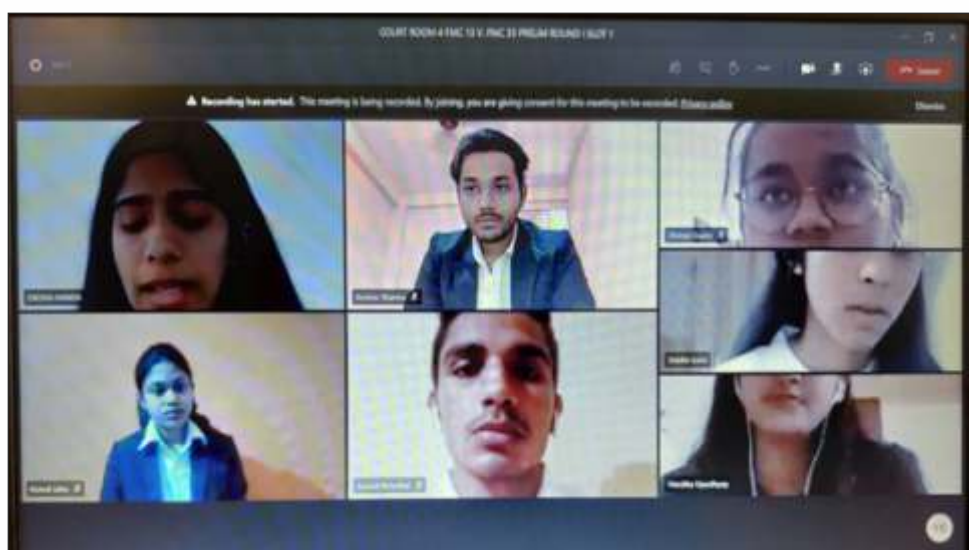
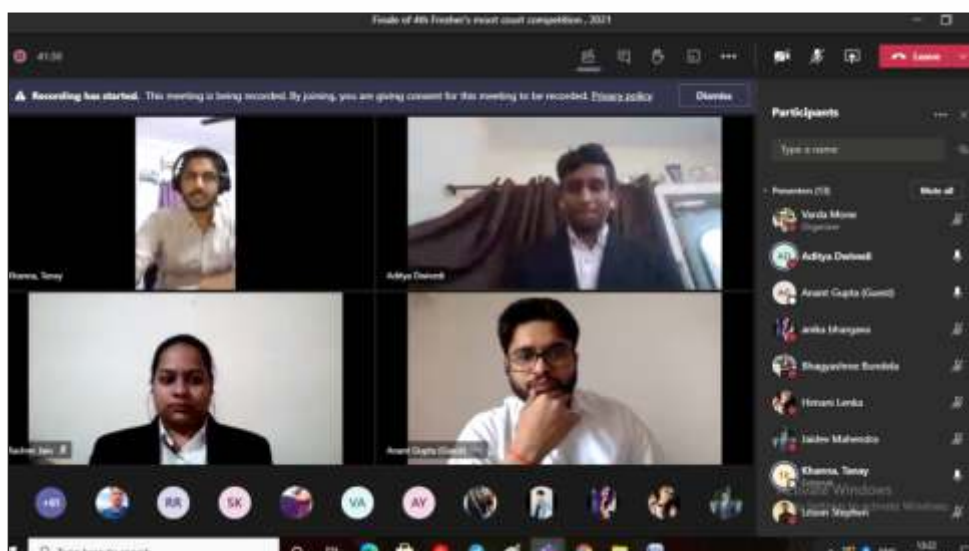
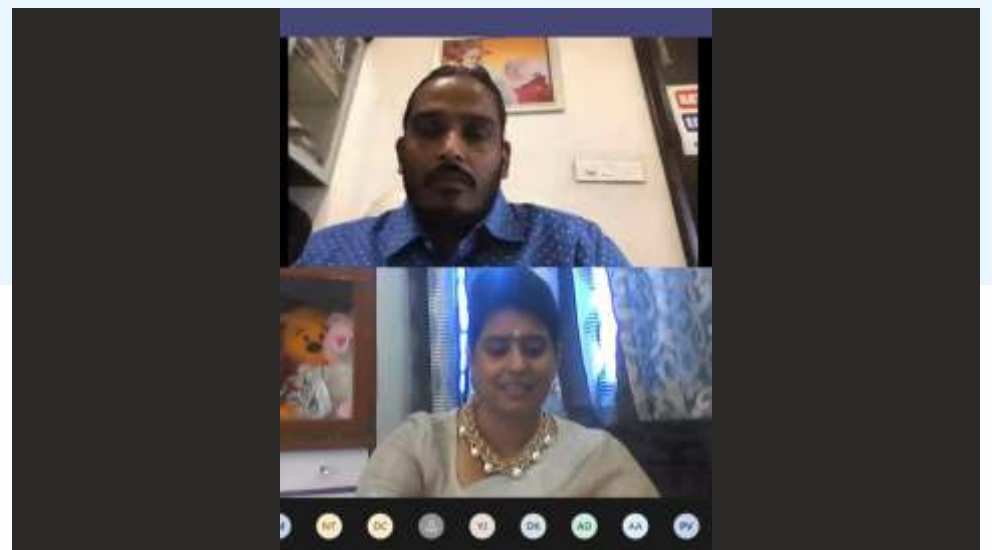
- The Lok Sabha has passed the Arbitration and Conciliation (Amendment) Bill, 2021 to check misuse by “fly-by-night operators” who take advantage of the law to get favourable awards by fraud.
- Border disputes between Odisha and Andhra Pradesh once again resurfaced when Andhra Pradesh announced panchayat polls in three villages of Kotia panchayat in Koraput district of Odisha.
- The government has notified Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 that broadly deals with social media and Over-The-Top (OTT) platforms.
- Recently, Vijay Sampla has been appointed as chairman of National Commission for Scheduled Castes (NCSC).
- Every year, the United Nations Educational, Scientific and Cultural Organization (UNESCO) celebrates 21st February as International Mother Language Day to promote mother tongue-based multilingual education.
- India's rank has slipped six places (previous 80th place) 86th among 180 countries in Corruption Perception Index (CPI), 2020 released by Transparency International.
- In the Criminal Defamation case filed by the former Union Minister against journalist over her tweets accusing him of sexual harassment. Recently, the Delhi High Court given its ruling that the right of reputation cannot be protected at the cost of the right of life and dignity of women.
- In M/s. Kalamani Tex v. P. Balasubramanian, the Supreme Court observed that even a blank cheque leaf would attract presumption under Section 139 of the Negotiable Instruments Act, 1881 when signatures are admitted by the accused
- In the matter of Union of India v. K.A. Najeeb, the Supreme Court has held that section 43D (5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on ground of violation of Fundamental Right to Speedy Trial.

IV FRESHER'S MOOT COURT

Fresher's Moot Court competition is an annual event of Indore Institute of Law in which 1st year students of B.A.LLB (Hons.), B.B.A. LLB (Hons.), LLB, LLM, B.B.A. LLB (Global and Transnational Studies) participate at a common platform to showcase and develop their advocacy skills.

Indore Institute of Law this year organized its 4th Fresher's moot Court competition on 12 & 13th February 2021 through online mode using Microsoft Teams Platform under which 42 teams participated. Students of 2nd & 3rd Year of B.A. LLB (Hons.) and B.B.A. LLB (Hons.) mentored the fresher's, and Students of 4th & 5th Year of B.A. LLB (Hons.) And B.B.A. LLB (Hons.) judged the preliminary round of the competition.

The competition was divided into three rounds. The first Round i.e., Preliminary Round I & II all the teams participated and argued from both the sides that is Plaintiff and Defendants and Top Four teams based on win-win basis were selected for the II Round i.e., Semi- Final Round. The winners from both the Court Rooms were selected on knock out basis, as Finalist of the Competition. The final Round was judged by two steamed personalities **ADV. ANANT GUPTA** & **ADV. TANAY KHANNA** from Memo-Pundits. Students performed like professionals in the entire competition and marking to the unbeatable performance our respected Dr. Manpreet Kaur Rajpal, Director and Dean (Academics) announced the results and encouraged the students by her words of wisdom and experience.



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