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AI REVOLUTION FOR THE LEGAL SYSTEM: EFFICIENCY, ETHICS, AND THE FUTURE

N K Gupta
Managing Partner

Artificial intelligence (AI) is no longer a futuristic vision; it's a present reality reshaping the legal landscape. From legal research to predictive analytics, AI is transforming how justice is administered and decisions are made, offering unprecedented levels of precision and efficiency. This article dives into the multifaceted influence of AI on the judiciary, exploring its impact on lawyers, ethical concerns, and the potential of AI-assisted legal systems.

A Research Powerhouse

The legal industry's most significant benefit from AI is its ability to process and analyze vast amounts of legal data at lightning speed. AI-powered tools can quickly and accurately retrieve relevant information for lawyers and judges, sifting through statutes, case laws, and legal precedents, far surpassing the limitations of traditional research methods. This is particularly valuable in complex cases where the sheer volume of precedent can be overwhelming. AI not only accelerates research but also enhances accuracy by identifying patterns and connections humans might miss. AI also empowers legal scholars and researchers, allowing them to rapidly explore legal theories and historical cases with greater precision.

As we already discussed in the Previous Article, One significant development in this regard is the Legal Information Management & Briefing System (LIMBS), introduced in 2016 for monitoring litigation involving the Union of India. LIMBS Ver.2, launched in 2019, aimed to address technological gaps in its predecessor and establish a synchronized regime for monitoring litigation across all Ministries and Departments of the Government of India.

The core function of LIMBS is to provide a single platform for the management of government litigation, enabling user Ministries and Departments to update details regarding Central Government cases. It's important to note that the data on the LIMBS portal is entered by the respective Ministries/Departments, ensuring that the information is accurate and up-to-date.

In addition to technological advancements, the government has also taken several steps to mitigate the burden of litigation. These include the adoption of Alternative Dispute Resolution (ADR) mechanisms, such as mediation and arbitration, to expedite dispute resolution outside the traditional court system. The introduction of the Mediation Bill, 2021, aims to institutionalize and promote mediation as a preferred method for resolving disputes efficiently.

Predicting the Future: AI in Court

One of the most groundbreaking applications of AI in the courtroom is predictive analytics. AI algorithms analyze past data from similar cases to forecast the probable outcomes of ongoing litigation. This not only helps judges understand potential precedents and the potential ramifications of their decisions, but also assists lawyers in developing effective strategies. It's crucial to remember that AI serves as a data-driven tool, not a replacement for human judgment.

Beyond Research: AI Streamlines Administration

AI's impact goes beyond legal research and decision-making, extending to improving administrative efficiency within the judiciary. Automating routine tasks like record-keeping, scheduling, and document sorting frees up court personnel from tedious work, minimizing human error and expediting the legal process.

AI-powered chatbots can answer basic legal questions, enhancing public access to information. By relieving lawyers of mundane tasks, AI allows them to focus on the critical aspects of their cases. This increased efficiency could significantly reduce case backlogs, ultimately improving the responsiveness and accessibility of the legal system.

The Evolving Landscape of the AI-Powered Judiciary

The potential of AI in the court system is vast. As technology advances, AI will find increasingly complex and sophisticated applications within the legal system. While AI integration holds the potential to revolutionize the efficiency and knowledge base of legal proceedings, it must be approached with caution.

The key lies in harnessing the power of AI while preserving the human element in legal decision-making. Fostering a collaborative environment between legal experts and responsible tech developers will be critical in creating an AI-enhanced judiciary that upholds the highest standards of fairness and justice.

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THE POWER OF AI: REVOLUTIONIZING BUSINESS EFFICIENCY IN INDIA

Prem Chandra Vaish
Managing Partner

Artificial Intelligence (AI) is not just a buzzword but a transformative force reshaping industry worldwide. In India, this technology is poised to revolutionize consumer experiences and business operations, unlocking a wave of innovation and economic growth.

Consumer-Centric AI Solutions

Personalized Recommendations: AI algorithms analyze vast amounts of consumer data to offer tailored product recommendations, significantly influencing purchasing decisions. Indian consumers trust AI-generated recommendations, fostering loyalty and satisfaction.

Seamless Checkout Processes: AI-powered checkout systems, like cashier-less stores and scan-and-go apps, streamline the shopping experience, reducing wait times and enhancing convenience.

EY.ai - A Unifying Platform: EY.ai integrates extensive industry experience with cutting-edge AI capabilities, empowering companies to leverage AI for personalized engagement, optimized operations, and data-driven decision-making.

Empowering Indian Businesses

AI is not only enhancing consumer experiences but also driving operational efficiencies and cost savings for Indian businesses across various sectors.

Personalized Engagement: AI-driven analytics provide real-time insights into consumer behavior, enabling retailers to tailor services and offerings, stay ahead of market trends, and increase sales.

Optimized Operations and Supply Chain Management: AI algorithms predict demand, optimize inventory levels, and improve product distribution, leading to cost savings and improved resource allocation.

Data-Driven Decision-Making: AI enables data-driven prioritization and decision support, empowering company leaders to make strategic choices and enhance consumer experiences.

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The Future of Retail with Gen AI

With Gen AI, the future of retail in India is poised for unparalleled personalization and innovation. Conversational platforms and virtual assistants will deepen customer insights, enabling companies to create intelligent solutions and drive successful outcomes in a competitive market.

India's AI Economy

India's AI landscape is rapidly evolving, driven by government initiatives like Digital India and a burgeoning ecosystem of startups and enterprises. AI adoption is scaling across various sectors, from banking and insurance to manufacturing and e-commerce.

Challenges and Opportunities

While AI promises significant benefits, challenges such as data privacy, infrastructure limitations, and talent shortages need to be addressed. Regulatory frameworks and investments in education and training are essential to realize India's full potential in AI.

India's Potential as an AI Leader

Favorable Environment: The "Digital India" initiative and a strong talent pool position India for significant growth in the AI sector.

Economic Impact: AI is projected to add significantly to India's GDP, with estimates ranging from $500 billion by 2025 to $967 billion by 2035.

Start-up Ecosystem: India boasts a thriving AI start-up ecosystem, creating innovative solutions and collaborating with established companies.

India's AI moment is here and now. By harnessing the power of AI, Indian businesses can unlock new opportunities, drive innovation, and create unparalleled value for consumers. As AI continues to reshape industries, India stands poised to lead the global AI revolution, propelling its economy to new heights of prosperity and growth.

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NAVIGATING THE EVOLVING LANDSCAPE OF ARBITRATION UNDER INDIAN LAW

Vijay Sharma
Sr. Partner

Introduction

Arbitration, as a means of resolving disputes outside traditional court systems, has gained significant traction in India in recent years. With the passing of the Arbitration and Conciliation (Amendment) Act, 2019, the Indian government aimed to streamline the arbitration process, making it more efficient and cost-effective. However, the landscape of arbitration under Indian law continues to evolve, presenting both opportunities and challenges for businesses and individuals seeking alternative dispute resolution mechanisms.

Recent Developments

One of the noteworthy developments in arbitration under Indian law is the establishment of the India International Arbitration Centre (IIAC). The IIAC replaced the International Centre for Alternative Dispute Resolution (ICADR) and aimed to promote India as a hub for international arbitration. The IIAC is equipped with state-of-the-art facilities and aims to provide a neutral and efficient platform for resolving international commercial disputes.

Additionally, the Indian judiciary has been playing a proactive role in promoting arbitration. The Supreme Court of India has consistently emphasized the importance of arbitration in reducing the burden on the overloaded judicial system. In recent judgments, the Supreme Court has reiterated the pro-arbitration stance, upholding the sanctity of arbitral awards and minimizing judicial intervention in arbitration proceedings.

Furthermore, the Indian government has been taking steps to enhance the enforceability of arbitral awards both domestically and internationally. Recent amendments to the Arbitration and Conciliation Act have aligned Indian arbitration law more closely with international standards. These amendments have introduced provisions for the expedited resolution of disputes and stricter timelines for arbitration proceedings, making the process more efficient.

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Challenges and Opportunities

Despite the significant progress in arbitration under Indian law, certain challenges persist. One of the primary challenges is the issue of judicial intervention, which can delay the arbitration process and undermine the finality of arbitral awards. While recent judicial pronouncements have sought to limit such intervention, there is still a need for greater clarity and consistency in this regard.

Another challenge is the enforcement of arbitral awards, particularly in cases involving government entities or public policy considerations. While India has made strides in enforcing foreign arbitral awards, challenges remain in enforcing domestic awards, especially against state-owned enterprises or government bodies. Addressing these challenges will be crucial in enhancing the credibility of arbitration as a dispute resolution mechanism in India

However, amidst these challenges, there are also significant opportunities for growth and development in arbitration under Indian law. The establishment of institutions like the IIAC and the government's commitment to promoting India as an arbitration-friendly jurisdiction signal a positive outlook for the future of arbitration in the country. With the increasing globalization of business and commerce, there is a growing demand for efficient and reliable dispute resolution mechanisms, and arbitration has the potential to fill this need.

Conclusion

Arbitration under Indian law has come a long way in recent years, with various legislative and judicial initiatives aimed at making the process more efficient and effective. While challenges remain, the overall trajectory is one of progress and growth. As India continues to position itself as a preferred destination for arbitration, stakeholders must work together to address existing challenges and capitalize on emerging opportunities. By fostering a conducive environment for arbitration, India can further enhance its reputation as a reliable and efficient hub for dispute resolution.

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THE CONUNDRUM SURROUNDING INTEREST UNDER GST ON DELAYED PAYMENT OF TAX: AN ANALYSIS

Puneet Agrawal
Sr. Partner

Introduction

Under the scheme of the Central Goods & Services Tax Act, 2017 (hereinafter "**CGST Act**"), Section 50 provides for the levy of interest on delayed payment of tax. An assessee making delayed payment of GST is required to pay interest at high rates for the period of delay during which the tax has remained unpaid.

However, lately, taxpayers and the revenue have been at loggerheads, on the issue of levy of interest where GSTR-3B was filed belatedly, though the tax was deposited in the electronic cash ledger (hereinafter referred to as "**ECL**") within the due date of filing of the return. The present article discusses the above controversy in light of the relevant legal provisions under the CGST Act and relevant judicial pronouncements.

Legal Provisions

Section 50 of the CGST Act provides that every person who is liable to pay tax but fails to pay the tax or any part thereof to the Government within the period shall pay interest at a rate not exceeding 18 per cent.

Attention is further invited to section 39(1) and section 39(7) of the CGST Act which pertain to the date of furnishing the return which is directly related to the date of payment of tax.To quote section 39(7):

> *"39. Furnishing of returns.—(1) Every registered person.....*
> *(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.....*

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Judicial Pronouncements

1. M/s Eicher Motors Limited v. The Superintendent of GST (W.P. Nos. 16866 And 22013 of 2023 And W.M.P. No. 32200 of 2023) [Madras High Court]- The Hon'ble High Court held that the filing of GSTR-3B is immaterial for the payment of tax to the Government, and the crucial factor is remitting the GST not later than the last date of filing of Form GSTR-3B, i.e., on or before 20th of every month, to the Government. Once the amount is paid by generating GST PMT-06, the said amount will be initially credited to the account of the Government immediately upon deposit, at which point, the tax liability of a registered person will be discharged to the extent of the deposit made to the Government. Thereafter, for the purpose of accounting only, it will be deemed to be credited to the ECL as stated in Explanation (a) to Section 49 of the Act.

2. M/S. RSB Transmissions India Limited v. Union of India (W.P (T) No. 23 of 2022) [Jkarkhand High Court]- In this case, the Hon'ble Jharkhand High Court had held that the mere deposit of an amount in the electronic cash Ledger does not constitute the payment of tax to the government. The actual debiting of the amount from the electronic cash ledger towards the tax liability occurs only upon the filing of the GSTR-3B as it is only then the amount lying in his Electronic Cash Ledger is debited towards payment of tax, interest or tax liability.

Conclusion

In conclusion, there are conflicting views among high courts as to whether the interest is payable if the tax is deposited in an electronic cash ledger but GSTR-3B is filed belatedly. However, in M/s Eicher Motors (Supra) the Madras High Court ruled that the filing of GSTR-3B is immaterial for the payment of tax to the Government. This decision specifically dissented from the previous judgment by the Hon'ble Division Bench of Jharkhand High Court in M/s RSB Transmission (Supra) thereby, providing relief to taxpayers who deposited tax in an Electronic Cash Ledger but faced challenges in filing GSTR-3B on time.

The assessees who have already paid the tax under the relevant head vide challan PMT-06 before the due date cannot be saddled with interest liability. The taxpayers must ensure the timely deposit of the tax to the account of the government, however, if any demand of interest is raised by the department, merely for the delay in filing GSTR-3B the assessee has respite in the form of law laid down by the Madras High Court. Turnover which way, the controversy would only be settled by the authoritative pronouncement of the apex court.

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SUPREME COURT'S RULING: RECOVERY CERTIFICATE FROM DRT TREATED AS DEEMED DECREE

Jatin Sehgal
Sr. Partner

In a significant legal development, the Supreme Court recently issued a landmark judgment underscoring the pivotal role of recovery certificates issued by Debt Recovery Tribunals (DRTs) in debt recovery proceedings. The case, titled Tottempudi Salalith Vs. State Bank Of India & Ors, was adjudicated by a two-Judge Bench comprising Justice Aniruddha Bose and Justice Vikram Nath on 18th October 2023. The ruling clarified that a recovery certificate issued by the DRT is to be treated as a deemed decree or order of the court for various legal purposes, including initiating the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC).

The genesis of the case lies in an appeal filed before the Apex Court by Tottempudi Salalith against the State Bank of India, Totem Infrastructure Limited, and G. Satyanarayana Murty. The matter stemmed from insolvency proceedings initiated against Totem Infrastructure Limited, the corporate debtor, due to its default in repaying loans and bank guarantees to several banks, including the State Bank of India and its subsidiaries. Prior to commencing the IBC action, the banks had initiated recovery proceedings before the DRTs, resulting in the issuance of recovery certificates.

The National Company Law Tribunal (NCLT) admitted the State Bank of India's application under Section 7 of the IBC, declaring a moratorium and appointing an Interim Resolution Professional. Subsequently, the matter was appealed before the National Company Law Appellate Tribunal (NCLAT), which affirmed the NCLT's decision. The appellant challenged the NCLAT's ruling before the Supreme Court, raising various legal issues pertaining to the acknowledgment of debt, limitation period, and the significance of recovery certificates issued by the DRTs.

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In its observations, the Supreme Court addressed several critical issues, including the determination of the default date, the applicability of the doctrine of election, and the treatment of recovery certificates as deemed decrees. The Court underscored that a recovery certificate issued by the DRT is akin to a decree or order of the court for initiating CIRP under the IBC. Furthermore, the Court clarified that the limitation period for filing an application under Section 7 of the IBC is governed by Article 137 of the Limitation Act.

The judgment reaffirmed established legal principles while providing clarity on the legal status of recovery certificates and their implications for debt recovery and insolvency proceedings. By treating recovery certificates as deemed decrees, the Supreme Court has bolstered the efficacy of debt recovery mechanisms and provided certainty to creditors seeking recourse under the IBC.

In conclusion, the Supreme Court's ruling in Tottempudi Salalith Vs. State Bank Of India & Ors has far-reaching implications for debt recovery proceedings and insolvency resolution in India. The judgment not only clarifies the legal status of recovery certificates but also underscores the importance of adhering to the limitation period for initiating CIRP under the IBC. As such, it represents a significant milestone in India's insolvency jurisprudence, providing clarity and certainty to stakeholders involved in debt recovery and insolvency proceedings.

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GST- PERQUISITES AND SUBSIDISED/FREE FOOD TO THE EMPLOYEES

Rakesh Garg
Sr. Mentor

As per sec 7(2) of the GST Act, activities specified in Schedule III to the CGST Act shall neither be treated as a supply of goods nor a supply of services. Entry 1 of Schedule III specifies that, "Services by an employee to the employer in the course of or in relation to his employment." Hence, whenever service is provided by an employee to the employer in the course of or in relation to his employment, it is not subject to GST.

In general, an employee receives two types of considerations from his employer: (a) Remuneration including perquisites; and (b) Gifts or awards.

Employee benefits, also known as perquisites or fringe benefits, are provided to the employees over and above salaries and wages. Employee benefits may vary depending upon the nature of organization. "Perquisites" is a benefit which one enjoys or is entitled to on account of one's job or position. Thus, unless a person is an employee, he cannot get any perquisites.

Vide Circular No. 172/03/2022-GST, dated 06 July 2022, it has been clarified that any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

Providing of food facilities, free or at subsidized rate, perhaps, is the most confusing and litigated activity under the GST. In these cases, since employee is relative of the employer, so far as levy of GST is concerned, number of questions arise, such as, -

(i) Where the employer recovers partial amount (food are supplied at subsidized rate), whether employer is liable to pay GST on the amount recovered or on the open market value or the cost + price;

(ii) Where the employer provides free food, whether he is liable to pay GST on the amount based upon the open market value or the cost + price

(iii) Where food is supplied through an independent contractor, and

1. if amount payable to the contractor is routed through the employer (without and with subsidy or margin), whether employer is liable to pay GST;
2. if partial amount is borne by the employer, what would be valuation of supply made by the employer, if any;
3. whether the employer is eligible for input tax credit if certain amount is decided as taxable in his hands. We are aware that rate of supply of food is 5%, without ITC.

Many a times, particularly in the large industries, providing of canteen facilities to the employees are also obligatory for the employer in certain laws in force; but there are number of other organisations who provide these facilities to its employees on voluntary basis.
First school of thought considers recovery of food expenses from the employees would come under the definition of 'outward supply', and amount recovered by the employer shall be subject to GST. Other school would say that GST is not payable by the employer on recovery of certain amount from the employees for availing the facility of canteen services. We are listing below few advance rulings just to understand the gravity of the confusion.

First view à GST is payable either on the fair market value of on the amount recovered from the employees: -

- Caltech Polymers Pvt. Ltd.[1];
- Musashi Auto Parts (P) Ltd.[2];
- Kothari Sugars and Chemicals Limited[3];
- Federal-Mogul Anand Bearings India Limited[4];
- Sundaram Clayton Limited[5];
- Tube Investment of India Ltd.[6];

[1] 2018 (4) TMI 582 dated 26.03.2018 (AAR-W.B.)
[2] No. HAR/HAAR/R/2019-20/18 dated 04.02.2020 (AAR-Har.)
[3] 2022 (7) TMI 525 dated 05.05.2023 (AAAR-T.N.)
[4] 2023 (11) TMI 949 dated 26.09.2023 (AAAR-H.P.)
[5] 2023 (12) TMI 723 dated 05.09.2023 (AAR-T.N.)
[6] 2024 (1) TMI 953 dated 22.12.2023 (AAR-Uttara.)

Second view à GST is not payable by the employer on the amount of recovery from the employees: -

- Rites Ltd.[1];
- Zydus Lifesciences Ltd. (Formerly Known as Cadila Healthcare Ltd.)[2];
- Bharat Oman Refineries Ltd.[3];
- Tata Autocomp Systems Ltd.[4];
- Kohler India Corporation Pvt Ltd.[5]

The other confusion is with regard to availing of the ITC by the employers on these services: some advance ruling authorities state that no ITC is available to the employer; and other states that ITC is not available to the extent of recovery from the employees.

Advance ruling authorities of almost every state have applied their minds; and based upon their wisdom, have given their verdict; which however, lead to big confusion to the trade and industry. We are about to complete seven years of implementation of GST; and such confusion, which also gives arbitrary powers to the adjudication authorities, must end. We would thus request to the Hony. GST Council to end this litigation by giving their views through a circular on taxability of various scenarios discussed in this Paper.

[1] 2023 (7) TMI 142 dated 19.06.2023 (AAR-Guj.)
[1] 2024 (1) TMI 703 dated 05.01.2024 (AAR-Guj.)

[1] 2022 (10) TMI 949 dated 18.10.2022 (AAR-Har.)
[2] 2022 (10) TMI 304 dated 28.09.2022 (AAR-Guj)
[3] 2021 (12) TMI 999 dated 08.11.2021 (AAAR-M.P.)
[4] 2023 (7) TMI 142 dated 19.06.2023 (AAR-Guj.)
[5] 2024 (1) TMI 703 dated 05.01.2024 (AAR-Guj.)

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NEW LABOUR CODE IN INDIA: A TRANSFORMATIVE SHIFT IN EMPLOYMENT LAWS

RK Gupta
Sr. Mentor

INTRODUCTION

2024, is anticipated to witness notable shifts in legislative advancements and the evolution of employment practices.

In a significant reform to its decades-old labour laws, India introduced the New Labour Code in July 2022, aiming to consolidate and amend the rules regulating employment in both the organised and unorganised sectors. This move was driven by the necessity to simplify the complex web of over 100 state and 40 central labour laws that had become outdated, inconsistent, and a barrier to the ease of doing business.

Historically, India's labour laws trace back to the British colonial era, designed primarily to protect the interests of British employers. Post-independence, these laws underwent various amendments to align with the needs of an independent India, focusing on worker rights, safety, and fair practices. The Factories Act of 1948, for example, marked a pivotal point, establishing the first eight-hour workday and other fundamental workers' rights.

Recognising the need for a modern legislative framework to address the challenges of the contemporary labour market, the Indian government consolidated 29 national labour statutes into four comprehensive labour codes:

1. The Code on Wages, 2019
2. The Industrial Relations Code, 2020
3. The Occupational Safety, Health and Working Conditions Code, 2020
4. The Code on Social Security, 2020

These codes represent a paradigm shift, promising to streamline the legal framework and ensure the welfare of a vast workforce while fostering an environment conducive to business growth and investment. They aim to enhance transparency, reduce compliance burdens, and promote formal employment practices, thus benefiting both employers and employees.

Here's a breakdown of what each code covers:

1. The Code on Wages, 2019

- Purpose: To consolidate laws related to wages and bonus payments.
- Replaces: Minimum Wages Act, 1948; Payment of Wages Act, 1936; Payment of Bonus Act, 1965; and Equal Remuneration Act, 1976.
- Key Features:
  - Introduces a universal definition of "wages" applicable across all sectors, aiming to ensure uniformity and prevent discrimination in wage payments.
  - It mandates wage payment to employees by setting a minimum wage rate that applies nationwide, thus reducing wage disparity across different states and sectors.
  - Ensures timely payment of wages and bonuses to all employees and workers.
  - Promotes equal pay for equal work irrespective of the gender of the worker.

2. The Industrial Relations Code, 2020

- Purpose: To consolidate and amend laws relating to trade unions, conditions of employment in industrial establishments or undertaking, investigation and settlement of industrial disputes.
- Replaces: Industrial Disputes Act, 1947; The Trade Unions Act, 1926; and The Industrial Employment (Standing Orders) Act, 1946.
- Key Features:
  - Facilitates easier formation of trade unions and ensures their recognition at both the establishment and industry levels.
  - Introduces provisions for fixed-term employment, allowing employers flexibility in hiring based on seasonal or project-based requirements.
  - Increases the threshold for applicability of certain provisions related to layoffs, retrenchments, and closures from establishments employing 100 workers to those employing 300 workers, making it easier for larger establishments to restructure or close operations.
  - Establishes a framework for negotiating unions and trade union rights.

3. The Occupational Safety, Health and Working Conditions Code, 2020

- Purpose: To consolidate and amend the laws regulating the occupational safety, health, and working conditions of the persons employed in an establishment.
- Replaces: 13 laws, including the Factories Act, 1948; The Mines Act, 1952; and The Dock Workers (Safety, Health and Welfare) Act, 1986, among others.
- Key Features:
  - Applicable to all establishments employing at least 10 workers, aims to ensure the health, safety, and working conditions of workers.
  - Introduces a single licence and annual return submission for establishments to simplify compliance requirements.
  - Mandates the issuance of appointment letters to all employees, thereby formalizing employment.
  - Provides for free health check-ups, safety standards, and welfare facilities.

4. The Code on Social Security, 2020

- Purpose: To amend and consolidate the laws relating to social security with the aim to extend social security to all employees and workers either in the organised or unorganised or any other sectors.
- Replaces: 9 laws including the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; The Maternity Benefit Act, 1961; and The Employees' State Insurance Act, 1948, among others.
- Key Features:
  - Extends social security to unorganised workers, gig workers, and platform workers, covering benefits such as provident fund, employment injury benefits, maternity benefits, and more.
  - Introduces the concept of aggregator paying contributions towards social security.
  - Empowers the central government to frame and notify social security schemes for self-employed individuals and other categories of workers.
  - Establishes a framework for social security funds for various segments of workers and provides for the national and state-level Social Security Boards to administer these schemes.

Key Changes and Their Impact

The New Labour Codes introduce several significant changes:

- Threshold for layoffs, retrenchment, and closure increased from 100 to 300 employees, aiming to provide greater flexibility to employers in managing their workforce.
- National floor level minimum wage introduced, ensuring a uniform wage structure across the country, which is expected to reduce income disparity.
- Social security benefits were extended to gig and platform workers, reflecting the changing nature of work in the digital economy.
- Occupational safety standards enhanced, consolidating 13 existing laws into a single code to ensure better protection for workers in various sectors.

The implementation of these codes is expected to bring a raft of benefits, including improved working conditions, enhanced social security, and greater inclusivity of the workforce, particularly benefiting the unorganised sector and gig economy workers. Additionally, the simplification of laws and the introduction of a national minimum wage are anticipated to attract more investment, boosting economic growth.

However, the transition to the new codes is not without challenges. There are concerns regarding the reduction in take-home pay due to increased contributions to provident funds and other schemes, and the potential for greater discretion in the hands of employers regarding layoffs and terminations.

Furthermore, while the codes aim to be comprehensive, they leave room for state-specific adaptations, which could lead to variations in implementation across the country. This necessitates a careful balance between maintaining uniform labour standards and accommodating regional economic variations.

Conclusion

The New Labour Code marks a monumental step in India's journey towards modernising its labour laws, aiming to balance the scales between protecting worker rights and fostering business growth. As the country adapts to these changes, it will be crucial to monitor their impact on the workforce and the economy to ensure that the benefits envisioned by these reforms are fully realised. The success of these codes will depend on their effective implementation and the cooperation between the government, employers, and the workforce in navigating the transition towards a more equitable and prosperous labour market.

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POWERS OF INTERIM/AD-INTERIM/STAY UNDER ARTICLE 226 R/W ARTICLE 142 OF CONSTITUTION : NO AUTOMATIC VACATION OF STAY ON ORDERS AFTER 6 MONTHS;

Anil Kuamr Gupta
Sr Mentor

(SC)(Criminal Appeal No. 3589 of 2023) High Court Bar Association vs. State of U.P. & Ors. (SLP-Crl.-13284-13289 of 2023)(Criminal Appeal Diary no. 49052 of 2023)

JUDGMENT : ABHAY S. OKA, J. for/of 5 Members Bench of SC

D. CONCLUSIONS

36. Hence, with greatest respect to the Bench which decided the case, we are unable to concur with the directions issued in paragraphs 36 and 37 of the decision in the case of Asian Resurfacing1. We hold that there cannot be automatic vacation of stay granted by the High Court. We do not approve the direction issued to decide all the cases in which an interim stay has been granted on a day-to-day basis within a time frame. We hold that such blanket directions cannot be issued in the exercise of the jurisdiction under Article 142 of the Constitution of India. We answer both the questions framed in paragraph 5 above in the negative.

37. Subject to what we have held earlier, we summarise our main conclusions as follows:

a. A direction that all the interim orders of stay of proceedings passed by every High Court automatically expire only by reason of lapse of time cannot be issued in the exercise of the jurisdiction of this Court under Article 142 of the Constitution of India;

b. Important parameters for the exercise of the jurisdiction under Article 142 of the Constitution of India which are relevant for deciding the reference are as follows:

(i) The jurisdiction can be exercised to do complete justice between the parties before the Court. It cannot be exercised to nullify the benefits derived by a large number of litigants based on judicial orders validly passed in their favour who are not parties to the proceedings before this Court;

(ii) Article 142 does not empower this Court toignore the substantive rights of the litigants;

(iii) While exercising the jurisdiction under Article 142 of the Constitution of India, this Court can always issue procedural directions to the Courts for streamlining procedural aspects and ironing out the creases in the procedural laws to ensure expeditious and timely disposal of cases. However, while doing so, this Court cannot affect the substantive rights of those litigants who are not parties to the case before it. The right to be heard before an adverse order is passed is not a matter of procedure but a substantive right; and

(iv) The power of this Court under Article 142 cannot be exercised to defeat the principles of natural justice, which are an integral part of our jurisprudence.
c. Constitutional Courts, in the ordinary course, should refrain from fixing a time-bound schedule for the disposal of cases pending before any other Courts. Constitutional Courts may issue directions for the time-bound disposal of cases only in exceptional circumstances. The issue of prioritizing the disposal of cases should be best left to the decision of the concerned Courts where the cases are pending; and
d. While dealing with the prayers for the grant of interim relief, the High Courts should take into consideration the guidelines incorporated in paragraphs 34 and 35 above.
38. We clarify that in the cases in which trials have been concluded as a result of the automatic vacation of stay based only on the decision in the case of Asian Resurfacing1, the orders of automatic vacation of stay shall remain valid.
39. The reference is answered accordingly. We direct the Registry to place the pending petitions before the appropriate Benches for expeditious disposal.

296 Taxman 580 (2024)(SC) AO(Intl.Tax) vs. Nestle SA

A Notification u/s 90(1) is a mandatory condition to give effect to a DTAA, or any other Protocol changing its terms or conditions, which has effect of altering existing provisions of law and thus, for a party to claim benefit of a same treatment clause, based on entry of DTAA between India and another State which a member of OECD, relevant date would be entering into Treaty with India and not a later date, when, after entering into DTAA with India, such country becomes an OECD member, in terms of India practice; High Court's order set aside;

Information' must be verified from case-file/records before issuing notice u/s 148A(b)

SURIDHI Commercial Infra Pvt. Ltd. vs. ITO (Delhi HC)(WP(C) 5535/2023)(21-2-2024)
18. Thus, it is evident from the record that the AO neither before passing of the show cause notice under section 148A(b) of the Act nor before the impugned order under section 148A(d) of the Act, has considered the ITR filed by the petitioner on 08.09.2016, which duly captures the income earned by the amalgamated entity.
19. It is to be noted that the statutory authority which is entrusted with the wide powers is also casted with the responsibility that those powers should not be used unwarrantedly and that the due procedure infused with concomitants of principles of fairness should be adhered to before passing of the impugned notice under section 148A(b) of the Act.

20. It is also pertinent to point out the legislative intent behind the introduction of section 148A of the Act which primarily intends to reduce the frivolous litigation and effective disposal of cases. Reliance can be placed upon the decision of this Court in the case of Divya Capital One (P.) Ltd. v. Asstt.CIT [2022 SCC Online Del 461], wherein, it was held as under that:- "7. This Court is of the view that the new re-assessment scheme (vide amended Sections 147 to 151 of the Act) was introduced by the Finance Act, 2021 with the intent of reducing litigation and to promote ease of doing business. In fact, the legislature brought in safeguards in the amended re-assessment scheme in accordance with the judgment of the Supreme Court in GKN Driveshafts (India) Ltd. v. ITO, (2003) 259 ITR 19 (SC) before any exercise of jurisdiction to initiate re-assessment proceedings under Section 148 of the Act. 8. This Court is further of the view that under the amended provisions, the term "information" in Explanation 1 to Section 148 cannot be lightly resorted to so as to re-open assessment. This information cannot be a ground to give unbridled powers to the Revenue. Whether it is "informationto suggest" under amended law or "reason to believe" under erstwhile law the benchmark of "escapement ofincome chargeable to tax" still remains the primary condition to be satisfied before invoking powers under Section 147 of the Act. Merely because the Revenue-respondent classifies a fact already on record as "information" may vest it with the power to issue a notice of re-assessment under Section 148A(b) but would certainly not vest it with the power to issue a re-assessment notice under Section 148 post an order under Section 148A(d)."

21. The bona fide objective behind the introduction of the new assessment scheme has also been discussed by this Court in Rithala Education Society v. UOI [2022 SCC Online Del 2501].

22. Thus, understanding of the legislative intent and the cardinal duty entrusted upon the authority to duly apply its mind before the issuance of the notice under section 148A(b) of the Act, clearly elucidates that it is pertinent for the AO to consider the material before it to even form a prima facie opinion. .....

24. Therefore, it is crystal clear that the Revenue has not considered the ITR filed by the petitioner and issued the impugned notice without due application of mind and in a mechanical manner, without adhering to the statutory responsibilities envisaged under section 148 of the Act.

25. We are also not inclined to accept the submission of the learned counsel, appearing on behalf of the Revenue, to remit the matter back to the concerned AO for the simple reason that on a bare examination of the facts, we find that the reason for the issuance of the notice under section 148A(b) of the Act is itself de hors the available record.Nonetheless,.....

26. In light of the above, we accordingly allow the writ petition and set aside the show-cause-notice dated 15.03.2023 and order dated 28.03.2023.

27. The petition thus stands allowed and disposed of along with the pending application(s), if any.

Even 143(1) assessment cannot be reopened for conducting fishing enquiry or merely on suspicion. Where trust is a religious institution which receives offerings from devotees to their deity of faith in cash or otherwise, mere fact that there are cash deposits cannot mean that there is any reason to believe that income has escaped assessment, especially when accounts of trust are audited.

Shri Dnyaneshwar Maharaj Sansthan Alandi Dewachi vs. 1.ITO 2.NFAC/Adl.CIT/ JCIT/ACIT (Exemption) 3.Additional/Joint/Deputy/Assistant CIT /ITO, NFAC, through the PCCIT(NFAC), Delhi Room No.401, 2nd Floor, E-Ramp, Jawaharlal Nehru Stadium, New Delhi-110003 Email: delhi.pccit.neac@incometax@gov.in 4. The Union of India, Through the Principal Secretary, Department of Revenue, Ministry of Finance, Room No.128-B, North Block, New Delhi-110001 Email: rsecy@nic.in and judicial-dla@nic.in

(Bombay HC) (11-3-2024)(WP No. 3309 of 2022)
Section(s): 147, 148, 11, 12A (Income Tax Act)
9. ..... The aforesaid averment clearly indicates that the notice has been issued only to gather information and that the AO had no sufficient reasons to believe that there was escapement of income. This is nothing but fishing expedition, which is not permissible in law. This Court in Neetu M Chandaliya v. Income Tax Officer-14(2)(3) 1 2023 SCC Online Bom 2046 has held that while the Court cannot investigate into the adequacy or sufficiency of reasons, the Court can certainly examine whether the reasons are relevant and have a bearing on the matter in regard to which the Assessing Officer is required to entertain the belief before he can issue notice under Section 148 of the Act. The reasons cannot be based on a suspicion subject to a case of fishing enquiry.

10. It is further noticed from the documents on record that there was no reason nor any justification given in the notice to even arrive at a prima facie finding that the cash deposits led to escapement of income. There was no response to Petitioner's requests for information regarding alleged undisclosed income pertaining to cash deposits over and above the deposits in the bank account. The impugned order does not even controvert the objection raised by Petitioner that the cash collected was not only deposited in its bank account but was also duly offered to tax.

11. It is settled law that a reason to suspect is not the same as reason to believe. There has to be a rational connection and the live link between the material coming to the notice of the AO and the formation of belief regarding escapement of income. The Apex Court in the matter Sheo Nath Singh v. AACIT (1971) 82 ITR 147 (SC) has held as under: "....There can be no manner of doubt that the words 'reasons to believe' suggests that the belief must be that of an honest and reasonable person based upon reasonable grounds that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income Tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The Court can always examine this aspect though the declaration or sufficiency of reasons for the belief cannot be investigated by the Court."

12. The reasons to believe in the present matter merely adverts to information from the Investigation Officer, Kolhapur that Petitioner made some cash deposits. But it is an admitted fact that Petitioner, a charitable trust registered under Section 12A of the Act, eligible to avail exemption under Section 11 of the Act has deposited the donations received in cash in its bank account and thereby disclosed 'Nil' total income for the relevant AY. Moreover, the accounts of Petitioner are recorded, accounted and audited and hence, undoubtedly, there is no undisclosed cash over and above the deposits in its regular bank accounts which were offered for taxation. Thus, there is no material or fact which has been stated in the reasons for reopening assessment in the present case on which any belief can be founded of the nature contemplated by law.

13. The Apex Court in the case of Income Tax Officer, I Ward, Distt.VI, Calcutta and Ors. v. Lakhmani Mewal Das [1976] 103 ITR 437 (SC) has held as follows: ".....the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is not doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Incometax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment....."

14. Thus, upon perusal of the letter providing the reasons to believe escapement of assessment as well as the order rejecting Petitioner's objections impugned herein, we have no hesitation in holding that there is no live link, which is a sine qua non between the material before the AO in the present case and the belief which he has to form regarding escapement of income. The sanction under Section 151 of the Act granted by the prescribed authority as well as the notice dated 25th March 2021 is issued by the Department without any application of mind. In this view of the matter, the notice of 25th March 2021 and the order dated 3rd March 2022 rejecting the objections of Petitioner are set aside. The Petition is thus, allowed.

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LIQUIDATION PREFERENCE: DOWNSIDE PROTECTION FOR INVESTORS

A liquidation preference serves as a vital form of downside protection for investors. In an ideal scenario, when a company undergoes an exit, all shareholders, including both common and preferred, anticipate some degree of upside. This means that the payout per share should exceed the highest price per share paid by any investor. Upon exit, the company is obligated to pay preferred investors after settling secured debt, trade creditors, and other company obligations. This right, manifested in various forms, is typically extended regardless of the stage of investment, whether it's the initial seed round or a subsequent growth stage funding round.

The concept of 'Liquidation Preference' grants investors the right to receive a preferred payout in the event of the investee entity's liquidation or divestment of its assets. This priority payout occurs before the remaining equity shareholders of the company receive their share. Such payments are made subsequent to the settlement of the company's creditors, who are legally entitled to precedence in any distribution of liquidation proceeds. A liquidation event encompasses not only the winding up of the company or insolvency but also the change of control events such as mergers, demergers, share sales, or significant asset sales of the investee entity or group.

The venture capital (VC) landscape typically witnesses two prevalent types of liquidation preference structures:

1. Non-Participating Preference
2. Participating Liquidation Preference

Under a **Participating Liquidation Preference** structure, investors, having received the predetermined returns as per the agreement, are further entitled to participate along with other shareholders in the distribution of surplus proceeds.

Consequently, investors enjoy a double dip in the available proceeds. Conversely, under a **Non-Participating Preference**, investors are entitled to receive either the amount equal to their investment or, in certain cases, a multiple of the investment amount based on the commercial arrangement between the parties. However, they do not have the right to participate in the surplus proceeds' distribution.

Enforceability

Liquidation preferences are crucial for investor protection, particularly in instances of undervalued company sales. However, the enforceability of these preferences varies. Section 43 of the Companies Act 2013 stipulates that preference shareholders possess rights to repayment or capital refund during liquidation, irrespective of fixed premiums in the company's charter.[1] Also, a Ministry of Corporate Affairs notification dated June 5, 2015, has allowed private companies to be exempted from Sections 43 and 47 of the Companies Act 2013. [2]

If a liquidation preference clause is activated due to a company's liquidation, all proceeds will be distributed according to the waterfall mechanism in section 53 of the Insolvency and Bankruptcy Code, 2016. According to this code, debenture holders are paid first, followed by preference shareholders, and then equity shareholders. The resolution professional overseeing the liquidation is not bound by any agreements between shareholders.

[1] Kinds of share capital – Section 43 of the Companies Act, 2013.
[2] Notification No. G.S.R 464 (E) dated June 5, 2015.

Contributed By
Aarushi Gairola
Associate

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TRADE DRESS IN TRADEMARKS: BASIC CONCEPT

Historical Evolution

The journey of Trade Dress traces back to the United States with the advent of the Lanham Act in 1946. This landmark legislation, crafted to fortify trademark protection, inadvertently laid the groundwork for Trade Dress by recognizing the significance of a product's overall appearance in consumer identification. In India, the formal recognition of Trade Dress arrived later with the inception of the Trade Marks Act in 1999. As the market dynamics evolved, so did the recognition of Trade Dress, culminating in its acknowledgment as a vital facet of brand protection and consumer rights.

Key Elements

Trade Dress encompasses a plethora of elements, each contributing to a product's distinct identity. Packaging stands as the frontline ambassador, conveying the essence of a product with every glance. Product design, with its unique attributes, becomes synonymous with the brand itself, fostering instant recognition. Furthermore, the décor and layout of business spaces transcend the tangible, offering consumers an immersive experience that resonates with the brand's ethos.

Legal Landscape

In the United States, Trade Dress finds its legal footing under the Lanham Act, where protection can be enforced without formal registration. The Act's definition underscores the inclusivity of Trade Dress, encompassing both product packaging and design. Similarly, in India, while the Trademark Act doesn't explicitly define Trade Dress, it recognizes it through various provisions, offering protection to visual elements that distinguish products. Firstly, Section 2 (zb) states that a “trademark” covers a mark capable of being represented graphically and which is capable of distinguishing goods or services from another.

Secondly, Section 2(m) "Mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof and Section 2(q) "Package" includes any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid, stopper a cork. These three definitions read together have been used to describe what is understood as a Trade Dress.

Judicial Precedents

A series of landmark judgments in India have solidified the legal standing of Trade Dress.

The landmark judgement in this regard is that of Colgate Palmolive Co. v. Anchor Health and Beauty Care where the court while deciding a dispute regarding colours of a toothpaste, addressed the issue by referring to the identity of trade dress and held, "trade dress is the soul for identification of the goods as to its source and origin and as such is liable to cause confusion in the minds of unwary customers, particularly those who have been using the product over a long period. In other words, if the first glance of the article without going into the minute details of the colour combination, getup or lay out appearing on the container and packaging gives the impression as to deceptive or near similarities in respect of these ingredients, it is a case of confusion and amounts to passing off one's own goods as those of the other with a view to encash upon the goodwill and reputation of the latter."

Conclusion

As businesses navigate the ever-shifting landscape of consumer preferences, Trade Dress stands as a stalwart guardian, ensuring that amidst the sea of choices, brands remain distinctive, recognizable, and trusted.

Contributed By

Ismat Chughtai

Associate

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THE SYNERGY OF BLOCKCHAIN AND SMART CONTRACTS

In today's dynamic business environment, integrating blockchain technology and smart contracts presents a transformative solution for enhancing the efficiency, security, and transparency of legal transactions. Blockchain, introduced in 2008 as the foundational technology for Bitcoin, has evolved to encompass various industries, offering a decentralized ledger for storing and replicating data.

Smart contracts, conceptualized by Nick Szabo in 1994, automate contractual agreements by encoding terms directly into lines of code, eliminating the need for intermediaries and ensuring enforceability.

Blockchain, a decentralized digital ledger system, provides a secure and transparent record of transactions across multiple computers. Each transaction is recorded as a block, linked to the previous one through cryptographic hashes, creating an immutable chain resistant to tampering. Smart contracts, on the other hand, are self-executing contracts with terms encoded in code. They automatically execute contractual obligations when predetermined conditions are met, operating on the blockchain network.

Advantages

1. Immutability: Blockchain's immutable nature ensures that once a legal document is stored, it remains unalterable and tamper-proof, enhancing the integrity and authenticity of records.

2.Secure and Transparent Record Keeping: Utilizing cryptographic techniques, blockchain secures data, reducing the risk of unauthorized access or tampering. The decentralized nature of blockchain ensures transparent access to documents for all authorized parties.

3.Decentralization: Operating on a decentralized network, blockchain eliminates reliance on central authorities, reducing the risk of a single point of failure and providing redundant storage mechanisms for legal documents.

4.Automated Execution with Smart Contracts: Integrating smart contracts with blockchain enables automatic execution of contractual terms when predefined conditions are met, streamlining contract enforcement and reducing manual intervention.

5.Enhanced Data Integrity: Blockchain's consensus mechanisms ensure agreement on the ledger's state among network participants, guaranteeing the accuracy and integrity of stored legal documents.

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6.Chain of Custody Verification: Blockchain offers a transparent and traceable record of the chain of custody for legal documents, crucial for establishing authenticity in legal proceedings.

7.Efficient Compliance: The transparent and auditable nature of blockchain simplifies tracking changes to legal documents, streamlining auditing processes and ensuring regulatory compliance.

8.Reduced Dependency on Intermediaries: Blockchain's decentralized nature reduces reliance on intermediaries for document storage and retrieval, leading to cost savings and increased efficiency in legal processes.

9.**Global Accessibility:** Blockchain facilitates global access to legal documents, enabling authorized parties to securely retrieve information from anywhere in the world, particularly beneficial for cross-border transactions and collaborations.

Combining blockchain's immutability, security, and transparency with smart contracts' automated execution capabilities revolutionizes the way legal transactions are conducted, paving the way for a more efficient, secure, and trustworthy ecosystem. Despite challenges such as complexity, regulation, and scalability, continued research and innovation are crucial in unlocking the full potential of this transformative technology in the legal domain.

Contributed By
Nancy Girdhar
Associate

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Registered & Head Office:

C-582, Defence Colony, New Delhi-110024