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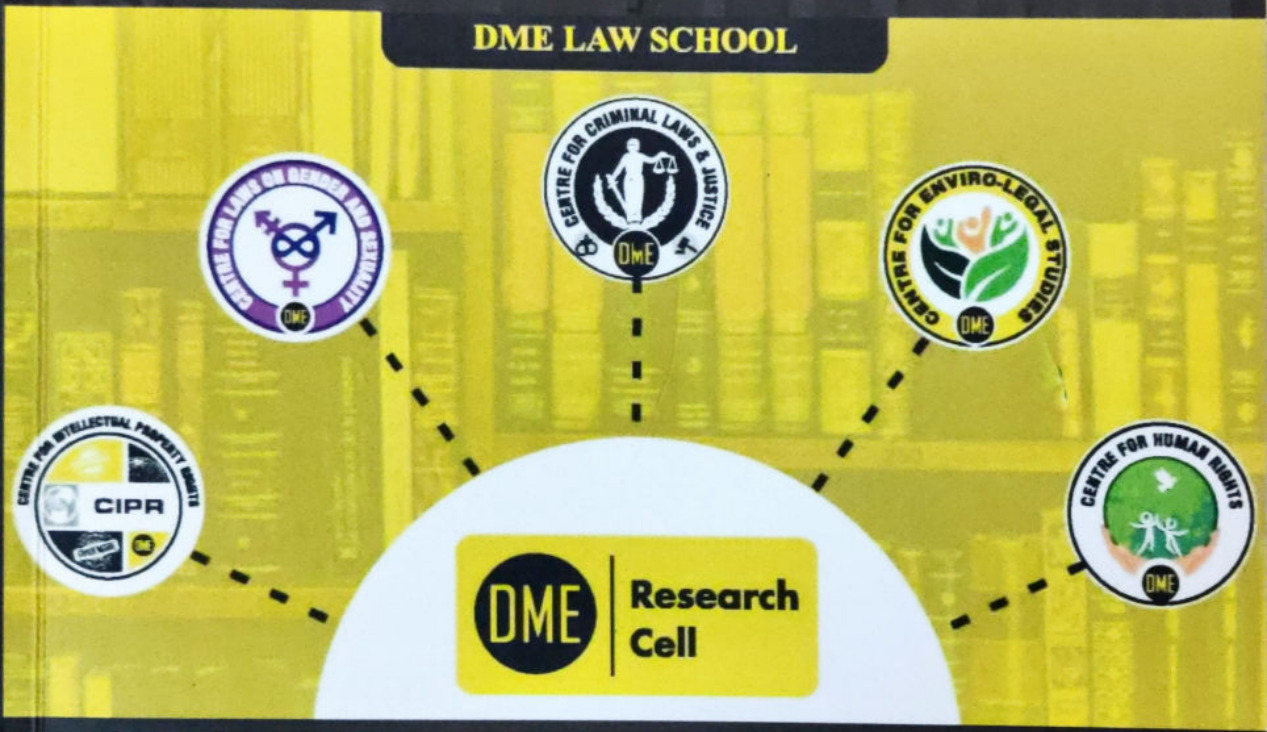

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Chapter 1
GENERICIDE: GENOCIDE OF TRADEMARKS

KOMAL KAPOOR, BHAVNA SINGH AND TULIKA NARBAR

INTRODUCTION

> "What's in a name? That which we call a rose by any other name would smell as sweet."
>
> – William Shakespeare[1]

Had Shakespeare been alive in the era of globalisation where trade names/ trademarks hold ample importance and play an indispensable role in almost all the fields, he would not have asked, "What's in a name?"

The term 'trademark' has been defined under Section 2(z) (b) of the Trade Marks Act, 1999 as a "*mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include a shape of goods, their packaging and combination of colours*." Primarily, a trademark worked as an identifier of source for the products and services associated with it. However, with the passage of time, it has transformed itself into indicator of quality which further enables the customers to choose goods and services with ease while shopping. Apart from the above-stated functions, an established trademark plays an important role in advertising and it also becomes a valuable asset. In terms of the Trade Marks Act, 1999, a mark does not qualify for registration if the mark is devoid of any distinctive character, or is incapable of distinguishing the goods or services of one person from the other or it merely describes the kind, quality, quantity, intended purpose, values, geographical origin, or other characteristics of goods and services with which it is associated.[2] Irrespective of the fact that whether a mark is a registered trademark or not it is always surrounded by the indispensible danger of becoming a generic word and losing its uniqueness. Literally, generic word is a verb that merely provides indication and characteristic of

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1. William Shakespeare: Romeo & Juliet, Act II, Sc. I. Available at: http://www.shakespeare-online.com/plays/ romeo_2_2.html, visited on 22 April 2018.
2. The Trade Marks Act, 1999 (Act No. 47 of 1999) s. 9(1).

CHAPTER 2
PATENTING ARTIFICIAL INTELLIGENCE

PRATIKSHA KUMAR AND PRERNA ARORA

INTRODUCTION

Evolution of technology plays an important role in the growth and development of a society. The world is witnessing rapid changes due to technologies backed up by artificial intelligence.

"Artificial Intelligence" is more of an "umbrella term" that comprises areas of computer sciences, arts and philosophy, which all have different goals and applications for artificial intelligence.[1] The *Oxford Dictionary* provides the curious with a broad interpretation, according to which artificial intelligence is the "theory and development of computer systems able to perform tasks normally requiring human intelligence."[2] Shterionov defines artificial intelligence as a "broad scientific field which aims at the study and the development of computer systems that can simulate human behaviour."[3]

Artificial intelligence is now helping human beings in their day to day work. It has become an intrinsic part of life to an extent that its regulation is sought important by the policy makers. On the 12th October 2016, the White House Office of Science and Technology Policy released the U.S. report on Artificial Intelligence titled – "Preparing for the Future of Artificial Intelligence."[4] The report defines Artificial Intelligence as a technology which when used thoughtfully can help to argument human capabilities, instead of replacing them a draft report of European Parliament to the Commission on Civil Law Rules on Robotics emphasises that no walk of life will remain untouched from the

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1. Julia Black. Critical Reflections on Regulation. *Australian Journal of Legal Philosophy, 27* (2002).
2. *Online Oxford Dictionary. Available at*: https://en.oxforddictionaries.com/, search inquiry input "artificial intelligence."
3. Dimitar Shterionov. *Design and Development of Probabilistic Inference Pipelines*. (KU Leuven, Faculty of Engineering, 2015).
4. Corinne Cath and Sandra Wachter. "Artificial Intelligence and the 'Good Society': The US, EU and UK Approach." *Science and Engineering Ethics*. Doi: 10.1007/s11948-017-9901-7. Original Paper, SpringerScience + Business Media Dordrecht, 2017, p. 1.

CHAPTER 3

COMMUNITY RIGHTS OF INDIGENOUS FOREST DWELLERS: PROBLEMS AND ISSUES

SOUMA BRAHMA SARKAR

INTRODUCTION

Traditionally, all forests were essentially owned by indigenous peoples and the related communities. This occupation was however usurped, in the face of expansions ensuing from constant turmoil of the sociocultural and political fabric of the society which was being subjected to the realm of feudalism, colonialism and imperialism at various stages in the last five centuries, eventually occasioning in absolute appropriation of almost all forests by the state. A gradual reversal of the above events has been prompted by the political awakening in past quarter century in the wake of democracy that establishes recognition of liberties and rights of all humans in a much wider spectrum than any other world orders of the past. Democracy has inspired a revolution of sorts persuading recognition of local rights.[1] Some countries today formally recognise community rights of the indigenous peoples. Brazil determined the rights of its forest dwellers in 1980 acting as the torchbearer leading the lukewarm revolution, igniting a fire that would spread across continents and engulf the already withering absolute authoritarian order. Mexico followed the process in 1986 and Bolivia a decade later. India, on the contrary, could only persuade itself to recognise the imminent inevitable and enact a law for the same as late as 2006. Worldwide more than 430 million hectares of forests are either community owned or managed. The local rights are more prominent in developing countries, where, in 2008, 27% of all forest lands were community owned or administered.[2]

There are several communities dependent upon forests for their life and livelihood in India. The relationship between the tribal people and the forest

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1. Augusta Molnar and Marina France. *Community-Based Forest Management: The Extent and Potential Scope of Community and Smallholder Forest Management and Enterprises*. The Rights and Resources Initiative, 2011. *Available at*: http://www.indiaenvironmentportal.org.in/files/cfm.pdf.
2. *Ibid.*

CHAPTER 4

COASTAL ZONE MANAGEMENT IN INDIA AND THE ROLE OF INDIAN JUDICIARY IN PROTECTING AND CONSERVING INDIA'S COASTAL ENVIRONMENT

GHAZALA ABIDIN

INTRODUCTION

The role played by a coastal environment had always been essential in structuring and building the economy of a nation on account of abundant available resources, biodiversity and dynamic habitat.[1] Our country India is one of the leading coastal nations in the world. India's coastline measures up to 7,516 km approximately. The mainland is of about 5,422 km. Lakshadweep coastline extends up to 132 km. The coastline of Andaman and Nicobar Islands consists of 1,962 km. It is worthwhile to mention that millions of people have been living within a distance of 50 km from the coastline.[2] Coastal nations have shown interest in safeguarding and protecting their coastlines. Coastal zones have rendered significant contributions in the development of civilisations.[3]

The coastal areas have assumed greater significance in the recent years because of the increase in human population, developmental activities and urbanisation and so on. The coastal areas, apart from being rich in minerals, have the probability to exploit the hydropower and the thermal sea power for the purpose of growth and development. The ecological significance of the coastal zone in the country like India is distinguished by the "*diversity of habitats, the extensive beaches of silvery sand, spits and dunes, rugged cliffs or slippery domes of rocks, salt marshes, estuaries, lagoons. Mangrove swamps, coral reefs, sea grass beds, and marshy wetlands which are locus of lotus and*

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1. Coastal Zone Management in India—Problems, Practice and Requirements, India. *Available at:* https://link.springer.com/chapter/10.1007/978-3-642-60103-3_12, visited on 10 September 2018.
2. P. Leelakrishnan. *Environmental Law in India.* (Lexis Nexis, 3rd ed., 2010, p. 47).
3. *Supra* note 1.

Chapter 5

STATUTORY RAPE: CONSTRUCTION OF CONSENT AND CONSTRAINTS ON SEXUALITY

AVANTIKA TIWARY AND SHAMBHAVI MISHRA

INTRODUCTION

Theorisation of sexual consent has been the most problematic enquiry in feminist scholarship. Sexual consent cannot be understood in a vacuum. It stands at the intersectionality of gender on one hand and age, class, caste and so on and has to be looked at through the lens of these social realities.[1] This intersectionality is thrown under a sharp relief especially in the rape cases. Age of consent for sexual intercourse has been the most contested issue in the matters relating to sexual violence.

According to the Criminal Law Amendment Act of 2013, sexual intercourse with a girl with or without her consent below the age of 18 years would be deemed to be rape.[2] This implies that adolescent sexual encounters would come within the purview of statutory rape. The decisions with respect to sexuality can be made by the female subject only when she attains statutorily prescribed age. Consequently "age" is pitted against "agency," that is, the inherent will to govern oneself, one's command over their conscious decisions and an extremely personalised notion of determination of "self."[3] Thus, by declaring that consent to any sexual act by a woman below a specific age is no consent at all, this power of conscious decision making of is curtailed. It is with the statutorily defined age and not the consciousness of decision making that the sexual consent is deemed as valid. It is important to note here that sexuality is

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1. Kimberley Crenshaw had first used this term in 1989 to signify the intermittent categories of gender, race and colour. Kimberley Crenshaw. *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of the Anti-discrimination Doctrine, Feminist Theory and Antiracist Politics*. The University of Chicago Legal Forum, 1989. *Available at*: https://Heinonline.org.
2. Section 375 of Indian Penal Code, 6 of 1860. Sixthly. – With or without her consent, when she is under 18 years of age.
3. Michel Foucault asserts that definition of agency changes with the change in the power structures within which the question of agency exists. He maintained that one cannot limit the meaning of agency into a single mould. Michel Foucault. *History of Sexuality*, 1976.

CHAPTER 6

LEGAL RECOGNITION OF SAME-SEX RELATIONSHIP

NEHA SINGH

"I chose to treat the homosexuality like I would treat any other form of sexuality."

—Barbet Schroeder[1]

INTRODUCTION

Meaning of Homosexuals

Homosexuality is a form of sexual orientation. Sexual orientation can be taken to mean one's physical and psychological preference towards the opposite or the same sex. Homosexuals are those people who are sexually attracted to the other individual of the same sex. The most general perception of sexual orientation is Heterosexuality, which means attraction towards the opposite sexes. However, the remaining population may not always follow this category. As per the provision of Section 377 of Indian Penal Code (IPC), homosexuals can be placed in the following categories:[2] LGBTQIA

L for Lesbian – A female attracted towards an another female

G for Gay – A male attracted towards an another male

B for Bisexuals – Individuals who are attracted to both men and women

T for Transgender – Individuals whose biological sex is different than the gender with which they identify

Q for Queer – is an all-inclusive term referencing all mentioned above

I for Intersex – Individuals who are difficult to recognise as completely male or completely female.

A for Asexual: Individuals having no sexual attraction towards anyone.

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1. Iranian-born Swiss film director and producer.
2. Jason Pierceson. *Sexual Minorities and Politics: An Introduction*. (Rowman and Littlefield Publisher, 2015).

Chapter 7

ILLEGAL DETENTION UNDER THE ARMED FORCES SPECIAL POWERS ACT

KARAN SHARMA AND PARUL GURUDEV

INTRODUCTION

India struggled for its independence for years and with the contribution of many great freedom fighters, it became an independent nation in 1947. After having become an independent nation, India started to face even more serious challenges, the most serious amongst them was how to integrate such a diverse nation and how to keep peace in sensitive zones so that no zone remains isolated. To tackle these problems, force was used at some places, and in some areas, the most controversial Act, Armed Forces Special Powers Act 1958 (AFSPA) was implemented. Violence in the AFSPA 1958 implemented areas, especially for the conflict of insurgency and counter-insurgency measures of the state raises serious questions over the polices made by various governments in the quest of peace in these areas for many decades.

The present chapter deals with the misuse of the special powers given to the armed forces under the AFSPA and the pitiable conditions of the affected people. The Constitution of India provides safeguards regarding the personal liberty and the life of dignity to every individual. These provisions were incorporated in Part III of the Constitution to make the fundamental rights enforceable in court of law. There have been relentless debates over the curtailing of these fundamental rights by the AFSPA. There have been serious questions on the functioning of the armed forces in these areas and there have been numerous instances when the armed forces have violated the basic human rights. Unlawful detention is one of the examples of violation of the Human Rights of the people in these troubled areas.

Unlawful detention is not only a problem exercised by the armed forces in the sensitive zones but it is rampant in other areas also. Detention of an accused is indeed required for the safety of society. However, at the same time, there has to be a balance between the interest of the society and the interest of the individual. It has been often seen that the power to secure the ends of justice is often misused to satisfy the needs and the gratification of many. Where the most marginalized section of the society gets treated in an inhuman manner,

CHAPTER 8
MEDIA TRIAL

SUNAINA MISHRA AND AKANSHA MADAN

INTRODUCTION

Speech is God's gift to the human race. Speech is one of the means through which human being convey his thoughts, sentiments and feelings to others. Freedom of speech and expression is thus a natural right, which a human being acquires upon his birth. Right to freedom of speech and expression includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers. Freedom of speech and expression also includes the domain of publication which means that it includes within its fold the freedom of press also. In this regard, freedom of the press is regarded as specie of which the freedom of speech is the genus.

Freedom of speech and expression is regarded as the first condition for liberty. It occupies an important position in the hierarchy of all forms of liberty and is said to be the mother of all liberties.[1] It says that all the citizens have the right to freedom of speech and expression. This right is available to all the citizens of India and not to foreign nationals. Freedom of expression means the right to express one's own idea and opinion freely by means of writing, printing, or through any other mode. It contributes significantly in the formation of economic, political and social opinion of the public.

Realising the importance of freedom of speech and expression the constitutional makers placed it in the category of fundamental rights under part III of the Constitution of India. Article 19(1)(a) of the Indian Constitution guarantees freedom of speech and expression to all individual. It is from this article in the Constitution of India that the media derives its right to freedom of speech and expression. Right to freedom of speech and expression embodies in itself not only the right to publish but also to circulate information and opinion. It has been declared by the Supreme Court of India that freedom of circulation is as essential as the right to publication.[2]

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1. Ramlila Maidan Incident, re 2012 SCC.
2. *Romesh Thappar* v. *State of Madras*, AIR 1950 SC 124.

Chapter 9

MUSLIM WOMEN'S QUEST FOR EQUALITY AND UNIFORM CIVIL CODE DEBATE IN INDIA

KARISHMA SHEIKH

INTRODUCTION

"Of all the lawful things divorce is the most abominable with Allah."[1]

Marriage is a union between two persons as partners, in a personal relationship, and it has been formally recognised by all the communities, culturally and States legally, worldwide. It establishes and confers certain rights and duties on both the parties to the matrimonial alliance for stability and subsistence of the bond of marriage. However, the social reality of the breach of this bond cannot be overlooked and hence in all the cultural and legal systems, divorce is also recognised.

Islam, in which marriage is in the nature of a contract, also recognises its repudiation through various modes.

The Dissolution of marriage in Islam can be made effective through three modes: *Talaq*, *Khula*, and *Mubarat*. *Talaq*, where the Husband initiates, *Khula*, at the instance of wife and *Mubarat*, is by mutual consent of both the parties. Muslim personal law[2] enables the wife to seek judicial divorce on the grounds mentioned therein.

In *Talaq*, the two forms, *Talaq e Ahsan* and *Talaq e Hasan* are the proper forms of divorce as they involve the process of arbitration, providing scope for reconciliation and if this process fails only then divorce is made effective. This practice is very well within the Quranic texts and is the recommended form of dissolution of marriage for Muslims. However, Hanafi sects of Muslim law recognises *Talaq-e-biddat,* that is, instant triple talaq where the Muslim husband

1. Prophet Mohammed (PBUH).
2. The Dissolution of Muslim Marriages Act, 1939.

Chapter 11

A SCRUTINY OF INDIA'S REFUGEE LAWS, POLICY AND PRACTICE

DR. M. MAHALINGAM

INTRODUCTION

> "We have a legal and moral obligation to protect people fleeing bombs, bullets and tyrants, and throughout history those people have enriched our society."
>
> —Juliet Stevenson, an English Stage and Screen Actress

Forced or involuntary migration has been growing due to various factors like political strife, ethnic conflict, sectarian violence, minority bashing and religious persecution. This century has witnessed an unprecedented mass displacement resulting in uprooting, statelessness, homelessness and destruction of livelihood, human trafficking, deprivation, xenophobia and subsequent violation of human rights. The United Nations Commissions for Refugees (hereinafter UNHCR) proclaims that "nearly one person is forcibly displaced every two seconds as a result of conflict or persecution."[1] The UNHCR's latest figure estimates that "68.5 million people around the world have been forced from home. Among them are nearly 25.4 million refugees, and around 10 million are stateless people who have been denied a nationality and access to basic rights such as education, healthcare, employment and freedom of movement."[2]

India, given its strategic location in South Asia, long porous borders without effective border surveillance mechanisms, coupled with volatile political situations in neighbouring countries and the World alike, has had an influx of refugees primarily from other South Asian countries and from across the world since precolonial through postcolonial to contemporary periods.

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1. Latest United Nations High Commissioner for Refugees (UNHCR) Figures. "Figures at a Glance." *Available at*: http://www.unhcr.org/figures-at-a-glance.html, visited on 13 November 2018.
2. *Ibid.*

Research plays a crucial role in the legal profession. It helps to shape the rule of law and enables the building of society on just principles of law. Legal research enhances the quality of legal education, strengthens the arguments of lawyers, enables judges to base their decisions on principles of law and natural justice, and provides thought-provoking material for academia. With this end in view, the Delhi Metropolitan Education (DME) has embarked upon a journey of conducting research in different branches of law. Research at DME 2018 is the first endeavour of DME to bring to the reader a compilation of research focusing on interdisciplinary and contemporary issues on media trial, Uniform Civil Code debate, statutory rape and patenting artificial intelligence among others.

The essays in this volume examine the historical perspective of law with respect to environmental law, intellectual property law, human rights law, criminal law and law relating to gender and sexuality and also the latest developments in law along with judicial decisions. Not only will Research at DME 2018 be useful for all members of the legal fraternity and legal scholars, but it will also cater to the interest of general readers.

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