



The ICFAI Foundation for Higher Education (IFHE),

Hyderabad

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Proceedings of National Conference
on
“Perspectives and Challenges in Criminal Law”
September, 17-18, 2021

Organized by:

Center for Excellence in Criminal Law



**A constituent of the ICFAI Foundation for Higher Education
(Deemed to be University u/s 3 of the UGC Act, 1956)**

Message from the Vice Chancellor



Greetings!

I am happy to know that ICFAI Law School is organizing a two-day National Conference on Perspectives and Challenges in Criminal Law to be held from September, 17-18, 2021. The Conference has four technical sessions with eminent speakers from academics and industry. Conferences such as these help in bringing together the academic knowledge of the Universities and the actual issues faced at the ground level. This will help the policymakers to understand and frame relevant legislations in the or in bringing the amendments to the existing legislations. The issues discussed during the conference on Perspectives and Challenges in Criminal Law shall open the doors for further research in the area. Such a conference will also provide an exposure to the students, some of whom will soon be working in the International, national or even in the Government and inter-governmental organisations.

I am happy that ICFAI Law School is hosting this conference and hope that the event will generate beneficial ideas and would help exchange of knowledge across academia and the industry. I congratulate the Director Prof. (Dr.) .A.V.Narasimha Rao, Dr.K.S.Rekhraj Jain and the Organising Committee, faculty, supporting staff and students and wish the conference to be a grand success.

Prof. J. Mahender Reddy

The ICFAI Foundation for Higher Education, Hyderabad.

Message from the Director, ICFAI Law School, Hyderabad



Greetings!

ICFAI Law School, Hyderabad is proud to organize its conference on Perspectives and Challenges in Criminal Law on September, 17-18, 2021. ICFAI Law School Hyderabad is one of the most prominent and premier schools in India. Espoused to its mission that to carve the mediocre students joining the college into future generation advocates and legal professionals with world class expertise by providing rigorous course work, creating student centric and participative learning opportunities, to solve the complex problems resulting from the changing international business environment.

The Centre for Excellence in Criminal Law is established with an objective to contribute to the field of criminal law literature and to organize conferences, seminars and workshops, webinars, symposium, expert lectures on various contemporary and emerging issues of the Criminal Law. The center endeavours to coordinate and collaborate with various departments concerned with the criminal law such as Police and Police Administration, Forensic Science Labs and sensitize the students, professionals and other stakeholders regarding emerging trends in criminal law. The center organized Webinars in the area of 'Law and Correctional Administration', 'Aesthesis of Victims in the Criminal Justice System', 'Criminal Justice System and Police Administration' and 'Cyber Crime Investigations: Forensic Stratagems' with eminent Judges, Police Officers and Academy of Prisons an Correctional Administration, Vellore and Institute of Correctional Administration, Chandigarh.

The conference has been organized around the theme of Perspectives and Challenges in Criminal Law such as Psycho-legal perspective of Restorative Justice to crime victims, sexual abuse of minor child, recent trends on capital punishment, prisoners right to conjugal visitation, decriminalization of Adultery law, fugitive economic offender and extradition law in India etc.,

I take immense pride and pleasure in inviting all of you to the conference on Perspectives and Challenges in Criminal Law and hope each participant will reap the maximum benefit from the event.

Dr. A.V. Narsimha Rao
Director, ICFAI Law School
ICFAI Foundation for Higher Education

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Beyond Reasonable Doubt...

Prof Answesha Panigrahi¹

Abstract :

The Allahabad High Court judgement acquitting parents of Aarushi in double murder case and exposing the way the prosecution was conducted is posing many questions on the weaknesses of investigations. The lacuna in the investigations and collection of evidences forced the Court to acquit the alleged offenders. Even the expert evidence is missing the fine details of the body autopsy. The prosecution was not able to prove the case beyond reasonable doubt and many questions were unanswered. The Court also played the trial judge for his parochial approach. The benefit of doubt was given to the parents of Aarushi. Like, in a book and movie produced based on the incident, the shoddy and insensitive investigation of the prosecuting agency has become the centre of debate after the judgement.

It is not the first case of its kind. Many cases filed by the government investigating agencies, are lost because of imperfect investigation and collection of evidences at the time and place of incidence or failing to use and place the evidence before courts. As a result, many innocent people are being placed in remand as under-trials on one hand and real offenders are acquitted on other hand. Tax payers money is spent for the trials having no effective results. Negative messages are spread in the society. The government machineries are demeaned. The public is losing their faith in the judicial process.

In order to rebuild the image of the investigating agencies and reimpose the confidence among the common man in the judicial process, there is a need to understand the reasons for substandard investigations and collection of evidences. The expertise, knowledge and skill-sets of members of investigating team members are to be assessed before they are given the task. The sufficient training in the field of investigation, forensic science, evidence collection and use of equipment's and devices are to be provided to the agencies. It may minimise the case failures, help in the nailing the real offenders and saving the face of the investigating agencies in the public.



A Socio Psycho-Legal Perspective of Restorative Justice of Crime Victims

Dr.Rekh Raj Jain²

Abstract:

Crime happens in many forms and has different effects. The tail-end of the criminal justice is prison as modern Criminal justice opines punishment as a primary response to crime. The most evident sufferer of crime is the victim who has been personally harmed. The most obvious effects of crime is that the victim suffer to ongoing social legal and psychological problems. Thus crime victims are vital from societal, psychological and legal as each of them has their own approach and perspective. The upsurge ideology and concern for crime victims in the present times had led to many initiatives from different angles. But the ultimate voice of echo is that it insists on justice to repair the damages. Therefore focus has shifted to vendetta of restoration of justice. Restorative justice is a new movement in the fields of victimology and criminology. Restorative justice is a “new” way of responding to crime and harm based on ancient practices. The stakeholders in the restorative process comprises the victim, the offender and the community with a major ideology to promote repair, reconciliation and reassurance of healing to the victim and with an aim to involve the community in actively preventing crime by reducing recidivism, by rehabilitating and reintegrating offenders. Restorative justice, therefore, advocates restitution to the victim by the offender rather than retribution by the state against the offender. The restorative process involves all the stakeholders in face to face interface as it is stated to be a most power method of addressing not the material and physical damages caused by crime, but also the social, psychological and legal perspective of a victim. Restorative justice is an approach to criminal justice system that emphasis on the victim and the community rather punishing and incarcerating the offender. Restorative justice practices help in saving valuable resources of the State and strengthening the image of the justice system in the eyes of the public. The society has now awakened to realize that the punitive options under the current system neither benefits the society nor serve as an effective deterrent. Replacing the retributive model of criminal justice by a restorative model will signal the dawning of a new era for crime victims.

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IJARST

International Journal For Advanced Research In Science & Technology

A peer reviewed international journal

www.ijarst.in

ISSN: 2457-0362

Sexual Abuse of Minor Girl Child

Mrs. Geetha Priyadarshini³

Abstract:

Child sexual abuse as a form of child abuse in which an adult or older adolescent uses a child for sexual stimulation. Forms of child sexual abuse include engaging in sexual activities with a child, child grooming, or using a child to produce child pornography. WHO Consultation on Child Abuse Prevention which stated that: "Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person. This may include but is not limited to: — the inducement or coercion of a child to engage in any unlawful sexual activity; — the exploitative use of a child in prostitution or other unlawful sexual practices; — the exploitative use of children in pornographic performance and materials". Child sexual abuse can occur in a variety of settings, including home, school, or work (in places where child labor is common). Child marriage is one of the main forms of child sexual abuse. The effects of child sexual abuse can include depression, post-traumatic stress disorder, anxiety, complex post-traumatic stress disorder, propensity to further victimization in adulthood, and physical injury to the child, among other problems. Sexual abuse by a family member is a form of incest and can result in more serious and long-term psychological trauma, especially in the case of parental incest. The POCSO Act 2012, which protects the children from sexual abuse and throws light on the important provisions under the Act. This paper suggests that proper implementation of these provisions required for affective working of the POSC Act.

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Capital Punishment: A Legal Assault on the Indian Economy

Ms. Priti⁴

Abstract:

Faculty started by explaining that until 1960's, the usage of economics was restricted to anti-trust laws, tax law or for determining the quantum of compensation or monetary damages in claims. But after 1960, the limited application of economics expanded to more traditional legal areas like Constitutional Law, Criminal Law, Property Law etc. She said, Capital punishment has probably been one of the most argued penological measures in the contemporary criminal justice delivery systems. In India capital punishment is given for offences under Indian Penal Code 1860 like murder, dacoity with murder, waging war against the state, abetment of mutiny, giving or fabricating false evidence leading to procure one's conviction for capital offense, abetment of suicide by child or insane person, attempt to murder by a life convict if hurt is caused, kidnapping for ransom, rape resulting in death or permanent vegetative state of the victim, punishment for repeat offenders of rape. Apart from the offences mentioned in IPC there are certain other offences under special legislations like Defense of India Act 1971, Unlawful Activities (Prevention) Act 1967, Air Force Act 1950, Army Act 1950, Navy Act 1957, Narcotic Drugs and Psychotropic Substance Act 1985 etc. which are punishable by death. Further she states that the most favored arguments by propounders of death penalty as stated by Martin Kasten for death penalty is that it acts as a deterrence against crimes in the society and that it is more economical than keeping a convict behind bars for his entire life Vis a Vis life imprisonment. This research paper tries to highlight the economic impact of executing a death penalty case in India starting from trial to the execution of sentence. The research paper intends to do a cost benefit analysis of death penalty as opposed to a sentence of life imprisonment i.e. by weighing the costs of executing the convict versus the costs of keeping the convict alive for life by using empirical study. She further explains the cost of a death penalty case includes not only the cost of executing the penalty as such but also several other costs incurred by the State like collection of forensic evidence, special security for the convicts etc. in all stages of the trial the punishment for which is death. It may be noted that majority of the countries provide a multi-layered procedural safeguard such as reviews, revisions, appeals to the interests of a person convicted and awarded capital punishment because human life is precious and any attempt to take away that life by the State must be based on proper procedure and on reasonable grounds. Similarly in India, there are several layers of procedural safeguards given to a convict after he is awarded death penalty like confirmation of sentence by High Court, review, revision, appeal to the Supreme Court, curative petitions, and pardon by the President.

Moreover the costs incurred in investigation, discovery, collecting the evidence; that includes forensic evidence is much more when compared to that of a case where the intended punishment is not death penalty because of the assessment of mitigating and aggravating circumstances. The calculation of mitigating and aggravating factors based on which the death penalty is awarded in our country seems to be an expensive exercise because expert opinion is required to solidify these factors. Furthermore the expenses incurred in the upkeep and security of the death row convicts is comparatively high as they are usually high profile criminals who require a more secure haven. She concludes by saying that the paper contends to point out that it is economically unviable to bear these costs, which is reflected from the argument that the death penalty also fails in achieving the intended utility of deterrence, as India

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International Journal For Advanced Research In Science & Technology

A peer reviewed international journal

www.ijarst.in

ISSN: 2457-0362

follows the rarest of the rare principle where minimum number of death sentences are awarded and not all of which actually result in execution. Most death penalty sentences are either commuted to life imprisonments or the trials take decades to get completed or the convicts are eventually granted pardon by the President. However, as aforementioned, regardless of these significant possibilities, the extra expenses attached to a trial of a death penalty case start mounting right from when the trial commences. Therefore the pertinent point here is that not only the State incurs these extra expenditures in the first place, they are also rendered pointless when the execution is not materialized. It is also remarkable to note that once we arrive at an estimate that death penalty does burn a hole in the state exchequer's pockets and that too without any material yields, we can further reflect upon the opportunity costs of retaining the capital punishment. If our country eliminates death penalty, the valuable employee hours spent on the trial of death penalty cases can be directed towards any other project of the State for strengthening the legal system like incorporating effective rehabilitative and reformatory elements in the criminal justice delivery system.



Socio-Legal Disparity and the Need for Sentencing Reforms in White Collar Crimes

Ms Priti⁵

Abstract:

White collar crimes are generally non-violent crimes committed by a person belonging to high and respectable social status in commercial setups for financial gains. These offences tend to have a huge bearing on an individual's pockets, corporation's accounts and the economy of the nation. They can be in the form of frauds, thefts, tax evasions, insider trading, corruption and bribery, embezzlement, forgery, counterfeiting, money-laundering, insurance fraud, medical fraud, identity thefts and so on. The recent surge in white collar crimes has led to debates on the effectiveness of the legislations dealing with such offences. The treatment of such offenders in the criminal justice system has been an issue of deliberation since the very beginning. The fact that white collar crimes are differentiated from other crimes raises more concerns of the effectiveness of the sanctions. It has been observed that those who enjoy a place in the higher social circle, may use their status to get an unfair advantage in the legal process and tend to get away with less sanctions. Faculty discusses about another pertinent issue is that the data on white collar crimes is not easily available in the public domain and remains concealed under the cloak of official confidentiality. The reason behind the same is that incumbent governments do not wish to give an impression of their country as one which is perforated with the higher-class being law-breakers. Further the fact that the officials who themselves are involved in illegal activities do not wish to alert the public of the wrongful acts happening in other such places. She concludes by referring about the recent years, that India has seen a surge in white collar crimes due to rapid increase in commerce and technology. Furthermore the intermittent technological slump has added to the pressures of the employees to meet the high standards set by the companies. Even though there are several legislations in our country like Essential Commodities Act 1955, the Industrial (Development and Regulation) Act, 1951, The Import and Exports (Control) Act, 1947, The Foreign Exchange Management Act, 1999, Companies Act, 2013, Prevention of Money Laundering Act, 2002 and regulatory bodies like Securities and Exchange Board of India, *Serious Fraud Investigation Office*, Reserve Bank of India the gaps in these legislations and regulatory bodies seem to be ineffective in handling the cases efficiently. Therefore a need has been felt to introduce certain reforms in the sentencing pattern of these offences in order to handle them more effectively.

It is pertinent to note that these offences may have a serious impact on the victim, public and economy therefore sentencing reforms are vital. This article will dwell upon various possible alternatives to imprisonment one of which could be imposing higher amount of fines, this will not only help in saving the various administrative costs attached to imprisonment but also help in neutralizing the loss caused by these frauds to the economy. If the cost of incarceration for white collar crimes is the same for offenders with dissimilar earning capabilities, imprisoning the ones with very high earning capabilities is a waste of social capital if the objectives sought to be achieved by imprisonment can be achieved via other means. This can be further substantiated by doing a cost benefit analysis of the choice between fining and imprisoning. Some of the other suggested alternatives to imprisonment can be disgorgements, cancellation of licenses, revoking of registrations, dismissal from boards etc. This article

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intends to discuss the various feasible alternatives to imprisonment by analyzing the lacunae in the present legal framework and suggest reforms in order to make sentencing more effective for white collar offences.



Effective Human Restoration of Prisoner's with Special Reference to India

Dr.Rekh Raj Jain⁶

Abstract:

This Paper explains about criminal justice system that the tail-end of the criminal justice system is the prison. In the era of mass incarceration a question arises how can a prisoner be restored to live a successful life after incarceration? The architecture of restoration of prisoners to begin the movement the prisoner placed under the authority of prison officials. Restoration is not a soft option, as many prisoners find it extremely difficult to face up to the impact of their crimes. The entire prison environment and the stakeholders of the prison department shall be involved in the restorative process. Restoration is the shift from retribution and vengeance to a more human approach. Hence restorative processes shall focus on physical, behavioral, emotional and restoration of dignity. The transition from prison to re-integration into the society after being incarcerated for number of years is the most difficult task for the prisoner. Therefore perseverance of restoration in prisons shall be a continuous process which would be a great investment to everyone. Research and studies across the world reveals that the scale of victimization among the prisons is very high and at time most devastating and India is not an exception. He further said adoption of restorative restoration approaches and practices in prison setting will not only successfully navigate reentry both into the family and society but also a realistic future and an effectiveness and positive impact outside the prison world. If prison officials want to reduce recidivism it is vital that they ensure effective and humane restoration of prisoners. It is necessary to take stock of the current context and that he aims to bring greater clarity pertinent to the thematic area of concerns regarding effective and humane restoration of prisoners with special reference to India.

⁶ Assistant Professor, Icfai Law School. Hyderabad



Neuro-criminology in the Court Room

Dr. K.S.Rekh Raj Jain⁷

Abstract:

A crime is composed of elements. The cardinal principle to establish criminal liability i.e. both actus reus and mens rea must be proved. Since, 17th century criminal law emphasized on mental state of mind which is referred as mens rea. The existence of mens rea is decided by the judiciary by adducing of evidence. With advancement of the years, complexities concerning the usage of mens rea have arisen in courts in several cases. To resolve such issues the court started depending on the scientific inventions. The progression of sciences led to the evolution of multi-disciplinary as well as interdisciplinary fields and one among them is neuroscience. Neuroscience is concerned with the study of the structure and function of the nervous system. The applications of neuroscience to criminology have acquired increasing scientific and legal value. A specific field neuro law evolved which links the brain to law, enables to explore the effects of discoveries in neuroscience on legal rules and standards. The creator of today's most successful technologies is neuroimaging. By neuroimaging it is possible to predict whether a brain is predisposed to criminal activity. Brain imaging enables access to original information that may potentially be used by judiciary systems across the world. Advances in neuroimaging are revolutionizing our understanding of the brain and evidence suggests that the number of cases involving neuroimaging implications is rapidly increasing to determine criminal culpability. Neuroimaging data has questionable probative value in the criminal law. The application of brain imaging techniques and principles of neuroscience enables to comprehend and predict crime. A growing body of knowledge shows that criminal behaviour has a neurobiological basis, there emerged a sub-discipline of bio-criminology and criminology, a neuro-criminological discipline. Neuro-criminology studies the makeup and composition of the brain and looks for correlations between characteristics of the brain and criminal behavior. Neuro-criminology concentrates on studying the brains of criminals. This paper examines: the current use of neuro-criminology to comprehend and explain criminal behavior, adduce of evidence and its relevancy, horizon of consent and plausible future applications of neuro-criminology in sentencing.

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A peer reviewed international journal

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ISSN: 2457-0362

Notching up Reformation- A Transformative Justice Approach to Corrections

Anwesha Panigrahi⁸

Abstract:

From time immemorial, stories of transformation have been interwoven into various mythological and religious expressions from around the world. The Indian epic Ramayana, itself begins with transformation of a dacoit into a sage. Dasyu Ratnakar, who was an intransigent dacoit confessed to Narada upon being confronted that his sole motive behind wrongdoings was to provide for his family. Narada listened to him, and brought him to the realisation that a virtuous goal does not justify crime as the means; that what he did was self-repression of his inherent goodness, which comes as a part and parcel of his being human. Ratnakar, consequently, reformed himself into a sage propagating the virtue of inherent goodness through the glorious epic. Transformation is not a new concept, nor is it a concept limited to complex developed societies (For instance, the Igbo indigenous justice system). (Elechi, 2008) This paper is an attempt to suggest a re-entry of this forgotten element into the entire system, more specifically, the criminal justice system. Enacting the dual role of both victim and offender interchangeably often based on external circumstances, as human beings we are all vulnerable. (Morris, 2000 pg.3) Transformative justice as a concept recognises this fact and provides for a humanistic and holistic approach for society and community to transform into better custodians of justice. It considers crime as a manifestation of deeper evils, which serves as an opportunity for ameliorating the wounded society. In her magnum opus, Morris observes, it is all about “turning irritation into iridescence”. Transformative Justice (hereinafter TJ) therefore inculcates the virtue of healing and negates harm.

⁸ Assistant Professor, Icfai Law School, Hyderabad.



Fugitive Economic Offender and Extradition Law in India: A Critical Analysis

Dr. Sumanth Meher⁹

Abstract:

The economic offence is a broad subject which consists of diverse categories of financial offences. These financial offences are both white-collar crimes as well as blue-collar crimes. In India, to regulate these financial offences, the legislature has not only adopted the general criminal laws but also created several specific laws. Moreover, through the special laws, some specific investigating agencies and special courts have established to investigate and try the specific economic offences. Despite this, some offenders of the white-collar crimes find a way to evade legal process and flew away from the country. To address these specific issues, in 2018 the Indian Parliament has enacted the Fugitive Economic Offender Act, 2018. This Act of 2018 equipped with some stringent provisions to deter the economic offender from evading the legal process but these provisions have also attracted many criticisms. Moreover, some of the provisions of this Act of 2018 have adopted so as to indirectly compelled the fugitive economic offender to return back to the country. However, the transportation of those fugitives are regulated by the extradition law which is enacted in 1962 but it has severely criticized by the jurist for its practicality and insignificant result. In light of the above stated facts, the researcher has made a doctrinal study of the Indian legal framework which is meant to regulate the fugitive economic offender and their extradition. The objective of the study is to ascertain and critically analyses the statutory measures to control the economic offences and fugitive economic offender. Moreover, the study also critically analyses the laws relating to the transportation of fugitive economic offender. In the end, the researcher has suggested certain measures to strengthen the legal framework to regulate the fugitive economic offender.

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www.ijarst.in

ISSN: 2457-0362

Prisoners Right to Conjugal Visitation: A Legal Perspective

Dr.P.L.Jayanthi Reddy¹⁰

Abstract:

Prison Population in India has increased tremendously in recent years. The growing prison population led to various challenges before prison administrators. One of the recent challenges is the right to conjugal visitation of convicted prisoners. This article discusses about right to conjugal life for prisoners in the precincts of Jail. It also tries to find whether if any legislation enacted or the right is provided in our Prisoner's laws. Also Article 21 of Indian Constitution is analyzed to trace the right of conjugal visitation. International perspective is also been highlighted regarding United States and also in Europe to find if conjugal visitation rights exist and if they have legal backup. The article tries to explore the international instruments on the right to conjugal visitation. An Analysis of the treaties it is understood that this right is partially recognized by way of Art 8 and 12 of European Convention on Human Rights or as the rights that are fundamental to the liberty and human dignity emanating from the Eighth Amendment and is further subject to reasonable restrictions social order and security. It refers to the role of Judiciary in developing this right . This article tries to analyze if any legislation or policy is brought in India on par with regulations internationally.

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IJARST

International Journal For Advanced Research In Science & Technology

A peer reviewed international journal

www.ijarst.in

ISSN: 2457-0362

Decriminalisation of Adultery Law

Amit Kumar¹¹

Abstract:

Adultery is a crime and an act against sanctity of marriage which is committed by a man which is offensive and illicit. This paper discusses its definition under IPC by referring to several case laws. Most particularly Yuzuf Abdul Aziz vs State of Bombay, Somithri Vishnu vs Union of India, Revathi vs Union of India case. The law of Adultery which is 150 years old has been into debatable controversies with regard to gender based approach, questioning equality clause and its contentions whether it has to be preserved, altered or removed from penal statutes. The paper discusses decriminalization of adultery law in the light of judgment in Joseph Shine vs Union of India case observation that women can also be punished not only male. The right to privacy is infringed under section 497, as freedom of woman by discriminating in opposition to married women and the husband. The law on adultery is considered to be arbitrary and undermines the dignity of woman. Therefore, the law of adultery was struck down for being violative of Article 14, 15, 21 of the Indian constitution. The paper concludes by referring to societal changes at present and that women are no longer seen as property of their husbands.

¹¹ Assistant Professor, ICFAI Law School,, Hyderabad



Evolving Capacities of Children: An Analysis in Reference to the Juvenile in Conflict

D.V.N Murty¹²

Abstract:

Child is unique in himself or herself. A child happens to be what an adult is in front of him or her. In our daily life we hear about different crimes from petty to heinous being committed by children who are either economically affluent, or poor or orphans. They are the takers of different fate but what is common among them all is that they are children still in the stage of development. When a child develops right from infancy to the teenage he or she has got some capacities in all these stages. These capacities may be to take a decision or to form an opinion or any talent which may be much beyond their age which they want to express but the adults around them unmindfully snub them for what they are saying or doing. This leads to suppression of their feelings affecting their psychologies which later on either construct them or destruct them. This psychological depression sometimes leads some children to commit crimes through which they satisfy their frustration which emerges out of the former. Children are taken for granted as not having any capacity to think, act or take any decision, but children at every stage have got some capacities which must be respected. This presentation will deal with the definitional aspect of evolving capacities, reasons for the juvenile delinquency in evolving children, different reasons for such delinquency and the responsibility of the parents or guardians in making better the future citizens

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Criminal Justice Administration in India: Focus on the Victims of Crime

Mudasir Bhat¹³

Abstract:

Administration of justice is the first promise of our Constitution. For achieving this end, courts have been established. Since the dawn of civilization, crime has been existing in our society. For curbing criminality, criminal law courts have been established. In the administration of justice, much focus has been on the rights of the accused. It seems trial starts with the accused and ends with the accused. The role of victim has been neglected in the process of administration of justice. It is only during the last few years that the role of victim in the judicial administration has been highlighted. At the national level, the Malimath Committee Report plays an important role in highlighting the role of the victim in the criminal administration of justice. It has been pointed out that to make the role of the victim more proactive, many steps need to be taken. There is a dire need for reformation of the criminal law in our country so that the victim is not taken as a forgotten identity. This paper mainly focuses on the position of the victims of crime in the whole criminal justice delivery system.

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IJARST

International Journal For Advanced Research In Science & Technology

A peer reviewed international journal

www.ijarst.in

ISSN: 2457-0362

Brutality of Honor Killings is on the Rise: The Need for a New Legislation

D V Srilakshmi¹⁴

Abstract:

It is hard to believe that in the 21st century, that too, in the largest democracy of the world, families murder their kith and kin for allegedly saving their honor. In India and some other countries, females in a family are considered as the custodians of the honor of the family. When a woman goes against the family, especially when they marry or elope with their partners belonging to a different caste or community, the members of the family or the community kill them for the sake of defending their honor. This paper makes an attempt to tackle the very important issue of honor killing that is growing in size day by day like a monster untamed. This paper seeks to understand the very concept of honor in killing and then highlights how honor killings are counterproductive. The paper also examines the present law as it stands, by presenting the views of the honorable courts on the subject and discusses as to what can be done to curb the menace.

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ISSN: 2457-0362

Protection of Rights of Women Prisoners in India

T Sita Kumari¹⁵

Abstract:

Of the three organs of Government, the judiciary has become a vanguard of human rights in India. It performs this function mainly by innovative interpretation and application of the human rights provisions of the Constitution. One of the basic tenets of our legal system is the benefit of the presumption of innocence of the accused till he is found guilty at the end of the fair trial on legal evidence. Even a convict has basic human rights. Only certain rights need to be restricted, but the remaining rights are not curtailed by any process of law, and the judiciary from time to time has recognized those rights by way of different pronouncements.¹ A person, who is found guilty and imprisoned, does not cease to be a human being. In India, the women prisoners have several rights under various legislations and also under the recommendations of the different committees appointed by central and various state governments in India. This paper focuses on the rights of the prisoners in general and that of the women prisoners in particular.

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IJARST

International Journal For Advanced Research In Science & Technology

A peer reviewed international journal

www.ijarst.in

ISSN: 2457-0362

Child Emotional Abuse: Causes, Effects and Remedies

Anubha Srivastava¹⁶

Sunitha Abhay Jain¹⁷

Abstract:

Child emotional abuse is severe and persistent ill-treatment of a child and it can have long lasting and devastating effects on the child's emotional health and psyche and development. Child emotional abuse needs to be addressed in relation to the relationships and the environment of a child. It is very important to focus on the safety and wellbeing of the child and also to identify the factors involved in child emotional abuse. Child emotional abuse can affect a child from infancy, through adolescence and into adulthood. Signs of emotional abuse may also be present in a child's actions, or their physical, mental and emotional development. In the light of the above, in this paper, an attempt is made to analyze the concept of child emotional abuse; various types of emotional abuse in relation to children; and the causes, effects and identification of child emotional abuse. Further, an attempt is also made to suggest certain solutions to deal with child emotional abuse.

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Commutation of Death Sentence to Life Imprisonment on Grounds of Delay: The Ground Realities

Ashutosh Hajela¹⁸

Abstract:

The paper focuses on the origin and development of 'Mercy Jurisprudence' by the Supreme Court of India as far as the notion of commutation of death sentence to life imprisonment on grounds of exorbitant delay is concerned. The Supreme Court has of late started dealing 'passionately' with the delays caused in the execution of the death sentences and the delays in the disposal of the mercy petitions and has ruled in several cases that the uncalled for delays in the ultimate disposal of such matters need to be compensated by commuting the death penalty into life imprisonment. The doctrine evolved by the Apex Court has created 'benefit' in favor of persons convicted of terrorist activities, including the assassin(s) of Rajiv Gandhi. The paper ponders over the practical consequences or repercussions of the 'active style' of the judiciary in thus dealing with the cases which have already passed the test of the 'rarest of rare' category and are offenses definitely involving a high sense of moral obnoxiousness. The paper tries to visualize the feasibility, if any, in dealing 'sympathetically' with such cases and the impact of the doctrine on the sense of justice as vested in the common man. The paper also examines the impact of such 'commutations' upon the sense of retribution potentially inherent in human beings, especially in cases involving extreme moral turpitude, cases of terrorism, etc. Further, the paper highlights the fact of inconsistencies in the decisions of the Apex Court even during a relatively short period of time which reflects poorly upon the justice delivery mechanism.

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The Prevention of Money Laundering Act, 2002: Caveat Emptor

D Ganesh Kumar¹⁹

Akshay D Gudinho²⁰

Abstract:

This paper seeks to gauge the attention of constitutional functionaries and legal practitioners generally, and homebuyers specifically by highlighting a few discrepancies in the Prevention of Money Laundering Act, 2002. The said Act has been amended a number of times since its first enactment owing to the growing emphasis on curbing money laundering in the political narrative in India. In drafting the law and empowering the enforcement agencies, the Parliament has sought to tackle the problem of money laundering and weed out the proceeds of crime hidden in the deepest crevices of the financial system. However, in doing so, has the Parliament gone a few steps too far? This paper seeks to answer this very question in the affirmative. The paper deals with the constituents of the “proceeds of crime” in tandem with the offense of money laundering under the said Act prior to and after the Prevention of Money Laundering (Amendment) Act, 2012. Pursuant thereto, the nature of the attachment and confiscation proceedings under the said Act have been discussed. Thereafter, how the said amendment works to the bereavement of bona fide homebuyers is dealt with on three counts: (i) the right to property; (ii) the burden of proof, and (iii) wrongful attachment of property. The paper concludes with a few alternative interpretations to the said Act provided by the Indian Judiciary which supports the suggestions made by the authors to remedy discrepancies highlighted in the Act.

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IJARST

International Journal For Advanced Research In Science & Technology

A peer reviewed international journal

www.ijarst.in

ISSN: 2457-0362

The Social Impact of the Supreme Court Ruling on Adultery in India: An Analysis

N B Chandra Kala²¹

A Anuradha²²

Abstract:

According to Collins English Dictionary, voluntary sexual intercourse between a married man or woman and a partner other than the legal spouse is adultery. Adultery law as per Section 497 of IPC states that if a man has sexual intercourse with a married woman without her husband's consent, he is punishable by law. The man could be imprisoned for five years or more and even pay a fine. The law allows the aggrieved husband of a married woman in adulterous relationship to file a complaint. But the same right is not available to an aggrieved wife if her husband is found to be in an adulterous relationship. The adultery law in IPC reduces a woman to an object because no consent of the married woman is required for a man to have sexual intercourse with her. As per Section 497, if the woman's husband agrees, the act is not a crime. This is the reason many have called this as an anti-women law. This section of the IPC had remained controversial. It was challenged in courts claiming it to be against the Constitution of India. India's top court has now ruled that adultery is no longer a crime, striking down a 158-year-old colonial-era law which it said treated women as male property. This paper discusses the impact of the said ruling on the society and whether the ruling is a boon or a bane to the society in general and to the institution of marriage in particular.

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“The smile of a child speaks the language of god”

Dr. Anita Yadhav²³

Abstract:

If the jurisprudential authorisation to Law for creating ‘Rights’ is to be admitted, the first species of living entity to claim for the same is – Child. Childhood is the most beautiful of all life’s seasons. “The childhood shows the man, as morning shows the day” said John Milton in his ‘Paradise Regained.’ Children are adorable precious gems – divine gifts to parents, blooming with innocent eyes and smiles, responding to the capricious adult play and giggle when mingle with their buddies – and signify the sanctity and faith of love symbolising God. Even a devil dances to the gestures of a child. Unfortunately, Childhood is a promise that is never kept as Ken Hill said.

The lofty proclamation of the Charter of the United Nations - recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world – remains an empty vessel without a child cared and protected.

Children are greatest national asset and resource. Children should be allowed and provided opportunity to grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with skills and activations needed by the society. Equal opportunities for development to all children during the period of growth should be provided for reducing inequality and ensuring social justice, which in turn would serve as an effective tool to curb delinquency in juveniles.

This Article highlights on the rights of Children under JJ Acr.

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Right to abortion: Time to revisit the Medical Termination of Pregnancy (MTP) Act, 1971

Mr. Amit Yadav²⁴

Abstract :

It is the need of the hour that restrictive abortion laws in India need to be liberalised keeping in the mind upcoming recent cases related to the abortion. For instance, on February 28, 2017, the Supreme Court has refused to allow a woman to abort her 26-week of the foetus on the ground that, it is suffering with down syndrome. In another case In May 2017, the apex court denied a plea to abort another 26-week-old foetus, to 35-year-old HIV-positive woman who had been sexually assaulted. The court cited a report prepared by a doctor at the All-India Institute of Medical Sciences (AIIMS). The main reason for refusing the abortion is the Ceiling of 20 weeks put by Medical Termination of Pregnancy (MTP) Act, 1971. According to MTP Act, abortion is a qualified right and if pregnancy has crossed 20 weeks of the permitted period for abortion it can be only allowed if there is 'substantial risk' to the woman's life or to her 'physical or mental health'.

Therefore, foetus with severe abnormalities is not concerned ground for abortion under MTP Act, 1971 and ultimately woman need to suffer excruciating pain & agony on account of the deliveries that they are forced to go through. Keeping in mind above challenges this paper try to explore the Constitutional validity of the 20-week restriction on abortion imposed by MTP Act, and Further attempt will made to analyse the women's reproductive right as a personal liberty and life under Art.21 of the Indian Constitution.

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IJARST

International Journal For Advanced Research In Science & Technology

A peer reviewed international journal

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ISSN: 2457-0362

Policy Framework for the child protection in India - An Analysis on POCSO Act.

Dr. Sanjay Bang²⁵

Abstract:

Child an innocent creation of God has been mercilessly killed tortured and exploited in this society. Children are considered to be the future of every society. A child is not only the responsibility of the family but also the society and the nation. They required atmosphere where they can grow without any fear from any one. The crimes against children are increasing day by day such kidnapping, murder, sexual abuse, child labor so on. Thus they need the protection in reference to various issues and problem in this regard. Children are entitled to various human rights and fundamental right. UNICEF, UDHR has granted various humans right to them internationally. Whereas the Constitution of India granted shield of protection to these children in the form of fundamental rights. Which covered various angles of their protection right to health education safety? The Ministry of women and child welfare has provided many schemes and policies for the child protection, Such as National Policy for Children, 22-08-1974, National Plan of Action for Children 2005_Integrated Child Development Services (ICDS) Scheme etc. The researcher wants to analyze the various policies and schemes for the child protection and their implementation in reference to the issues and problems for child protection in modern era.

This article point out the child protection under POCSO Act, 2015

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“Man, wooing woman through sanctity and sentiment – A critique on application of Domestic Violence Act”

Dr. Aarti Tyagi²⁶

Abstract:

From biblical beam to the present boutique era, woman is subjected to the thrust of the individual and societal capricious attitude. The opulence of legislative measures seeking to alleviate the suffering women is gradually proving to be nothing but legal obesity. Constitutional and statutory safeguards, balancing the need of the union of man and woman for vindicating the ‘family unit’, invited additional strength in the form of Domestic Violence Act, 2005. Law’s cruelty hardly tames the human bestiality, and hence the compatriot feminism is required to control the man’s aggressiveness through soft legal peddling in view of the need to preserve and protect much-valued ‘family unit’. Law relating to Domestic Violence is a soothing reflection of the balancing wheel of man and woman relation in the family and society.

This legislation on domestic violence also engendered staggering statistics of complaints by women against men and other family members creating calamitous consequences. Instead of strengthening the bonds of wife and husband, the D.V. Act sadly prodded separation of couple and disruption of serene family environment. Adding fuel to the fire, judicial interpretations in some quarters imported the element of ‘equality’ in application of Domestic Violence Act, 2005, not only for women but also for men. Thus the Domestic Violence Act of 2005, once perceived to be woman paradise became the joint residence of cantankerous couple. End results impact on family status, children destitution, property possession, economic upheavals etc., and family spirit is being jettisoned by individual ego.

The article focuses mainly on practical application of PWDV Act, 2005.

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Role of Forensic Evidence in Criminal Cases

Dr.P.Vara Lakshmi²⁷

Abstract:

Forensic science is science applied in Courts, forensic evidence is used in both civil and criminal Courts. Handwriting, signatures, finger and foot prints, blood and sperm testing, polygraph or lie-detector tests, Narco-Analysis, DNA Fingerprinting, Breathalyzer testing, and ballistics or weapons are all examples of forensic science. In comparison to polygraph and narco-analysis, fingerprints and DNA testing offer a better level of confidence and dependability. Fingerprint identification is one of the oldest ways, but with the advancement of biometrics technology, the science has gotten more advanced. Apart from the traditional physical inspection of fingerprints, optical, ultrasonic, and computer-aided comparisons have become popular, greatly improving the accuracy. The arch, loop, and whorl are the three primary patterns of fingerprint ridges. An arch is a pattern in which ridges enter from one side of the finger, rise in the middle to create an arc, and then escape from the other side. The loop is a pattern in which the ridges enter from one side of a finger, curve, and then escape from the same side. Ridges develop in a circular pattern around a central spot on the finger in the whorl pattern. There are a few more minor features that aid in the identification procedure.

Unlike the science of handwriting and signatures, the science of fingerprints has always been favored by courts. "The science of fingerprint identification is an exact science that does not admit of any mistake or doubt, and the risk of an incorrect opinion is practically non-existent," the Supreme Court said. "The science of handwriting identification, unlike the science of finger prints identification, which has achieved near-perfection, is not quite perfect, and the risk is, therefore, higher," it has been said. "Expert evidence as to handwriting is only opinion evidence and it can never be conclusive," the court stated in "SPS Rathore v CBI"²⁸. However, there is no reason for dismissing expert opinion, considering it on par with accomplice's evidence, and requiring for corroboration constantly. It is a rule of thumb that no conviction should be relied exclusively on expert testimony, and courts should search for further evidence to back up their findings.

As indicated in the above, the Court has the ability to order any individual present in the Court to produce a sample of his handwriting or signature for comparison by itself under section 73 of the Evidence Act, 1872. The Courts have frequently concluded that since they are not experts in handwriting or fingerprints, it is not desirable for the Court to take on a duty that should be handled by an expert. Forensic science is science applied in Courts, much as forensic medicine is medicine used in Courts. Handwriting, signatures, finger and foot prints, blood and sperm testing, polygraph or lie-detector tests, Narco-Analysis, DNA.

Fingerprinting, Breathalyzer testing, and ballistics or weapons are all examples of forensic science. In comparison to polygraph and narco-analysis, fingerprints and DNA testing offer a better level of confidence and dependability. Fingerprint identification is one of the oldest ways, but with the advancement of biometrics technology, the science has gotten more advanced. Apart from the traditional physical inspection of fingerprints, optical, ultrasonic, and computer-aided comparisons have

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ISSN: 2457-0362

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Role of Forensic Science in Criminal Investigations

Dharmitha Kovvuri²⁹

Abstract :

Criminal investigation is a pragmatic science that comprises the study of facts, used to categorize, uncover and demonstrate the culpability of an accused criminal. The ancient world was devoid of standardized practices of forensic practice. Basically, investigation was supported by the witness testimony. Forensic science has come up in a big way to assist criminal investigation. Forensic science is that piece without which the puzzle of a criminal investigation is incomplete. It enables the authorities to identify the suspect in crime also helps in decide when and how a crime has occurred. Forensic scientists examine and analyse evidence from crime scenes and elsewhere to develop objective findings that can assist in the investigation and prosecution of perpetrators of crime or absolve an innocent person from suspicion.

Forensic scientists use analytical and scientific techniques to examine evidence from crimes and prepare legal statements that summarise the results for court cases. Forensic science is the application of science to the law by gathering and examining evidence to be used in a legal case. Forensic science facilitates criminal investigation in all varied facets and plays the pivotal role in keeping law and order in a society. It has become an indispensable part of criminal investigations and two will never separate.

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