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Trial: Endgame?**

**Digital Arrest:
Criminals As Cops**



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ARBITRATION BAR OF INDIA

A NEW MILESTONE

The judiciary has recognised the importance of this mechanism as a viable alternative to traditional litigation. Despite the progress of arbitral awards, India needs to do much more if it is to emerge as a leading global centre

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Election Commission of India



WORTH REMEMBERING



“You can’t solve a problem as complex as inequality in one legal clause.”

—*Theresa May, British politician who became the second woman prime minister of the United Kingdom*

“Yes, people need food and education. But one of the cornerstones of any society is a well-functioning legal system.”

—*Cherie Blair, an English barrister, writer and wife of former Prime Minister of the United Kingdom Tony Blair*

“One of the challenges for lawyers can be explaining, first of all, what the legal issue is and, second, its significance. And both of those are important.”

—*Ken Cuccinelli, an American lawyer and politician*

Calcutta High Court restrains BJP from publishing derogatory ads against Trinamool Congress

The Calcutta High Court (right) restrained the BJP from publishing any kind of derogatory advertisements against the Trinamool Congress (TMC) till further orders. Justice Sabyasachi Bhattacharyya also pulled up the Election Commission of India (ECI) for grossly failing to address the complaints filed by the TMC against BJP ads in which the ruling party in West Bengal was targeted.

Justice Bhattacharya said the ECI had grossly failed to address the complaints of the TMC in due time. The Court noted that the ads by the BJP during the silence period—a day prior to the polls and the polling day—were violative of the Model Code of Conduct (MCC), the rights of the TMC as well as the citizens' right to



fair elections.

The Court observed that the allegations and publications made against the TMC were outright derogatory and definitely intended to insult the rivals and level personal attacks.

The ECI's counsel stated that the matter

was *sub judice* before them and a verdict of the Court may influence the outcome of those proceedings. The counsel added that the only remedy available to the petitioners was in the form of an election petition and that no such prayers for an injunction could be entertained at the present stage.

Special Court grants bail to Karnataka MLA HD Revanna in sexual abuse case

A Special Court in Bengaluru granted bail to Karnataka MLA HD Revanna (right) in a sexual abuse case involving him and his son, Lok Sabha MP Prajwal Revanna, who is absconding. The Special MP/MLA court Judge J Preeth allowed the bail plea on the condition that HD Revanna executes a personal bond for Rs five lakh with two sureties and cooperates with the investigation.

The sexual abuse allegations against Prajwal Revanna had emerged after more than 2,900 videos depicting the sexual assault of several women were circulated on social



media. A first information report was registered on April 28 against Prajwal Revanna

and HD Revanna under Sections 354A (sexual harassment), 354D (stalking), 506 (criminal intimidation) and 509 (insult to modesty of woman) of the Indian Penal Code at the Holenarasepur town police station in Hassan district.

Furthermore, the criminal case was registered on a complaint lodged by one of the victims. A special investigation team headed by senior Indian Police Service officer BK Singh is investigating into the matter.

Karnataka JDS leader HD Revanna was arrested on May 4 and remanded to four-day police custody. The Karnataka MLA was later sent into judicial custody. At the conclusion of his judicial custody, he secured

conditional bail from a special court for MPs and MLAs.

BRS leader K Kavitha's judicial custody extended till June 3

The Delhi Rouse Avenue court extended the judicial custody of Bharat Rashtra Samithi (BRS) leader K Kavitha (right) in the Delhi excise policy case until June 3. The custody was extended in cases being investigated by both the Central Bureau of Investigation (CBI) and the Enforcement Directorate (ED).

Kavitha's lawyer argued that the charge sheet had been filed but cognisance hadn't been taken by the court as yet, and hence, the Court cannot extend her custody, and she was entitled to be released.

Appearing for Kavitha, Advocate Nitesh Rana called the BRS leader's custody after May 13 as illegal. The charge sheet was filed against her on the same day. The counsel questioned under which provision of the Code of Criminal Procedure (CrPC)



the investigation agency was seeking further judicial custody. Responding, the ED's counsel stated that the Court is empowered to extend custody under Section 167 of the CrPC and take post-cognisance under Section 309 CrPC.

Subsequently, when the Court ques-

tioned Kavitha's counsel on what should be done, mentioning that the bail application is still pending, the advocate replied that the BRS leader should be released.

The counsel further argued that they are in a precarious situation since the Court cannot extend custody under Section 167 without taking cognisance of the charge sheet. Nonetheless, the Court decided to extend the judicial custody until June 3.

Earlier, the Delhi High Court had issued a notice to the CBI on the bail plea filed by Kavitha. A bench comprising Justice Swarna Kanta The ED had arrested Kavitha from her Hyderabad residence on March 15, and she was in judicial custody in the case. Later, the CBI arrested her in Tihar jail.

CJI DY Chandrachud meets Uzbekistan's chief justice at Tashkent



Chief Justice of India DY Chandrachud recently engaged in a bilateral meeting with Uzbekistan's Chief Justice Bakhtiyar Islamov during his visit to Tashkent. The discussions, reportedly, centred on fostering bilateral cooperation between the top courts of both the nations

The Arbitration Bar of India serves as a professional body for arbitration practitioners, providing them with a platform for networking, professional development and advocacy. It sets standards and ethical guidelines for arbitration practitioners to ensure high-quality and fair practices and offers training programmes, workshops and seminars to enhance the skills and knowledge of arbitration professionals.



A NEW MILESTONE

The judiciary has recognised the importance of arbitration as a viable alternative to traditional litigation. With the launch of ABI, hopes are high that outstanding issues will find a platform and resolution

By Sanjay Raman Sinha

RECENTLY, a new landmark was set up in arbitration when the Arbitration Bar of India (ABI) was launched with much fanfare at a ceremony in Bharat Mandapam, Delhi.

The website of ABI states: “Arbitration Bar of India (ABI) is a leading professional association dedicated to advancing Alternative Dispute Resolution (ADR) mechanisms throughout India. ABI’s core mission is to promote excellence, integrity, and innovation in arbitration practices. We aim to foster the widespread adoption of ADR, advocate for legislative reforms, and

provide a platform for continuous learning and collaboration within the arbitration community. By championing fairness and efficiency, ABI endeavours to shape the future of dispute resolution in India, ensuring equitable outcomes for all stakeholders involved.”

ABI serves as a professional body for arbitration practitioners, providing them with a platform for networking, professional development and advocacy. It sets standards and ethical guidelines for arbitration practitioners to ensure high-quality and fair practices. ABI offers training programmes, workshops and seminars to enhance the



Arbitration is growing by leaps and bounds in India and a fledgling infrastructure is slowly being replaced by robust machinery. The laws are lengthy and complex and have seen overhaul by way of amendments in the last few years. The judiciary has recognised the importance of the arbitration process.

skills and knowledge of arbitration professionals. This includes certification programmes for new arbitrators.

In fact, mediators' training programmes in the country have kicked off in a special way with even courts having arbitration and mediation training cells in their premises. The Supreme Court Bar Association had organised one such programme for its members, highlighting the need and importance for such focussed training.

Arbitration is growing by leaps and bounds in India and a fledgling infrastructure is slowly being replaced by robust machinery. The laws are lengthy and complex and have seen overhaul by the way of amendments in the last few years.

In fact in 1989, Justice Sabyasachi Mukharji in *FCI vs Joginderpal Mohinderpal* had stated: "We should make the law of arbitration simple, less technical and more responsible to the actual realities of the situation, but must be responsive to the canons of justice and fair play and make the arbitrator adhere to such process and norms which will create confidence, not only by doing justice between the parties, but by creating a sense that justice appears to have been done."

The judiciary has recognised the importance of the arbitration process and stressed the need to foster evolution of this alternative, non-adjudicatory form of dispute resolution. Arbitration in India has significantly metamorphosed over the past few decades, positioning itself as a

viable alternative to traditional litigation.

The Arbitration and Conciliation Act, 1996, lays the groundwork for a comprehensive structure for both domestic and international arbitration. Recent amendments have streamlined the arbitration process, minimising judicial interference and improving institutional arbitration.

Arbitration benefits from minimal intervention by the judiciary as it is a stand-alone process with its own timelines and norms. The principle of minimal intervention is embedded in the statutory structure of the Arbitration and Conciliation Act, 1996. The concept of minimal judicial intervention in arbitration is based on the idea of mutual ▶



Justice RF Nariman in *Ssangyong Engineering & Construction Co. Ltd. vs National Highways Authority of India* (2019) stated presciently: "The Arbitration and Conciliation Act, 1996, as amended, is a significant leap forward in making India an arbitration-friendly jurisdiction. The courts have consistently tried to uphold the spirit of minimal intervention."



High costs are often associated with arbitration, which includes arbitrators' fees and legal expenses. These can be unaffordable for smaller parties and disputes. In *Reliance Industries Ltd. vs Union of India* case of 2014, Justice SA Bobde observed: "Cost-effectiveness is a crucial factor in the success of arbitration as an alternative dispute resolution mechanism."

agreement to settle disputes amicably, and the resultant autonomy the parties should have to do so. Section 5 of the Act not only ensures least interference by courts, but also guarantees the integrity of the arbitration process.

Justice RF Nariman in *Ssangyong Engineering & Construction Co. Ltd. vs National Highways Authority of India* (2019) stated presciently: "The Arbitration and Conciliation Act, 1996, as amended, is a significant leap forward in making India an arbitration-friendly jurisdiction. The courts have consistently tried to uphold the spirit of minimal intervention."

However, there is a flip side to the spirit of minimal intervention; and that is spirited intervention by the courts. This is highlighted by a comment of Justice RS Bachawat, a retired judge of the Supreme Court, who said: "Judicial interference remains a significant hurdle in the arbitration process in India. While the intention of the law is to minimise such intervention, in practice, courts often overstep, leading to delays and increased costs." The process of judicial intervention is given a foothold by the contending parties themselves when they challenge the award in courts.

The impartiality and expertise of arbitrators, particularly in ad-hoc arbitrations, are often questioned. Questions are raised on the selection process. The people who man-

the arbitral process are crucial to arbitration. Traditional courts have a benchmark for fairness and the arbitration seat has to hold up the jural standards. It has rightly been said that arbitration is only as good as the arbitrators.

In the 2017 *TRF Ltd. vs Energo Engineering Projects Ltd.* case, the Supreme Court stated: "An arbitrator must be independent and impartial. Any justifiable doubts regarding their neutrality must be addressed promptly to maintain the integrity of the arbitration process."

High costs are often associated with arbitration, which includes arbitrators' fees and legal expenses. These can be unaffordable for smaller parties and disputes. In theory, arbitration is said to have lower costs when compared to litigation. With structured timelines and lack of appeals, arbitration is assumed to be cost-friendly. In reality, this may not be the case. In many cases, arbitration can be more costly than domestic litigation.

In Singapore, the arbitrator's fees are based on the amount in dispute, unless the parties have determined an alternative method. The Supreme Court in *Oil and Natural Gas Corporation Ltd. vs Afcons Gunanusa JV* imposed a ceiling of Rs 30 lakh payable to each arbitrator. The Court held that the arbitrators cannot unilaterally decide their fees and any order passed by the arbitral tribunal to this effect shall not be binding on the parties.

In *Reliance Industries Ltd. vs Union of India* case of 2014, Justice SA Bobde observed: "Cost-effectiveness is a crucial factor in the success of arbitration as an alternative dispute resolution mechanism."

Today, even as an ever burgeoning band of arbitrators grapple and solve disputes, the infrastructure is also getting a boost from government and courts. While India has developed a comprehensive legal framework for arbitration, the challenges need an ongoing reform programme.

A proactive approach to solve the outstanding issues is crucial for enhancing the credibility and effectiveness of arbitration as a preferred mode of alternative justice delivery mechanism. This is precisely why expectations are high from the Arbitration Bar of India. ■



THE ARBITRATION ANOMALY

Arbitral Awards are the promise of enforcement that justifies their being. Despite periodic attempts and some progress, India still has some way to go if it has to emerge as a leading global arbitration centre

By Priyanshu Upadhyay

THE ever-expanding horizons of international trade and commerce necessitate the growth of cross-border dispute resolution mechanisms which are honoured and effective. The growing popularity of international commercial arbitration is a direct

result of this. The freedom to contract imbues the arbitration mechanism with party-autonomy. This autonomy to choose a seat of arbitration, its governing law and its venue makes arbitration a preferred dispute resolution mechanism over regular litigation. In this context, it is no surprise that arbitral awards passed in one country find them-

selves at the mercy of the courts of another for their enforcement. The ease of this enforcement is perhaps the plinth on which the international arbitration framework stands.

The ease of enforcement of arbitral awards in a particular jurisdiction also contributes, in no small measure, to its value as a business destination. Ultimately, no prudent enterprise would like to engage in business with an entity with assets in a jurisdiction where awards go to die. India has undoubtedly evolved into a pro-arbitration jurisdiction. This credential stands burnished by successive judicial pronouncements and laws. Save a few exceptions, which are few and far between, the pro-arbitration and enforcement bias of the Indian judiciary and legislature is manifest. However, certain cases show that this bias may be more theoretical than practical. This begs the question: is India the enforcement haven that it needs to be? Especially if it has to emerge as a leading global arbitration centre.

The Supreme Court of India in *M/s Fuerst Day Lawson Ltd. vs Jindal Exports Ltd.* observed that a single proceeding may have multiple stages. Enforcement of an award may only be the first stage, while its execution may take several more steps. In 2018, the Delhi High Court delivered a landmark decision by upholding an arbitral award made in Singapore in an international commercial arbitration between the erstwhile owners of Ranbaxy Laboratories Limited and the Japanese multinational pharmaceutical company, Daiichi Sankyo Company Ltd ('Daiichi'). This decision was consistent with the pro-arbitration bias of India's judiciary and legislature. However, nearly six years later, Daiichi's struggle to execute and realise the award in its favour continues, with no end in sight.

The identification of the court[s] of competent jurisdiction when assets are scattered across the country; legal battles over the scope of precepts under Section 46 of the Code of Civil Procedure, 1908; multiplicity of proceedings across various states; issues of conflict with laws such as the Insolvency and



In 2018, the Delhi High Court delivered a landmark decision by upholding an arbitral award made in Singapore in an international commercial arbitration between the erstwhile owners of Ranbaxy Laboratories Limited and the Japanese multinational pharmaceutical company, Daiichi Sankyo Company Ltd. However, nearly six years later, Daiichi's struggle to execute and realise the award in its favour continues, with no end in sight.

Bankruptcy Code, 2016; and unnecessary legal interventions by award debtors which are invariably entertained by courts and take years to dispose are only some of the challenges that award holders face in India. To ►



The case of Amazon.com NV Investment Holdings LLC vs Future Retail Limited is yet another example of how, despite having an emergency award passed by the Singapore International Arbitration Centre in its favour, Amazon practically lost its investment in FRL. This battle paints a rather bleak picture of the enforcement and execution of foreign awards in India.

the watchful eye, these struggles serve as a deterrent to doing business in India. The case of Daiichi is a case study on how post-enforcement execution is a separate, protracted and painful battle in India.

The case of *Amazon.com NV Investment Holdings LLC vs Future Retail Limited* is yet another example of how, despite having an emergency award passed by the Singa-

pore International Arbitration Centre in its favour, Amazon practically lost its investment in FRL. Interestingly, in line with its pro-arbitration approach, the Supreme Court held the emergency award in favour of Amazon enforceable under Indian law. However, amidst the plethora of litigation initiated by FRL before various fora such as the Competition Commission of India, the Delhi High Court, the National Company Law Tribunal and the involvement of regulators like the Securities and Exchange Board of India, the emergency award lost its value.

While the dispute between Amazon and FRL gave India a welcome new judicial precedent on the recognition of emergency awards, the emergency award in question died a miserable death. The Supreme Court did allow the post-emergency award arbitration to continue and Amazon may well emerge victorious in this arbitration; however, the enforcement and execution proceedings that will follow will send shivers down any investor's spine. The Amazon-FRL battle is among the most widely reported legal disputes and paints a rather bleak picture of the enforcement and execution of foreign awards in India.

Recently, in a judgment passed in 2024 titled *Avitel Post Studioz Ltd. and Ors. vs HSBC PI Holdings (Mauritius) Ltd*, the Supreme Court lamented HSBC's inability to reap the fruits of an award in its favour for nearly a decade. In the words of the Supreme Court: "This long list of events points to a saga of the award-holder's protracted and arduous struggle to gather the fruits of the Award. ...In this backdrop, the travails of the Award holder suggest a Pyrrhic victory..." The Court further noted: "Even as the appeals filed by the award debtors are dismissed, the respondents, notwithstanding their victory in all legal battles until now, must not be allowed to feel that theirs is a case of winning the battle but losing the war. In the circumstances, we emphasize the need for early enforcement of the foreign award by the competent forum, without showing further indulgence to the award debtors."

Recently, an ICC Tribunal seated in



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Chicago, Illinois, USA has passed an arbitral award in favour of UpHealth Holdings Inc. a company incorporated in the USA. This award has been reported widely in the media and if the reportage is to be believed, the award debtors, viz., M/s Glocal Healthcare Systems Private Limited, an Indian company and its shareholders are poised to resist the enforcement and execution of this award. The award has already been called "one sided", "perverse", "oppressive" and "vexatious", among other things. Even before the mounting of any legal challenge to the award or its enforcement as per law, a media trial seems to have commenced.

The media diatribe against the award is despite the fact that the award has been passed by a tribunal of formidable international repute. The tribunal comprised VK Rajah, Carolyn Lamm and Pramod Nair—all bona fide names in the field of international commercial arbitration. Rajah has served as the attorney general of Singapore, prior to which he has been a judge of the Singapore Court of Appeal and the High Court of Singapore; Lamm is a partner at White & Case LLP, an international law firm based in the USA; Nair is an Indian Senior Advocate and the founder of Arista Law Chambers. The fact that an

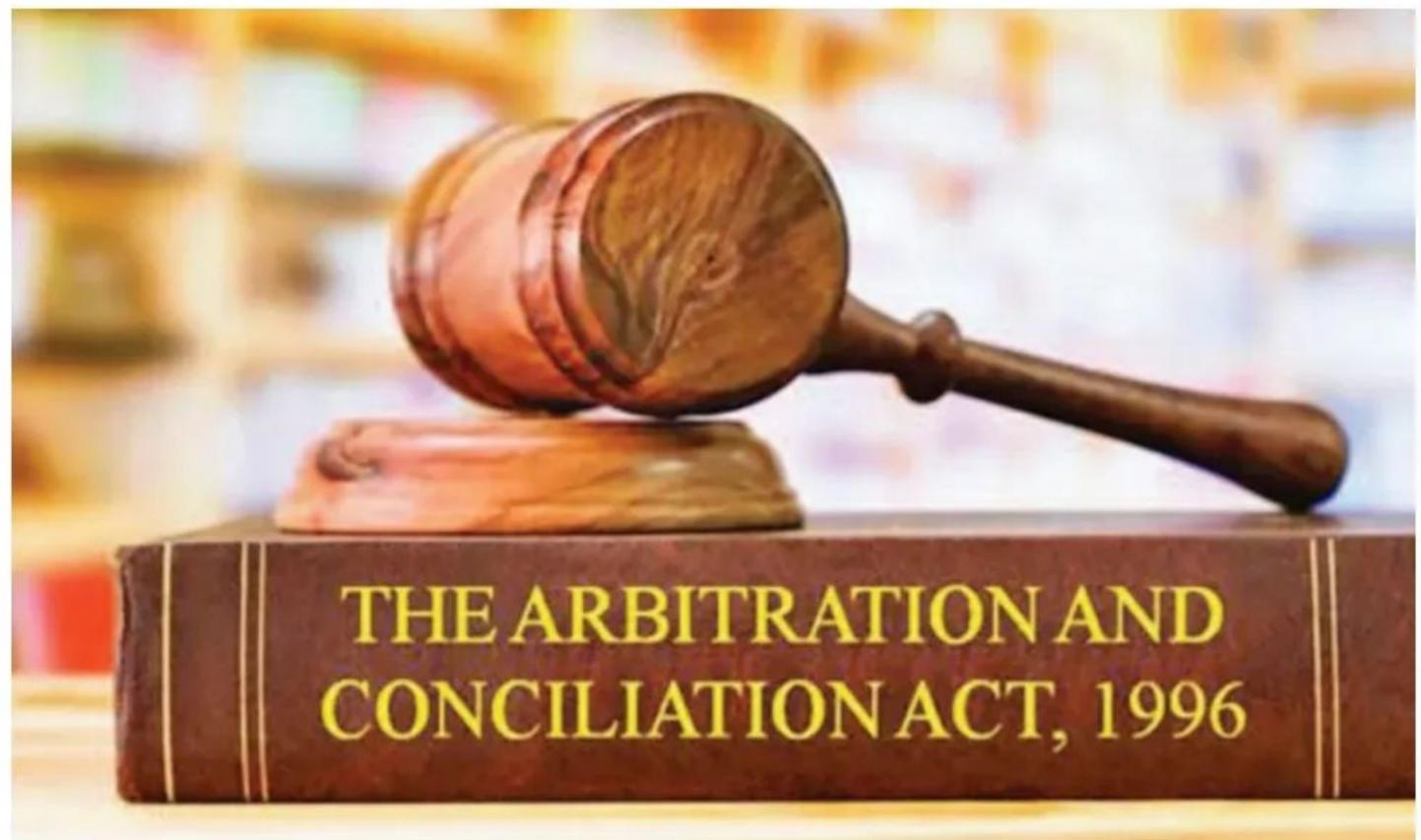
award passed by a tribunal of such sterling repute is being sullied publicly is rather shocking. Regardless of whether the award is correct, legally firm, conscientious, etc., it remains to be seen whether the Indian legal system upholds its sanctity. It is also to be seen how swiftly the courts act to safeguard the award and prevent it from being frustrated by disgruntled award-debtors.

Despite successive events like the Delhi Arbitration Week and the growing knowledge sharing between India and other leading arbitration jurisdictions, the intensifying narrative in favour of arbitration and enforcement appears to be mere lip service to the cause.

Another case where an international arbitration agreement has been overrun by India's domestic laws is the dispute between Westbridge Ventures and People Interactive (India) Pvt Ltd. In this case, the parties had an agreement to arbitrate their disputes under the aegis of the Singapore International Arbitration Centre. When disputes arose between the parties, the arbitration proceedings were stayed by the National Company Law Tribunal (NCLT), Mumbai bench. The founder of People Interactive (India) Pvt Ltd. had approached the NCLT bench of Mumbai following an order of the Bombay High Court which stayed an anti- ▶

The intention of the law makers is clearly to give effect to awards and this is clear from the very narrow and limited grounds to resist enforcement under the Arbitration and Conciliation Act, 1996 .

The interplay of laws surrounding the Arbitration Act and the conflict of laws with the Arbitration Act sometimes make it impossible for an award to survive.



suit injunction order passed against People Interactive (India) Pvt Ltd by the Singapore High Court. The Bombay High Court had stayed the Singapore High Court's order for eight weeks for People Interactive (India) Pvt Ltd. to approach the NCLT.

The NCLT stayed the arbitration proceedings owing to allegations of oppression and mismanagement by People Interactive (India) Pvt Ltd. Such allegations, as per Indian law are non-arbitrable. On the other hand, Westbridge Ventures had argued that the dispute between the parties was purely contractual and the arbitral tribunal had the jurisdiction to adjudicate these disputes. This argument, however, did not find favour with the NCLT. It must be noted that in Singapore, disputes relating to or arising from oppression and mismanagement are arbitrable and in exercise of their autonomy, the parties had chosen Singapore to be the seat of the arbitration. Thus, NCLT's decision serves to negate party autonomy and is a dangerous precedent for multiple reasons. The case, albeit not an example of India's enforcement and execution affliction, sheds light on how India's legal framework requires a hard relook to promote arbitration as an efficient dispute resolution mechanism. Examples of this kind are a dime a dozen—something an aspiring global arbitration hub simply can-

not afford.

The intention of the law makers is clearly to give effect to awards, this is clear from the very narrow and limited grounds to resist enforcement under the Arbitration and Conciliation Act, 1996 (Arbitration Act). The interplay of laws surrounding the Arbitration Act and the conflict of laws with the Arbitration Act sometimes make it impossible for an award to survive. More often than not, foreign awards are defeated even before their enforcement can be refused by a competent court in India. The foregoing examples are not very encouraging, to say the least. The languishing foreign awards in India are a hurdle in its path to becoming a global arbitration hub. It is time that the inordinately prolonged enforcement and execution proceedings of foreign awards in India draw legislative and judicial attention so that a path may be paved for their smoother realisation.

In 1872, the Privy Council had observed that "...the difficulties of a litigant in India begin when he has obtained a Decree...". Unfortunately, these words hold true for the enforcement and execution of foreign arbitral awards in 2024—a reality that must change. ■

—The writer is an Advocate-on-Record practicing before the Supreme Court, among various other legal fora



CRIMINALS AS COPS

This concerning form of cybercrime involves criminals posing as law enforcement officials to deceive individuals into believing they are facing arrest for fabricated legal violations. Its deceptive nature has caused major worries as well as the psychological effects it has on those affected

THE latest trend in cybercrimes has criminals posing as police officers to deceive victims using online communication methods. Fraudsters usually start by contacting victims through a phone call, posing as police officers. They often try to switch the conversation to a video call on platforms such as Skype, where they create the illusion of a police interrogation. These scammers may go as far as setting up fake backgrounds that look like police stations and wearing uniforms to make themselves seem more credible. The victim is typically falsely accused of a crime that doesn't actually exist and the situation is portrayed as urgent and

serious. This scare tactic is an essential part of the fraud.

The recent public interest litigation (PIL) filed in the Delhi High Court, *Akshya and another vs India Union & Others*, highlighted the concerning rise of cyber scams known as "digital arrest" in which criminals create fake arrest warrants to extort money from innocent people. The petition emphasised the pressing necessity to tackle the growing problem of cybercrimes, which present a serious threat to the criminal justice system and its integrity. The petitioners provided evidence of fake and deceptive arrest warrants, indicating the potential for these fraudulent schemes to infiltrate the criminal justice system. The PIL also highlighted the

THREATENING PUBLIC SAFETY

A recent PIL filed in the Delhi High Court emphasized the pressing necessity to tackle the growing problem of cybercrimes, which present a serious threat to the criminal justice system and its integrity



Acting Chief Justice Manmohan (inset, left) and Justice Manmeet Pritam Singh Arora of the Delhi High Court sent notices to the centre, Delhi government, Delhi police and the RBI regarding their worries about the increase in modern cybercrimes, particularly focusing on the problem of “digital arrests” and called for responses from relevant authorities in relation to the PIL filed.

inadequate coordination between government bodies and urged the Court to establish rules for improved cooperation among authorities, expedite investigations and stop the transfer of profits from cybercrimes. The PIL also pointed out situations where criminals pretend to be government and law enforcement officers, taking advantage of the trust of the public.

The High Court sent notices to the central government, Delhi government, Delhi police and the Reserve Bank of India regarding their worries about the increase in modern cybercrimes, particularly focusing on the problem of “digital arrests”. Acting Chief Justice Manmohan and Justice Manmeet Pritam Singh Arora called for responses from relevant authorities in relation to the PIL that aimed to raise awareness and simplify the process for reporting cybercrimes.

Earlier, the High Court had recognized the severity of cybercrime as a widespread problem and urged authorities to increase public knowledge about the issue. It also highlighted the importance of making reforms to the police force and updating technology in order to effectively address new cyber threats. The Court had mentioned that if someone sends money, it should be blocked right away in order to prevent it from crossing international borders and becoming unreachable without a digital system in place and had suggested setting up

specialized units to deal with the increasing number of cybercrimes targeting celebrities. It also highlighted the importance of law enforcement agencies adapting to new challenges by having officers who are knowledgeable about the latest technologies.

In many instances, scammers using the tactic of “digital arrest” have been able to deceive innocent individuals. An IT engineer from Gurgaon was questioned for more than two hours on Skype and instructed by a supposed “police officer” to transfer Rs 7 lakh to an account, citing that a package under the woman’s name had been seized by customs. The person who called also mentioned the woman’s Aadhaar card number, stating that it had been connected ▶



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to several unlawful actions.

In Noida, another IT engineer was deceived of Rs 3.75 lakh after being kept “hostage” during a Skype call that lasted for more than seven hours. She was informed by law enforcement officers that a package with unlawful substances addressed to her had been intercepted.

On March 14, in a similar incident, a woman in Indirapuram, located in the Delhi-NCR region, received a phone call from a number she did not recognize. The person who called said he was a customs officer and that drugs had been discovered in a package being sent from Mumbai to Taiwan, with her name on it. She felt scared and was compelled to remain on camera for two hours during a Skype video call. Rupees 12 lakh were transferred from her bank account under the pretence of an inspection. The woman later reported the incident to the police.

On February 23, a female officer working in the central government and living in Vasundhara, Delhi-NCR, received a call. The caller, pretending to be a Mumbai police officer, said a courier was being sent to Iraq in her name containing expired passports, credit cards, laptops and drugs. The caller said this information would be sent to the Mumbai narcotics department. She was asked to join a Skype call to avoid trouble and was threatened for two days. She was told not to tell her family about the situation. They claimed they would help her avoid being arrested, but instead, they were able to steal Rs 56 lakh from her bank account and fixed deposits within just two

days. After attempting to call back and realizing that their phones were off, she reported the situation to the police.

In another case, a man from Raj Nagar in Ghaziabad received a WhatsApp call in early March from an unknown number, informing him that his son was involved in a rape case. Upon hearing this, the father panicked. The caller had a police officer's photo on their WhatsApp profile. The father was digitally detained for 30 minutes during the video call and could not end the call. The caller said all the paperwork was done and the son could be looking at a minimum of 20 years in prison. The caller asked for Rs 15 lakh to prevent the son from being arrested, so the father transferred Rs 12.7 lakh from various bank accounts. The caller disconnected the call after the transfer and the father was shocked for a while before telling his family. After calling his son, he discovered that he had been scammed.

Recently in Delhi, an elderly woman was digitally intimidated into defrauding her of the entire amount deposited in her account. The Special Cell Unit of the Delhi Police uncovered the gang responsible for the fraud. According to the police, a 65-year-old elderly woman received a call from an unknown number. She was told that an online parcel addressed to her was found containing fake passports, documents and drugs. When the woman became suspicious of the call, the caller claimed to be a CBI officer. To gain her trust, they connected with her through a video call on Skype. The video displayed a fake CBI office and logo. Three individuals, posing as CBI officers, convinced her that a parcel containing drugs was caught in her name. Under the pretext of needing to inspect her bank accounts, they obtained all her account details and transferred Rs 35 lakh. The culprits were also aware that the woman had money and investments in the stock market. After the fraud, the woman notified the police.

In another case, according to the police, a student studying medicine in Ghaziabad received a call around 2 pm on February 21 from an unknown number. Upon receiving the call, a girl identified herself as an



On its social media pages, the Delhi Police (above) warned the public to be wary of these types of scams. In the video, Special CP (Crime) Shalini Singh (above right) urged viewers to be cautious of these frauds and avoid becoming their victims.

employee of FedEx courier company and said that the student's Aadhaar had been used for money laundering. The victim said that she had not done any such work, so she was told that she can complain about it to the Mumbai cyber cell. The girl making the call connected the student to the Mumbai cyber cell inspector on Skype on the pretext of talking to all the inspectors of the Mumbai cyber cell. After that the fake cyber cell officer took the student's Aadhaar card, photo and other bank details and said that until the case is resolved, she would be kept under surveillance. This scared the victim a lot. The criminal mentioned settling the case in the name of saving her from legal trouble. Taking the student into confidence, Rs 8,17,297 were transferred from her account. After receiving the money, fake documents were also shown to the student, assuring her that her name would not be caught in this case. Later, when the student realised that she had been cheated, she filed a report with the police.

In a similar incident in Faridabad, a 23-year-old woman was digitally arrested and duped of Rs 2.5 lakh. The victim received a call on October 12 from an imposter claiming to be a customs officer in Lucknow. The caller alleged that a parcel containing passports and cards linked to the victim's Aadhaar number was being sent to Cambodia. The victim was coerced into believing she was involved in criminal activi-

ties, including human trafficking. The cyber-criminals, posing as police officers, fabricated accusations and, ultimately, extorted money from the victim.

On its social media pages, the Delhi Police posted a PSA, warning the public to be wary of these types of scams. "Someone calls pretending to be an officer of the law or an official of another agency and says you're under digital arrest. To be clear, digital arrests are not covered in any way." In the video, Special CP (Crime) Shalini Singh urged viewers to be cautious of these frauds and avoid becoming their victims. According to a senior officer, "the biggest giveaway to the scam is the fact that there are no such arrest provisions in the law". The government wants the public informed about the latest techniques scammers are using to defraud people of their money.

The complexity of the digital world we live in also highlights the phenomena known as "digital arrest". It serves as a clear reminder of the necessity of ongoing watchfulness and cybersecurity knowledge. It is becoming more and more important to comprehend and spot the warning indications of these cyber-frauds as our reliance on digital communication grows. ■

—By *Abhilash Kumar Singh and India Legal Bureau*



MINORITY REPORT

Taking an empathetic view of a minor rape victim, the Kerala High Court allowed MTP even though she was 28 weeks pregnant, thereby giving her the right to live with dignity as per the Constitution

THE Kerala High Court has said that declining permission to a rape victim to medically terminate her unwanted pregnancy would amount to forcing her to live with the responsibility of motherhood and denying her right to live with dignity which forms a part

of the right of life guaranteed under Article 21 of the Constitution.

A single bench of Justice Kauser Edappagath granted relief to the 16-year-old rape victim who did not want to give birth to the child of a man who sexually assaulted her. She approached the High Court through her mother, seeking permission for medical ter-



A single bench of Justice Kauser Edappagath (inset) of the Kerala High Court granted relief to the 16-year-old rape victim who did not want to give birth to the child of a man who sexually assaulted her. Permission to terminate the pregnancy was sought on the ground that its continuation would adversely affect the mental and physical well-being of the victim as well as the child.

mination of her pregnancy.

It was alleged that the victim, while studying in XI standard, was sexually abused by her 19-year-old lover and became pregnant. A crime was registered in Edakkad Police Station, Kannur, based on intimation from the doctor under Section 376 IPC and Sections 4(1), 3(a), 3(b), 6(1), 5(j)(ii) of the POCSO Act, 2019, and Sections 3(1)(w)(i) and 3(2) (v) of the SC/ST (PoA) Act.

The victim was in her 28th week of pregnancy. Permission to terminate the pregnancy was sought on the ground that its continuation would adversely affect the mental and physical well-being of the victim as well as the child.

Until the 1960s, abortion was illegal in India. The Shantilal Shah Committee was formed in the mid-1960s to examine the need for regulations governing abortion. As a result, the Medical Termination of Pregnancy (MTP) Act, 1971, was enacted legalising safe abortions and protecting women's health. The law is an exception to the criminalisation of abortion under the Indian Penal Code. The MTP Act permits licensed medical professionals to per-

form abortions in specific predetermined situations. These include danger to the life or risk to the physical or mental health of the pregnant woman, when pregnancy arises from a sex crime or rape or intercourse with a lunatic woman, etc., and when there is substantial risk that the child when born would suffer from deformities and diseases.

The MTP Act was amended in 2021 to allow abortions up to 24 weeks of gestation, raising it from the previous 20 weeks for "certain categories of women". These are listed under Rule 3B of the MTP Rules notified under the MTP Amendment Act and include survivors of rape, incest, minors, women experiencing a change of marital status (widowhood or divorce), women with disabilities, women with foetal anomaly and those living in emergency, disaster or humanitarian crisis.

The amended Act allows termination of pregnancies beyond 24 weeks only in cases of foetal anomalies of the child. It sets up State Level Medical Boards to decide if the pregnancy may be terminated after 24 weeks in cases of substantial foetal abnormalities. The MTP Act also provides for the protection of women's privacy, confidentiality and ▶

The Medical Termination of Pregnancy Act, 1971, was enacted legalising safe abortions and protecting women's health. The MTP Act permits licensed medical professionals to perform abortions in specific pre-determined situations. The MTP Act was amended in 2021 to allow abortions up to 24 weeks of gestation, raising it from the previous 20 weeks for "certain categories of women.



dignity in accessing safe abortion services.

The right of a woman or a girl to make autonomous decisions about her own body and reproductive functions is at the very core of her fundamental right to equality and privacy. Reproductive rights include the right to choose whether and when to have children, the right to choose the number of children and the right to access safe and legal abortions, the bench said.

The constitutional right of women to make reproductive choices as a part of personal liberty under Article 21 was recognised by the Supreme Court in the landmark *KS Puttaswamy vs Union of India* (2017). The Constitution bench reiterated the position adopted by the three-judge bench in *Suchita Srivastava vs Chandigarh Administration* (2009) which held that the right of a woman to have freedom to reproductive choice is an inseparable part of her personal liberty, as envisaged under Article 21 and that she has the sacrosanct right to her bodily integrity.

Following *Puttaswamy*, a three-judge bench of the Supreme Court, recognising the importance of women's autonomy over her reproductive choices, in *X vs Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi*,

held that every woman has an inherent right to secure safe and legal abortions, thereby ruling out any sort of discrimination based on marital status. It was held that the rights of reproductive autonomy, dignity and privacy under Article 21 give a woman, both married and unmarried, the right to choose whether to bear a child or not. It was observed that decisional autonomy is an integral part of the right to privacy and the decision to carry the pregnancy to its full term or terminate it is firmly rooted in the right to bodily autonomy and decisional autonomy of the pregnant woman. This ruling recognises unwanted pregnancy as a life-altering reproductive choice.

More recently, a two-judge bench of the apex court in *XYZ vs State of Gujarat & Others* (2023) took the view that the woman alone has the right over her body and is the ultimate decision-maker on the question of whether she wants to undergo abortion.

When the victim in the present case was medically examined by a medical board constituted by the Government Medical College Hospital, Kannur, as per the direction of the High Court, she was found to be 27 weeks pregnant. The Court noted that as per Section 3 of the MTP Act, termination of pregnancy of a woman where it exceeds 20 weeks but does not exceed 24 weeks can

only be allowed in special categories and where the medical practitioners are of the opinion that continuance of such a pregnancy would either involve a risk to the life of a woman or cause grave injury to her physical or mental health.

The categories under which pregnancy can be terminated between 20 and 24 weeks have been prescribed by the MTP Rules, 2021. Clause (a) of the Rules relates to victims of sexual assault, rape or incest and clause (b) relates to minors. In this case, the victim fell under both, i.e., clauses (a) and (b) as she was a minor who is alleged to have been raped.

Though the MTP Act does not provide for termination of pregnancies over the gestational age of 24 weeks except in cases of detection of substantial foetal abnormalities, the Court has wider powers. The extraordinary powers of constitutional courts in this regard have been recognised by the Supreme Court and exercised several times by High Courts, including allowing termination of pregnancies even in cases where it has exceeded 24 weeks.

In *A. vs Union of India and Others*, the Supreme Court permitted termination in a case where the gestational age was 25-26 weeks. In *Meera Santosh Pal vs Union of India* (2017), permission for medical termination of pregnancy was granted when it crossed 24 weeks based on medical reports pointing out the risk involved in the continuation of the pregnancy.

In *Sarmishtha Chakraborty vs Union of India* (2018), termination of pregnancy was permitted even when the gestational age was 26 weeks in view of the recommendations of the Medical Board. In *XYZ vs State of Gujarat*, the age of the foetus was almost 27 weeks when the court examined the plea of termination of pregnancy. "Pregnancy outside marriage, in most cases, is injurious, particularly after sexual abuse and is a cause for trauma affecting both physical and mental health of the pregnant woman, the victim. Sexual assault or abuse of a woman is itself distressing and the resultant pregnancy compounds the injury. This is because such a pregnancy is not a voluntary or mindful pregnancy," the Court observed.



The constitutional right of women to make reproductive choices as a part of personal liberty under Article 21 was recognised by the Supreme Court in the landmark *KS Puttaswamy vs Union of India* (2017).

Section 3(2) of the MTP Act provides that if continuance of the pregnancy would cause grave injury to the physical or mental health of the pregnant woman, the pregnancy can be terminated. Explanation 2 of this Section says that where the pregnancy was caused by rape, the anguish caused shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

In the report of the Medical Board, it was pointed out that continuance of pregnancy may be detrimental to the physical and mental health of the victim. The psychiatrist who was part of the Board opined that the continuation may result in severe psychological trauma to the victim. The family of the victim belongs to the Scheduled Caste community. The victim is now housed in a Childcare Home and is not mentally prepared to accept the state of affairs and deliver the child. Moreover, the social isolation of a minor girl before the SC/ST community cannot be ruled out.

Therefore, the Court permitted the victim to undergo medical termination of pregnancy. ■

—By Shivam Sharma and
India Legal Bureau



TOYING WITH SEX

While sex and anything associated with it have long been considered social taboos, surprisingly, the market for such toys in India is vast and constantly growing. However, for everyone involved in this segment, just like any other industry, it is essential to know the legal aspects involved

By **Garima Mitra**

SECRET PLEASURE
A shop selling sex toys in India. Various social and economic factors are behind the significant growth experienced by the Indian sex toys market

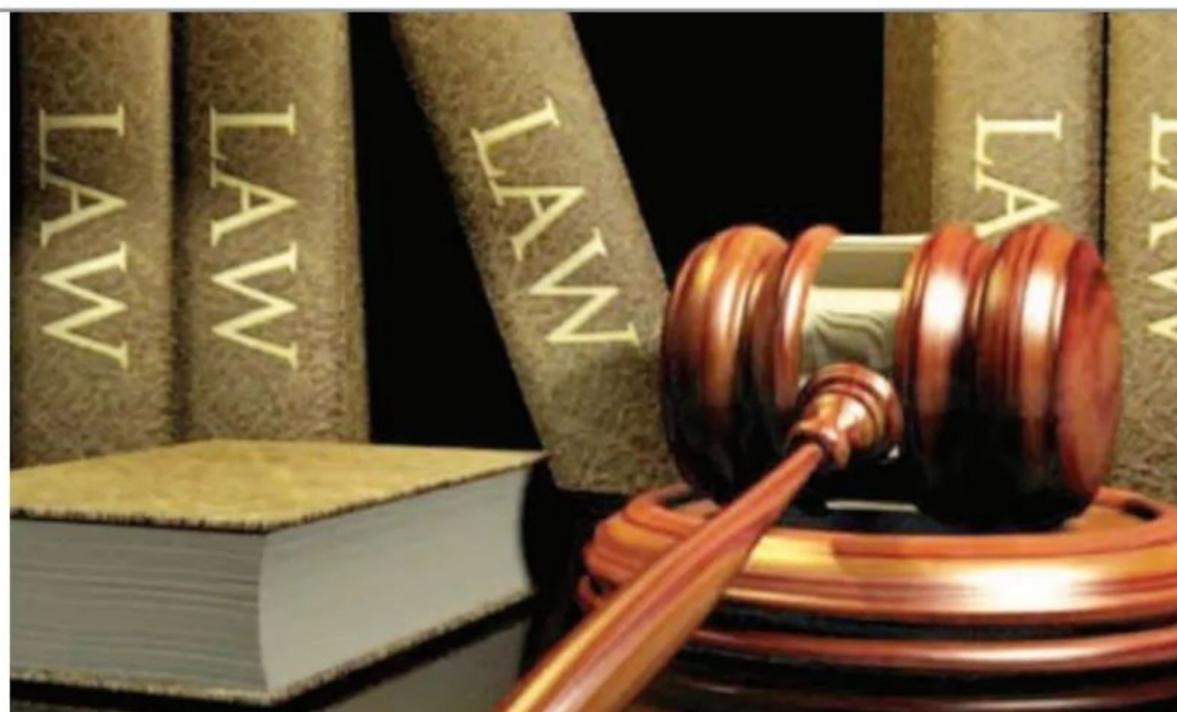
A survey conducted in 2020 found a 65% increase in the sale of sex toys on online marketplaces. Being the world's seventh largest market for e-commerce, India has witnessed evolving consumer attitudes and, consequently, increased acces-

sibility to such adult entertainment forms. To put things in perspective, the market value for sex toys in India is estimated at around \$112.45 million in 2023 and growing at a compounded annual growth rate of 15.24% during the forecast period of 2025-2029.

As the global market for sex toys is pro-

jected to reach \$54.6 billion by 2026, and the Indian market, too, is not likely to slow down any time in the near future, this segment has become a lucrative venture for start-ups. Unfortunately, the legal landscape surrounding the manufacture, import, storage, marketing, sale and distribution of sex toys is murky and complex, leading to numerous challenges for companies seeking to capitalise on the increasing demand for quality products and sex-positive marketing. Various social and economic factors are behind the significant growth experienced by the Indian sex toys market. Shifting attitudes, propelled by social media and increased openness about sex are normalising sex toys, particularly among younger generations, eroding traditional stigmas. The e-commerce boom has further facilitated this trend, offering a discreet and convenient shopping experience which bypasses potential embarrassment in physical stores.

Additionally, the increasing disposable income of a growing middle class has expanded the market for these products. There is also a growing focus on sexual wellness, with sex toys being increasingly viewed as tools for enhancing sexual pleasure and intimacy rather than as taboo items. For instance, vibrators dominate with the largest market share, while rings and other male-oriented products show promising growth. Women are the primary users, but the male segment is catching up quickly. Online platforms are the preferred method of purchase, representing over 59% of the market, thanks to discreet packaging and



The legal landscape surrounding the manufacture, import, storage, marketing, sale and distribution of sex toys is murky and complex, leading to numerous challenges for companies seeking to capitalise on the increasing demand for quality products and sex-positive marketing.

secure transactions. Key players include *Besharam*, *Snapdeal*, *LoveTreats*, and *ThatsPersonal*.

In a recent ruling in March 2024, the Bombay High Court provided further clarity. The case involved a company appealing against a confiscation order for importing body massagers labelled as “adult sex toys”. The Court overturned the order, stating that body massagers cannot be equated with items explicitly banned under customs notifications. It emphasised that the classification of these massagers as prohibited items was subjective and lacked a solid legal basis. The Court also highlighted the inconsistency of banning imports of mas- ▶



In March 2024, the Bombay High Court (left) provided clarity in a case related to confiscation order for importing body massagers labelled as “adult sex toys”. The Court overturned the order, stating that body massagers cannot be equated with items explicitly banned under customs notifications.



The Calcutta High Court, in a case involving the confiscation of sex toys by customs authorities, ruled that items providing sexual pleasure should not be labelled as “obscene” solely for that reason.

sagers that are legally sold within India, emphasising the need for a consistent regulatory approach. Additionally, the Court rejected the argument that the potential for an alternative sexual use justifies their prohibition, stating that such criteria are not valid for banning goods that meet standard import and sale requirements.

Although there is no express legislation that bans the manufacture/import and sale of sex toys in India, the applicable regulatory framework relies primarily on obscenity laws, followed by laws which generally regulate the quality of goods and protect consumer interests. The fundamental challenge under this framework is that these legislations contain language that is sufficiently vague and authorities are left to exercise their own discretion in its interpretation, often leading to an adverse outcome.

Section 292(1) of the Indian Penal Code (IPC) defines an object as “obscene” if it is lascivious, appeals to prurient interest, or tends to deprave and corrupt a person. This includes selling, distributing, or advertising such objects. Section 292(2) of the IPC provides for punishment by fine and imprisonment for the sale, distribution, import, conveyance, profit from, and advertisement of obscene objects. Indian courts use a

“Community Standard Test” to determine obscenity, considering the views of the majority in India rather than a small group. However, the subjective nature of obscenity means that perceptions can change over time. Despite this, many in India still equate sex with obscenity, posing a challenge in establishing an objective standard.

The Indecent Representation of Women (Prohibition) Act, 1986 (“IRW”), defines “indecent representation of women” as any depiction that is indecent, derogatory, or likely to harm public morality. Promoting such representation is punishable under Section 4 of the IRW with imprisonment and fine, applicable even to companies and their directors/key managerial personnel. However, the subjective nature of what is considered “indecent” poses challenges, as this definition can vary. The law’s aim to protect public morals also affects the marketing of sex toys to the Indian consumer base.

The Information Technology Act, 2000, and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, prohibit the publication or transmission of sexually explicit material in electronic form. The IT Rules place the responsibility on intermediaries (such as online platforms selling sex toys) to prevent the hosting of obscene materials. Intermediaries must implement effective content removal mechanisms to comply with these rules.

Then there is the Customs Act, 1962, which allows the government to prohibit the import or export of goods to maintain public order and standards of decency or morality. Customs officers can seize goods that may be confiscated under the Act. A customs notification from 60 years ago prohibits the import of obscene materials. Due to social taboos, customs officials often seize sex toys imported by Indian consumers, considering them obscene. Sex toys are not classified separately and are often marketed under names like “massagers” to avoid explicit identification. Also, Section 3(B) of the Patents Act, 1970, allows the government to reject applications for patents in case the product in question goes against the principles of public order and morality.

India’s e-commerce regulations seek to protect consumer interests in the country’s ►



Clarity from the Supreme Court on the legality of sex toys would be beneficial. Until then, companies will have to employ a combination of ethical marketing practices, judicious use of medical device registration and a continued push for legislative reform for a stable and transparent business environment.

growing e-commerce sector. They require online platforms to ensure sellers provide accurate product information, especially for items like sex toys. This places an additional responsibility on sex toy sellers and platforms to prevent misrepresentation, necessitating accurate labelling and imagery to differentiate these products from others. These rules significantly impact the sale and marketing of sex toys in India.

The legal status of sex toys in India has been a matter of judicial scrutiny, with e-commerce platforms like *Snapdeal.com* and *Ohmysecret.com* facing legal action for selling what was deemed as “obscene” products as recently as 2015. However, recent judicial trends suggest a shift towards recognising the right to privacy in personal matters, including the use of sex toys.

Critics of the current legal ambiguity surrounding sex toys in India point to landmark Supreme Court judgments, such as the *Justice KS Puttaswamy (Retd.) vs Union of India*, which emphasised the right to privacy as including personal intimacies and sexual orientation. Similarly, in the *Navtej Singh Johar & Ors. vs Union of India*, the Court highlighted the diverse nature of human sexuality, beyond procreation, protected by the Constitution.

The Calcutta High Court, in a case involving the confiscation of sex toys by customs authorities, ruled that items providing sexual pleasure should not be labelled as “obscene” solely for that reason. The Court compared sex toys to the *Kama Sutra*, emphasising that materials stimulating sexual enjoyment if not expressed in offensive language, should not be deemed obscene. This stance aligns with exemptions in certain laws where “obscene” content is allowed if it contributes to art or culture.

The Indian sex toy market, although gradually evolving, faces several challenges due to unclear legal frameworks. Obscenity laws, particularly under Section 292 of the IPC and the Customs Act of 1962, create uncertainty as customs officials can confiscate items they deem obscene. To navigate this, companies often market sex toys as “massagers”, but this raises concerns about misleading consumers. Importation is also challenging due to the absence of specific HSN codes for sex toys. Additionally, while some sex toys can be registered as medical devices, most pleasure-oriented toys lack genuine therapeutic value, raising questions about the integrity of the registration process.

To address these challenges, clarity from the Supreme Court on the legality of sex toys would be beneficial. Legislative reform to create specific regulations for sex toys, including clear guidelines for marketing and sale, could also help. Companies can also adopt ethical marketing practices, focusing on potential wellness benefits and ensure transparent disclosures when seeking medical device approval. These steps would help the industry operate within the legal framework and ensure consumer protection. The legal ambiguity surrounding these products necessitates ample caution to be exercised by companies in the segment. Until a clear legal framework is drawn by the Supreme Court, companies will have to tread carefully and employ a combination of ethical marketing practices, judicious use of medical device registration and a continued push for legislative reform to ensure a more stable and transparent business environment. ■

—The writer is co-founder, Treelife



THE COST OF HEALTH

The huge problem of major pharmaceutical companies polluting the environment with its untreated excrements is a worldwide phenomenon, more so in India. The National Green Tribunal has taken note of this issue

By Sujit Bhar

RAISING CONCERN
The UN Environment Programme in its article has raised the issue of pharma wastes being released into rivers, lakes and groundwater aquifers

THE UN Environment Programme has recognised a dangerous trend of environmentally persistent pharmaceutical pollutants and has come out with a detailed article on this, similarly titled. It details how our very idea of providing excellent and safe healthcare has resulted in the persistent

fouling up of the atmosphere and how this has grown to epic proportions.

While the world is struggling to deal with this, the effects have been substantial in India as well, and it is only lately that some level of activity has taken place. And it is only now that the legal fraternity of India has decided to do something about it.

Just the other day, the National Green

Tribunal (NGT) took it upon itself to initiate some proactive steps and took *suo motu* cognizance of the fact that “pharmaceutical-induced environmental contamination needs urgent attention because around 43% of global rivers are facing risks from Active Pharmaceutical Ingredients (APIs).”

This is a very positive move, because it has a deeper implication. The NGT move strikes directly at the very base of the problem. Before venturing into the details of what actually transpired in the green court and what the UN is talking about, one needs to be clear on what is at stake here.

The UN article has talked about chemicals and untreated reagents. It says: “Chemicals are important in the health care sector, as they can be used as disinfectants, cleaners, laboratory reagents, sterilants, pesticides, pharmaceuticals and are used within medical devices and equipment, they also have major benefits for animal welfare. However, there is a growing recognition and rise of concern about the impacts of human health and the environment when pharmaceuticals and chemicals are not managed appropriately.”

The NGT, which has had a petition registered *suo motu* on the basis of a news item, has accepted that “the continuous emissions are posing potential hazards to the environ-

ment and human health.”

The news item in question also states that discussions on chemical waste reduction face limitations due to incomplete knowledge about their toxicity to humans. The article discloses that pharmacies sometimes cannot filter all the chemicals used in pharmaceutical production (e.g. solvents, APIs, excipients, additives, by-products, intermediates, etc). It explains that these chemicals cause ecosystem imbalances that give rise to chemical pollution in the environment.

The news item raises substantial issues relating to compliance of the environmental norms, especially by the pharmaceutical companies.

The Court said: “Power of the Tribunal to take up the matter in suo-motu exercise of power has been recognized by the Hon’ble Supreme Court in the matter of *Municipal Corporation of Greater Mumbai vs Ankita Sinha & Ors.* reported in 2021 SCC Online SC 897.”

And since this is a pan-India issue, the principal bench of Justice Prakash Shrivastava and Dr A Senthil Vel deemed it proper to implead the chief ministers, members-secretary of all the states, including Central Pollution Control Board (CPCB), Ministry of Environment Forest and Climate Change, Ministry of Agriculture and Ministry of Dairying and Veterinary Science as respon- ▶



The NGT has taken *suo motu* cognizance of the fact that “pharmaceutical-induced environmental contamination needs urgent attention because around 43% of global rivers are facing risks from Active Pharmaceutical Ingredients.” The NGT’s actions will now be complementary to what the UN programme intends to achieve. This judgment will be an important precedent in India and across several developing economies in the world.

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dents in the matter.

The bench issued notice to the respondents, except the CPCB, which is already represented through the counsel, for filing their response at least one week before the next date of hearing disclosing the compliance of the norms by pharmaceutical company, the regulatory guidelines in force, number of pharmaceutical companies in each state and number of such companies complying with norms and number of companies against whom action is taken for violation of the norms as also the proposed action for prevention of environment from pharmaceutical toxicity.

The bench will hear this again on August 20.

The UN Environment Programme explains that “Given that pharmaceuticals are biologically active substances specifically designed to cause pharmacological effects in living organisms, they have an impact on wildlife and ecosystem health when not treated in an environmentally sound manner.

“Active pharmaceutical ingredients (APIs) are the biologically active ingredients in a pharmaceutical drug. These APIs are sold to pharmaceutical companies who make end products for patients globally. About 4,000 active pharmaceutical ingredients are administered worldwide in prescription medicines, over-the-counter therapeutic

drugs and veterinary drugs.” (quoted from: *Global Chemicals Outlook II*, UNEP, 2019).

While the NGT is specifically dealing with the role of pharma manufacturing companies in this, the UN programme has taken a wider view, saying: “From a chemicals and waste management perspective, environmental and health concerns in this sector are primarily related to releases of pharmaceuticals to the environment.”

It adds: “Residues are released into rivers, lakes and groundwater aquifers. In addition, when applied in animal husbandry and where manure is used as a fertilizer, veterinary pharmaceuticals are released into the soil and wider environment. This results both in soil contamination, and biomagnification through uptake of pharmaceuticals into food crops.

“Sources of releases of pharmaceuticals to the environment include direct emissions from drug manufacturing, patient and animal excretion, aquafarming, and disposal of unused or expired medicines.”

The NGT’s actions will now be complementary to what the United Nations programme intends to achieve. Hence this judgment will be an important precedent, not only in India, but also across several developing economies around the world. More so in India, because, as the unofficial “pharmacy to the world”, the country has a bigger responsibility in controlling its pharma excrements than any other country. ■



THE CASE FOR GREEN BUDGETING

A recent Supreme Court ruling is a landmark judgment recognising the right against the adverse effects of climate change. This provides an impetus for using green budgeting practices for national investment

By Ranjit Barthakur

LOPSIDED APPROACH
In recent years, policy measures for growth have been criticized for its prioritization of economic growth over other concerns, including concerns of clean environment and climate change

THE scorching heatwave across India is a stark reminder of the climate crisis looming large. India is at a crossroads regarding climate change. The Supreme Court's recent order builds upon previous judgments that recognised the right to a clean

environment. The Court's emphasis on the link between climate change and human rights highlights the urgency of integrating climate mitigation and adaptation strategies across policy frameworks nationally for the future of the country, including using green budgeting practices for national investment. In 2023, the state of Assam, introduced



Green budgeting integrates environmental considerations into the heart of financial planning. It goes beyond mere environmental allocations and focuses on strategically mapping and tracking expenditures that contribute to a sustainable future.

its first green budget to scale investment cross-sectorally in greening the state economy, with 10% of total spending going directly towards green investments. This year's budget ramps up investments in nature-based solutions for flood management in the state, EV installation and transportation and renewables, including mandatory installation of solar panels on rooftops of new buildings and rapid upscaling of conservation activities such as the Amrit Brikshya Andolan scheme launched last year to encourage citizens to plant commercial trees in their lands. Similar budgetary measures have been rolled out at a national level, with green investment growing to Rs 35,000 crore in the 2023 budget—India's first green growth budget.

Green budgeting integrates environmental considerations into the heart of financial planning. It goes beyond mere environmental allocations and focuses on strategically mapping and tracking expenditures that contribute to a sustainable future. This empowers policymakers to make informed decisions, fostering innovation

within existing programmes and schemes.

The apex court's ruling has significant implications for green budgeting across India, but especially in climate vulnerable regions such as Northeast India by recognising the right to a healthy environment as a fundamental right, strengthening the legal basis for green budgeting initiatives, as it empowers communities and environmental organisations to hold governments accountable for their environmental spending.

A robust green budget relies on accurate data on environmental spending within existing schemes. Implementing these processes also requires highly-skilled personnel who understand both environmental and economic principles. These budgets benefit greatly from a coordinated approach, which necessitates collaboration between the central government and state governments, including developing states and regions like the Northeast. Creating a unified framework for green budgeting across diverse state economies can be challenging, particularly in states with economies that are highly dependent on either fossil fuels as energy sources or as a key source of income. ▶

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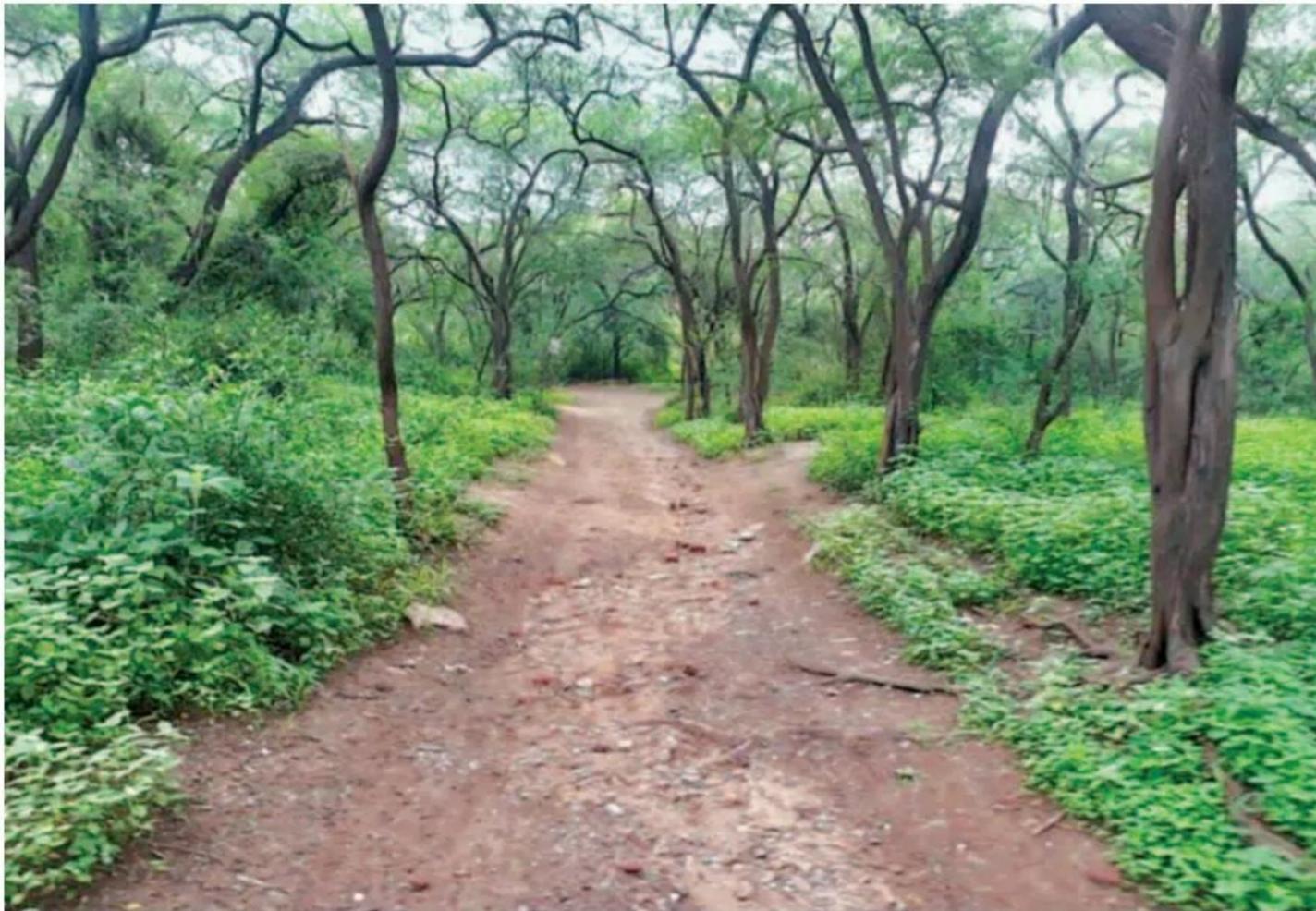
The Supreme Court judgment rightly reflects on the need to balance environmental concerns, development concerns and climate concerns, while also recognizing that the three are not mutually incompatible. The biggest challenge in adopting these measures is the country's need and focus on socio-economic growth and development. In recent years, policy measures for growth have been criticized for its prioritization of economic growth over other concerns—including concerns of clean environment and climate change. At COP26 and COP27, India was one of the several countries that was scrutinised internationally for its role in removing language involving the phase out of fossil fuels such as coal from agreements. However, the increased spending on net zero commitments—while very important—has also had unintended consequences on ecosystems as a whole.

The Supreme court ruling on the right to a healthy environment and to be free from the consequences of climate change is part of a case in which environmentalists petitioned the Court to shift all overhead transmission lines for solar plants underground where they affected the habitats of the critically endangered Great

Indian Bustard. In response, the centre's Ministry of New and Renewable Energy argued that such a move would drastically increase the cost of delivering solar energy and make it commercially unviable.

Striking a balance between promoting climate-friendly industries, creating jobs and biodiversity concerns requires better and more advanced tools for green budgeting than the current investment paradigm. International recognition is growing for the critical role that biodiversity plays in managing the climate crisis, reflected in official agreements signed at both COP26 and COP28. Globally, the tide is turning towards valuing nature. India is now one of 90 countries to sign up to the UN's SEEA to value nature in policymaking. Valuation tells us not only what we lose, but what we stand to gain if we invest effectively in nature.

In 2020, the landmark study, *The Economics of Biodiversity* by Sir Partha Dasgupta, commissioned by the UK Treasury, systematically outlined how nature needs to be included in policy and economic decision-making at the national and international levels. The *Dasgupta Review* advances a sophisticated economic case for understanding natural ecosystems through the lens of



Green budgeting, coupled with ecosystem valuation, emerges as a potent solution. Ecosystem valuation assigns economic value to the services rendered by intact or restored ecosystems. Forests (left), for instance, not only provide us with timber, but also purify our air and regulate water flow. By assigning a monetary value to these services, we can integrate their significance into budgetary decisions.

demand-supply economics: its ecosystems services are being consumed faster than its supply is being regenerated.

To regenerate this supply, the report recommends including nature in national accounting and budgeting systems and the adoption of policies that increase financial investment in nature-based solutions, incentivise nature-regenerative businesses and penalise practices that destroy ecosystems. This includes the ecosystems services provided by wildlife: often critical to keeping terrestrial carbon-storing ecosystems like grasslands, wetlands and forests alive and thriving.

With the introduction of the Kunming-Montreal Biodiversity Framework to protect 30% of all ecosystems by 2030 and as climate frameworks move towards integrating biodiversity goals, India must pay attention and actively work towards valuing its biodiversity and ecosystems services and the hidden value they generate in real economic terms.

Green budgeting, coupled with ecosystem valuation, emerges as a potent solution. Ecosystem valuation assigns economic value to the services rendered by intact or restored ecosystems. Forests, for instance, not only provide us with timber, but also purify our air and regulate water flow. By assigning a

monetary value to these services, we can integrate their significance into budgetary decisions. This approach fosters a nature-positive economy, one that thrives in harmony with the natural world.

The current GDP-centric model overlooks the vital contribution of nature. North-east India, with its rich biodiversity, is a prime example with over 60% of the workforce relying on agriculture, directly dependent on healthy ecosystems. Degrading these ecosystems not only erodes economic potential, but also weakens our resilience against climate change.

Natural assets must be carefully and robustly defined into natural asset classes to reflect the value they imbue across the value chain—for example, medicinal, household and living, food and fodder, biodiversity, etc. This includes the ecosystems services that remain invisible or undervalued in the economy, e.g. water replenishment, soil nutrient cycling, pollination or carbon sequestration; services which enable continuity in agricultural and manufacturing/industrial processes. This total valuation must be added to national accounts, as a repository of standing assets generating and earning value for the econo-▶



REJUVENATE NATURE

The ecosystems services provided by wildlife are often critical to keeping terrestrial carbon-storing ecosystems like grasslands, wetlands and forests alive and thriving

my, even when they are not being mobilized into commodities.

The exercise of natural capital valuation is not just about developing an alternative model of economic growth, but also building inclusive societies. Natural capital valuation provides the scope for building useful information meant for informed economic choices. It also offers a pathway for greater social equity for communities that manage or live adjacent to these ecosystems, by channelling earnings on those values directly to those communities—as carbon-based funds are increasingly aiming to do for forest-fringe communities. Effective valuation and stewardship open up new vistas for investing in communities using nature-debt, to create access to universal basic assets such as education and healthcare. However, leveraging natural debt must be accompanied by proper checks and balances to ensure the sustainability and survival of natural assets, as well as access and rights of forest and indigenous communities.

For biodiversity-rich regions like Northeast India which boast rainforests to wetlands, valuing these ecosystems using methodologies like market valuation and cultural significance can generate significant revenue streams. These funds can then be channelled back into

green initiatives, creating a self-sustaining model which ensures both environmental and climate resilience that benefits communities across the board. To effectively steward these natural assets, creating ecological budgets and integrating them into financial accounts at both the state and national levels is critical. Integrating environmental factors into the fiscal structure of an economy, especially the annual national budget, will allow the government to track natural capital expenditure—and invest for its regeneration. By addressing data limitations, building capacity, fostering inter-state and trans-boundary cooperation and by integrating natural capital valuation for environmentally holistic decision-making, green budgeting can be a powerful tool towards building a climate resilient economy.

As the world embraces a sustainable future, India with its rich ecological wealth can be a global leader in recognizing that climate resilience cannot be divided from biodiversity. By embracing green budgeting and ecosystem valuation, India has the potential to become a pioneer in building a nature-positive economy, one that values both prosperity, resilience and environmental well-being. ■

—The writer is founder,
Balipara Foundation

COURTROOM CLASSIC

The criminal trial for fraud was adjourned for a week and will resume with closing arguments and jury deliberations on May 28. This decision reflects several twists and turns in the trial with the former president at its centre. It gives lawyers ample time to compose closing arguments and the judge to compose his instructions to the jury

By Kenneth Tiven



THE 19th courtroom day of the month-long trial in New York City wrapped up with the defense deciding not to call Donald Trump as a witness. Instead, it relied on Robert Costello, a lawyer who once had advised Trump's former attorney, Michael Cohen. This testimony was supposed to be the defense's moment to prove that Cohen is not only a liar, a cheat, and a convicted perjurer, but that his story about Trump—and what he actually knew about the Stormy Daniels payment—is full of holes.

The holes ended up in Costello's performance. He got into an argument with the judge. It did not help that Trump's attorney, Todd Blanche, used a confusing story to set up Costello's testimony. Reporters remarked that some jury members struggled to stay awake while Trump again appeared asleep at the defense table.

In what might have felt like a segment from a bad episode of television drama, Costello managed to disrespect the judge in ways rarely seen. When prosecutors objected to questions posed by defense counsel, Judge Juan Merchan sustained them. Costello

THE DEFENSE RESTS

The defense decided not to call Donald Trump as a witness in the trial proceedings. Trump has made his disrespect clear to the judge, jury and the prosecution

began muttering under his breath audibly. “Jeez”, then said, “ridiculous”, before throwing the judge some serious side-eye. In response to his own remarks, Costello said: “Strike it”, but Judge Merchan was having none of it. (a witness doesn’t have this power; only a judge does.)

First, the judge removed the jury. The transcript of the proceedings reveals Judge Merchan told Costello that his conduct was “contemptuous” and reminded Costello of proper decorum in the courtroom, including not commenting on the judge’s ruling. Costello then managed to annoy Merchan by glaring at him. “Are you staring me down right now?” Merchan demanded to know. He then ordered all the spectators removed except Trump’s allies. The judge blasted Costello, declaring: “I am putting you on notice that your conduct is contemptuous. If you try to stare me down one more time I will remove you from the stand.” To the defense lawyers, he added: “I will strike his entire testimony, do you understand me?” When Costello asked: “Can I say something?” Merchan replied: “No, no, this is not a conversation.”

What the jury did hear and see was unlikely to improve their opinion of the defense team. The bottom-line is that Trump and Cohen are comparable in their behaviours and that Cohen went to jail and Trump went to the White House. Trump sat silently—and often sleepily—in court for a month, making his disrespect clear to the judge, jury and the prosecution. He complained and drew \$10,000 in fines for violating restrictions on what he could say about the trial.

Witnesses explained how the Trump organization masked the reality of a \$1,30,000 election-eve payment made to porn star Daniels to keep Trump’s extracurricular sex life from being revealed and influencing the 2016 vote. The defense’s presentation suggests either extreme confidence that no jury will ever convict Trump or bad decision-making on their part.

Trump continues as presidential candidate and operating head of the Republican Party for this election year. His all-important immunity appeal before the US Supreme

Court received some attention this past week based on a strange revelation involving Justice Samuel Alito. With his eight Court colleagues, they are considering an appeal by Trump to grant immunity for any crimes committed while he was president—this a get-out-of-jail card Trump wants to avoid any federal or state trials if he loses his 2024 re-election bid. Winning again will probably moot the federal cases, but not the pending state-level cases.

Alito, possibly the most avowedly right-wing justice on the Court, has a home in suburban Washington that flew an upside-down US flag a few days after the January 6 MAGA attacks on the US Capitol building. This flag position is a distress signal. Justices are supposed to stay out of politics. Was this intentional? Yes, said Alito, intentional on his wife’s part. Images and emails regarding this were made public. She was apparently embroiled in a dispute with a neighbour who posted an anti-Trump sign on his lawn with an expletive. In response, says Alito, she put this distress signal of an upside-down flag on their flagpole (blaming the wife is not unknown in US politics).

Trump has appointed three of the nine justices sitting on the Supreme Court, giving it a 6-3 conservative majority whose political beliefs have been entwined with legal issues while deciding cases. ■

—The writer has worked in senior positions at The Washington Post, NBC, ABC and CNN and also consults for several Indian channels



TENSE MOMENTS

Robert Costello, a defence lawyer, got into an argument with the judge. He managed to disrespect the judge in ways rarely seen



RESTORING DISCIPLINE

Judge Juan Merchan told Costello that his conduct was “contemptuous” and reminded him of proper decorum in the courtroom

Courting Criticism

Karim Khan is a familiar name for those covering Israel's war on Gaza. He has been filmed traveling through the wreckage of homes and hospitals, talking to those affected and giving the occasional interview on his role as prosecutor for the International Criminal Court (ICC).

Based on his reports, the ICC, based in The Hague, announced last week that it was seeking arrest warrants for Hamas leader in Gaza, Yahya Sinwar, and Israeli Prime Minister Benjamin Netanyahu on charges of war crimes and crimes against humanity over the October 7 attacks on Israel and the subsequent war in Gaza. The prosecution team is also seeking warrants for Israel's Defense Minister Yoav Gallant, as well as two other top Hamas leaders—Mohammed Diab Ibrahim al-Masri, the leader of the Al Qassem Brigades, and Ismail Haniyeh, Hamas' political leader.

The decision puts Netanyahu in the company of Russian President Vladimir Putin, for whom the ICC issued an arrest warrant over Moscow's war on Ukraine. By applying for the arrest warrants against Israeli and Hamas leaders in the same action, Khan's office received criticism for placing a terror organization and an elected government on an equivalent footing.

Netanyahu called the decision "a politi-



The International Criminal Court has announced that it is seeking arrest warrants for Hamas leader in Gaza, Yahya Sinwar, and Israeli PM Benjamin Netanyahu, among others

cal outrage", adding: "Drawing parallels between the leaders of a democratic country determined to defend itself from despicable terror to leaders of a blood-thirsty terror organisation is a deep distortion of justice and blatant moral bankruptcy," he said, adding that the decision by the prosecutors "is in itself a crime of historic proportions."

The ICC announcement is separate from the case that is currently being heard by the International Court of Justice (ICJ) filed by South Africa on the issue of Israel committing genocide in its war against Hamas following the October 7 attacks.

The ICC is a criminal court, which hears cases against individuals for war crimes or crimes against humanity. Located in The Hague, Netherlands, and created by a treaty called the Rome Statute first brought before the United Nations, the ICC operates independently. Most countries—124 of them—are parties to the treaty, but there are

notable exceptions, including Israel, the US and Russia. That means that if the Court grants Khan's application and issues arrest warrants for the five men, any country that is a member would have to arrest them and extradite them to The Hague.

Under the rules of the Court, all signatories of the Rome Statute have the obligation to cooperate fully with its decisions. This would make it extremely difficult for Netanyahu and Gallant to travel internationally, including to many countries that are among Israel's closest allies which include Germany and the United Kingdom.

Human rights attorney Amal Clooney is among a group of eight legal experts who advised Khan. Clooney said the panel's findings were "unanimous" despite their diverse backgrounds. "I served on this panel because I believe in the rule of law and the need to protect civilian lives. The law that protects civilians in war applies in every country in the world regardless of the reasons for a conflict," Clooney said in a statement.

Clooney, who is a barrister in London and an adjunct professor at Columbia Law School, is married to the actor George Clooney. A panel of ICC judges will now consider Khan's application for the arrest warrants.



A panel of ICC judges will now consider Karim Khan's application for the arrest warrants. He is the prosecutor of the International Criminal Court

Iran's Tragedy

It seemed somewhat inevitable that the blame for the helicopter crash that cost Iran's Islamic Republic the lives of two of its political leaders would be laid at America's door. Even before the official investigation into the helicopter crash that killed President Ebrahim Raisi and Iran's foreign minister had begun, the country's ex-foreign minister Javad Zarif told Iran's state TV that, "One of the causes of this heart-breaking incident is the United States, which by sanctioning the sale of the aviation industry to Iran caused the martyrdom of the president and his companions. The US's crime will be recorded in the minds of the Iranian people and history."

That referred to the Bell 212 chopper that America used during the Vietnam war-era that the officials were travelling in. Most aviation experts attribute the crash to bad weather and poor visibility, but Iran's official media has been playing up the theme that lack of spares and maintenance issues caused by US sanctions were responsible.

The Bell 212 was a civilian version of the ubiquitous "Huey" helicopter and are still being used by some governments and private operators, although most are upgraded versions. The helicopter was introduced in 1971 and was immediately pressed into action in Vietnam.

The exact origin of the helicopter involved in the Iranian crash was not con-



Iranian President Ebrahim Raisi (top) died in a chopper crash; wreckage of Raisi's helicopter



Iran's former foreign minister Javad Zarif has blamed the US for the heart-breaking incident

firmed, but one account said it was connected to the Red Crescent Society. Experts said the few details available suggested it may be 40 to 50 years old.

Whatever the cause, the death of the powerful presi-

dent along with the former foreign minister, who were the external face of Iran in bilateral or multilateral exchanges, leaves the Islamic Republic facing a political vacuum and an uncertain future in the face of growing domestic discontent and its recent tit-for-tat drone attack on Israel.

The Putsch Plan

It is one of the biggest and most sensational cases heard by German courts since the defeat of the Nazi regime under Hitler and the resulting Nuremberg trials. The present case involves a group of power-hungry, “conspiracy theory” plotters who are accused of trying to stage a coup and overthrow Chancellor Olaf Scholz’s government.

The accused include a prince, a former MP and retired army officers who are among the nine defendants who have gone on trial, accused of preparing a “treasonous undertaking” to storm the Bundestag and take MPs hostage.

The legal proceedings currently underway at the regional court in Frankfurt are the second of three trials against defendants linked to the putsch plan which dates back to 2022. Eight suspected members of the coup plot took the stand in Frankfurt, as well as one woman accused of supporting their efforts to overthrow the government.

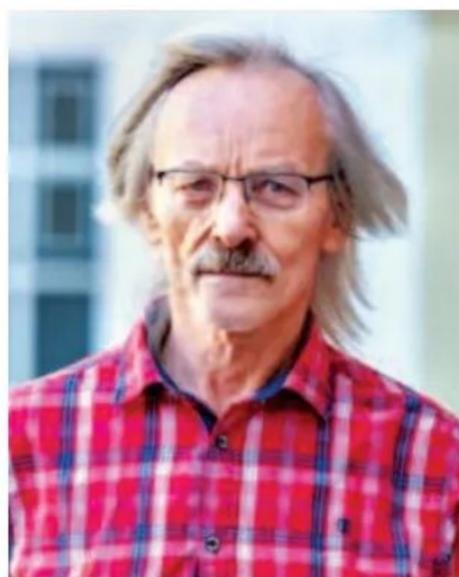
The aristocrat and businessman Prince Heinrich XIII Reuss, one of the group’s ringleaders, was said to be in line to become the provisional head of state if the coup was successful.

The sensational plan, foiled by law enforcement officers, is an example of the growing threat of violence from the political fringes in Germany. The alleged plotters are said to belong to the German Reichsbuerger (Citizens of the Reich)—a group of extremists and gun enthusiasts who reject the legitimacy of the modern German republic. According to prosecutors, the group believed Germany was run by a hidden “deep state” and were waiting for a signal from a fabricated international “Alliance” of governments to stage their coup.

The case, in which a total of 26 people face trial, is being held across three different courts. Nine members of the group’s “mili-



The case involves a group of power-hungry, “conspiracy theory” plotters who are accused of trying to stage a coup and overthrow Chancellor Olaf Scholz’s government



Also in the dock with Reuss will be ex-soldiers Ruediger von Pescatore (above left), Maximilian Eder (above right) and Peter Woerner, who are said to have founded the group in July 2021

tary arm” were recently on trial in Stuttgart while a third set of proceedings is scheduled to begin in Munich in June. The hearings are being held under tight security, with the trial in Frankfurt held in a specially built secure facility.

Among those in the dock along with Reuss will be ex-soldiers Ruediger von Pescatore, Maximilian Eder and Peter Woerner, who are said to have founded the group in

July 2021. The ninth defendant is Reuss’s partner, a Russian woman identified as Vitalia B. She is accused of “abetting” the alleged putsch plan and putting him in touch with a contact at the Russian consulate in Leipzig. Reuss and the other alleged ringleader of the group, von Pescatore, also sought a meeting with Russian officials in 2022, prosecutors said.

Reuss was allegedly the man who would negotiate an “Accord” with Russia if the coup was a success. As a plot, it bends more to fiction and movies than reality, but it also shows the kind of people attracted to conspiracy theories like QAnon, the extreme right-wing in America that believes there is a sinister “deep state” in the US government. Its followers were predominant among those who stormed the Capitol building in Washington on January 5, 2021.



The aristocrat and businessman Prince Heinrich XIII Reuss, one of the group’s ringleaders, was said to be in line to become the provisional head of state if the coup was successful



In Romania, Andrew Tate and his younger brother, Tristan (right), are awaiting trial on human trafficking and organized crime charges, accused of exploiting seven women. Andrew is also charged with rape

The Woman Hater

His unofficial title is the King of Toxic Masculinity. His real name is Andrew Tate, a former kickboxer who revels in controversy and extreme displays of misogyny. In the recent past, he has made such outlandish claims that women's empowerment is leading to the fall of Western civilization and that "humanity cannot survive with female empowerment". All that macho talk has earned him a massive following on social media and led to him being banned on Tik Tok, Instagram, Facebook and YouTube for hate speech and now, led to three legal cases in two countries, all to do with charges of abusing women.

In Romania, where Tate has made his home for several years, he and his younger brother, Tristan, are awaiting trial on human trafficking and organized crime charges, accused of exploiting seven women. Andrew is also charged with rape.

The Tate brothers are also facing possible criminal charges in the UK, where the police have issued arrest warrants on allegations of human trafficking and sexual assault. Four different British women have also served Andrew with a civil lawsuit in the UK on allegations of sexual assault. After seven months under house arrest, Andrew was released in August, 2023, but still faces restrictions on his movements. Tristan and two associates also face charges of abusing women.

While the Tate brothers have denied all the allegations levelled against them in both countries, police in Romania and the UK have been investigating his actions on what Tate has called "Manosphere" while recording accounts from some of the women who accuse him of abuse. The Romanian court has ruled that the pair, who are both dual UK-US nationals, can be extradited to Britain on a European arrest warrant once legal proceedings against them in Romania are complete.

Tate rose to fame in the ring, but made headlines after he was removed from the British version of reality TV show *Big Brother* in 2016, following the release of a video that appeared to show him attacking a woman.

Seeing Red, Or Scarlet

Hollywood leading lady Scarlett Johansson is in the news, but not for a movie she is starring in or an appearance at Cannes: It's to do with her voice, or an Artificial Intelligence version of it. The actress raised concerns over the voice feature of a new OpenAI system that she said sounded "eerily similar" to her own. SAG-AFTRA, an influential body representing television and radio artists, also came out in support of Johansson.

The controversy erupted when OpenAI released a voice feature in its latest artificial intelligence model, GPT-4o, last week, featuring an audio-interacting persona named "Sky". Johansson said

it sounded exactly like her and that she had previously turned down a request from the company to use her voice for

this system.

OpenAI CEO Sam Altman clarified that the voice belonged to a different professional actress and said he was removing Sky's voice from the company's products.

"We thank Ms. Johansson for speaking out on this issue of crucial importance to all SAG-AFTRA members. We share in her concerns and fully support her right to have clarity and transparency regarding the voice used," a SAG-AFTRA spokesperson said.

SAG-AFTRA represents entertainment and media professionals globally and has been taking on AI platform producers in Big Tech on behalf of actors. The controversy over the rights to actors' voices and images has become a burning issue in Hollywood as AI platforms compete for ways to create new entertainment by using computer-generated images and sounds. Johansson, however, is a major star and her voice carries weight and gravitas: her real voice, that is.



Scarlett Johansson raised concerns over the voice feature of a new OpenAI system that she said sounded "eerily similar" to her own



OpenAI CEO Sam Altman clarified that the voice belonged to a different professional actress and said he was removing Sky's voice from the company's products