

Civil Law Updates

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“Raffle, Demonetization, PMLA, Central Vista, all judicial verdicts are in favour of government by Supreme Court. These judges were appointed through collegium system. What more does Rijju want?” tweeted Mr. Kapil Sibal, one of the senior most advocates of the Supreme Court and a senior parliamentarian, in his recent comment on the Union Government’s demand on the Supreme Court collegium. This statement says it all about the current political scenario of our country and its impact on the Indian democracy. It seems to be a mere sham to teach the children that our Indian democracy consists of three pillars (Legislative, Judiciary and Executive) as envisaged by the Indian Constitution. It is disheartening to note that our country is almost leaning towards the popular ideology of the ruling party “*One Nation, One Ruler*”, and that “One Ruler” will be none but the one and only the majoritarianism. The monarchical and majoritarian mentalities of the present legislators of the ruling party out rightly push forward to make the pillars of democracy toothless and redundant.

The freedom of the, so called the ‘fourth pillar of democracy’, the press is also questionable as most of the leading Indian Television channels and the print media is controlled by the same majoritarian rulers. Just a few days ago Justice K. M. Joseph, the judge of Supreme Court questioned the News Broadcasting Standards Authority (NBSA) about their unbiased action against the television anchors who express biased views on the air. He said anchors sometimes shut down people from expressing their views. In many of these TV programmes, you don’t allow people to talk on an equal basis. You don’t want the participants to express their views, you will either mute them, or allow the other person to go on the whole time unchallenged, he said adding “so the point is it is not the right of the broadcaster or the views of the panelist. It is the right of the persons who are viewing it” (as reported in the Indian Express, January 14, 2023).

In this background, let us briefly go through some of the recent legislations of Union and the State legislators and some of the important and pertinent judgments of the Supreme Court.

I. New Acts and Bills

1. Draft Digital Personal Data Protection Bill, 2022

In November, the Indian Ministry of Electronics and Information Technology (MeitY) released its Digital Personal Data Protection Bill, 2022. The bill had been put up by the country’s Union Minister for Communications, Electronics and Information Technology, Ashwini Vaishnaw, for public consultation till January 2, 2023. The Digital Personal Data Protection Bill, of 2022, is legislation, on one hand, outlines the rights and duties of the citizen and on the other hand, the obligations to use collected data lawfully of the data fiduciary.

Highlights of the Bill

- The Bill will apply to the processing of digital personal data within India where such data is collected online, or collected offline and is digitized. It will also apply to such processing outside India, if it is for offering goods or services or profiling individuals in India.
- Personal data may be processed only for a lawful purpose for which an individual has given consent. Consent may be deemed in certain cases.
- Data fiduciaries will be obligated to maintain the accuracy of data, keep data secure, and delete data once its purpose has been met.
- The Bill grants certain rights to individuals including the right to obtain information, seek correction and erasure, and grievance redressal.
- The central government may exempt government agencies from the application of provisions of the Bill in the interest of specified grounds such as security of the state, public order, and prevention of offences.
- The central government will establish the Data Protection Board of India to adjudicate non-compliance with the provisions of the Bill.

Key Issues and Analysis

- Exemptions to data processing by the State on grounds such as national security may lead to data collection, processing and retention beyond what is necessary. This may violate the fundamental right to privacy.
- The Bill accords differential treatment on consent and storage limitation to private and government entities performing the same commercial function such as providing banking or telecom services. This may violate the right to equality of the private sector providers.
- The central government will prescribe the composition, and manner and terms of appointments to the Data Protection Board of India. This raises a question about the independent functioning of the Board.
- The Bill does not grant the right to data portability and the right to be forgotten to the data principal.
- The Bill requires all data fiduciaries to obtain verifiable consent from the legal guardian before processing the personal data of a child. To comply with this provision, every data fiduciary will have to verify the age of everyone signing up for its services. This may have adverse implications for anonymity in the digital space.

2. The Constitution (Scheduled Tribes) Order (Second Amendment) Bill, 2022

The Parliament on 22 December, 2022, passed a bill which seeks to grant Scheduled Tribe status to Narikoravan and Kurivikkaran communities in Tamil Nadu. The Constitution

(Scheduled Tribes) Order (Second Amendment) Bill, 2022 was passed through a voice vote in the Rajya Sabha. The bill, which was piloted by the Union Minister for Tribal Affairs Arjun Munda, has already been passed by Lok Sabha on December 15, 2022. The bill follows the suggestion of the Tamil Nadu government that the two communities be included in the list of Scheduled Tribes (ST) in the state.

Narikoravan and Kurivikkaran Communities:

The Narikurava, also called Narikuravar, are an indigenous group from Indian state of Tamil Nadu. Narikoravan is a nomadic community by tradition. Kurivikkaran's traditional occupations is 'trapping birds, especially sparrows'

3. The New Delhi International Arbitration Centre (Amendment) Bill, 2022

The New Delhi International Arbitration Centre (Amendment) Bill, 2022 was introduced in Lok Sabha on August 5, 2022 and was passed by both the houses. The Bill amends the New Delhi International Arbitration Centre Act, 2019. The Act provides for setting up the New Delhi International Arbitration Centre and designates it as an institute of national importance. The New Delhi International Arbitration Centre replaced the International Centre for Alternative Dispute Resolution.

4. Criminal Procedure (Identification) Act, 2022

The **Criminal Procedure (Identification) Act, 2022** has come into force after being passed by the Parliament in April 2022. It replaces the **Identification of Prisoners Act, 1920**, and authorizes police officers to take measurements of people convicted, arrested or facing trial in criminal cases. The Act expands: (i) the type of data that may be collected, (ii) persons from whom such data may be collected, and (iii) the authority that may authorise such collection. It also provides for the data to be stored in a central database. Under both the 1920 Act and the 2022 Act, resistance or refusal to give data will be considered an offence of obstructing a public servant from doing his duty.

Key Features the Criminal Procedure (Identification) Act, 2022

- It provides **Legal sanction to the police to take physical and biological samples of convicts** as well as those accused of crimes.
- The police as per section 53 or section 53A of the **Code of Criminal Procedure (CrPC), 1973**, can **collect Data**.
- **Data that can be collected:** Finger-impressions, Palm-Print impressions, Footprint impressions, Photographs, Iris and Retina scan, Physical, Biological samples and their analysis, Behavioural Attributes including signatures, Handwriting or any other examination

- **National Crime Records Bureau (NCRB) will store, preserve, share** with any law enforcement agency and destroy the record of measurements at national level. The records can **be stored up to a period of 75 years.**
- It aims to **ensure the unique identification of those involved with crime and to help investigating agencies** solve cases.

The Significance of the Act

- This law enables the officials to make use of the modern techniques in collecting and storing samples and helps the investigating agencies to be more efficient and expeditious and will also help in increasing the conviction rate.

Issues raised in Objection to this Law:

- **Violation of Privacy:** Seemingly technical, the legislative proposal undermines the **right to privacy** of not only persons convicted of crime but also every ordinary Indian citizen. It has provisions to collect samples even from protestors engaged in political protests.
- **Ambiguous Provisions:** The phrase ‘biological samples’ is not described further, hence, it could involve bodily invasions such as drawing of blood and hair, collection of DNA samples.
- **Violation of Article 20:** Enables coercive drawing of samples and possibly involves a violation of Article 20(3), which protects the right against self-incrimination. The Bill implied use of force in collection of biological information, could also lead to narco analysis and brain mapping.
- **Unawareness among Detainees:** Although it provides that an arrested person (not accused of an offence against a woman or a child) may refuse the taking of samples, not all detainees may know that they can indeed decline to let biological samples be taken. And it may be easy for the police to ignore such refusal and later claim that they did get the detainee’s consent.

5. Amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules of 2021 (January-2023)

The Union government on 17th January, 2023, proposed revised amendments to the *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules of 2021*, through which it seeks to prohibit circulation and uploading of news content that has been “fact checked” by the Press Information Bureau (PIB) as fake. The Union Ministry of Electronics and Information Technology (MEITY) has published a draft notification on its website, proposing the addition of a para to a clause in Rule 3 of the IT Rules, 2021, which provides for due diligence by an intermediary.

The new Rule 3(1) (b) (v) will read:

3. (1) Due diligence by an intermediary: *An intermediary, including [social media intermediary, significant social media intermediary and online gaming intermediary], shall observe the following due diligence while discharging its duties, namely...*

(b) the intermediary shall inform its rules and regulations, privacy policy and user agreement to the user in English or any language specified in the Eighth Schedule to the Constitution in the language of his choice and shall make reasonable efforts to cause the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that...

...(v) deceives or misleads the addressee about the origin of the message or knowingly and intentionally communicates any misinformation or information which is patently false and untrue or misleading in nature [or is identified as fake or false by the fact check unit at the Press Information Bureau of the Ministry of Information and Broadcasting or other agency authorised by the Central Government for fact checking or, in respect of any business of the Central Government, by its department in which such business is transacted under the rules of business made under clause (3) of article 77 of the Constitution].

The Ministry also extended the last date for feedback on the draft amendments to the IT Rules, 2021 in relation to online gaming for till January 25, 2023.

II. Recent Government Orders:

1. Pre-Matric Scholarship for Minority Students Will No Longer Apply for Classes I to VIII

The Union government's pre-matric scholarship to students of minority communities will no longer apply to students from Class I to Class VIII, and only be continued for students from Class IX and Class X starting from 2022-23. The scholarship is run by the Union Ministry of Minority Affairs. According to the *Indian Express*, the government has said that this was done to bring the minority affairs ministry scholarship in line with the Ministry of Social Justice and Empowerment and Ministry of Tribal Affairs.

2. Tamil Nadu forms committee to review personal laws

The move comes amid the BJP-ruled Centre envisioning a Uniform Civil Code, which would replace religion-based marriage and inheritance laws. The Dravida Munnetra Kazhagam (DMK)-led Tamil Nadu government has become the first non-BJP-ruled state to form a constitutional committee to examine personal laws. The move comes amid the BJP-ruled Centre envisioning a Uniform Civil Code, which would replace religion-based marriage and inheritance laws.

The committee has been given terms of reference on ten aspects for submitting the report;

- the conflict between personal laws and fundamental rights in the Constitution,

- making the personal laws gender just,
- justifying social evils as ‘religious customs,
- codification of all personal laws for removing ambiguity in their interpretation and application,
- reforming secular personal laws like Special Marriage Act, 1954,
- protecting couples having inter-religion or inter-caste marriages,
- sensitizing society on the codification of personal laws with best practice evolved in those personal laws,
- reforming personal laws/family laws in states exempted under the sixth schedule of the Constitution,
- aligning personal laws with the International Conventions to which India is a signatory
- and review of different personal laws in the light of provisions of Constitution.

Tamil Nadu’s four-member panel is led by a retired justice of the Madras high court, M Sathyanarayanan as the chairperson, with the three other members being senior advocate Om Prakash and advocates E Prabu and Abdul Mubeen. “The topic is vast. We have to go through several court judgements and acts of the state and central governments,” said retired justice Sathyanarayanan. The DMK has made a clear distinction between personal laws and a uniform civil code. “We are against a uniform civil code,” said senior advocate and member of the Parliamentary standing committee, P Wilson.

3. Tamil Nadu State Education Committee (G.O.(Ms). No. 98, Dated 01.06.2022)

TN govt constitutes committee headed by retired judge Murugesan to formulate State Education Policy. The committee to form the State Education Policy will comprise 12 members, including singer TM Krishna and chess grandmaster Vishwanathan Anand. According to the official notice, the committee will take input from educationists and subject experts and suggest reforms aimed at developing a modern, technology-driven education framework. The final reports will be submitted by the committee within a period of one year from the date of its constitution.

The functions of the committee shall be;

- i. To draft a distinct State Education Policy, keeping in mind the interests of the education;
- ii. Should take inputs from educationists and suggest reforms aimed at developing modern, technology driven and updated curriculum frame works at all levels of education.
- iii. Suggest ways and means to improve access, equity and quality of education with focus on employment-ready skills.
- iv. Examination reforms.
- v. Suggest reforms in Teacher/Assistant Professor recruitment, training and ensuring their accountability towards slated objectives.

- vi. Suggest ways to incorporate life skills, soft skills, creative skills, language skills and social justice values as part of the broad spectrum of education from the sciences to the liberal arts.
- vii. To ensure that all school pass outs enroll in some stream of Higher education.
- viii. To suggest ways to improve the quality of research in Higher education institutes.
- ix. To suggest ways to tap resources from all funding agencies from India and abroad.

Suggestions submitted to the State Education Committee by the TNBC

On behalf of the Christian Community of Tamil Nadu, The Tamil Nadu Bishops' Council and the Tamil Nadu Latin Bishops' Council have submitted a "Draft Inputs for State Education Policy", to the State Education Policy on 05.10.2022 in which it proposes various valuable guidelines such as; beginning of education of a child from the age of 4 (instead of 3), free education from 4 to 18 years of age, two language policy, to avoid appointment of tenured or contract teachers, special curriculum for the special children, abolition of public examination for class ten students, abolition of NEET, not to introduce multiple exit programme, to bring higher education totally under the State without interference of the Union government, to retain the 3+2 in the higher education rather than the proposed 4 years, etc.,

III. Some of the Recent Court Proceedings:

1. Reservations for Vanniyar Community in Tamil Nadu Struck Down (March 2022)

In February 2021 the Tamil Nadu legislature passed an Act to provide reservations for the Vanniyar community *within* the reservations that were being provided for Most Backward Classes (MBC). This sub-classified category of Vanniyars would receive 10.5% of the 20% reservations provided to MBCs.

Other individuals from the MBC category challenged the Act, claiming that States did not have the power to identify classes for reservation. On March 31st, 2022, Justices L.N. Rao and B.R. Gavai declared the Act and the reservations unconstitutional in *Pattali Matkal Katchi v Mayileruperimal*. The Bench refused to acknowledge reservations that only used relative population as a basis, instead of comparing the backwardness of Vanniyars to other MBC groups.

2. Additional Restrictions on Foreign Contributions to NGOs Upheld (April 2022)

In September 2020, Parliament enacted an Amendment to the Foreign Contributions (Regulation) Act, 2010 (FCRA). The Amendment barred the transfer of foreign funds to other organizations and individuals, strictly limited the funds that could be used for administrative purposes, and mandated that all funds could only be received at the main branch of the State Bank of India in New Delhi.

Multiple Non-Governmental Organizations (NGOs) challenged the amendment, arguing that it had a devastating impact on NGOs that receive foreign funds, as well as smaller NGOs that rely on larger organizations for funding. The Union responded that these restrictions were necessary to trace the flow of foreign money and ensure that national interest and security were maintained.

Justices A.M. Khanwilkar, Dinesh Maheshwari, and C.T. Ravikumar upheld the 2020 FCRA Amendment on April 8th, 2022 in *Noel Harper v Union of India*. The SC agreed with the Union that the restrictions ensure foreign funds are used solely for permitted purposes.

3. Temporary suspension of Sedition Law (May 2022)

The recent order of the Supreme Court of India on 11 May, 2022, in *S.G. Vombatkere vs Union of India* has been monumental for the future of dissent in the country. The order has been passed in a bunch of petitions filed challenging the Constitutionality of the provision of Section 124A on sedition under the Indian Penal Code 1860 (IPC). During the hearings in the matter, the Union of India, in its affidavit, averred that it had decided to reexamine and reconsider the provisions on sedition under the IPC. It was further submitted by the Union of India that the Supreme Court may examine the constitutional validity of the law on sedition once the exercise of reconsideration has been undertaken by the government. Accordingly, the Court deemed it inappropriate to use the provisions on sedition till the reexamination by the Union of India is complete. Additionally, the Court recommended that the governments should restrain from registering any FIR, or undertaking any coercive measure in sedition cases till the matter is under consideration. The Court also ordered that all pending proceedings concerning sedition would be kept in abeyance. Multiple reports suggest that since 2010, approximately 800 sedition cases have been filed in India against more than 13,000 people. The National Crime Records Bureau's Report "Crime in India 2020" states that there have been 70, 93, and 73 cases of sedition in 2018, 2019, and 2020 respectively.

4. Challenged Provisions of Prevention of Money Laundering Act (PMLA) Upheld (July 2022)

Over 80 petitions were filed at the Supreme Court challenging the wide powers of investigation granted to the Enforcement Directorate (ED) under the Prevention of Money Laundering Act, 2002 (PMLA). The petitioners, including several politicians accused of money laundering, claimed that the ED has wide powers of arrest and to seize property, without being bound by the rules of the Criminal Procedure Code, 1973 (CrPC). Additionally, they challenged the onerous bail conditions under the PMLA. Section 45 reverses the criminal law standard of 'innocent until proven guilty', which places the burden on the prosecution to prove the accused persons guilty. Instead, the PMLA requires the accused to prove that they are not guilty before they can receive bail.

On July 27th, 2022, Justices A.M Khanwilkar, Dinesh Maheswari, and C.T. Ravikumar agreed with the Union government and upheld all the challenged provisions of the PMLA in *Vijay Madanlal Choudhary v Union of India*. They held that the ED did not possess police powers and, as a result, did not have to follow police procedure when conducting an inquiry. Further, the reversed burden of proof to receive bail was justified in order to counter the ‘heinous’ crime of money laundering. This Judgment is viewed in the context of a rapid increase in the number of cases filed under the PMLA—from 209 in 2014 to 3,985 cases in 2021—paints a dire picture.

5. Split Verdict on Hijab Ban (October 2022)

On March 15th, 2022, the Karnataka HC upheld the State government’s Hijab ban in educational institutions. On the same day, the All India Muslim Personal Law Board filed a petition challenging the decision at the SC. The case of *Aishat Shifa v State of Karnataka (2022)* was placed before a Bench composed of Justices Hemant Gupta and Sudhanshu Dhulia. The Bench heard arguments in the case over nine days from September 5th to September 21st, 2022. The petitioners presented a wide variety of arguments. They claimed that the ban amounted to indirect discrimination against Muslim girls, and violated their Right to Education. The Karnataka government argued that the ban furthers the Right to Equality by ensuring uniformity among students.

On October 13th, 2022, the Bench delivered a split decision in the case. Justice Hemant Gupta upheld the ban, stating that the ban was religiously neutral as it applied equally to all students, and students were hindering *their own* Right to Education by violating it. The State itself was not denying access in any manner.

Justice Sudhanshu Dhulia on the other hand held that the ban should be struck down. He held that there was no justifiable reason for banning Hijab in the classroom and that religious beliefs should be reasonably accommodated by educational institutions. As the case resulted in a split verdict, it is now up to CJI Chandrachud to place it before a larger Bench for a final decision.

6. Constitution Bench Upheld Reservations for “Economically Weaker Section”-EWS (November 2022)

In January 2019, Parliament enacted the Constitution (103rd) Amendment Act, introducing reservations for ‘Economically Weaker Sections’ (EWS). The Amendment allowed States to provide up to 10% reservations in educational institutions and public employment on the basis of economic criteria alone. Further, it excluded those who are already benefiting from reservations, such as Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs).

EWS reservations were upheld by a 3:2 majority in *Janhit Abhiyan v Union of India* on November 7th, 2022. Justices Maheswari, Trivedi, and Pardiwala formed the majority and upheld the Amendment, stating that there is no *active* exclusion—the Amendment merely creates a new class of beneficiaries within the general category. Further, they saw no issue with

economic considerations being the sole criteria for reservations. Justice Ravindra Bhat wrote the dissenting opinion for himself and the CJI Lalit. They did not object to solely using economic criteria, but they claimed that the exclusion of SCs/STs/OBCs violated the Right to Equality. The fact that they already benefit from existing reservations has no connection with the purpose of EWS reservations—addressing income inequalities between individuals.

The Judgment marks a monumental change in the Court’s understanding of reservation and affirmative action policies. It cements a shift from reservation as a means to address historic and structural disadvantages experienced by certain classes of people, based on factors like caste and religion, to a means to address inequalities between individuals.

7. The Appeal before the SC on the power of a Bishop to alienate Church Assets (January 2023)

Two Catholic dioceses of Kerala have made an appeal to the Supreme Court over the state’s High Court judgment that held Bishops have no authority over diocesan properties unless linked with spiritual matters. The Catholic Diocese of Thamarassery and Eparchy of Bathery filed the Special Leave Petitions challenging the remarks made by the Kerala High Court in the judgment delivered in August 2021. The two dioceses contended that the observations made by the high court would adversely impact the administration of all diocesan properties across all Churches.

The Kerala High Court observed that “the religious supremacy vested with the Bishop or apostolic succession should be understood (to be) confined to religious matters, both temporal and spiritual, governed by ecclesiastical law, viz. the Canon law”. A single bench of Justice P Somarajan observed the powers of the Bishop will not include the right to alienate the property vested in the endowment. The dioceses, in their appeal, argued that the high court order and observations were based on an “erroneous understanding of canon law”.

On 17th January, 2023, Senior Advocate Chander Uday Singh, appearing for the Eparchy of Bathery, informed a bench comprising Justices Dinesh Maheshwari and Bela M. Trivedi that in 2016, the High Court held in the case of Major Archbishop Angamaly and Others Vs. P.A. Lalan Tharakan that church assets are vested with the Bishop.