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COMMITTEE FOR LAW AND PUBLIC INTEREST LITIGATION (CLAP)
CATHOLIC BISHOPS' CONFERENCE OF INDIA (CBCI)

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NEWS LETTER

Dear Esteemed Members of Catholic Hierarchy and Heads of Catholic Institutions,

Your Eminence/ Grace/ Excellency/
Father/Brother/Sister,

I am extending my heartfelt thanks for the deep interest and sincere appreciation you have shown to the previous News Letters. Your appreciation and suggestions are factors of motivation and a call for higher excellence.

The objective of CLAP News Letter is to circulate information about important bills, legislation, landmark judgments of High Courts and Supreme Court of India. Enactments, Judgments and other observations of various Courts which are of some relevance and significance to us have been included in the present issue. I hope and trust that the information and analysis would help you in your mission.

The activities of CLAP require your continuous patronage and blessing. I am soliciting your views and suggestions with regard to CLAP News letters and CLAP activities.

With respectful regards and best wishes,

Yours sincerely,

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MINORITY INSTITUTIONS HAVE THE RIGHT TO APPOINT QUALIFIED PERSON AS PRINCIPAL FROM THE COMMUNITY IGNORING SENIORITY: SUPREME COURT

The Supreme Court held that minority educational institutions have absolute right to appoint qualified persons as Principal from the community ignoring seniority.

“The emerging position is that, once the Management of a minority educational institution makes a conscious choice of a qualified person from the minority community to lead the institution, either as the Headmaster or Principal, the court cannot go into the merits of the choice or the rationality or propriety of the process of choice. In that regard, the right under Article 30(1) is absolute,” the Bench comprising Justice Kurian Joseph and Justice R. Banumathi observed.

The Court was hearing an Appeal filed by a minority educational institution, challenging an order passed by the High Court, wherein it had been held that the management of a minority educational institution has no absolute freedom to appoint a person of their choice, and that they cannot overlook the qualified and senior teachers belonging to the same community.

The Supreme Court, however, noted that this was not the case in light of several judicial precedents which have held that the management of a minority aided educational institution is free to appoint the Headmaster or the Principal of its own choice and has no obligation to appoint the available senior qualified member from the same community.

“We are afraid, the stand taken by the High Court cannot be appreciated,” the Bench observed, setting aside the impugned High Court judgment.

(Copy of the judgement is available at CLAP office)

SUPREME COURT DECLARES TRIPLE TALAQ UNCONSTITUTIONAL BY 3:2 MAJORITY

Supreme Court of India declared the practice of Triple Talaq as unconstitutional by 3:2 majority. Justices Kurian Joseph, UU Lalit and RF Nariman delivered the majority Judgment. Chief Justice Khehar and Justice Abdul Nazeer dissented.

Chief Justice J S Khehar and justice S Abdul Nazeer held triple talaq to be part of fundamental right to religion of Muslims and said it was not unconstitutional.

But, Justices Kurian Joseph, R F Nariman and U ULalit said triple talaq violated the fundamental right of Muslim women as they are subjected to arbitrary irrevocable divorce through this practice.

(Copy of the judgement is available at CLAP office)

PRIVACY A FUNDAMENTAL RIGHT: SUPREME COURT

A nine-judge bench of the Supreme Court has ruled that Indians enjoy a fundamental right to privacy, that it is intrinsic to life and liberty and thus comes under Article 21 of the Indian constitution.

The bench, led by Chief Justice J.S. Khehar, pronounced a unanimous judgement even if the judges had slightly different arguments as to how privacy is intrinsic to right to life and liberty.

The bench comprised Chief Justice Khehar and Justices J. Chelameswar, S.A. Bobde, R.K. Agrawal, Rohinton Nariman, A.M. Sapre, D.Y. Chandrachud, Sanjay Kishan Kaul and S. Abdul Nazeer.

In its 547-page judgment that declares privacy to be a fundamental right, the Supreme Court has overruled verdicts given in the M.P. Sharma case in 1958 and the Kharak Singh case in 1961, both of which said that the right to privacy is not protected under the Indian constitution.

copy of the judgement is available at CLAP office)

CIRCULAR MANDATING PRESENCE OF PRIEST WHO PERFORMED THE CEREMONY DURING REGISTRATION OF MARRIAGE, AS A WITNESS QUASHED BY BOMBAY HIGH COURT

A Division Bench comprising of S.C. Dharmadhikari and Sangitrao S. Patil, JJ. Quashed a circular issued by the Registrar of Marriages, appointed under the Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998 to the extent it mandates presence of priest/purohit, who performs the ceremony to be present before the office of the Registrar of Marriage during the registration of marriage as a witness.

While the reason for issuing the circular was to prevent registration of fake marriages, the Court held that the Act only provided for the presence of the parties and three witnesses while registration of marriage and that the priest/purohit who performed it was not required. It would become highly difficult for the petitioner to be present for the registration of each and every marriage that he performs and also he would not be able to attend his regular functions in the temples or the other places, through which he earns his livelihood.

(Copy of the judgement is available at CLAP office)

LAW COMMISSION OF INDIA SUBMITS REPORT NO. 270, RECOMMENDING COMPULSORY REGISTRATION OF MARRIAGES

Law Commission of India submits its report recommending compulsory registration of marriages. The Commission highlights that the recommendation is neither aimed at eliminating diversity of personal laws nor it aims to nullify the existing provisions for registration of marriages under different state laws. The Commission notes that in different parts of the country marriage registration is regulated by different laws and it creates lot of confusion with registration officials as well as people.

The Commission also recommends making registration of marriage online as far as possible and also to link registration of marriage to the unique identification number among other recommendations.

SUPREME COURT GIVES CENTRE FOUR WEEKS TO DECIDE ON REGULATING NGOS

The Supreme Court gave the central government four weeks' time to decide how to regulate the funding and functioning of the NGOs and voluntary organisations a large number of which are found to be functioning in breach of the rules.

The bench of Chief Justice Jagdish Singh Khehar and Justice D.Y. Chandrachud sought a response from the government as Additional Solicitor General Tushar Mehta told the court that a decision on whether to enact a law or frame guidelines for regulating the funding and functioning of the NGOs would be taken at highest level at the earliest.

Making it clear that it would not like to push the government on the course it may adopt for regulating the NGOs overwhelming number of which are flouting the norms, the bench said it would be appropriate if government took a call on the matter.

Telling ASG Mehta that misuse of public funds by the NGOs could not be allowed, the court said it was not the absence of law on regulating the funding and functioning of the NGOs and voluntary organisations that prevented in initiating proceedings against errant NGOs.

The top court in the last hearing in the matter on April 26 had asked the Centre to consider putting in place a statutory regime to regulate registration, funding, compliance and audit of the NGOs getting state support. The court said this during the hearing of a PIL and following a direction by the top court, a probe by the Central Bureau of Investigation (CBI) found that of the 32 lakh NGOs, only three lakh submitted their audited accounts to the authorities.

COMMISSION TO BE SET UP TO EXAMINE THE SUB-CATEGORIZATION WITHIN OBCS

The Union Cabinet has approved a proposal for setting up of a Commission under Article 340 of the Constitution to examine the issue of sub-categorization of the Other Backward Classes (OBCs). The Commission shall submit its report within 12 weeks from the date of appointment of the Chairperson of the Commission. The Commission shall be known as the Commission to examine the sub-categorization of Other Backward Classes.

The proposed terms of references of the Commission are as follows:

- (i) To examine the extent of inequitable distribution of benefits of reservation among the castes/ communities included in the broad category of OBCs, with reference to the OBCs included in the Central list.
- (ii) To work out the mechanism, criteria, norms and parameters, in a scientific approach, for sub-categorization within such OBCs, and,
- (iii) To take up the exercise of identifying the respective castes/communities/ sub-castes/ synonyms in the Central List of OBCs and classifying them into their respective sub-categories.

ISSUE CIRCULAR ON SEXUAL HARASSMENT AT WORKPLACE ACT TO COLLEGES: MADRAS HIGH COURT TO STATE

The Madras High Court recently directed the Department of Higher Education and Directorate of Collegiate Education to issue a circular on implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 to all colleges. "This Court feels that such complaints received from the employees are to be dealt without any delay and the issue has to be sensitized to the subordinate officials to deal with the complaints in an appropriate manner. In this regard, this Court feel that it is appropriate to direct the Secretary to Department of Higher Education and Directorate of Collegiate Education to issue appropriate circular with regard to the implementation of the Act to all the colleges and so as to prevent any such delay in future," Justice S.M. Subramaniam observed.

It then directed the Registry to communicate the order to the Secretary to Department of Higher Education and Directorate of Collegiate Education "to issue appropriate circular with regard to the implementation of the Act to all the colleges in order to implement the provisions of the said Act in its letter and spirit, while dealing with the complaint regarding the sexual harassment at work places".

GUJARAT HC ORDER DIRECTING STATE GOVT TO PAY COMPENSATION FOR DESTRUCTION OF RELIGIOUS STRUCTURES SET ASIDE; GOVT. SCHEME ACCEPTED



Supreme Court of India set aside the Gujarat High Court order directing the Gujarat Government to give compensation in favour of the persons in charge of all the religious places including those of worship, which were damaged during the communal riot of the year 2002 for restoration to the original position, as those existed on the date of destruction.

The Court, however, accepted the scheme framed by the State Government where the Government has fixed the maximum amount under the caption of ex- gratia assistance and also conferred the power on the District Collector of the Districts where religious places are situated to determine about the ownership or administration rights of religious places concerned. Noticing that the terms and conditions of the said scheme were reasonable, the Court directed that the claimants who fulfil the conditions of the scheme shall approach the authorities therein within eight weeks and the said authorities shall determine the same within three months from the receipt of the claims. Further, if any party is aggrieved by the denial of the benefit, he can take appropriate steps in accordance with law.

The Court, relied upon the rulings in *PrafullGoradia v. Union of India*, (2011) 2 SCC 568, where the two-Judge Bench has opined:

“the object of Article 27 is to maintain secularism and the said Article would be violated if the substantial part of the entire income tax collected in India, or a substantial part of the entire central excise or the customs duties or sales tax, or a substantial part of any other tax collected in India, were to be utilized for promotion or maintenance of any particular religion or religious denomination. However, if only a relatively small part of any tax collected is utilised for providing some conveniences or facilities or concessions to any religious denomination, that would not be violative of Article 27 of the Constitution.”

The Court also took note of the ruling in *Archbishop Raphael Cheenath S.V.D. Vs. State of Orissa*, where the Court had emphasized on the creation of atmosphere where there shall be complete harmony between the groups of people and the duty of the State to have discussions with the various groups to bring about peace and give possible help to the victims and had directed the Government to formulate a scheme regarding the religious places.

(Copy of the judgement is available at CLAP office)

SUPREME COURT DIRECTS DELHI GOVT. TO REGISTER DOMESTIC WORKERS UNDER THE UNORGANISED WORKERS SOCIAL SECURITY ACT

The Supreme Court bench of Justices Kurian Joseph and R.Banumathi, on August 4, gave the Delhi Government three months to work on a pilot project, to see that the domestic workers in Delhi are registered under the Unorganised Workers Social Security Act, 2008, by eliciting cooperation on all the duty holders. The Government of NCT of Delhi has been directed to file an affidavit as to the progress made in the matter of registration within three months.

The SLP originated from a Delhi High Court judgment, in which 256 women and children from West Bengal, employed as domestic workers in Delhi, without wages, were rescued and rehabilitated.