

JURISDICTIONAL REPORT (2021-2022)
SUBMITTED BY THE BAR ASSOCIATION OF INDIA
IN
LAWASIA COUNCIL MEETING
TO BE HELD ON 18TH NOVEMBER, 2022

I. PROMINENT LEGISLATIONS AND OTHER DEVELOPMENTS

1. The Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021

The Act came into force in April, 2021. The Act provides for the constitution of the Commission for Air Quality Management in India's capital and adjoining areas for better co-ordination, research, identification and resolution of problems surrounding the air quality index.

2. The Dam Safety Act, 2021

The Act came into force in December, 2021. It provides for surveillance, inspection, operation and maintenance of the specified dam for prevention of dam failure related disasters and to ensure safe functioning of dams.

3. The Surrogacy (Regulation) Act, 2021

The Act came into force in January, 2022. It constitutes National and State Boards of Assistive Reproductive Technology and Surrogacy. The Act provides for appointment of authorities for regulation of the practice and process of surrogacy. The Act aims to prevent commercial exploitation of surrogacy in India.

4. The Assisted Reproductive Technology (Regulation) Act, 2021

The Act came into force in January, 2022. It provides for regulation and supervision of the assisted reproductive technology clinics and banks. The Act was enacted for prevention of misuse, safe and ethical practice of assisted reproductive technology services for addressing the issues of reproductive health. The Act also provides for regulation and supervision of research and development in this field.

5. The Insolvency and Bankruptcy Code (Amendment) Act, 2021

The Amendment Act amends the Insolvency and Bankruptcy Code, 2016. It came into force in April, 2021. The Act brought in the Pre-packaged Resolution Process in cases of distressed Micro, Small and Medium enterprises wherein the default amount is less than Rs. 1,00,000,00 (USD 121,457). The Pre-Package Insolvency Resolution Process is aimed at providing MSMEs with an opportunity to restructure their liabilities without losing control of the company.

6. The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021

The Act amends the Juvenile Justice (Care and Protection of Children) Act, 2015. It came into force in September, 2022. The amendments authorize district magistrates and additional district magistrates to issue adoption orders under Section 61 of the Act. The eligibility parameters for appointment of Child Welfare Committee members have been redefined. The criteria for disqualification of the Child Welfare Committee members have also been introduced to ensure that only the people with right competence and integrity are appointed.

7. **The Limited Liability Partnership (Amendment) Act, 2021**

The Act amends the Limited Liability Partnership Act, 2008. It came into force in April 2022. The Amendment Act off-sets criminal liability and decriminalizes more than ten offences and prescribe only civil liability in the form of monetary penalties. It has reduced the maximum penalty from Rs.5,00,000 (USD 6072) to Rs.1,00,000 (USD 1214). The decriminalization drive and a comparatively relaxed penalty regime brought in by the Amendment Act provides flexibility to compound minor contraventions thereby, encouraging compliance by the entrepreneurs and effective regularization of LLPs.

8. The Supreme Court in a judgement of 2018 in the case of *Swapnil Tripathi v. Supreme Court of India*, upheld the plea of live streaming its proceedings in cases of constitutional and national importance. In September 2022, the Supreme Court began live streaming of Constitution Bench proceedings. The move expands the idea of open, accessible and transparent justice. This marks the onset of a significant transformation in the judiciary's functioning. Recent reports noted that more than eight lakh viewers (0.8 million) watched the proceedings on the day it went live.
9. During the Covid-19 pandemic, normal court proceedings in physical mode were not possible on account of the lockdown imposed to contain the spread of the virus. To meet this challenge, courts across the country conducted hearings in virtual mode. Since the start of the Covid-19 lockdown, district courts heard 1,28,76,549 cases while High Courts heard 63,76,561 cases (totaling 19.2 million) till 30.04.2022 through video conferencing. The Supreme Court heard 2,61,338 cases since the lockdown till June 2022.

II. SUPREME COURT JUDGEMENTS

1. **Fundamental Right to Life unconditionally embraces an undertrial**

In the case of *Kerala Union of Working Journalists v. Union of India*, a three judge bench of the Supreme Court held that the fundamental right to life is available to undertrial prisoner as well.

2. **Freedom of press relating to Court proceedings**

The Supreme Court in the case of *The Chief Election Commissioner of India v. M.R. Vijayabhaskar* held that freedom of speech and expression extends to reporting proceedings in courts including oral observations made by judges.

3. **One Rank One Pension Policy upheld**

A bench of three judges of the Supreme Court in *Indian Ex-Servicemen Movement and Others v. Union of India and Others* upheld the One Rank One Pension Policy as proposed by the Union Government in November 2015. The policy was envisioned to mean all officers of the same rank would receive the same pension, regardless of the date of their retirement.

4. **Free and Fair Elections**

A three judge bench of the Supreme Court in *State of Goa and Another v. Fouziya Imtiaz Shaikh and Another* while highlighting the importance of free and fair elections to a constitutional democracy, directed States to ensure that only independent persons be appointed as Election Commissioner. Such person cannot be a person who holds any office or post in the Central or any State Government.

5. No individual can be forced to be vaccinated

The Supreme Court, in the case of *Jacob Puliyel v. Union of India and Others* while considering, *inter alia*, a challenge raised against vaccine mandates imposed by the government during the Covid-19 pandemic, held that, bodily integrity is protected under Article 21 of the Constitution of India and no individual can be forced to be vaccinated. The Court observed that if there is a likelihood of such individuals spreading the infection to other people or contributing to mutation of the virus or burdening the public health infrastructure, government can regulate such public health concerns by imposing certain limitations on individual rights that are reasonable and proportionate.

6. Measures for expeditious disposal of cases relating to dishonor of cheque

The Constitution Bench of the Supreme Court in *Re: Expeditious Trial of Cases under Section 138 of N.I. Act, 1881* passed various directions with respect to the conduct of trials of complaints in cases of dishonor of cheques under Section 138 of the Negotiable Instruments Act. In light of the rising pendency of check bouncing cases, by way of a subsequent order, the Constitution Bench directed that a pilot study be conducted for a period of September, 2022 to August, 2023 to test the scheme of employing retired judicial officers and retired court staff to operationalise Special Courts for taking up cases relating to cheque dishonour in 5 states with the highest pendency.

7. Stay of Sedition cases

The three judge bench of the Supreme Court in the case of *S.G. Vombatkare v. Union of India* stayed all pending cases and proceedings with respect to charges framed under the sedition law contained in Section 124A of the Indian Penal Code, until a re-examination of the law is completed by the government. The Court observed that security interests of the state and civil liberties of citizens must be balanced.

III. ISSUES AFFECTING THE LEGAL SECTOR IN INDIA

1. Shortage of judicial officers and backlogs

The Supreme Court has a sanctioned strength of 34 judges. However, the Court is functioning with 28 judges as on October, 2022. As per the data available, in March 2022, 25 high courts that require at least 1104 judges, are functioning with 717 judges.

While there have been improvements in the filling up of vacancies, the pendency of cases continues to cripple courts. By March 2022 over 4.7 million cases are pending in various courts in the country, including 70,154 in the Supreme Court and 58,94,060 in High Courts. 4,10,47,976 cases are pending in the various district and subordinate courts.

2. Gender imbalance on both sides of the bar

Despite several efforts undertaken in the last few years for increasing representation of women on the judicial side, the current situation is far from ideal. As per July, 2022 data, there were only 4 women judges out of 32 judges in Supreme Court and 96 women judges out of the working strength of 729 judges, across various High Courts in the country. Only 15.3% of lawyers in the country are women.

IV. BAI ACTIVITIES AND ENGAGEMENTS (2021-2022)

9th October, 2021

2nd LAWASIA Human Rights Conference

Dr. Anindita Pujari, Hony. General Secretary made a presentation on Gig economy and labour rights with special focus on women's rights in the 2nd LAWASIA Human Rights Conference organized by the Korean Bar Association of India 9th October, 2021 over a virtual platform.

2nd – 3rd November, 2021

POLA Conference

Korean Bar Association (KBA) hosted the POLA Conference held on 2nd – 3rd November, 2021 over a virtual platform. On behalf of the Bar Association of India its President Mr. Prashant Kumar, President-Elect Mr. Amarjit Singh Chandhiok, Hony. General Secretary Dr. Anindita Pujari & Joint General Secretary Mr. Amarjit Singh Bedi attended the said Conference.

11th November, 2021

LAWASIA Council Meeting

The Bar Association of India (BAI) Vice President Mr. Shyam Divan, Senior Advocate has been elected unopposed as President-Elect of LAWASIA for the term of 2021-2022. The election was held in LAWASIA Annual Council Meeting held on 11th November, 2021 over a virtual platform.

15th – 18th November, 2021

LAWASIA Annual Conference – 2021

A high level delegation attended the LAWASIA Annual Conference under the leadership of President, Shri Prashant Kumar and Vice President, Shri Shyam Divan from 15th – 18th November, 2021 over a virtual platform. The Bar association of India contributed towards sponsoring the registration fee of 5 Speakers for the said event.

3rd December, 2021

Lawyers' of India Day – 2021

The Bar Association of India celebrated 3rd December as “The Lawyers’ of India Day” which also happens to be the Birth Day of Dr. Rajendra Prasad who was an eminent lawyer, a prominent freedom fighter and also the First President of the Republic of India. Dr. Rajendra Prasad had also formally inaugurated the Bar Association of India on 2nd April, 1960.

The Chief Guest on the occasion was Hon’ble Shri Justice Dipak Misra, Former Chief Justice of India who spoke about the great contribution made by Dr. Rajendra Prasad as a lawyer and referred to his excellent drafting skills. He also called upon the members of the Bar to emulate his philosophy in practice of the profession.

Also present on the occasion was Hon’ble Shri Justice Deepak Gupta, Former Judge, Supreme Court of India.

The meeting was presided over by the Bar Association of India President, Shri Prashant Kumar and conducted by Dr. Anindita Pujari, Hony. General Secretary, BAI. Introductory

Remarks were delivered by Shri Amarjit Singh Chandhiok, President-Elect, BAI and Vote of Thanks were given by Shri Amarjit Singh Bedi, Joint General Secretary, BAI.

On this occasion the Lawyers' of India Day Award was conferred on the following distinguished lawyers and Academician :

Shri Ranjit Kumar, Former Solicitor General of India
 Shri Kapil Dev Sood, Senior Advocate, Himachal High Court
 Shri R. Venkataramani, Senior Advocate, Supreme Court
 Ms. Meenakshi Arora, Senior Advocate, Supreme Court
 Prof. (Dr.) Dilip Ukey, Vice Chancellor, Maharashtra National Law University Mumbai.

24th – 26th January, 2022

Ceremonial Opening of the Legal Year 2022 in Hong Kong

The Law Society of Hong Kong organized the Ceremonial Opening of the Legal Year 2022 in Hong Kong, including Presidents' Roundtable and Leadership Insights Session on 25th and 26th January, 2022.

On invitation Mr. Prashant Kumar, President, The Bar Association of India attended the President's Roundtable Meeting on 25th January, 2022. Dr. Anindita Pujari, Hony. General Secretary and Mr. Amarjit Singh Bedi, Joint General Secretary attended the Leadership Insights Session on 26th January, 2022.

9th February, 2022

LAWASIA & the American Bar Association Webinar Series

Mr. Shyam Divan, Vice President, BAI & President-Elect, LAWASIA delivered his addressed at the webinar and shared his views in the webinar series jointly organized by the LAWASIA & the American Bar Association on the theme of "Emergency Orders & Executive Powers" on 9th February, 2022 over a virtual platform.

22nd April, 2022

National Consultative Workshop on 'Rivers in Indian Law: Opportunities and Challenges for Legal Rights for Rivers in India'

The Bar Association of India & Tata Institute of Social Sciences, Hyderabad Campus jointly organised a National Consultative Workshop on 'Rivers in Indian Law: Opportunities and Challenges for Legal Rights for Rivers in India' on 22nd April, 2022 at New Delhi. The Hon'ble Mr. Justice Adarsh Kumar Goel, Former Judge, Supreme Court of India & Chairperson, National Green Tribunal was the Chief Guest on the said workshop. Prof. Aseem Prakash, Deputy Director, TISS and Dr. Anindita Pujari, Hony. General Secretary, BAI gave the Introductory Remarks. Shri Prashant Kumar, President, BAI, Shri Shyam Divan, Senior Advocate & Vice President, BAI and Shri Mohan V. Katarki, Senior Advocate & Vice President, BAI and & Vice President, BAI were the Expert Speakers. A presentation was also given by the members of TISS Project team on New Zealand and Columbia. Vote of Thanks given by Dr. Bibhu Prasad Nayak, Associate Professor, TISS Hyderabad.

3rd May, 2022

Seminar on the Personal Data Protection Bill, 2021

The Bar Association of India organized a Seminar on the Personal Data Protection Bill, 2021 on 3rd May, 2022 at Jacaranda Hall, India Habitat Centre, Lodhi Road, New Delhi.

Hon'ble Ms. Justice Indira Banerjee, Judge, Supreme Court of India inaugurated the seminar. The topics discussed during the meetings are - Unpacking the Data Protection Law, Who Watches the Watchers? Government Surveillance Powers, Impact of the PDP Act on Industry, Data Governance within the PDPB and Criminal Law and Privacy. Many experts spoke on the occasion including Mr. Prashant Kumar, President, BAI, Mr. Shyam Divan, Vice President, BAI, Dr. Pinky Anand, Vice President, BAI, Mr. Chander Uday Singh, Vice President, BAI, Mr. Rajiv Duta, Senior Advocate & Chairperson, BAI Senior Advocates Forum, Dr. Uday Prakash Warunjikar, Vice President, BAI, Mr. Yakesh Anand, Vice President, BAI, Dr. Anindita Pujari, Hony. General Secretary, BAI, Mr. Amarjit Singh Bedi, Vice President, BAI, Mr. Apar Gupta, Internet Freedom Foundation, Mr. Anand V., Public Interest Technologist, Cyber Security Advisor, Deep Start LLP, Ms. Ria Singh Sawhney, Advocate, Mr. Ashish Aggarwal, Head of Policy, NASSCOM, Ms. Shahana Chatterji, Partner, Shardul Amarchand Mangaldas, Ms. Bagmisikha Puhan, Advocate, Ms. Anita Gurumurthy, Executive Director and Senior Fellow, IT for Change and Ms. Vrinda Bhandari, Advocate.

17th May, 2022

Book Release of Dr. Uday Prakash Warunjikar, Vice President, BAI

Dr. Uday Prakash Warunjikar, Vice President, BAI had written a book on "The Gender Justice, Human Rights And P.C. & P.N.D.T. Act, 1994 – Critical Appraisal of Statutory And Judicial Perspectives". The Book was released by Hon'ble Mr. Justice Bhushan R. Gavai, Judge, Supreme Court of India and Hon'ble Mr. Justice Abhay S. Oka, Judge, Supreme Court of India on 17th May, 2022 at 5:00 PM at New Maharashtra Sadan, Kasturba Gandhi Marg, Near Baroda House, New Delhi. On the said occasion Shri Prashant Kumar, President, BAI & Shri Shyam Divan, Vice President, BAI were speakers.

19th May, 2022

BAI Hosted Professor Steve NGO, President & Executive Director, BEIHAI Asia International Arbitration Centre Pte Ltd., Singapore.

BAI hosted Professor Steve NGO, President & Executive Director, BEIHAI Asia International Arbitration Centre Pte Ltd., Singapore on 19th May, 2022 at New Delhi and discussed developments in Alternative Dispute Resolutions.

29th June – 1st July, 2022

X Saint Petersburg International Legal Forum

All-Russian Non-Governmental Organization (Association of Lawyers of Russia) organized the X Saint Petersburg International Legal Forum on 9th June – 1st July, 2022. On invitation BAI represented through its President Mr. Prashant Kumar participated in the said legal forum. He also delivered his keynote speech and shared his expert views and thoughts.

24th September, 2022

Seminar on "Free Speech and Judiciary: Ensuring Independent and Fair Administration of Justice"

The Bar Association of India organized a Seminar on "Free Speech and Judiciary : Ensuring Independent and Fair Administration of Justice" on Saturday, 24th September, 2022 at New Delhi.

The seminar discussed the following timely and thought provoking issues i.e. Balancing Judicial independence and accountability: should there be limits on the freedom of speech

while dealing with the judiciary?, Power of Contempt: a shield or a double-edged sword?, Code of conduct for lawyers when commenting to media in cases they are appearing or are associated with and Training the Media to Cover Court proceedings: Developing a Collaborative Effort.

A galaxy speakers and experts from field of Law, Journalism and Media Institutes including Shri Shyam Divan, Shri Prashant Kumar, Shri Amarjit Singh Chandhiok, Shri B.V. Acharya, Shri S.S. Naganand, Shri Jaideep Gupta, Ms. Rachana Srivastava, Shri Mohan V. Katarki, Shri Aman Lekhi, Shri Rajiv Dutta, Shri Vikramjit Banerjee, Ms. Maninder Acharya, Shri (Col.) R. Balasubramanian, Ms. Menaka Guruswamy, Shri Uday Prakash Warunjikar, Shri Amarjit Singh Bedi, Shri Rohit Khanna (The Quint), Shri Arunachalam Vaidyanathan (NDTV), Prof. (Dr.) Pramod Kumar (IIMC), Shri P.V. Dinesh (LiveLaw) and Shri Yakesh Anand, spoke.

29th – 30th September, 2022

High Level Delegation to Germany

BAI High Level Delegation under the leadership of its President Shri Prashant Kumar including Dr. Uday Prakash Warunjikar, Vice President, BAI, Shri Amarjit Singh Bedi, Joint General Secretary, BAI and Shri Thanniru Srinivas, State Secretary, BAI on invitation of German Federal Bar Association (BRAK) attended the International Lawyers Forum on 29th – 30th September, 2022 at Berlin. During the said visit a consensus was arrived it that Bar Association of India will be the Launch Partner for the World Rule of Law Index – 2022.

BAI becomes a member of The Compact and Forum (promoting the Rule of Law and Access to Justice)

The Bar Association became the member of The Compact and Forum (promoting the Rule of Law and Access to Justice) for SDG 16, in collaboration with the Legal Vice Presidency of the World Bank.