

**INDORE INSTITUTE OF LAW**  
(Affiliated to DAVV & Bar Council of India, New Delhi)

On  
73rd Republic Day Celebration

Organised  
19th Shree Gendalal ji Bam Memorial International  
Virtual Debate Competition, 2022  
26th January, 2022



Chief Guest Dr. Anil Kumar Sharma Addressing at  
19th Shree Gendalal Ji Bam Memorial  
International Virtual Debate Competition, 2022

Indore Institute of Law did a flag hoisting ceremony to celebrate 73rd Republic Day at Indore Institute of Law campus. The chief guest for the ceremony was Mr. Kanti Lal Bam, Chairman, ICON Education Society. The Dignitaries from Management of Indore Institute of Law Mr. Akshay Kanti Bam, Chairman, Indore Institute of Law, Mr. Gaurav Basant Jain, Executive Director, Indore Institute of Law, Prof. (Dr.) Manpreet Kaur Rajpal, Director & Dean, academics also graced the occasion.

The ceremony began with Mr. Kanti Lal Bam, Chairman, ICON Education Society hoisting the national flag followed by National Anthem. The event was attended by faculty & Students. Sweets were distributed after the flag hoisting.

The second half of the day was for the 19th Shri Gendalal Bam International Debate Competition 2022. The topic of the debate competition was "भारतीय राजनीति का भविष्य: धर्म या विकास". A total of 22 teams comprising of 5 International teams from, Sri Lanka, Germany, England, Scotland & Bangladesh along with National Law Universities & Colleges of repute from India participated in the competition. The participants were judged by Dr. Anil Kumar Sharma, Director, Bhopal Institute of Technology & Management, Bhopal & Dr. Babita Kadakia, Principal, Idyllic Institute of Management, Indore. The participants were very thorough in their presentations and presented their views with great aplomb and confidence. The judges were quite impressed by the participants arguments and applauded for the depth and clarity of thoughts.

**The winners are as under**

<b>Mr. Barun Kumar Mishra</b> (Govt. New Law College Indore)	<b>Ms. Priyanshi Bunker</b> (Idyllic Institute of Management)
<b>Ms. Akshaya Sridhar</b> (Indore Institute of Law)	<b>Ms. Abha Gupta</b> (NMIMS, Indore)
<b>Ms. Ishika Totla</b> (The Vidhayajali International School, Indore)	<b>Mr. Anubhav</b> (Ramias College)



**SERVICE OF SNIFFER DOG FOR THE PURPOSE OF INVESTIGATING A CRIMINAL CASE**



the life and liberty of a human being should not be depend on canine inference.”

Another reference was drawn from Ramesh v. State of A.P. 2001, where the court observed, “there are inherent frailties in the evidence based on sniffer or tracker dog. The responsibility of an error on the part of the dog or its master is the first among them. The possibility of a misrepresentation or a wrong inference from the behaviour of the dog could not be ruled out. Last, but not the least, is the fact that from scientific point of view, there is little knowledge and much uncertainty as to the precise faculties which enable police dogs to track and identify criminals. Investigation exercises can afford to make attempts or forays with the help of canine faculties but judicial exercise can ill afford them.”

In lack of faculties to understand evidence corroborated from sniffer dog, it was held that while the service of a sniffer dog may be taken for the purpose of investigation, its faculties cannot be taken as evidence for the purpose of establishing the guilt of the accused.



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To glimpse the relevancy of evidence corroborated using service of sniffer dog we have placed reliance upon the judgment pronounced in Dinesh Borthakur case where all the important evidence were put into doubt but the evidence corroborated with the help of sniffer dog led to prosecution of the accused by the trial court. The mainstay of the prosecution case is the evidence who testified about the sniffer dog's staying near the accused and the reaction of the accused was not natural as he did not exhibit the emotion or sadness despite the fact that his wife was killed.

The court to draw conclusion of the evidence drawn from sniffer dog referred to the decision of apex court in Abdul Rajak Dafedar case where it was held as under, “there was three objection which are usually advanced against reception of the evidence of dog tracking. First, since it is manifest that the dog cannot go into the box and give his evidence on oath and consequently submit himself to cross-examination, the dog's human companion must go into the box and report the dog's evidence and this is clearly hearsay. Secondly, there is a feeling that in criminal cases

**SETTING ASIDE ALIENATION; AN OVERVIEW**

A coparcener, according to Mitakshara law, cannot make a gift of the coparcenary property, not even of his own interest in the property. Therefore, where such a gift is made, and it is objected to by the other coparceners, the court will set aside the gift in its entirety. The gift is not valid even to the extent of the donor's interest in the property. However, when a coparcener makes a gift of his entire interest in favour of the sole remaining coparcener, such a gift may be held to be valid either on the principle of renunciation or as a transfer with the consent of all the coparcener, the consent of the other coparcener, who is himself the donee, being presumed.



the date of sale, the sale being valid until it is repudiated.

Partition- shares on partition- mother— In a suit by a son for partition and separate possession of his share after setting aside the alienation of joint family property made by his father, alienation is not for a purpose binding upon the family consisting of father, mother and sons.

Where a member of a joint family governed by Mitakshara law as administered in Bombay and Madras states, sells or mortgage more than his own interest in the joint family property, the alienation not being one for the legal necessity or for payment by a father of an antecedent debt, the other members or persons to whom their interests in the property have passed, are entitled to have the alienation set aside to the extent of their own interest therein. Where an alienation is not for legal necessity or for payment of an antecedent debt, and it is set aside at the instance of the other coparceners as regard their shares, there is no

equity entitling the alienee to a refund of a proportionate part of the purchase money in respect of those shares. The method of adjusting equities between alienee and non-alienating coparcener was explained in detail in Peramanayakam v. Sivaraman, by a Full Bench of Madras High Court.

Equities on setting aside alienations— The rule that a coparcener cannot make a gift of his share, cannot be evaded by making a sale at a grossly inadequate price.

Mesne profit on setting aside alienation— Where an alienation is set aside under this section, and the purchaser is in possession, he may be required to pay mesne profit from the date on which the sale is repudiated by the other coparceners, but not from

Where a member of a joint family governed by Mitakshara law as administered in Bengal, Bihar and Uttar Pradesh, sells or mortgage of the joint family property or any portion thereof without the consent of his coparceners, the alienation is liable to be set aside wholly unless it was for legal necessity or for payment by a father of an antecedent debt and it does not pass the share even of the alienating coparcener. The result is that if the alienation is neither for legal necessity nor for the payment of an antecedent debt, the other coparceners are entitled to a declaration that the alienation is void in its entirety.



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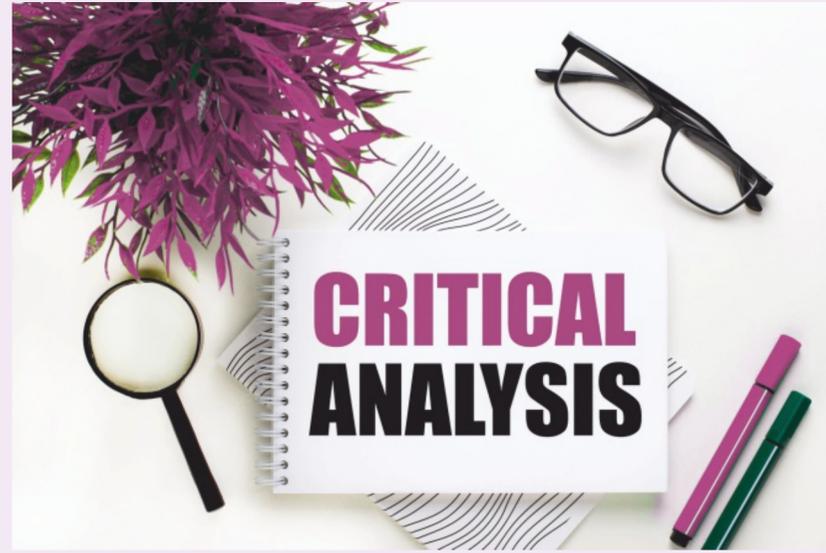
Icon Education Society (I.E.S.), as a first step to achieve its objectives, decided to set up an exclusive and independent college to provide specialized, high quality Law education for professionals, coupled with all basic infrastructure facilities.

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## CRITICALLY ANALYSIS, COMMENT AND CONTRAST ON MOHD. AHMAD KHAN VS SHAH BANO BEGUM

The Mohd. Ahmad Khan vs. Shah Bano Begum & Ors. or the Shah Bano maintenance case is seen as one of the legal milestones in battle for protection of rights of Muslim women. While the Supreme Court upheld the right to alimony in the case, the judgment set off a political battle as well as a controversy about the extent to which courts can interfere in Muslim personal law. The case laid the ground for Muslim women's fight for equal rights in matters of marriage and divorce in regular courts, the most recent example being the ShayaraBano case in which the Supreme Court invalidated the practice of instant triple talaq. Since Independence, the Indian government has struggled to achieve political modernity within acceptable religious boundaries. Religious diversity in India necessitates governmental sensitivity toward sometimes opposing principles, and yet, when religious practices threaten an individual's access to the rights of citizenship, a secular government has to intervene. The Indian Supreme Court case of Mohammad Ahmed Khan v. Shah Bano Begum and others brought to the forefront issues of citizenship, minority identity, and national sovereignty amidst an environment of fear and tension during the mid-1980s.

The case and its ensuing controversy reflect the threat religious fundamentalism can pose to liberal democracy without the intervention of a uniform civil code. India suffers from a specific brand of communalism that was fostered by British imperialists as a means of weakening the Nationalist Movement by forcing religious rather than national allegiance.



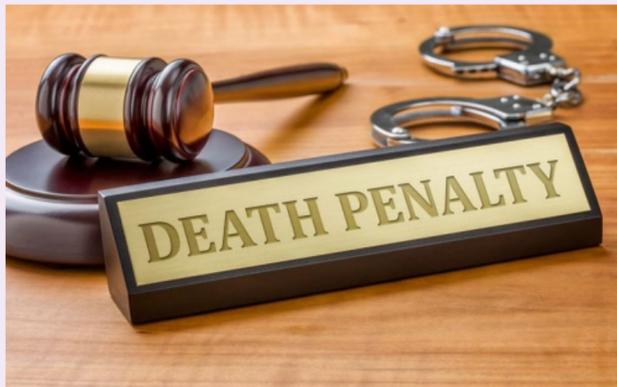
Religious identification was a means of mobilizing politically, and the resulting political divide between Hindus and Muslims worsened progressively despite the efforts of Mahatma Gandhi and Jawaharlal Nehru, eventually leading to Partition in 1947. The Shah Bano controversy was the first of the Rajiv Gandhi government, which came into power following the 1984 assassination of Mrs. Indira Gandhi. What began with a citizen, Shah Bano Begum, utilizing her Fundamental Right to petition the court, became a permeating political dilemma with far-reaching

consequences. From India's beginnings as an independent nation, nationalist leaders like Mahatma Gandhi and Jawaharlal Nehru devoted themselves to the ideals of tolerance, equality, and unity. With Shah Bano, those ideals became contradictory, and the politicization of religion usurped the practice of democratic government by fomenting disunity among the Indian populace. Muslim fundamentalists sacrificed equality to preserve



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## THE MANDATORY DEATH PENALTY



The mandatory death penalty continues to remain on the statute books in India though it has been held to be unconstitutional. In Mithu v. State of Punjab [(1983) 2 SCC 277], the Supreme Court has struck down Section 303 as void and unconstitutional for being violative of both Article 14 and 21 of the Constitution. It regards life-convict to be a dangerous class without any scientific basis and thus violates Article 14 and similarly by completely cutting out judicial discretion it becomes a law which is not just, fair and reasonable within the meaning of Article 21 read with Article 14. So, all the matter are now punishable only under section 302 of IPC.

The J & K High Court held that section 303 of Ranbir Penal Code being in pari-materiawith Indian Penal Code's section 303, mandate of Supreme Court striking down the section 303 IPC will automatically result in striking

down the corresponding provisions in RPC (Ranbir Penal Code).

In Indian Harm Reduction Network v. Union of India, 2011 [Criminal Writ Petition No. 1784 OF 2010], the High Court of Bombay held that the provision for mandatory death sentence under Section 31A of the The Narcotic Drugs and Psychotropic Substances Act, 1985 was in violation of Article 21 of the Constitution, and held that the words "shall be sentenced to death" be read as "may be sentenced to death."

In State of Punjab v. Dalbir Singh, 2012 [Criminal Appeal No.117 OF 2006], the Supreme Court struck down Section 27(3) of the Arms Act, 1959 which made the offence of using prohibited arms, if it results in the death of a person, as punishable with death. It was found that Section 27(3) was in breach of Articles 14 and 21 of the Constitution, as it took away judicial discretion in matters relating to imposition of the death penalty.

Despite mandatory death sentence being declared unconstitutional in the cases mentioned above, it is a matter of grave concern that it continues to be a part of certain central legislations. Section 195A of the IPC, Section 3(1)(g) (i) of the Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 and Section 3(2)(i) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 still provide for the mandatory death sentence.



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## THE MODERN CONCEPT ON DEFINITION OF STATE UNDER ARTICLE 12 OF THE CONSTITUTION



Article 12 of the Constitution reads as under;

"In this part unless the context otherwise requires "the State" includes the (1) Government and Parliament of India and the (2) Government and the legislature of each State or (3) all Local or (4) other authorities within the territory of India or under the control of the Government of India."

The restrictive interpretation of principle of ejusdem generis was mentioned in University of Madras v. Shantha Bai, [AIR 1954 Mad 67], the Madras High Court held that other authorities could only indicate authorities of a like nature i.e. ejusdem generis. So construed, it could only mean authorities exercising Governmental or Sovereign function. This restrictive interpretation of Madras High Court was rejected by the Supreme Court in Ujjambai v. State of U.P. [AIR 1962 SC 1621]. It was held that ejusdem generis rule could not be resorted in interpreting this expression as there is no common genus running through these named bodies in Article 12 nor can these bodies be so placed in one single category or any rational basis.

In Electricity Board Rajasthan v. Mohan Lal, [AIR 1967 SC 1857], a narrow interpretation was done by the Supreme Court in earlier cases was refuted.

The modern concept of State given by Justice Matthew was finally summarised by Justice P.N. Bhagwati in R.D. Shetty v. Airport Authority, [AIR 1979 SC 1628], where it was held that if a body is an agency or instrumentality of Government it may be an "authority" within the meaning of Article 12 whether it is a statutory

corporation, a Government Company or even a registered Society. The Court laid down the following tests for determining whether a body is an agency or instrumentality of the Government.

- Financial resources of the State in the chief funding source.
- Existence of deep and pervasive State control.
- Functional character being governmental in essence i.e. if the functions of the corporation are of public importance and closely related to governmental function.
- If a department of government is transferred to a corporation.
- Whether the corporation enjoys monopoly status which is State conferred or State protected.

The Court said these tests are not conclusive but illustrative only and will have to be used with care and caution.

Some landmark judgment in defining State under Article 12 of the Constitution of India.

In Ajay Hasia v. Khalid Mujib [AIR 1981 SC 487], it was held that a society registered under the Societies Registration Act, 1898 is an agency or instrumentality of the State and hence a State within the meaning of Article 12.

In M.C. Mehta v. Union of India [AIR 1987 SC 1086], without deciding the question, finally in a unanimous opinion of the Supreme Court, Chief Justice P.N. Bhagwati has advanced, strong arguments for including

the non-government companies within the meaning of "State", if for reasons of State control of registration & the kind of public function they are performing satisfy the test of being an instrumentality or agency of the Government. Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression "state".

In Lt. Governor Delhi v. V.K. Sodhi [(2007) 10 SCALE 41], it was held that the entity which is under Article 12 does not become the State Government. The employees of such body are not holders of civil post or employees of the State Government.

In Pradeep Kumar Biswas v. Indian Institute of Chemical biology, the seven Judge Bench by majority 5:2 overruled Sabhajitewary case relying upon the instrumentality or agency test formulated in Ajay Hasia, the Court observed as under;

"Not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be, whether in the light of the cumulative facts as established, the body is financially, functionally and administrative dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within the Article 12. On the Other hand, when the control is merely regulatory whether under or otherwise, it would not serve to make the body a State."

In Rajasthan SEB v. Mohan Lal and Sukhdev Singh v. Bhagat ram Sardar Singh Raghuvanshi, the Supreme Court noticing the socio-economic policy of the country thought it fit to expand the term "other authorities" to include bodies other than statutory bodies. The development of law of judicial interpretation culminated in the judgment of the seven Judge Bench in the case of Pradeep Kumar Biswas case. It has also been noted that in the meantime the socio-economic policy of the Government has changed and the State is today distancing itself from commercial activities and concentrating on governance rather than on business. Therefore, the situation prevailing at the time of Sukhdev Singh case is not in existence at least for the time being. It shall be borne in mind that in a democracy there is a dividing line between a State enterprise and a non-state enterprise, which is distinct, and the judiciary should not be an instrumental to erase the said dividing line unless required.



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## CURRENT AFFAIRS JANUARY 2022

• The Supreme Court (SC) expanded the meaning of vulnerable witnesses to also include among others sexual assault victims, those with mental illness and people with speech or hearing impairment. The SC referred to a verdict of 1996 in which it had passed similar directions, then in 2004 and in 2017, when it had asked all the High Courts of the country to adopt the guidelines prepared by the Delhi High Court in 2017 for vulnerable witnesses.

• A Judge of the Madras High Court has said that a recent order passed by another judge of the same court, mandating the installation of CCTV cameras inside spas [massage and therapy centres], appears to run counter to the Supreme Court's landmark judgement in K.S. Puttaswamy case (2017). In this case, the Supreme Court declared that the right to life and personal liberty guaranteed in Article 21 also implicitly includes a right to privacy.

• According to data from the Centre for Monitoring Indian Economy (CMIE), India's unemployment rate touched a four-month high of 7.9% in December 2021. With Covid-19 cases on the rise amid the threat posed by the Omicron variant and many states imposing fresh curbs, economic activity and consumption levels have been affected.

• The Gujarat High Court has asked a journalist facing contempt of court proceedings to speak only in English as that was the language in the higher judiciary. Article 348(1)(a) states that unless Parliament by law provides otherwise, all proceedings before the Supreme Court and in every High Court shall be conducted in English. Article 348(2) provides further that notwithstanding the provisions of Article 348(1), the Governor of a state may, with the previous consent of the President, authorise the use of Hindi or any other language used for

any official purpose, in proceedings in the High Court. States of Uttar Pradesh, Bihar, Rajasthan and Madhya Pradesh have already authorised the use of Hindi in proceedings before their respective high courts and taking a cue, Tamil Nadu is also working in that direction – to authorise the use of Tamil before its high court.

• The expenditure limit for candidates for Lok Sabha constituencies was increased from Rs 54 lakh to Rs 70 lakh (depending on states) to Rs 70 lakh-Rs 95 lakh, by the Election Commission of India (ECI). Further, the spending limit for Assembly constituencies was hiked from Rs 20 lakh-Rs 28 lakh to Rs 28 lakh- Rs 40 lakh (depending on states). In 2020, the ECI had formed a committee in 2020 to study the election spending limit.

• A petition has been filed in the Supreme Court challenging guidelines issued by the Bombay High Court in cases under the Protection of Women from Sexual Harassment (POSH) Act, 2013. The provision that challenged pertains to blanket bar on parties and advocates from sharing records, including orders and judgments, with the media. The guidelines were formed by Justice G.S. Patel of the Bombay High Court ostensibly to protect the identities of the parties in a case under the POSH Act.

• A batch of petitions seeking criminalisation of marital rape, has been filed in the Delhi High Court. In response to it the Union government has replied that it is considering a "constructive approach" towards criminalising it and had sought suggestions from various stakeholders. The petition seeks to amend the criminal law, which includes Section 375 (rape) of the Indian Penal Code (IPC).