RSRR revamps its website and logo

RSRR Interviews Mr Samraat Basu

RSRR conducts the Cinejuris Competition

Carpe Quartam

A Quarterly Newsletter by RSRR

RGNUL STUDENT RESEARCH REVIEW

Issue 4, September 2023

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A QUARTERLY NEWSLETTER BY RSRR

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PREFACE

Carpe Quartam, a quarterly newsletter published by RSRR, is committed to democratizing legal research, making it more accessible to students and professionals alike while putting a spotlight on the activities undertaken by the RSRR Board in furthering its mission.

RSRR celebrates a decade of excellence in 2023, marked by a transformative journey. Commemorating the same, RSRR revamped its website and released a fresh logo, reflecting a commitment to enriching the legal research experience.

For this quarterly issue, the board had the privilege to interview Mr. Samraat Basu, a former student of RGNUL and former Editor-in-Chief of RSRR (2015-16). During the interview, we interacted with him about the intersections of law and technology, career prospects and higher education opportunities in this field. He also gives valuable advice to students pursuing law, especially in RGNUL.

In other news, the Editorial Board of RSRR held an orientation session for the Batch of 2028. Filled with excitement and a willingness to explore, the students enthusiastically participated in discussions revolving around the mandate of RSRR, its various focus areas, and research assistantship programs which provides the students of RGNUL with first-hand experience in legal research.

In our Editor's Column Series, Richa Maria and Shagnik Mukherjea, Editors at RSRR, critically examine the International Humanitarian law and its application to armed conflicts in outer space. Additionally, they outline the need to resolve the manifold issues plaguing the space industry through developing laws and fixing international responsibility of states for the actions of non actors.

Focusing further on the recent upheaval in the region of Jammu and Kashmir with regards to Article 370 the newsletter has showcased a dynamic view by giving due importance to the dissenting opinions that have emerged as 'just, fair and reasonable'.

Lastly, this edition also includes the winning entry of the RSRR's Blog Series on 'Emerging Trends in Indian Approach to Trade & Investment: Treaties & Agreements', in collaboration with the Centre for Trade and Investment Law.

This edition also includes a crossword section to intrigue all the readers with an interactive recap of the Short Notes posted regularly by RSRR.

We hope this edition is an insightful read!

RSRR Editorial Board

ABOUT RSRR

The RGNUL Student Research Review (RSRR) Journal (formerly RGNUL Student Law Review) is a bi-annual, student-run, blind peer-reviewed journal based at Rajiv Gandhi National University of Law, Punjab. It is a flagship law journal of RGNUL managed by the students of the University. It was founded with the objective of facilitating novel ideas and a research conducive environment. RSRR regularly engages the student community, as well as legal practitioners, to contribute to the legal discourse on various topics. Additionally, RSRR also runs its Blog Series, which deals with specific contemporary issues of law. The RSRR Blog Series has been named amongst the top 25 Constitutional Law Blogs internationally by Feedspot, consecutively for three years.

The journal encompasses myriad fields of law and proliferates novel legal discourse through opinions, suggestions and extensive analysis of contemporary issues from numerous areas of law, covering widely discussed topics like Tech law and antitrust law to more nascent areas like energy law, space law, Et al.

Initiatives of RSRR Law Journal

Each year, the RSRR Editorial Board selects a contemporary theme for its journal and invites research papers in the form of short articles, long articles, case comments and normative law articles, from academicians, industry stakeholders as well as law students. The Editorial Board also constitutes the Peer Review Board for the journal, comprising of distinguished experts and jurists in the field of the selected theme. The previous volumes of the RSRR Journal can be accessed here- **https://www.rsrr.in/**. The past Peer Review Boards and Guest Author roster can be viewed here and here respectively. No article submission or processing charge is required to be paid for the publication of any article in the journal.

Blogs

Themed Blog Series RSRR began running the 'RSRR Blog Series' in the year 2017. Periodically and typically for a month, RSRR releases a 'Call for Blogs' on contemporary and relevant themes. The Editorial Board also invites Guest Authors, who are distinguished experts in the selected field of law, to contribute to the Blog Series. Submissions are invited from academicians, scholars, as well as law students. A blog is typically 1500-2100 words, which are published on the RSRR website.

Editor's Column

This category constitutes blogs authored by the Editors of the RSRR Editorial Board. These blogs are written on current and relevant issues, which may be themed or open for the editors to choose.

Excerpts from Experts

Excerpts From Experts is a novel initiative by RSRR, started in 2020, initiated to bring forth discussion by experts on contemporary legal issues, belonging to their field of expertise. The aim is to provide our readers with well-researched and quality legal content written by the Guest Authors.

Research Assistantship Program

RSRR became the first Editorial Board at RGNUL, Punjab to offer Research Assistantship to its Editors and students of RGNUL. This is an opportunity to work with Guest Authors invited to contribute to RSRR's Journals and Blog Series. This initiative of RSRR is aimed at increasing hands-on knowledge and promoting a culture of academic research and writing at RGNUL. With various Guest Authors invited to write for RSRR's Journals and Blog Series, RSRR is providing students with an opportunity to learn from and work under the guidance of various academicians and lawyers, pioneers in their fields. A Research Assistant (RA) works under the guidance of the Guest Author to assist them in their research. An RA carries out supplementary research for them and assists in the overall research, in the instances required.

Notable Collaborations of RSRR

RSRR has occasionally collaborated with varied organisations for issues of the Journal or Blog Series. RSRR has had notable collaborations for projects with the following organisations:

- Collaboration with PRS Legislative Research for a Practicum Series on "Understanding the Functioning of Parliament, Law Making and the Career Avenues in Public Policy".
- Collaboration with Ikigai Law for the Blog Series on the theme: "Regulating E-Sports: Paving the Road Ahead" and "Emerging Technologies: Addressing Issues of Law and Policy".
- Collaboration with Arogya Legal and Medical Students Association of India for RSRR Journal Volume 6.1 on the theme: "Healthcare in India: Tracing the Contours of a Transitioning Regime".
- Collaboration with Nishith Desai Associates for the Blog Series on the theme: "Digital Healthcare in India".
- Collaboration with Mishi Choudhary and Associates for the Blog Series on the theme: "Addressing Legal Concerns of AI: A Clarion Call".
- Collaboration with Mishi Choudhary and Associates for a Webinar Series on Artificial Intelligence.
- Collaboration with Common Cause India for Panel Discussion on "Citizen-Police Interaction and Policing in the Pandemic".

THIRD EDITION: RECAP

In the previous edition of Carpe Quartum, the quarterly newsletter published by RSRR, we read about our two-day parliamentary practicum series conducted in collaboration with PRS legislative research. It introduced the discourse around 'Understanding the Functioning of Parliament, Law Making and the Career Avenues in Public Policy'.

In our Editor's Column Series, S. Lavanya, Junior Editor, and Murli Manohar Pandey, Digital Editor at RSRR, critically examined the current stance of consent and privacy in the article "The Digital Data Bill: A Paradigm Shift in Advertiser-Consumer Interactions". The article further explored the legal lacunae in the existing regime and potential developments which may occur with the introduction of the Bill.

RSRR, in collaboration with the Centre for Trade and Investment Law (CTIL), announced its Call for Blogs on the theme "Emerging Trends in Indian Approach to Trade & Investment: Treaties & Agreements".

In our Quarters at Glance, the section featured the Short Notes on the legal development in the field of Digital laws, Human Rights and Procedural laws. The Short Notes are excerpts that succinctly analyze the recent major happening every week and leave the readers with food for thought to stimulate their research capabilities.

Additionally, the article from the Excerpts from Experts series titled, "Regulating shape marks in India: the threshold of secondary meaning continues to hold good" explored shape marks and developments in the trademark laws in India.

Apart from this, the previous edition also featured a conversation with Ms. Anandita Bhargava, a former student of RGNUL and member of the Editorial Board, which threw light on the route to premier opportunities like the Legislative Assistant to a Member of Parliament (LAMP) Fellowship.

WEBSITE AND LOGO REVAMP

In 2013, a remarkable journey began as RSRR was founded, and in 2023, we proudly celebrate a decade of excellence. To commemorate this significant milestone, the dedicated Editorial Board of RSRR spared no effort in revitalizing the RSRR website and coming up with a fresh new logo. This transformation is a testament to RSRR's commitment to providing an even more exquisite and enriching experience for our valued readers and contributors.

The RSRR website is now more than just a platform; it is an embodiment of our passion for legal research and our dedication to the pursuit of knowledge. As we embark on the next decade of our journey, we invite you to join us in celebrating the evolution of RSRR. Here's to a future filled with groundbreaking research, insightful articles, and a renewed sense of purpose. Thank you for being a part of our remarkable journey.

IP-BACKED ASSET DEBT FINANCING

This article has been authored by Dr. Ashwini Siwal, Senior Assistant Professor, Faculty of Law, University of Delhi and Mr. Anupam Sharma, LL.M. & LL.B., Faculty of Law, University of Delhi. This blog is part of the RSRR's Excerpts from Experts series.

Introduction

In this technological era, everything is changing drastically, as is the way to generate finance. Earlier only physical assets were used as a tool to generate finance, but now intangible assets are the new modern way through which finance can be generated. Intangible assets include Intellectual Property ("IP") such as copyright, trademark, patents etc. With the growing digitisation in the economy, the concept of IP-backed debt finance is also evolving in how IP can be used as collateral to raise debt, instead of traditional borrowing and lending that was confined to physical assets. IP assets are brought into existence by the force of law and are playing a critical role as a source of financing.

Methods for IP Backed Debt Finance
Collateral Like other collaterals, IP can be used as collateral for the debt issued by the bank as per the debt agreement. IP will be pledged with the financial institutions and those institutions can sell them in case of insolvency or on non-repayment of the loan. Here, both the financial institution and the IP owners/Business enterprises/Companies are in a win–win situation as the company obtains the desired financial liquidity, and the bank also saves its money in case of any default. Debenture and other securities IP-backed assets can be placed in markets. Raising money from the market is one of the easiest and most reliable ways to generate finance for any enterprise. IP owners are saved by the seizure of their IP assets and can raise funding under favourable conditions. like debenture, bonds can also be issued, and IP owners can directly work on maximizing their revenues and paying interest to debenture holders and bondholders.

Here, the IP owners are not forced to comply with the complex rules and procedures of collateral agreement, IP owners have greater autonomy in the securitization of assets.

Lease IP can be leased to generate liquidity. This option is best for catering to short-term liquidity requirements. The IP owner leases the IP, and can regain the IP back on payment of the lease amount. Here, the owners of IP assets are sure that they will get their IP rights back as soon as the lease amount is returned. Another lucrative condition is Sale and Leaseback, where IPs are transferred for a fixed period of time, and the original IP owner may also be required to pay any royalties or future projected revenue to the transferor. After the expiry of the time period, IP owners have the option to buy back these securities.
Impact on SMEs IP-backed debt finance is a boon for small and medium enterprises ("SMEs").

All enterprises need finance for the management of successful business operations. But for SMEs, it is very difficult to get a debt sanctioned from financial institutions if they do not have any physical assets or any other traditional securities for collateral. This is a serious issue because Micro Small and Medium Entreprises (MSMEs) account for 70% of employment in Organisation for Economic Co-operation and Development (OECD) countries. These SMEs rely heavily on banks because they can provide them with much-needed liquidity without diluting their equity. SMEs are often hijacked by venture capitalists and angel investors on the pretext of financing and forcing SMEs to dilute their equity. Once the equity is diluted SMEs often lose control over their enterprise as well. It's high time that we start evaluating the IP right as commercial assets.

The monetization of IP lies in exclusivity, the right to exclude others from its use except for the owners or the licensees thereby supporting its uniqueness. IP assets are safe because of the fixed time duration/term and sometimes in case of owners' death beyond life especially in the case of copyright where the term is lifetime plus some more years. These IP assets can be used as collateral for the debt. These IP assets are more valuable than other physical assets which are often affected by other factors in the economy such as inflation, slow down or recession. Valuations of IP Securities Despite it being considered an asset, evaluating an IP is a critical task as it is on the basis of valuation the credit will be extended.

For collateralization of IP-backed assets lender/financial institutions are required to be well aware of the exact value of IP assets. The value shall include the cost of research and development of the IP, the impact of particular IP in generating revenue for the business, and the factors which can affect the value of the IP. Their valuations should be precise and accurate to the particular point in time so that banks can extend credit and at the same time know the exact value of such IP. For any lender who is providing funds to IP-backed assets, the value lender can realize by the sale of such assets is of extreme importance.

The major difference between tangible assets and IP assets is the complexity involved in valuation. If a tangible asset is given in collateral, the amount of the asset can at any time be easily calculated. Even in cases of default, tangible assets can be easily sold and the collateral amount can be easily realized. However, in the case of IP assets, it becomes a little complex to calculate the sale and resale value due to a lack of formal procedures and fewer buyers for the same. The IP is thriving in every continent, so a universal standard must be followed to value that particular IP so that there is no conflict in the valuation of IPs in other jurisdictions. Proper accounting systems need to be overhauled on how the IPs will be evaluated, and the effect of depreciation and appreciation on it. Unless and until the IP is not brought within the sphere of accounting and evaluation, it will be impossible for financial institutions to extend credit to IP-backed assets.

Most SMEs and young start-ups face a common problem, they have a lot of IP assets but lack tangible assets where IP could be leveraged to generate funding for their future growth and development. Such SMEs and start-ups are required to give formal training on how to commercialize their IP assets. Due to a lack of technical know-how in the commercialization of IP, SMEs are often left behind when compared with large companies in the usage of IP-backed assets as collateral. Large Multi-National Corporations ("MNCs") always have the advantage of their goodwill, long-time presence, market confidence, success stories, and a huge IP collection which gave them an upper hand in commercializing their IP assets. This becomes a major barrier for SMEs and start-ups in generating funds from IP and often forced to use their tangible assets if any.

This could be lethal to the existence of SMEs and start-ups as they are forced to provide their tangible assets to raise loans, and in case of default, they are left with nothing. This is because their tangible assets will be sold off to settle the debt and the IP assets will become obsolete as they lost the minimal required tangible assets to run the business smoothly. Therefore, especially for SMEs and start-ups, it is extremely necessary that they are provided with a platform where their demand for finance could be backed by an IP-backed assets system.

Role of International Institutions Office for Economic Cooperation and Development (OECD)

OECD has underlined the importance of SMEs and start-ups and the role played by them in creating employment opportunities and supporting growth in the economy. OECD has specifically highlighted that a uniform finance ecosystem needs to be established for SMEs and start-ups so that their rising finance needs can be easily catered to. The major issue highlighted here is that lenders need to be made aware of IP assets as security and not look at IP assets with suspicion. A financial trust needs to be made with the financial lender where they understand how IP assets work and how they are at par with other financial securities like stocks which can be easily manipulated. Simultaneously SMEs and start-ups should focus on IPs that can have commercial viability so that the lack of trust and lender's risk can be minimized. The Delhi High Court has reiterated through Knitpro that in order for a trademark to be registered, it must be demonstrated that the trademarked shape is distinguishable from the generic shape of the product. The form must have gained a secondary meaning and lost its original or generic significance. It would require significant effort to get the required level of distinction. In old industries like hand sewing needles, having the threshold high for a shape mark reinforces the law's discouragement towards unjustified monopoly, maintaining fair competition.

Secondly, corporations realize that the duration of protection trademark law has to offer is much more than most other relevant IP protection. Therefore, trademark protection would have been especially desirable, as a trademark may be renewed as often as desired and the owner of such a trademark could have prevented competitors from using comparable marks indefinitely. On the other hand, other wings of IP laws offer protection, if standards are met, to precarious cases like these. For example, as mentioned above, Lego was denied shape mark protection but upheld its design protection in 2021. A registered design allows its owner a 25-year monopoly on the claimed design, which appears sufficient for a mark to enjoy monopoly, albeit for a limited time.

The majority of products are unable to successfully market themselves with the same design for over a quarter century. Additionally, only a few designs are able to obtain blanket protection from design protection.

Way Forward

IP is evolving in this globalised economy, there is no doubt that IP is playing a big role in generating revenues. IP-backed financing in general is often understood as complex and procedural but we shall keep in mind that fundamental lending principles always remain simple.

The better the commercialisation avenue the more are lenders to bear the risk. States shall come forward and start drafting IP financing policies.

At the global level, it often becomes difficult to bring all people to one table. Instead, the state shall start drafting policies on IP debt financing and shall create a dedicated IP Asset Backed fund to support their IP-based start-ups and SMEs. In this era of globalisation, a state shall partner with its friendly countries and establish bilateral agreements supporting IP debt financing, as business and commercialisation can't be restricted to physical borders. It is important to note here the fall of Silicon Valley Bank (SVB). SVB followed the traditional system of borrower and lending, and still collapsed.

The two major reasons are first it lacked asset diversification and second, the depositors withdrew their money from the bank fearing the bank's stability. IP-backed assets provide much-needed asset diversification, they are not easily affected by the market's sentiments. The value of physical assets relies heavily on the policies and regulations of the government.

Additionally, they are highly volatile if compared with IP-backed assets. IP is granted protection under the law for the hard work and intellect of the IP owner which provides it with the necessary stability. Neither hard work nor labour can be overpowered by market sentiments nor can it be affected by adverse economic conditions.

INTERNATIONAL HUMANITARIAN LAW AND ITS APPLICATION TO ARMED CONFLICTS IN OUTER SPACE

This article has been authored by Richa Maria & Shagnik Mukherjea. This blog is a part of the RSRR Editor's Column Series.

"I do not say that we should or will go unprotected against the hostile misuse of space any more than we go unprotected against the hostile use of land or sea, but I do say that space can be explored and mastered without feeding the fires of war, without repeating the mistakes that man has made in extending his writ around this globe of ours."

– President John F. Kennedy

Technology enabled by space-based systems pervades almost every facet of human life; for example, satellite communications, space situational awareness, and position navigation demonstrate our dependence on space technology for performing tasks critical to sustaining life as we know it today.ince the dawn of the space era, space activities have been associated with military use for nations to fortify their military, security, and defense prowess

S. As General Lance W. Lord wrote, "Space superiority is the future of warfare. We cannot win a war without controlling the high ground, and the high ground is space." However, it was soon realized that military operations and armed conflicts conducted in, or concerning, outer space could lead to a catastrophe with irrevocable ramifications giving rise to potential humanitarian crises.

Understanding the necessity of a consolidated international legal framework, five international treaties were developed under the auspices of the United Nations to regulate military and civilian activities in outer space. Each treaty, namely – The Outer Space Treaty, The Rescue Agreement, The Liability Convention, The Registration Convention and The Moon Agreement eals with various matters ranging from the liability for damage caused by space objects to the exploitation of natural resources in outer space. From the beginning,

the development of space law has been premised on the hope of avoiding armed conflict in outer space while maintaining outer space as a sanctuary for peace. As the prospects of this hope wane, uncertainties arise concerning the constraints governing the potential utilisation of force in the event of armed conflicts originating from or occurring in outer space. In light of this, this article aims to elucidate the prevailing legal framework and examine the extent to which international humanitarian law applies to armed conflicts in outer space. Provisions of the Outer Space Treaty and its Need for Development The aforementioned five international treaties, or the corpus juris spatialis, collectively form the foundation of space law. The Outer Space Treaty, also known as the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (hereinafter 'OST') , is a keystone treaty of space law which highlights that the use of

outer space shall be carried out for the benefit and in the interests of all countries and outer space should be used exclusively for 'peaceful purposes.' There has been a longstanding discourse vis-à-vis the term 'peaceful purposes' since it has not been clearly defined by the OST , leaving its meaning ambiguous and unclear. While some members of the international community interpret 'peaceful purposes' as 'non-military,' others interpret it as 'non-aggressive or non-hostile.' Interestingly, there is no internationally binding obligation that outer space has to be used exclusively for 'peaceful

purposes' even though the peaceful use of outer space is often quoted at international forums as an underlying principle governing space activity. There are explicit prohibitions on certain weapons, such as 'nuclear weapons and 'weapons of mass destruction' and military activities on 'celestial bodies, such as the Moon, under Article IV of the OST.

However, if one strictly follows the wording of the article itself, these restrictions do not apply to outer void space as a whole, highlighting a significant loophole in the OST.he Preamble of the OST explicitly mentions that the use of outer space is for 'peaceful purposes.' Even though a preamble does not enforce legally binding responsibilities on states,

Tit aids in the practical interpretation of the aims and purposes of a treaty and often imbibes the treaty's spirit. Nevertheless, the term 'peaceful purposes' in the Preamble of the OST is only helpful in interpreting the treaty articles and does not per se define the terms themselves. Furthermore, in an attempt by the United Nations to strictly interpret the use of outer space for peaceful purposes, the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, popularly known as the Moon Agreement, was created as a supplement to the OST and reaffirmed the de-militarisation of celestial bodies. According to Article 3 of this Agreement, 'the moon shall be used by all States Parties exclusively for peaceful purposes. Any threat or use of force on the moon is prohibited.'

Furthermore, Article III of the OST is significant because it applies the full breadth of general public international law to outer space and contains provisions directing State Parties to 'carry on activities in the exploration and use of outer space, in accordance with international law, including the Charter of the United Nations, in the interest of cmaintaining international peace and security and promoting international cooperation and understanding.' This means that the laws of armed conflict and the UN Charter's Article 2(4), which relates to the prohibition of the threat or use of force against any state's territorial integrity or political impendence, applies to state action in outer space.

Thus, the use of weapons would be permitted if the purpose was justified under the exceptions to the use of force (jus ad bellum), one such exception being self-defence.

Following Article 103 of the UN Charter, when conflict arises between the obligations of the Members of the United Nations and their obligations under any other international agreement, their obligations under the Charter shall prevail. In light of this, the OST and the UN Charter must be interpreted and read together because Charter obligations supersede other treaties, as further reinforced under Article 30 of the 1980 Vienna Convention on the Law of Treaties. Furthermore, under Article 42 of the Charter, the Security Council 'may take action in order to maintain or restore peace and security.' Accordingly, any use of space, including the use of force, following the orders of the Security Council would be valid and legally justified because, as established under Article 25 of the UN Charter, members have to accept and carry out the decisions made by the Council.

Enshrined in Article IV of the OST are provisions relating to the question of the military uses of space and the prohibition of the placement of weapons of mass destruction in orbit around the earth, weapon testing and the installation of nuclear weapons on celestial bodies. According to the Article, 'the moon and other celestial bodies shall be used by all State Parties exclusively for peaceful purposes, and the establishment of military bases, installations and

fortifications, the testing of any type of weapons and the conduct of military manoeuvres on celestial bodies shall be forbidden.' While 'the testing of any types of weapons' is not permitted on 'celestial bodies,' there is no mention of such testing being prohibited in 'outer space,' which raises pertinent questions regarding whether 'outer space' is excluded from the testing of weapons. However, this is likely to be a drafting error since Article III, Article IX and Article XIII of the Treaty include the Moon and celestial bodies within the definition of 'outer space,' which is a broader interpretation in comparison.

Nonetheless, a stringent interpretation of the language used in Article IV prohibits only the placement of 'nuclear weapons' and 'weapons of mass destruction' in orbit, failing to acknowledge the permissibility of other conventional weapons and dual-use military space objects. Regrettably, the narrow focus of the article and its inadequate definition of 'weapons of mass destruction' allow for considerable room for improvement. Presently, international space law permits the placement of weapons into orbit if they do not fall within the scope of 'weapons of mass destruction.' Consequently, due to these interpretational challenges, States have construed these provisions in a manner that allows for the utilisation of weapons such as Anti-Satellite (ASAT) missiles, as long as they are not employed aggressively against another State . This circumstance, therefore, necessitates an examination of the laws of armed conflict, which seek t o regulate the behaviour of parties involved during periods of hostilities.

The Application of the Laws of Armed Conflict in Outer Space

Since the launch of Sputnik 1 in 1957, space has been a critical theatre of military operations as satellites and other space-based systems have emerged as indispensable tools for a state's military force to gather intelligence, conduct surveillance, and enhance reconnaissance capabilities. In light of rising tensions and the threat of proxy wars, applying IHL to military activities in outer space has become a pressing concern for the international community. It is only further escalated with the rapid advancement of technology that blurs the boundary between civilian and military applications. In this regard, initiatives like the International Committee of the Red Cross Publications on Contemporary Armed Conflicts and the Woomera Manual pave the way for establishing a rule-based legal framework for regulating military operations in space.

As previously noted, it is worth highlighting that the OST does not explicitly forbid military operations. in space but refers to the prohibition of aggression, akin to the jus contra bellum regime. This understanding would still not negate the application of IHL in space-based military operations, which derives its relevancy from Article III of the OST, referring to all obligations being carried out "in accordance with international law." Whether IHL applies depends on whether the conflict is a Non-International Armed Conflict or an International Armed Conflict. In short, once a conflict is deemed an IAC or NIAC, IHL principles and obligations are in effect. This was further evidenced by the International Court of Justice in its 1986 Nuclear Weapons Advisory Opinion, observing that the

principles of IHL apply to "all forms of warfare and to all kinds of weapons, those of the past, those of the present and those of the future." Similarly, the ICRC affirms this stance in their Working Paper on Armed Conflicts in Outer Space, citing Article III of the OST as the basis for the relevant international law that governs such conflicts and explicitly refers to the UN Charter, specific treaties, the law of neutrality and the principles of *jus in bello*. While an exhaustive overview of all use cases concerning the analysis of IHL principles is beyond the scope of this article, it does delveinto issues surrounding the principles of distinction and proportionality that are uniquely applicable in this setting.

Principle of Distinction

The principle of distinction, regarded as a cardinal principle of IHL, is crucial in determining the legitimacy of military attacks. It distinguishes between combatants and civilians, only authorising military attacks against the former when it results in a definite military advantage. Consequently, it not only safeguards but also upholds the status of non-combatants throughout such hostilities.

However, two pertinent issues regarding its applicability arise in the context of armed conflicts in outer space. *Firstly*, regarding the status of military astronauts in outer space when their respective countries are involved in an ongoing armed conflict. In this regard, while IHL would traditionally consider them combatants, international space law, on the other hand, unequivocally treats astronauts as "envoys" of humankind, guaranteeing protection and assistance at all times. The question, therefore, would boil down to the determination and application of *lex specialis*. While IHL has traditionally been regarded as *lex specialis*, governing the conduct of belligerents during armed conflicts, recent discussions have emerged regarding the precedence of international space law.

These discussions emphasise the unique position of astronauts operating in a highly specialised and complex domain, contending that nternational space law should be treated as the lex specialis for such circumstances. It is reliant on the fact that space exploration, whether for military or civilian purposes, typically necessitates international collaboration and the cooperation of nations for successful operations. Additionally, the existence of Rescue and Return Agreements, even during the Cold War era, adds weight to the notion of providing protections to astronauts regardless of their nationalities.

Secondly, various conflicting interpretations arise concerning the identification and classification iof intended targets. Reliance is primarily placed on the "nature," "location," and "purpose" of the object. However, given the unique circumstances of conflicts in outer space, neither of the standards provides a compelling threshold. The nature standard permits attacks on objects utilised by the military, but it raises the question of whether insignificant equipment, such as broadband TV signals for entertainment purposes, would also fall within this standard. Similarly, the location standard permits attacks on strategically positioned objects to provide military advantages meaning that a civilian satellite could become a legitimate military target if it is merely located near a military satellite. Lastly, the purpose standard focuses on the objective and function of the object. While determining the current use of a satellite is relatively straightforward, predicting its future uses becomes exceedingly challenging. Furthermore, "potential" functions do not serve as a legitimate standard, requiringh

A central aspect of this issue concerns the intertwined nature of civilian and military space industries. Military satellites are often launched into orbit using civilian launch systems, and while these are commonly regarded as valid military objectives under Article 52(2) of API, the use of hosted payloads further complicate the object's targeting legitimacy. In this regard, such "dual-use" objects include hosted payloads separate from atellite's primary payloads and serve distinct objectives that can tbe utilised by other users (for instance, the armed forces) to enhance their space-based capabilities. In such scenarios, the challenge is to differentiate between the military payload and civilian payload aboard the satellite, only the former being considered a valid military objective, thus raising issues related to the purpose standard.

Principle of Proportionality

Outlined in Article 51(5)(b) of the API, the principle of proportionality imposes the obligation that the harm caused to civilians or civilian objects should not be excessive in relation to the concrete and direct military advantage achieved through a military attack. It is important to emphasise that several jurists have acknowledged the inherent challenge of balancing military considerations with civilian objectives as they involve fundamentally distinct considerations. However, when applied to the context of outer space, this principle assumes an even more complex and elusive nature in terms of its applicability.

An assessment of proportionality remains when it comes to targeting civilian objects. For instance, the destruction of dams, water-generating facilities, and electrical grids, which possess both military and civilian utility, requires a thorough evaluation of proportionality. And it is worth nothing that the same

requirement applies to the unique circumstances of conflicts occurring in outer space. The Global Navigation Satellite Systems (GNSS) is particularly important in this regard. Various states possess their technological infrastructure in this domain, such as the United States Global Positioning System (GPS), Russia's GLONASS, and China's BeiDou System.

While the crucial role of GNSS in the modern world cannot be overstated, its legal status remains unclear. Originally designed to fulfil military objectives for armed forces, these complex infrastructures now serve increasingly vital civilian purposes. Civilian activities rely on GPS frequencies for navigation and timing synchronisation, which is integral to numerous modern technologies. Internet connectivity, aviation, maritime transportation systems, and specialised sectors like healthcare, energy production, mining, and agriculture depend on such infrastructure.

Apart from its civilian applications, GNSS also serves numerous military purposes, justifying military attacks under the principle of dual-use objects.The critical question, therefore, revolves around whether such attacks meet the test of proportionality. Although the standard is necessarily speculative, as there are no direct civilian casualties in such attacks, it requires considering foreseeable and proximate consequences in the assessment. In this regard, there appears to be a consensus among jurists that attacks targeting GNS

equipment would constitute an unlawful attack unless the attacking state is capable of satisfying and justifying the expected direct military advantage, thereby setting a high threshold for acceptance. Assessing this matter presents significant complexities within space-based warfare, primarily due to the escalating dependence on "soft" methodologies. These techniques involve interference with an object's operations, such as signal jamming, rather than resorting to "hard" methodologies that directly obliterate the object itself. Adopting such "hard" methods also carries distinct implications, like generating space debris.

Furthermore, as stipulated in Article 58 of the API, the principle of precaution necessitates undertaking all necessary measures to minimise foreseeable harm to civilians and civilian objects. In this context, legal scholars conclude that a comprehensive application of both the principle of proportionality and precaution contributes to the preservation and protection of valuable objects, the destruction of which would have far-reaching consequences for civilians. However, critics maintain that such an approach leads to a blanket prohibition on military attacks, even if the infrastructure or satellites serve military purposes.

Conclusions and the Way Forward

Although there is widespread recognition that IHL, incorporating the progressive balancing of principles like military necessity and humanity has the capacity to regulate future conflicts in outer space, this article highlights the numerous challenges involved in establishing a rule-based framework for implementing existing IHL principles within this unique theatre of warfare. In light of this, we assert that a comprehensive adherence to the principles of distinction, proportionality, and precautions does not necessarily render kinetic attacks illegal from the outset. Instead, it obligates states to explore alternative and less destructive means of achieving their intended objectives, thereby placing a heightened burden on the attacking state to justify its use of force.

Similarly, the ICRC has advocated for formulating national and international policies encompassing general prohibitions on weapons and conduct during hostilities based on the same conceptual frameworks.Undoubtedly, the OST establishes a robust foundation by incorporating provisions restricting utilising space for military purposes. However, its efficacy is limited due to the brevity and vagueness of its articles. Consequently, it fails to adequately address the imminent challenges associated with military activities in space, which are also unaddressed by the general principles of IHL. As a result, there is a pressing need to clarify and resolve issues concerning the threshold for the use of force, armed attacks, self-defence, the legality of space exclusion zones, and the international responsibility for the actions of non-state actors, particularly as states continue to increase their space-based military capabilities.

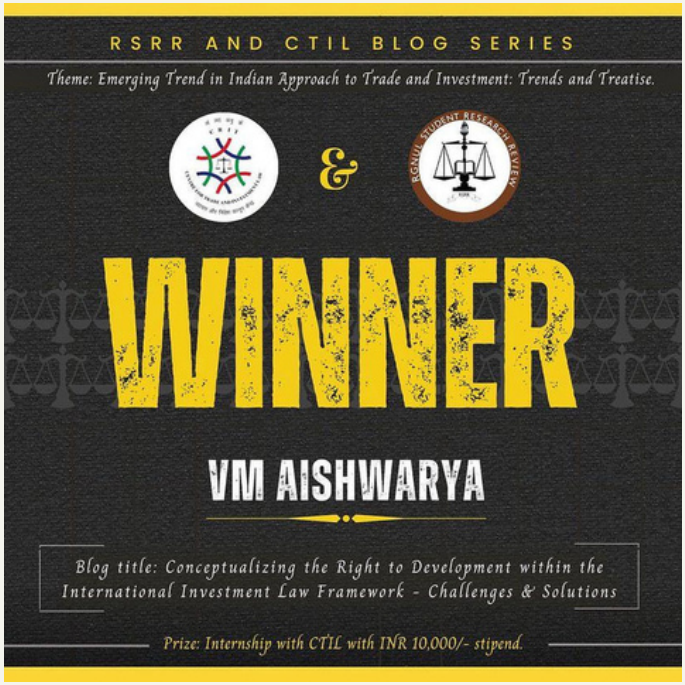
ORIENTATION-BATCH OF 2028

On August 16, 2023, the Editorial Board of the RGNUL Student Research Review (RSRR) successfully held an orientation session for the Batch of 2028. The session introduced the students to the operations of RSRR, the functions of the editors and the intricacies involved in producing high-quality legal literature.

The session was led by Members of RSRR and the attendees were informed of the board's various initiatives, including a peer-reviewed journal with a contemporary focus, the Excerpts from Experts series, the Research Assistantship programme, which gives students the chance to collaborate with prestigious Guest Authors, Short Notes, which aims to give readers precise, accurate factual and legal information, Cinejuris which explores a fascinating confluence of cinema and law by analysing the legal aspect of a film or television show.

Throughout the orientation session, the batch of 2028 was interactive and participated enthusiastically in the session. Overall, the session was insightful as a result of the students' questions on the board's many different facets. At the end, the students expressed their willingness to partake in the coveted platform that law journals offer.

CTIL BLOG SERIES WINNER



The RGNUL Student Research Review (RSRR) collaborated with the Centre for Trade and Investment Law (CTIL) to initiate a theme blog series titled 'Emerging Trends in Indian Approach to Trade and Investment: Treaties & Agreements'. This blog series aimed to foster a discussion on the issues plaguing the trade and investment law sector. The series was an attempt to critically analyse the legal vacuum with respect to significant developments in this sector and suggest viable solutions to bolster the intersection of law with trade and investment.

Due to the emerging area of Investment Laws, the board has received numerous interesting submissions. It was a challenging task to select the best manuscripts from the various excellent manuscripts that the board received. The Board is pleased to announce the winner as decided by the esteemed peer reviewer CTIL - VM Aishwarya for her insightful blog titled, 'Conceptualizing the Right to Development within the International Investment Law Framework - Challenges & Solutions. As announced, winner would be awarded with an Internship with CTIL with INR 10,000 as stipend.

In the winner's blog, the author delves into the complexities of integrating the Right to Development (R2D) within international investment law, highlighting challenges and solutions. The Board congratulates the winner for their novel contribution to the existing literature and all the participants for their submissions to conclude the blog series successfully. We are grateful to all the authors who helped facilitate legal discourse on the nascent area of Investment Law, and look forward to enthusiastic participation in our future endeavours!

CINEJURIS COMPETITION

The Editorial Board of RSRR recently conducted the Cinejuris Competition, 2023 for the Batch of 2028. We are delighted to announce that after a rigorous and exhaustive evaluation process, the following entries are adjudged as the winners of the competition:

1st- Shubh Mangal Zyada Saavdhan by Dev Arora
2nd- Mimi and Surrogacy, Adoption & Abortion laws in India by Himanshi Sobti
3rd- The Judge: Indian Edition by Mustafa Topiwala and Farzi by Esha Kartik.

Entry I: Shubh Mangal Zyada Saavdhan

"Shubh Mangal Zyada Saavdhan" is a Bollywood film that explores a sensitive topic; homosexuality. It skilfully blends humour, emotion and social commentary to shed light on the challenges faced by LGBTQ+ individuals in a society that leans towards conservatism. Simultaneously, it advocates for an inclusive outlook. The story revolves around Kartik's journey as he unexpectedly falls in love, with Aman. Complications arise when it becomes apparent that Aman's family holds certain beliefs that disable them to accept this love. The movie tactfully addresses the stigma surrounding same sex relationships in India while emphasizing the importance of acceptance and love.

Delving deeper into this subject, homosexuality has long been a taboo in Indian society. Though homosexuality has been decriminalized, it is still not morally accepted in India. In ancient texts like Arthashastra and Dharmashastras, Ayoni or non-vaginal sex of all types was punishable. The infamous Section 377 of the Indian Penal Code (IPC) criminalized homosexuality. Introduced in 1861 during British rule, Section 377 read as follows: "Unnatural offences—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to a fine." However, after numerous petitions before Indian courts, the Supreme Court in the case of Navtej Singh Johar v. Union of India [(2018) 1 SCC 791] unanimously struck down parts of Section 377, thereby decriminalizing homosexuality. In the impending case of Supriya Chakraborty & Anr. v. Union of India [W.P.(C) No. 1011/2022] before the Supreme Court, homosexuals are currently fighting for legalisation of same sex marriages in India.

The film concludes on a hopeful note where both families accept their sons' homosexuality and their love. Though in reality homosexuality and same-sex marriages remain stigmatised, such depictions of societal issues through cinema, may lead to bringing change in the Indian society and its laws.

Entry II: Mimi and surrogacy, adoption, and Abortion Laws in India

"Mimi," set in 2013 Rajasthan, follows the journey of Mimi, a 25-year-old dancer, who dreams to be an actor but lacks the financial means to pursue her dream. She finds a way to get over her monetary problems when Bhanu, a driver, comes to her with an offer from an American couple looking for a surrogate.

The film allows for an exploration of surrogacy laws in India. Commercial surrogacy was legal in India from 2002 to 2015, enabling underprivileged women like Mimi to earn by renting out their wombs. However, the exploitation of surrogates led to commercial surrogacy being banned in 2015. Currently, the Surrogacy Regulation Act, 2021 redefines 'intending couple' and 'surrogate mother'. The Act has been criticized as it prohibits couples with one child, foreign nationals, live-in partners, single adults, same-sex couples, and widowers from participating in the surrogacy process.

Towards the conclusion of the film, the American couple adopts an orphan girl. The legislations governing adoption in India are the Juvenile Justice Act, 2015 and The Hindu Adoption and Maintenance Act, 1956. As for inter-country adoptions, the Supreme Court laid out guidelines in the judgment Laxmi Kant Pandey v. UOI (1987 SCC (1) 66) such as the three to five-tier adoptive process, ensuring whether the child would adapt to new country's culture, maintenance of registers by the Social Welfare Department of India amongst others. In 1986, the Central Adoption Resource Agency was set up to improve the inter-country adoption procedure. On an international level, inter-country adoption is covered under the Convention on the Rights of the Child and the Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption (1993).

Additionally, the film talks about abortion. In 1971, the Medical Termination of Pregnancy Act was passed. Presently, by virtue of the 2021 Medical Termination of Pregnancy Amendment Act, abortion is allowed up to 20 weeks on the opinion of one doctor, and up to 24 weeks on the opinion of two doctors. The extension is given to special categories of women such as rape and incest victims, disabled women, and minors. However, challenges still remain in ensuring access to safe abortions, addressing stigma, and simplifying the legal process for women seeking abortion. In conclusion, while "Mimi" takes creative liberties, it helps in exploring the reproductive rights of women and their socio-legal aspects in India.

Entry III: The Judge - Indian Edition

Intoxication, murder, and a splintered father-son relation – The Judge (2014) brushes across several legal issues coupled with poignant emotions that make it easier for people to resonate with the film. If the film's story were unfolded in India, it would involve the interplay of legalities such as S. 85 of the IPC, and S. 185 of the Motor Vehicles Act (MVA). Acts committed under the influence of alcohol/drugs are understood through S. 85 of the Indian Penal Code (IPC). However, if the IPC is replaced with the contemporary Bharatiya Nyaya Sanhita Bill, introduced in the Lok Sabha in 2023, it shall bring a tide of change in the world of law, and transform how people interpret The Judge from an Indian legal perspective.

The film indulges in the intricacies of a severed family relation by revealing at its very onset a mutual animosity between the judge (Robert Duvall) and his son, Hank (Robert Downey Jr.). During the course of the film, it comes to Hank's knowledge that the judge has been charged with the second-degree murder of Mark, a criminal who had been convicted by the latter for the death of a young girl. Hank decides to defend his father by convincing the court of the presence of reasonable doubt in the case.

Hank's initial defense is based on the assumption that the judge's state of mind was affected due to his wife's death, and his old age. These factors might have forced him, a recovered alcoholic, to drive intoxicated. Thus, there was no intent to kill anyone, proving it was an accident and not murder.

What if this case happened in India? S. 85 of the IPC protects a person who is unknowingly or forcibly intoxicated. Further, S. 185 of MVA states that if a person is under the influence of any substance to the extent that he/she is unable to properly maneuver his/her vehicle, then he/she can be held liable. The judge could be thus, held liable under S. 185 unless Hank could prove otherwise using S. 85's defense.

Although if the new Bill is passed, S. 23 of this Bill can be used directly by Hank to prove that his father was drunk voluntarily and hence no crime was committed, as it protects the act of a person intoxicated by choice (as opposed to 85 of IPC). Hence, a glass of wine and S. 23 would be all to get away with the crime, if it is committed in India, post the passing of the Bill.

Entry IV: Farzi

Farzi is the story of a small-time artist, Sunny, who enters the world of designing counterfeit notes and circulating them. He succeeds in making the perfect fake note using the machines in his grandfather's printing press. Meanwhile a task force, with the aim of eliminating all forms of counterfeiting in the country, works hard to find him. There is also a bigger group of criminals involved in the counterfeiting business at a large scale. The thriller series follows Sunny's foray into the counterfeit industry and the obstacles faced by him. It also focuses on the task force's journey to find out the artist behind the new fake currency note. The question of law that arises is whether Sunny has committed an offense under the Indian laws.

Counterfeiting is an offense under Sections 489A-498E of the Indian Penal Code, 1860 (IPC). These sections deal with the punishment prescribed for making a counterfeit note, possessing it knowingly, or selling it to someone else. The punishments under these sections can range from a liability to pay fine to even imprisonment for life.

In addition, the Unlawful Activities (Prevention) Act, of 1967 (UAPA) has many sections related to counterfeiting. Counterfeiting is defined as a "terrorist act" under Section 15 of the Act. The punishment for the offence is imprisonment for a term of five years that can be extended up to life, along with a fine. Further, the Reserve Bank of India (RBI), the regulator of currency in India, has employed many measures to identify counterfeit notes. The RBI has also issued guidelines on the actions to be taken against such offenders. Some of the measures taken by the RBI include mandating banks to check the authenticity of notes received and requiring them to inform the police on detection of any counterfeit notes.

As counterfeiting in India is an offence, Sunny and the group of criminals can be punished under the IPC for making and dealing with counterfeit notes. Further, they can also be made liable under the UAPA for carrying out a terrorist act and endangering the stability of India's monetary system.

KNOW YOUR ALUMNI

MR. SAMRAAT BASU (BATCH OF 2017)

1.What initiated your liking in the field of Law and Technology? Were there any specific legal areas or college activities that helped enhance that interest?

I developed an affinity for issues surrounding law and technology in the third year of law school when I had the opportunity to do the Oxford Price Media Moot Court Competition. I had a great time preparing and researching on emergent issues and that was my first foray into the world of law & technology. Subsequently, I also spearheaded the release of a RSRR special issue on law & technology closely following the landmark decision of Shreya Singhal v Union of India decision which declared Section 66A of the Information Technology Act as unconstitutional vis-à-vis Article 19(1)(a) of the Constitution of India.

2.How would you evaluate the Law and Technology space having had practical experience in the same? What is the future of Law and Technology in India?

The law and technology space is rapidly developing. All companies process data and are reliant on some form of technology to ensure smooth business operations. Given that background, the scope of TMT lawyers in India is immense. I would recommend all budding lawyers to keep abreast of developments in this area. Think about it, most large M&A activities and IPOs involve technology companies and it would be wise to develop skills in these areas.

3.What advice would you give to someone planning to make a career in Technology and Data Privacy, and that too, abroad?

There is no alternative to reading and writing. I would recommend publishing papers and articles in leading law journals and popular news media during law school. Alongside these activities, it is important to intern with firms and companies which have good TMT lawyers that you can learn from. Remember, the quality of your internships matters more than the quantity.

Crucially, I would recommend students to read the following:

- Code is law by Lawrence Lessig;
- Nudge by Richard Thaler and Cass Sunstein;
- Tech Contracts Handbook by David Tollen;
- Venture Deals by Brad Feld and Jason Mendelson;
- Srikrishna Committee Report on A Free and Fair Digital Economy;
- Puttaswamy Judgment on Privacy;
- Amazon's Antitrust Paradox by Lina Khan (Yale Law Journal);
- Guide to the GDPR by Bird and Bird; and
- General tech law/privacy articles and updates by major law firms, both Indian and European.

Moreover, it is important to follow the research and publications of leading tech law scholars and academics from around the world.

With reference to building a career abroad, some magic/silver circle law firms such as Linklaters, Herbert Smith Freehills, Clifford Chance, Freshfields and Allen & Overy run training contracts (job offers) and paid vacation scheme (internship) programs which Indian students in their 4th and 5th year can apply to.

4.What motivated you to pursue your LLM from Leiden, and how do you think it helped you in your career?

I think that pursuing the LLM from Leiden Law School was one of the best decisions I have taken as it unlocked the European tech law market for me. I recommend that after gaining a few years of experience in India, all lawyers should try and get international exposure at a foreign law school as it (a) helps refine their research and writing skills; (b) provides exposure to other early career lawyers from around the world; and (c) unlocks access to a new jurisdiction.

5.What are your thoughts on the Digital Personal Data Protection Act, 2023? Does it achieve its intended goal?

The DPDPA is an important first step to ensuring that personal data is processed in a responsible manner. However, there is no doubt that it could have gone a lot further than it currently has. The original Srikrishna Committee Bill was an excellent draft that should have been adopted into law.

3.How has your experience working in different industries and roles helped you to develop your legal skills and knowledge?

I have been privileged to have had the opportunity to work in different sectors of the legal market. All of those roles have helped me become a better lawyer. I am currently working in ING Bank, Amsterdam as a privacy and consent manager which would not have been possible without building on the skills I acquired in previous roles. In a nutshell, the key building blocks are good research and communication skills, top-notch writing skills, flexibility, responsiveness and availability, and the willingness to go the extra mile to ensure that your work product is ahead of the curve.

6.What were the biggest challenges and rewards of transitioning from working in policy to becoming an associate in a reputed law firm, then a lecturer, and then to your current role?

Given that I have moved sectors and jurisdictions, the biggest challenge has been flexibility and a willingness to adapt to different roles and situations. In terms of rewards, I have had the opportunity to teach as a lecturer at one of the top law schools in the world as well as work with colleagues in leading firms/companies from all over the world at the cutting edge of technology law which would not have been possible in India.

7.How did being part of the RSRR help in your career and academic growth?

RSRR has been an important part of my law school life. Being an editor helps develop these key skills that are required to succeed as a lawyer. More importantly, it is immensely rewarding to see how RSRR has grown from strength to strength over the last decade.
As mentioned earlier, being a part of the RSRR special edition on law & technology was one of the key enablers to kick-start my knowledge about technology law as I got to read, edit and review numerous submissions from fellow students across a number of different critical issues.

8.Given your exposure in India as well as abroad, what can be done for the development of a culture of research in India?

I don't think it is important to think about the macro picture. Focus on developing your own legal skills. Every time that you have a project or paper submission, try and find creative and novel solutions to improve the current state of affairs. If everyone in law school did that, the culture of research would automatically level up in India.

In order to understand how to write a good paper, it is excellent practice to see how top scholars write and structure their legal arguments. You will find most of these articles on Hein Online, Jstor and Westlaw. The Indian Journal of Law & Technology is also an excellent resource. As a first step, this short video explains how legal arguments should ideally be structured (albeit in the context of moot memorials) - https://www.youtube.com/watch?v=zVLaUgT2-Qw. Additionally, in my law school days, the Oxford Price Media Law resource was of great help to develop these skills. It is available here - https://www.law.ox.ac.uk/research-subject-groups/moot-pages-index/monroe-e-price-media-law-moot-court-competition/participant.

I DISSENT - ARTICLE 370

A five-judge constitution bench of the Supreme Court headed by Chief Justice DY Chandrachud conducted day-to-day hearings, beginning on 2nd August to hear 22 filed petitions against the abrogation of Article 370, four years after the special status was withdrawn from the state and was bifurcated into two union territories. The constitution bench of the Supreme Court is led by CJI, DY Chandrachud, and comprises Justices Sanjay Kishan Kaul, Sanjeev Khanna, Bhushan Ramkrishna Gavai, and Surya Kant. Presided over these hearings.

Jammu & Kashmir Retained Constitutional Autonomy Due to Absence of Merger Agreement

Arguments were made by the petitioners that Jammu & Kashmir retained constitutional autonomy as it didn't sign a merger agreement. The petitioners stressed the unique nature of J&K's relationship with India, which was embodied in the Indian constitutional setup. In this context, the petitioners provided the bench with a history of J&K's accession with India and the subsequent formation of the Constitution of J&K.

Article 370: The Shift from 'Temporary' to Permanent Status

Another dissent that was there was that Article 370 was no longer a "Temporary" provision. With regard to this argument, the petitioners said that Article 370 had assumed permanence and was no longer a temporary provision after the dissolution of the constituent assembly of Jammu and Kashmir in 1957.

Senior Advocate Mr. Kapil Sibal argued that Article 370 was called a temporary provision only because when the constitution of India came into force, the Constituent Assembly of Jammu and Kashmir did not exist. He argued that the constitution makers foresaw the formation of the Constituent Assembly of the state and it was nderstood that this assembly would have the authority uto determine the future course of Article 370. Once the constituent assembly came into being, it created the constitution for the state and then ceased to exist after its tenure from 1951 to 1957, without recommending the removal of Article 370, the article became a permanent feature of the constitution. Another argument that was made by Senior Advocate Zaffar Shah was that Permanent Residence must be protected. He stated that the history of the region solidified the idea of protecting individuals who lived in the state of Jammu & Kashmir as permanent residents. Article 370 ceased to operate after the enactment of the J&K Constitution.

Senior Advocate Dinesh Dwivedi advocated that Article 370 ceased to operate after the J&K Constitution was enacted. While taking a different route in interpreting Article 370, he argued that the article ceased to operate after the constitution was enacted in 1957 and accordingly all the powers conferred under Article 370 to abrogate it also ceased to operate when the J&K constitution was made. Referring to Article 370 as an "Interim Arrangement", he said that the final decision with the regard to jurisdiction of the union and the Indian parliament over Kashmir as well as the centre and the state relations was always meant to be taken by the Constituent Assembly .

Key Arguments

Surrounding the Use of Article 356: Constitutional Procedure, State Concurrence, and Misuse Concerns ater, most of the arguments had their base related to the procedure adopted by the union where the petitioners argued that the Indian parliament can not convert itself into the constituent assembly. It was followed by the contention that the concurrence of the state of J&K was necessary, which according .Lto the petitioners wasn't done. Moreover, regarding using Article 356, it was argued that the misuse of the article is impermissible.

It was emphasized by the council that the purpose of article 356 was to restore state machinery and not destroy it but the president's rule was imposed to destroy the state legislature. It was adopted that the President's rule under Article 356 was in nature temporary and thus permanent actions could not be taken under it. It was also argued that under this article, the Union could only exercise the functions of the state government and not the powers.

Indian Constitutional Ethos and State Autonomy. A good set of arguments was also made on Indian Constitutional Ethos, arguing that India follows "Asymmetrical Federalism" and a "Dual-polity" system. It was asserted that the Indian constitution took note of the special conditions and special needs of people which is a core feature of the Indian federal structure and could not be removed. It was argued that the autonomy of states within the federation was fundamental to the constitution and that special provisions made in relation to people of different states were a regular function of the constitution.

Further, the conversion of the state into union territory is impermissible. It was argued that while Article 3 of the constitution granted the power to the Indian Union to alter the boundaries of state may even create smaller states through bifurcation, it has never before been used to convert an entire state into a union Territory. The argument was first raised by Senior Advocate Kapil Sibal and was later elaborated upon by Senior Advocate Chandra Uday Singh.

The petitioners also asserted that the ruling party had exercised these powers to achieve their political ends and the same could not be done. Secondly, it was argued that the 2019 BJP manifesto was illegal, and was not as per the constitution's scheme.

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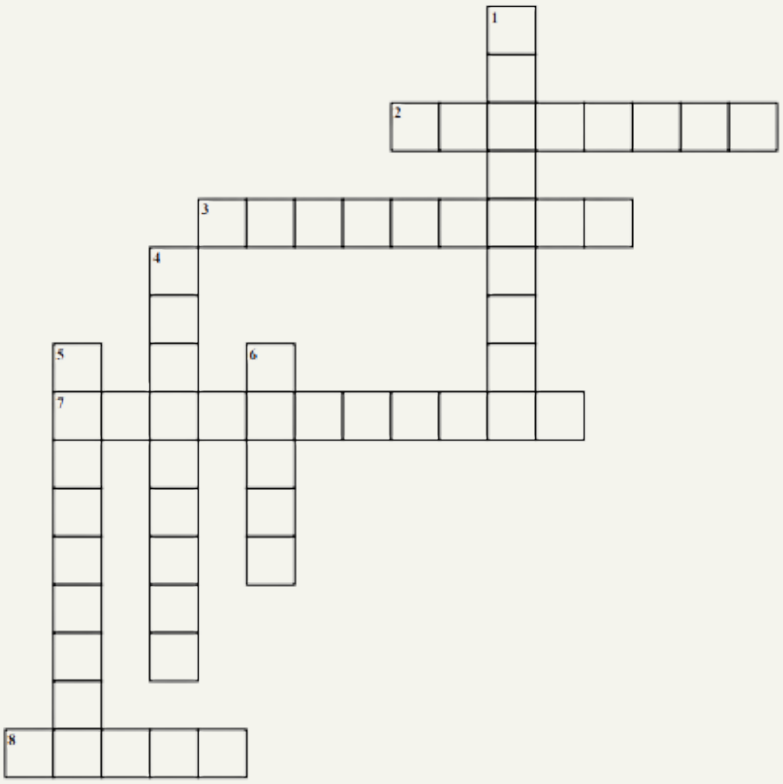
CROSSWORD: RSRR SHORT NOTES RECAP



ACROSS

[2] The subject which was taken away from the jurisdiction of Delhi government by the GNCTD (Amendment) Bill, 2023

[3] The ministerial body involved in the Indus Waters Treaty

[7] The Treaty which established the International Criminal Court

[8] The punishment for the offence of gang rape under Bharatiya Nyaya Sanhita

DOWN

[1] The body which presented a partial award in the Indus Waters Treaty was the Court of Arbitration

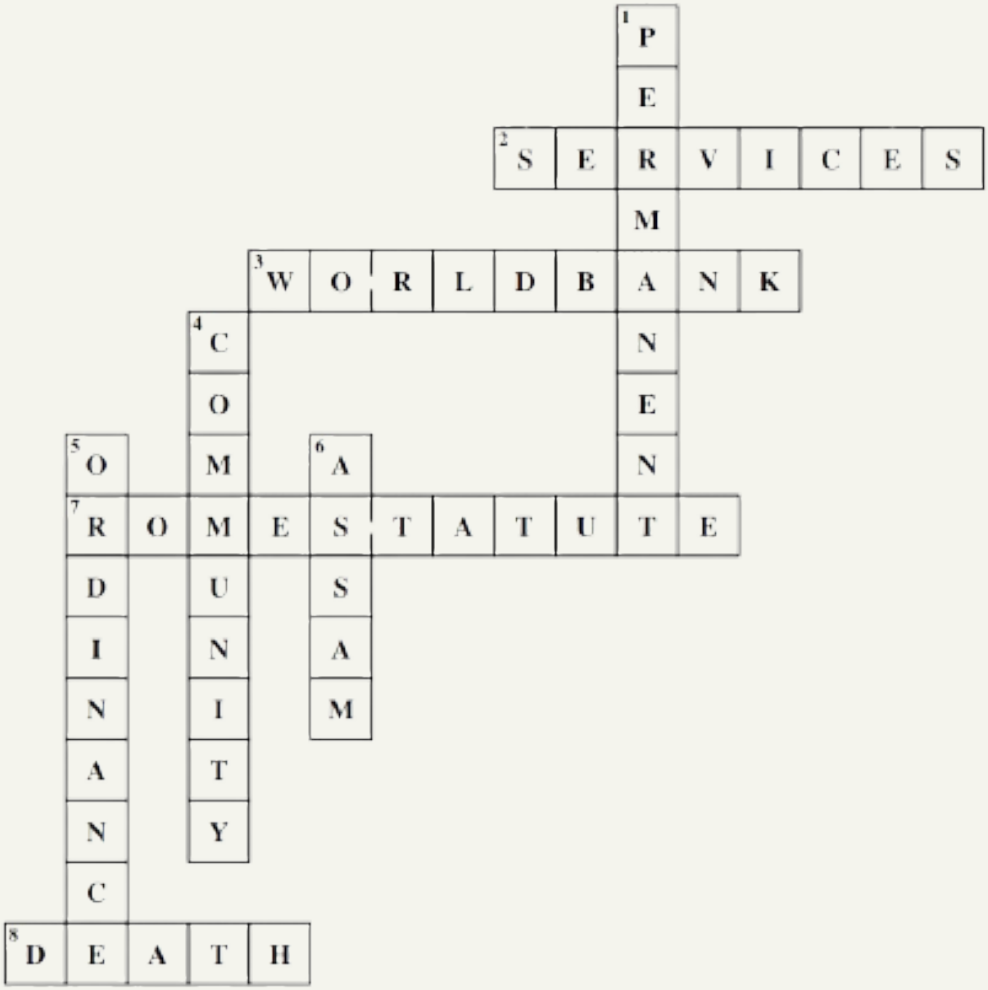
[4] Under the Bharatiya Nyaya Sanhita, a provision for service has been incorporated for minor crimes

[5] Executive order issued by the President of India

[6] The judgement Indra Das v. State of held that under UAPA mere membership of a banned organisation would not amount to an offence

CROSSWORD: RSRR SHORT NOTES RECAP

Solution



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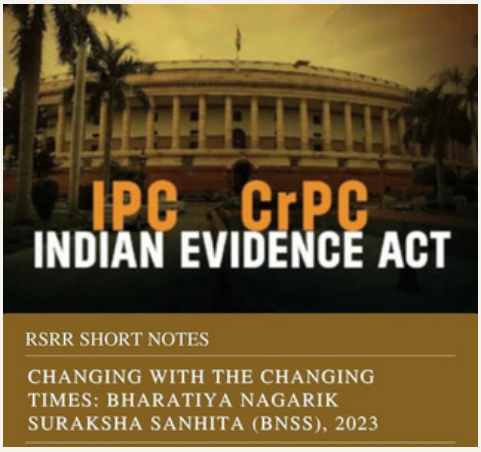

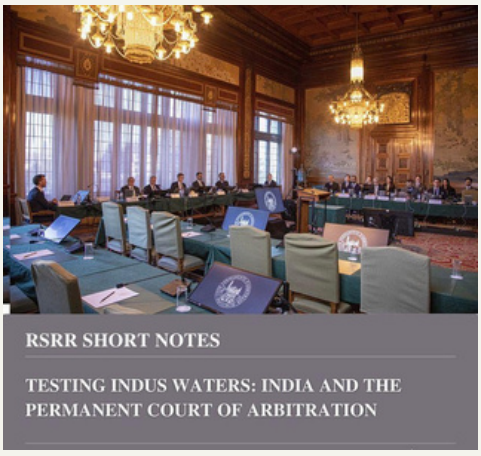

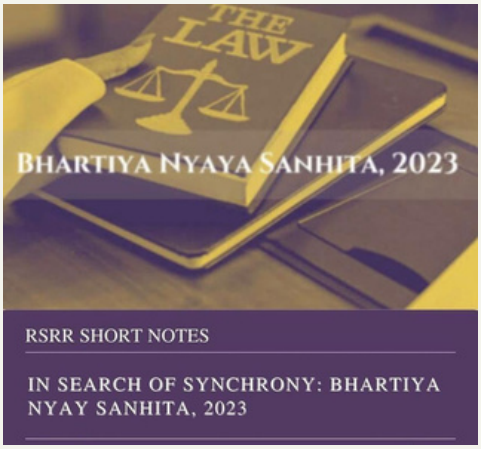

Short Notes

Short notes are excerpts that succinctly analyse recent major happening every week and leave the reader with food for thought to stimulate their research capabilities.

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