

## Online Certificate Course "STATE v. PERSONAL LIBERTY"

(A focus on Evidence Act and Special Criminal Legislations)

FROM THE CHAMBERS OF Mr. Rajive Maini Advocate & Ms. Shriya Maini



COURSE CHIEF FACULTY ::

### MS. SHRIYA MAINI

- Advocate-on-Record, Supreme Court of India
- Oxford Global Justice Award Scholar 2015-16
- Dr. (Mrs.) Ambruti Salve Scholar 2014-15
- Ex-Associate, The Mechanism for International Criminal Tribunals
- The Hague, The Netherlands (2016)

Course Duration :: May - June 2022

Course Days :: Mon. - Wed. - Fri. (Weekly)

Attendees :: Open to all the students of Lloyd

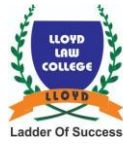
Date & Time :: Mon. 16, Wed. 18 & Fri. 20 May 2022, IST 06 PM

Google Form :: <https://forms.gle/yeZ1nJm1wiyHwZ819>

#### TOPICS::

- Individual Liberty and Criminal Justice System
- Fundamentals of Evidence Act. 1872
- State Interest v. Individual Liberty :: NDPS Act. 1985 :: Aryan Khan Case
- State Interest v. Individual Liberty :: PML Act. 2002
- State Interest v. Individual Liberty :: POCSO Act. 2012
- State Interest v. Individual Liberty :: Special Criminal Legislations
- Freedom of Speech v. Hate Speech :: Disha Ravi Case, Maharashtra husband - wife arrests
- The Art of Cross Examination
- Individual Liberty and Wrongful Prosecution
- Protection of Individual Liberty of Accused and Convicts-right to pre-trial bails :: Lakhimpur Kheri Murder Case (Ashish Mishra's Bail)





## LEGAL PRACTICE ONLINE CERTIFICATE COURSE

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**Zoom Session Link ::** <https://lloydcollege-in.zoom.us/j/92689228294>

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Mon.-16-May-2022

Dear Parent / Student,

Greetings from Lloyd academic community!

#### **Course Preface :: State v. Personal Liberty**

Individual liberty and State interest are at times perceived to be at odds with one another, be it civil, criminal or commercial law. The criminal courts (dealing with conventional crimes – rape, murder, theft or deep seated economic frauds) have quite often been confronted with the task of preserving a proper balance between safeguarding individual liberty and effective administration of criminal justice system, while evaluating the evidence available. Be it **Aryan Khan's Bail, Parambir's Special Leave Petition, Ashish Mishra's Cancellation of Bail or Vinod Dua's Quashing Petition**, this is a persistent challenge which this Course aims to effectively highlight with case law discussions while upholding the true spirit and ideals of Constitution of India.

The Social Contract Theory is a classic bargain, wherein individuals trade their liberty in lieu of the State granting them rights and protection. The State, as a guardian of the society has been assigned the role of ensuring public order and tranquility by prescribing a code of conduct which is perceived as harm not only to the individual, but also to the society as a whole. The State's criminal justice system is aimed at preventing crime and punishing such deviant behaviour with the help of various functionaries, such as the investigation authorities (Police), public prosecutors, courts, defence counsels, prison authorities, etc. Unlike a civil wrong, which is considered to be a conflict between two parties safeguarding their individual interest, a criminal justice system undertakes to resolve a conflict between the State and the accused.

The State functionaries have been given wide powers to ensure that the accused is punished and the aggrieved is served justice. In pursuing this objective, however, courts are required to address two competing interests. On one hand, criminal justice system is required to adopt effective measures to combat crime, which curtails the individual liberty of the accused. In order to ensure that there is a balance between the State's compelling interest and individual rights of those whose liberties are at stake, the principles of fair trial (**Triple Test of Bails**) have been designed and widely accepted by



every country. It is designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of their basic rights and freedoms, the most prominent of which are the right to life and liberty of the person, especially while focusing on special laws like the **Narcotic Drugs and Psychotropic Substances Act, 1985 Unlawful Activities (Prevention) Act, 1967.**

Gone are the days when a weapon at a crime scene was considered as the sole concrete evidence in settling a case. The candid power vested in a piece of evidence to prove or disprove a factum for instance if an accused is guilty or not, or if a will is genuine or not, is what makes it crucial for lawyers to win cases! Many lawyers agree that 'finding proof' is a challenging task. However, it is also extremely important to know what serves as evidence and how the evidence is presented and examined in a Court of Law. This because evidence proves facts and sans the facts, we cannot apply the law to a case at hand.

### **Course Objective ::**

In light of the aforesaid overview, this practice certificate course is designed with the objectives to:-

- Develop understanding of the competing interests at the intersection of State and individual liberty during the functioning of criminal justice system and evaluating the relevant evidentiary material;
- Understand the interplay between State and individual liberty during the functioning of criminal justice system;
- Understand the safeguards for individual liberty of accused and convicts during various stages of criminal proceeding and appreciate the principles of the Indian Evidence Act;
- Apply the interplay between State and individual liberty to preventive detention laws with a focus on general and special criminal legislations.

### **Certificate of Participation ::**

Certificate of participation will be issued jointly by the Chambers of Mr. Rajive Maini Advocate & Ms. Shriya Maini & Lloyd Law College.

### **Course Chief Faculty :: Ms. SHRIYA MAINI, Advocate – on – Record, Supreme Court of India**

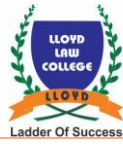
Ms. Shriya Maini is an award-winning lawyer practicing at the Supreme Court of India, the Delhi High Court and District Courts/tribunals (NCLAT, NCLT and NCDRC). She specializes in dispute resolution (civil, criminal and matrimonial) and has been accredited with numerous publications. A gold medallist from Gujarat National Law University, Ms. Maini post graduated in laws from the University of Oxford, U.K., and worked at the Mechanism for International Criminal Tribunals, The Hague, The Netherlands. She is also a Visiting Professor for Women and Child Laws and International Crimes at National Law University, Delhi and Lloyd Law College, Noida. She currently serves as an external member on the Internal Complaints Committee at Lloyd Law College, Noida

### **COURSE STRUCTURE :: DURATION & CONTENTS**

Lecture No.	TOPICS DETAIL
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Lecture : 01	<b>Individual Liberty and Criminal Justice System ::</b> Impact of Criminal Justice System on individual liberty of accused at various stages of the criminal proceedings – Charge, Bails, Cross – Examinations, Statement of Accused; Functionaries of Criminal Justice System: Investigation authorities; Public prosecutors; Defence counsels; Criminal courts; Prison and correctional services authorities and their co - relation.
Lecture : 02	<b>Conflicting Interests between State and Individual Liberty ::</b> Interpretation of Individual Liberty under Constitution of India; Issues at the Intersection of State versus Individual Liberty under Criminal Justice system and economic frauds; Need for balancing of conflicting interests.
Lecture : 03	<b>Fundamentals of the Evidence Act ::</b> Introduction and Importance - A Lawyer's Lens to Facts In-Issue; Relevant Facts; Document, Evidence: Proved; Disproved; Not proved, May, Shall and Conclusive Proof, Circumstantial Evidence, Relevancy and Admissibility; Res Gestae (Sections 6 to 13). – How to strategize and win cases – Case laws and examples of recording Evidence in post Covid Litigations.
Lecture : 04	<b>Burden of Proof, Reverse Burden of Proof, Purpose of Presumption under Evidence Law and Exceptions ::</b> Presumption of guilt in cases of abetment of suicide; Presumption of guilt in cases of dowry death; Presumption in cases of rape under Section 114A of the Indian Evidence Act 1872; Presumption in cases under Section 111A of the Indian Evidence Act 1872; Conclusive proof in cases of legitimacy of child – Practical perspectives with live court room examples and experiences to be shared by the Teaching faculty.
Lecture : 05	<b>State Interest v. Individual Liberty, NDPS Act. 1985 ::</b> Object of enacting NDPS Act; Procedure for Investigation and arrest; Procedure for bail under NDPS Act; Reverse onus of proof clause- Presumption of guilt under Section 35 and Section 54; Admissibility of confessions made before police officers; Constitutional validity of such clauses
Lecture : 06	<b>State Interest v. Individual Liberty, PML Act. 2002 ::</b> Object for enacting PMLA Act; 'Proceeds of crime'; procedure for investigation and arrest upon subjective satisfaction of authorities under PMLA; Procedure for Bail; Standard of Proof; Reverse Onus of Proof Clauses; Presumption of Guilt under Section 24 of the Act; Constitutional Validity of such clause.
Lecture : 07	<b>State Interest v. Individual Liberty, POCSO Act. 2012 ::</b> Object of enacting the POCSO Act; Procedure for Investigation and Arrest; Procedure for Bail under POCSO Act; Standard of Proof; Reverse onus of proof clauses; Presumption of guilt under Section 29 and 30 of the Act; Constitutional validity of such clauses.



Lecture : 08	<b>State Interest v. Individual Liberty, Special Criminal Legislations ::</b> Reverse Onus of Proof and Admissibility of Confession under the Maharashtra Control of Organised Crime Act, 1999; Reverse Onus of Proof and anticipatory bail under and Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Prevention of Corruption Act, 1988.
Lecture : 09	<b>Freedom of Speech v. Hate Speech, Disha Ravi Case, Maharashtra husband – wife arrests ::</b> Provisions of the Indian Penal Code 1860 defining and penalising hate speech; Delineating the contours of hate speech, Seditious Case Studies – <i>Disha Ravi Case</i> , Latest Maharashtra husband – wife arrests.
Lecture : 10	<b>The Art of Cross Examination ::</b> (types of questions and strategies with practical examples): How to draft Affidavits of Evidence in civil, arbitration, commercial and matrimonial matters, How to Lead Evidence and how to strategize framing of charges/issues and evidence, especially in Post Covid Times.
Lecture : 11	<b>Individual Liberty and Wrongful Prosecution ::</b> Impact of Wrongful Prosecution, Conviction and Incarceration on Fundamental Rights of the aggrieved accused; Right to Compensation; Impact of delay in conducting trials and deprivation of individual liberty.
Lecture : 12	<b>Protection of Individual Liberty of Accused and Convicts–right to pre-trial bails, Lakhimpur Kheri Murder Case (Ashish Mishra’s Bail) ::</b> Triple Test of Bails, Types of Bails – Regular, Anticipatory, Interim Bails, Role of Judiciary in Balancing State Interest and Individual Liberty, Evolution of scope of preventive detention laws; Procedural safeguards under Article 22 of the Constitution of India – Practical perspectives with live court room examples and experiences to be shared by the Teaching faculty including the Lakhimpur Kheri Murder Case (Ashish Mishra’s Bail Cancellation).

Hope to see you all in regular classes, additional courses, practical academics, skilling opportunities and professional guidance of excellence and standard.

**Dr. Md. Salim**  
**DIRECTOR**

**LLOYD LAW COLLEGE**

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