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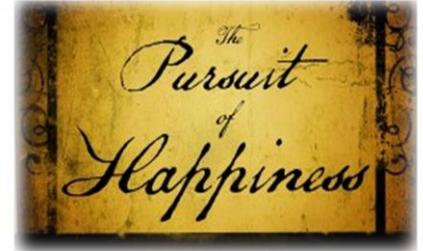
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FROM THE DESK OF CHIEF EDITOR

Every human being has a Right to Happiness. Happiness is not a luxury. It is the basic human right. Happiness is integral to human beings. It cannot be denied to anyone. The United States Declaration of Independence of July 04, 1776 drafted by Thomas Jefferson reads :

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness.”



Human Rights in Bhutan are outlined in Article 7 of its Constitution (2008). The Royal Government of Bhutan has affirmed its commitment to the “enjoyment of all human rights” as integral to the achievement of “**Gross National Happiness**” : **GNH**. The concept of **GNH** was first articulated by Bhutan’s fourth king, Jigme Singye Wangchuck in 1972. This concept does not employ “conventional income – based measures”. In fact, it focuses on the happiness of individuals. Measured on the basis of aspirational, spiritual and cultural lens. The establishment of good governance would lead to development. Development in turn would lead to happiness of people. It is a change-over from **Gross National Product : GNP to GNH**.

Can **GNH** be part of different Constitutions of different countries ? Article 21 of the Indian Constitution guarantees the right to life and personal liberty. They cannot be denied except according to procedure established by law. The Constitution is silent regarding the right to happiness. The right to happiness, can it be read into the right to life and personal liberty? Whether *pursuit to happiness is integral to the right to life* ! Yes. What is the meaning of right to life if you do not have the right to happiness. Right to life is meaningless, if it is sans happiness. Similarly, if I have the right to personal liberty, I also have the right to happiness. You cannot enjoy the right to life without the right to happiness. Moreover, the right to life and happiness are natural basic human rights. Both are non-negotiable. The right to happiness needs to be read into Article 21. The *pursuit* of right to life is right to happiness. As long as one continues to enjoy the right to life, one continues to enjoy the right to happiness. The right to life and happiness, they are like siamese twins. Both co-exist. One cannot be divorced from the other. They are inseparable. In short, the right to life and happiness are not mere Constitutional rights. They are basic human rights. These basic human rights are not dependent upon the Constitutional guarantees.

Positive minds are happy minds. Tenzing and Hillary scaled the Mount Everest for the first time in 1953. Before attempting the same, both of them, visited the temple in Kathmandu. The head priest told them that they will not be able to scale the Mount Everest. They were warned / cautioned. If they would attempt, one of them would even die. This caution did not dampen their motivation. They had a positive mind. Attempted. The attempt was successful. They made it. They were happy. They were full of joy. This became possible because they had a positive mind. Garry Sobers, the world known fast bowler in cricket of yesterday years. It was predicted that he would die before the age of ten. Today, he is 82 years and plus. In the field of cricket, he has achieved what others have failed to achieve. What a joy. What happiness. This became possible because he worked and worked hard with a positive mind. The positivity brings to you happiness. Yet another example of positive mind. Alfred Nobel was reading newspaper long many years back. He found his name in the obituary column. It read : *The king of dynamite. Merchant of death. No more.* Reading this, Alfred felt depressed. This is how; he was going to be remembered. He was sad. He was disappointed. Soon he came out of it. He constituted a Trust to award Nobel Prize to those who contribute to 'excellence' in different fields every year. Alfred is no more. His fragrance continues. Nobel Prize provides unique happiness to those who contribute hugely. It also provides inspirational happiness to contribute to others in the years to follow. It is a continuous process. It continues to generate happiness.

Judges are judicious minds. Adjudicatory minds. Independent minds. Positive minds. Thinking minds. Productive minds. They act fairly and objectively. Neutrality is part of their personality. They do justice. They remove injustice. This gives satisfaction to them. Happiness follows. This is a life-long mission and passion. They render unique service. The judicial fraternity needs to adopt this as **a way of life**. This is a challenge. They must accept it. At the end of the day, they would enjoy it. The manner in which judges conduct the court. The manner in which judges treat the lawyers, the litigants and the staff. Above all, they build trust and confidence of the public in the judicial institution. All this provides satisfaction and happiness.

Happiness is within. It gets reflected on your face. The way you talk. The way you perform. It never remains hidden. It can neither be stolen nor snatched. It is the best tonic. Healthy bodies wear happy minds. Artists, painters, writers, lawyers, judges, teachers, statesmen, scientists and many others make rich contribution during their life time. These creative minds are happy minds. Creativity is the soul of happiness. Happiness is the best recipe to live long and healthy. When they live long, they are able to hugely contribute in their respective fields. Therefore, happiness is the best insurance of rich contribution. In every sphere of human activity. Lord Denning lived 100 years and plus. Justice Krishna Iyer, Khushwant Singh and H.L. Sibal just missed the century. Oliver Wendel Holmes lived for 94 years. The catalogue is long. They all made matchless contribution.

Happiness is mind-set. It is a question of attitude. Attitude determines altitude. Happiness is tonic. Better than any other tonic. You can ensure its constant supply. Judges are innovative minds. They need to nurture healthy habits. They need to look forward. How best they can contribute. May you be the torch-bearers of the judicial institution.

Balram K. Gupta

CASE COMMENT

Karnail Singh versus State of Haryana : 2019 SCC OnLine P&H 704 Animal Kingdom : as Legal Entity

"The universe along with its creatures belongs to the land. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species."

Isha Upnishad

The importance of the continued existence of wild life and wilderness to the quality of life on the planet earth is an indisputable fact. But, unfortunately, the so called progress with the civilization, has posed a grave danger to the ecosystem in general and to animal kingdom in particular, all over the world including India. Global warming, habitat destruction in the name of development, human greed are few major factors which have put our wildlife under threat; causing overall detriment to biodiversity. Infact, the immense importance of conservation of wildlife for mankind can be understood from the fact that the extermination of wild life will ultimately lead to the extinction of human race itself. As rightly said by Jeffrey Mc Neely,

"Everytime we lose a species we break a life chain which has evolved over 3.5 billion years."¹

Unfolding the pages of history we find that organized animal protection began in England in the early 1800s and spread from there to the rest of the world. Henry Bergh² and George Angell³ looked to England and the Royal Society for the Prevention of Cruelty to Animals (RSPCA) as a role model for their own efforts, as so did the founders of many other societies for the prevention of cruelty to animals (SPCAs) in the British Empire and elsewhere. In 1877 a group of American organizations established the International Humane Society⁴, the first to carry the objective of such protection on international platform. Prior to the modern period of animal protection which started after World War II, international animal protection involved mostly uncoordinated support from the larger societies and certain wealthy individuals and a variety of international meetings where animal protection advocates gathered together to exchange news and ideas. One of the earliest such meetings occurred in Paris in June 1900 although, by this time, there was already a steady exchange of information among animal protection organizations around the world. These exchanges were encouraged further by the organization of a number of international animal protection congresses, including one in Philadelphia, Pennsylvania, in 1908, followed by another in London in 1909.⁵

Today, the animal kingdom in India is a combination of species of diverse origins.⁶ According to one study, India along with 17 mega diverse countries is home to about 60-70% of the world's biodiversity.⁷ Our country is home to several well known large mammals including the Asian Elephant, Bengal Tiger, Asiatic Lion, Leopard, Sloth Bear and Indian Rhinoceros, often engrained culturally and religiously and often being associated with deities. Other well known large Indian mammals includes ungulates such as the rare Wild Asian Water Buffalo, common Domestic Asian Water Buffalo, Nilgai, Gaur and several species of deer and antelope. Some members of the dog family such as the Indian

¹ Jeffrey A. McNeely is Senior Science Advisor at IUCN, where he has worked since 1980. For details see; <http://ec.europa.eu/environment/greenweek2010/content/jeffrey-mcneely.html>

² Henry Bergh is the person who founded the American Society for the Prevention of Cruelty to Animals, or ASPCA, in 1865. For details see: Lane, Marion; Zawistowski, Stephen, Heritage of care: the American Society for the Prevention of Cruelty to Animals, (2008).

³ George Angell founded the Massachusetts Society for the Prevention of Cruelty to Animals, or MSPCA, in 1868. For further information visit: <http://eightfits.blogspot.com/p/george-angell.html>

⁴ It's name was later changed to the American Humane Association (AHA).

⁵ Stearns, Peter N., The Oxford Encyclopedia Of The Modern World, Volume 1, (2008) at 156.

⁶ Haggett, Peter, Encyclopedia of World Geography: The Indian subcontinent, Volume 19, (2002), at 2648.

⁷ Dutt, Misra & Chatterjee, Explorations in Applied Geography, (2008), at 104.

Wolf, Bengal Fox, Golden Jackal and the world's rarest monkey, the Golden Langur typifies the precarious survival of much of India's mega fauna. In India, till the middle of the last century, wildlife was abundant and its habitat was largely intact. But slowly with the passage of time, the unending needs of human inflicted grievous threat to their kingdom. To strengthen the diminishing habitat of our wild heritage, wildlife management in the country becomes essential today.

With this benevolent objective in mind, it is worth to appreciate that recently Punjab and Haryana High Court has declared the entire animal kingdom including avian and aquatic, as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person. Justice Rajiv Sharma while pronouncing the judgment in Karnail Singh V. State of Haryana (2019 SCC OnLine P&H 704) also declared that all the citizens throughout the State of Haryana as persons in loco parentis are the human face for the welfare/protection of animals.

Further while conferring honour and dignity to every species the court observed that even animals have inherent right to live and are required to be protected by law. Like the Corporations, Hindu idols, Holy Scriptures, Rivers have been declared legal entities, thus, in order to protect and promote greater welfare of animals they too are required to be conferred with the status of legal entity.

In the elaborative judgment running into 104 pages, the Hon'ble Court has taken into consideration various Rules framed for protection of animals as well as various cases, text and juristic literature. To promote and protect the health, comfort, nourishment and safety, the Court has passed detailed twenty eight directions to the Government to ensure that throughout the State of Haryana, animals are taken good care of, some of being very noteworthy like;

- No person in charge of any vehicle drawn by any animal allows more than four persons, excluding the driver and children below 6 years of age to ride the vehicle.
- The use of spike stick or bit, harness or yoke with spikes, knobs or projections or any other sharp tackle or equipment is banned throughout the State of Haryana to avoid bruises, swelling, abrasions or severe pain to the animal.
- The animals shall be transported on foot only when the temperature is between 12°C to 30°C. The animals should be provided water every two hours and food in every four hours. The animals should not be made to walk more than 2 hours at a stretch.
- No new born animal of which the navel has not completely healed, diseased, blind, emaciated, lame, fatigued, or having given birth during the preceding seventy-two hours or likely to give birth during transport are ordered not to be transported on foot. There should be watering arrangements enroute during transport of such animals on foot. There should be sufficient feed and fodder arrangements during transportation of animals.
- The animals while transported shall not be tied by its nose, or legs or any other part of the body except by its neck. The animals, if at all, are to be tied during transportation shall be tied with rope covered with suitable cushioning.
- Since the carts driven by animals have no mechanical devices, they should be given the "Right of Way". All the Police Officers throughout the State of Haryana are directed to ensure compliance of this direction to avoid inconvenience to the animals.

Moving from the anthropocentric (human centric) approach to eco-centric approach, the court observed that it will be difficult to see animals' intrinsic worth and dignity until we confer upon them some rights. Quoting Stone the bench stated,

"The paradox is that we may be loathe to extend legal personality to animals because we find it difficult to value animals for what they are - but we may continue to have difficulty seeing animals' intrinsic worth and dignity "until we can bring ourselves to give them 'rights. As Stone observes, extending rights to new entities always appears "unthinkable" until the change is

actually effected, as we tend to suppose “the rightlessness of rightless ‘things’ to be a decree of Nature, not a legal convention acting in support of some status quo.”⁸

The shelter of the legal umbrella provided to animals would certainly assist in more effective protection of their interests than is available under current animal welfare law. As legal persons, now animals would be recognised as parties to legal actions, because they would have the independent standing which at present does not exist. Human legal persons in such cases would act as their representatives to interact with the courts and the legal system on their behalf as an “administrator” of those rights (like in the case of infants). In practical terms, a human legal person of full capacity, concerned with the wellbeing of the animal and willing to represent the animal on a legal level, could be appointed by the court as the guardian and legal representative of that animal. Appropriate guardians might include animal welfare bodies, like the RSPCA, or individuals with a particular interest in, or familiarity with, the animal concerned. The guardian could represent the interests of an individual animal or a group of animals. The advantage of this approach is that it would require a court to take the animals’ interests directly into account as parties to the legal action, rather than as the object of rights.

The Hon’ble court has however made it very clear that such approach is not to convey the idea that the animals’ interests must prevail over those of other legal persons. Rather, this approach would require the court explicitly to acknowledge the animals’ interests, as it must acknowledge those of other legal person’s party to the proceedings, and weigh their interest against those of the other parties. The Hon’ble court affirmed that the applied approach of conferring legal personality is a creation of the law, therefore, it can be extended to animals, or to other objects or beings, if the law so chooses. The inclusion of animals in the community of legal persons will dignify them by forcing humans to see and value animals for themselves, rather than seeing them simply as the object of property rights, or as something for humans to ‘use and abuse’.

However, ultimately, the question of whether legal personality will be bestowed on animals depends on whether human beings are prepared to acknowledge that animals need and deserve full legal protection for their rights and interests. The multiplicity of animal beings with whom we share our world deserve to be treated not as means to human ends, but as ends in themselves. Having arrogated to ourselves complete power over our animal kin, their liberation rests in our hands.

Thus, at present when we emphasize upon victimology and compensatory jurisprudence bestowing restricted personhood status to animals in legal sense, similar to that which we have given to some non-living will definitely strengthen the conservation programs related to the animals. Since fauna is a part of the nation, thus, the government can act as the guardian of the animals and in the cases where these animals are victimized by humans the court can award compensation to them to be collected by the said government. A separate corpus can be established where such fund is maintained and the money collected in the form of compensation can be further utilized by the government to meet the expenditure for animal protection and conservation programs

As rightly said by Peter Singer,

“...All the arguments to prove man's superiority cannot shatter this hard fact: in suffering the animals are our equals...”⁹

Therefore, by conferring such restricted personality upon animals we will not only benefit them but also to ourselves indirectly.

Dr. Kusum Pal,
Research Officer, CJA

⁸ The Hon’ble Court here in refers to Prof. Christopher D. Stone, “Should Tree Have Standing?- Towards Legal Rights for Natural Objects”, Southern California Law Review 45(1972); 450-501

⁹ For details see, http://www.brainyquote.com/quotes/authors/p/peter_singer.html

LATEST CASES : CIVIL

“The law is not a respecter of social, economic or political status and every litigant who seeks access to justice has to be treated evenly.”

Dr D.Y. Chandrachud, J. in Romila Thapar vs. Union of India, (2018) 10 SCC 753

Pam Developments Private Ltd. vs. State of West Bengal : 2019 SCC OnLine SC 852 : No exceptional treatment to be given to the government while considering the application for stay of arbitral award – Held – The Supreme Court has observed there is no exceptional treatment to be given to the Government while considering the application for stay under Section 36 filed by the Government in proceedings under Section 34 of the Arbitration and Conciliation Act. The issue in this case was whether the provision of Order XXVII Rule 8A CPC would be applicable and should the Court consider the same while deciding the application for stay of the award under Section 36 of the Arbitration Act, Another issue is whether, even if the provision of Order XXVII Rule 8A are to be taken into account, then too, can the Courts pass an order of unconditional stay of award. Upon this the Court observed that, *“Order XXVII Rule 8A was incorporated in the year 1937 during the British Raj, giving certain safeguards to the Government (which was then the British Crown) would not be applicable in today's time, when we have a democratic Government.”*

Shri Badru (since deceased) Through L.R. Hari Ram etc. vs. NTPC Limited (formerly National Thermal Power Corporation Limited) & Ors. : 2019 SCC OnLine SC 859 – Cross objection should be disposed on merits notwithstanding dismissal of appeal – Held – The Supreme Court observed that cross objection has to be disposed of on its merits by assigning reasons notwithstanding the dismissal of the appeal. While considering the appeal filed by land owners, the Apex Court bench noted that the High Court had dismissed the cross objection without assigning any reason. The bench observed that it was obligatory on the part of the High Court to have independently examined the issues raised by the landowners before the High Court in the cross objection with a view to find out as to whether any case was made out on facts by the landowners for further enhancement in the compensation and, if so, to what extent.

Dr. S. Kumar & Ors. vs. S. Ramalingam : 2019 SCC OnLine SC 861 : Right to use passage granted in the sale deed will not extinguish in terms of Section 41 Indian Easements Act – Held – The Supreme Court

has held that right to use passage granted in the sale deed will not extinguish in terms of Section 41 of the Indian Easements Act, 1882. In this case, the contention put forth on behalf of the plaintiff, was that the easement rights were not granted specifically to the defendant as the recitals in the sale deed are generic in nature usually put by the deed writers so as to confer complete title over the land sold to the defendants but that will not include the grant of any easement rights to the defendants. Rejecting this contention, the bench observed that grant of easement right of passage granted in the sale deed to the defendant will not be negated only because the recital is generic in nature and usually put by the deed writers. Perusing the deed, the bench observed that there is a specific mention of easement rights reserved for defendant in the sale deed.

Amit Kumar Roy vs. Union of India : 2019 SCC OnLine SC 823 : A person enrolled in Air Force can't depart from service at his or her will during the term of engagement – Held – A person who has been enrolled as a member of the Air Force does not have an unqualified right to depart from service at his or her will during the term of engagement.

Arshnoor Singh vs. Harpal Kaur & Ors. : 2019 SCC OnLine SC 801 : Mitakshara Law – Property inherited by a male will remain as coparcenary property for descendants upto three degrees below him – Held – The Supreme Court has held that the rule under Mitakshara law that whenever a male ancestor inherits any property from any of his paternal ancestors upto three degrees above him, then his male legal heirs upto three degrees below him would get an equal right as coparceners in that property will apply in cases of succession which opened before Hindu Succession Act 1956. It is observed, “If succession opened under the old Hindu law, i.e. prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by Mitakshara law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands vis-à-vis his male descendants upto three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956”.

Sudin Dilip Talaulikar vs. Polycap Wires Pvt. Ltd : 2019 SCC OnLine SC 857 : 'Conditional' leave to defend may be granted in case of doubt regarding the genuineness of defence in summary suits – Held – On the question relating to the power of the court to grant leave to defend in case of sham or moonshine defence in a commercial dispute, the bench said that *“if the court is satisfied of a plausible or probable defence and which defence is not considered a sham or moonshine, but yet leaving certain doubts in the mind of the court, it may grant conditional leave to defend.”* The Court also explained that *in a summary suit, if the defendant discloses such facts of a prima facie fair and reasonable defence, the court may grant unconditional leave to defend.* The court further added that *the ultimate object of a summary suit is expeditious disposal of a commercial dispute.* The discretion vested in the court therefore requires it to maintain the delicate balance between the respective rights and contentions by not passing an order which may ultimately end up impeding the speedy resolution of the dispute.

Sopan vs. Syed Nabi : 2019 SCC OnLine SC 862 : Sale with a mere condition of retransfer is not a mortgage – Held – The Supreme Court reiterated that a sale with a mere condition of retransfer is not a mortgage. The bench referring to proviso to Section 58(c) of the Transfer of Property Act observed that, if the sale and agreement to repurchase are embodied in separate documents then the transactions cannot be a mortgage by conditional sale irrespective of whether the documents are contemporaneously executed.

Chief Regional Manager, United India Insurance Company Limited vs. Siraj Uddin Khan : 2019 SCC Online SC 846 : Principle of 'No Work No Pay' applies when employee was not kept away from work by any order of employer – Held – The Supreme Court has observed that the principle of 'No Work No Pay' can be applied when the employee was not kept away from work by any order of the employer. The bench reiterated the settled principle that nobody could be directed to claim wages for the period that he remained absent without leave or without justification.

Pharez John Abraham (Dead) vs. Arul Jothi Sivasubramaniam K. : 2019 SCC OnLine SC 819 : No prohibition against adoption in

Christian Law even if couple have natural born child – Held – The Supreme Court held that there is no prohibition against adoption in the Christian law. Unlike in the Hindu Law, there is no law prohibiting the Christian couple to adopt male or female child, although they may have natural born male or female child, the bench observed.

R. Lakshmikantham vs. Devaraji : Law Finder Doc Id # 1540938 : Delay to file suit for specific performance not a ground to deny relief if it was filed within limitation period – Held – The Supreme Court has observed that the delay in filing suit for specific performance cannot be a ground to deny relief to the plaintiff, as long as it is filed within the period of limitation. The court observed, “The rule of equity that exists in England, does not apply, and so long as a Suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff.”

Ganesan (D) through LRs vs. Kalanjiam and Ors. : Civil Appeal No. 5901-02 of 2009 (SC) : Not always necessary that attesting witnesses should actually see the testator signing the will – Held – The Supreme Court observed that it is not always mandatory that the testator must necessarily sign the Will in presence of the attesting witnesses only or that the two attesting witnesses must put their signatures on the will simultaneously at the same time in presence of each other and the testator. The Bench passed an order affirming a High Court judgment in which it interpreted Section 63 (c) of the Indian Succession Act, 1925 and observed, “Where a testator asks a person to attest his Will, it is a reasonable inference that he was admitting that the Will had been executed by him”.

M/s Treaty Construction vs. M/s Ruby Tower Co-Operative Housing Society Ltd. : 2019 SCC OnLine SC 884 : Objection regarding pecuniary jurisdiction of Consumer Forums should be raised at the earliest opportunity – Held – The Supreme Court observed that objection regarding pecuniary jurisdiction should be raised before the Consumer Forum / Commission at the earliest opportunity. The Court held that when the State Commission having already decided the matter on merits, such a technical objection as regards pecuniary jurisdiction could not have been countenanced before the National Commission.

LATEST CASES : CRIMINAL

“The right of victims, and indeed victimology, is an evolving jurisprudence and it is more than appropriate to move forward in a positive direction, rather than stand still or worse, take a step backward. A voice has been given to victims of crime by Parliament and the judiciary and that voice needs to be heard, and if not already heard, it needs to be raised to a higher decibel so that it is clearly heard.”

Wasim vs. State NCT of Delhi : 2019 SCC OnLine SC 874 : Section 498A – When conviction by trial court was not for dowry demand, HC can't convict accused for it without appreciating evidence on record –

Held – The Supreme Court has observed that, when the Trial Court conviction under section 498A of the Indian Penal Code was not for demand for dowry, the High Court could not convict the accused under the same for demand of dowry without a detailed discussion of the evidence on record. In this case, accused Wasim was convicted by the Trial Court under Section 306 and 498A of IPC. Conviction under Section 498A was not for demand of dowry, but on account of finding that the accused caused mental cruelty by having an extra marital relation and the threats held out by him to the deceased that he would leave her and marry the other woman. The High Court acquitted the accused under Section 306 IPC by reaching a conclusion on the basis of evidence that the charge of abetment of suicide was not proved. However, it convicted him under Section 498A finding that though there was no demand of dowry soon before the death, the prosecution proved dowry demand immediately after the marriage. Upon this the Hon'ble court observed, “The High Court ought not to have convicted the Appellant under Section 498A for demand of dowry without a detailed discussion of the evidence on record, especially when the Trial Court found that there is no material on record to show that there was any demand of dowry.”

Sanjay Rajak vs. The State of Bihar : 2019 SCC OnLine SC 895 : Failure to recover dead body of victim does not entitle accused to acquittal on benefit of doubt – **Held** – The Court held that the said ground alone will not entitle an accused to acquittal. Also, it is only one of the relevant factors to be considered along with all other attendant facts and circumstances to arrive at a finding based on reasonability and probability based on normal human prudence and behavior. In the facts and circumstances of the present case, the failure of the police to recover the dead body is not much of consequence in the absence of any explanation by the appellant both with regard to the victim last being seen with him coupled with

Madan B. Lokur, J. in Mallikarjun Kodagali vs. State of Karnataka, (2019) 2 SCC 752

the recovery from his house of the belongings of the deceased.

Naval Kishore Mishra vs. State of U.P. & Ors.: Law Finder Doc Id # 1532059 : 2019 (3) RCR (Criminal) 679 : Criminal Appeal No.979 of 2019 (Special Leave Petition (Crl.) No.1642 of 2018) : Victim has right to appeal under Proviso to Section 372 Cr.P.C. against acquittal of accused – **Held** – The Supreme Court has reaffirmed that a victim of a crime has the right to appeal under the Proviso to Section 372 of Code of Criminal Procedure (Cr.P.C) against the acquittal of the accused. Such an appeal has to be treated like a regular appeal and no leave has to be sought in such a situation.

Satvinder Singh @ Satvinder Singh Saluja & Ors. vs. The State of Bihar : Law Finder Doc Id # 1521315 : 2019 (8) SCALE 619 : 2019 AIR (SC) 3274 : Consuming liquor in a private vehicle in a place accessible to public is punishable under Bihar Excise Act – **Held** – The Supreme Court held that a private vehicle is not exempted from the definition of 'public place' under the Bihar Excise (Amendment) Act 2016. As per Section 2(17A) of the Bihar Excise (Amendment) Act "Public Place" means "any place to which public have access, whether as a matter of right or not and includes all places visited by general public and also includes any open space". According to the Court, the key word in the definition was "access". Any place to which public have access, whether as a matter of right or not, is a public place.

Pradeep Ram vs. The State of Jharkhand & Anr. : 2019 SCC OnLine SC 825 : An accused on bail cannot be arrested on addition of new offences without order of the court which granted bail – **Held** – The Supreme Court held that , in a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences needs to obtain an order to arrest the accused from the Court which had granted the bail.

Girish Singh vs. The State of Uttarakhand: Law Finder Doc Id # 1543389 : Criminal Appeal No. 1475 of 2009 : Cruelty not related to dowry cannot be basis for conviction under section 304-B I.P.C – **Held** – The Supreme Court observed that, conviction under

Section 304B of the Indian Penal Code can be made only if the woman was subjected to cruelty or harassment by her husband or his relatives which must be for or in connection with any demand for dowry, soon before her death. It is not any cruelty that becomes the subject matter of the provision but it is the cruelty or harassment for or in connection with, demand for dowry.

Manjit Singh vs. The State of Punjab & Anr. : Law Finder Doc Id # 1543622 : Criminal Appeal No. 1090 of 2019 (arising out of SLP (Cri.) No.8293 of 2018) : Cannot record compromise between parties in non-compoundable offences; but it's a factor for considering quantum of sentence – Held –

The Supreme Court has observed that no permission can be granted to record the compromise between the parties in non-compoundable offences. The court, however, noted that, while sentencing the accused for a non-compoundable offence, the compromise entered into between the parties is indeed a relevant circumstance which the Court may keep in mind for considering the quantum of sentence.

Sri A.M.C.S. Swamy, ADE/DPE/Hyd (Central) vs. Mehdi Agah Karbalai & Anr.: Law Finder Doc Id # 1543352 : Criminal Appeal No.1102 of 2019 (Arising out of S.L.P.(Cri.) No.2073 of 2019) : Special Court can take cognizance of an offence without committal if the special act empowers it to do so – Held – When there is express provision in the Special Act empowering the Special Court to take cognizance of an offence without the accused being committed, it cannot be said that taking cognizance of offence by Special Court is in violation of Section 193 of the Code of Criminal Procedure, 1973. As per Section 193 of the Code of Criminal Procedure, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate except as otherwise expressly provided by the Code of Criminal Procedure, 1973, or any other law for the time being in force.

Shiv Prakash Mishra vs. State of Uttar Pradesh and Another : 2019 SCC Online SC 898 : Standard of proof for summoning a person as an accused u/s 319 Cr.P.C higher than that for framing a charge – Held –

Reiterating that the power under Section 319 of the Code of Criminal Procedure should be exercised sparingly, the Supreme Court has observed that the standard of proof employed for summoning a person as an accused person under Section 319 Cr.P.C. is higher than the standard of proof employed for framing a charge against the accused person.

Vishnu Kumar Tiwari vs. State of Uttar Pradesh: 2019 SCC Online SC 877 : Magistrate could not be compelled to take cognizance by treating the protest petition as a complaint – Held – The SC observed that a protest petition can be treated as a complaint and the magistrate can deal with the same as required under Section 200 read with Section 202 of the Code of Criminal Procedure, if it fulfills the requirements of a complaint. It observed that when the Magistrate does not treat the protest petition as a complaint, the remedy of the complainant would be to file a fresh complaint.

Abhijeet Singh vs. State of Punjab : 2019 SCC OnLine P&H 1118 – Comprehensive directions for fair and expeditious trial, and witness protection issued by Court – Held –

Court issued the following mandatory directions to ensure fair and expeditious enquiry, investigation, trials and to prevent the witnesses from turning hostile:

1. All trial courts, of the State of Punjab, should examine eyewitnesses on a continuous basis and grant adjournments for next day only after recording cogent, convincing and special reasons.
2. State of Punjab was directed to make suitable amendments in IPC and the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C') to punish the persons inducing, threatening and pressurizing any witness to give a false statement, within three months.
3. State of Punjab was directed to provide reasonable traveling allowance to the witnesses. If the hearing got continued to next day, then boarding and lodging should also be provided by the State Government through the State Exchequer.
4. State of Punjab was also directed to ensure the material witnesses in 'heinous and sensitive matters' on a short term or long term basis to enable them to fearlessly testify before the Court and also protect their identity, change their identity and relocate the witnesses.
5. State of Punjab should install security devices in the witnesses' home, including security doors, CCTV cameras, alarms and fencing, etc.
6. Police should possess the emergency contact numbers of witnesses, close protection for the witnesses, regular patrolling around the witness's house, escort to the Court and from the Court to their home with provision of government vehicle or a State-funded conveyance on the date of hearing.
7. All the investigating officers in the State of Punjab must record statement under Section 161 Cr.P.C by audio, video and electronic means.

LATEST CASES : LABOUR LAW

“If the Court were not to stand by the principles which we have formulated, we may witness a soulful requiem to liberty.”

Dr. D.Y. Chandrachud, J. in *Romila Thapar vs. Union of India*, (2018) 10 SCC 753

Bharat Heavy Electricals Ltd. vs. Mahendra Prasad Jakhmola & Ors.: 2019 SCC OnLine SC 382 : What are the tests to find out whether contract labourers are direct employees? SC explains- Applying tests laid down by precedents for determining whether a contract labourer is a direct employee, the Supreme Court has set aside the award of a Labour Court which had directed reinstatement of retrenched workers. The bench was dealing with an appeal filed by Bharat Heavy Electronics Ltd, which contended that the workers were not its direct employees but were contract labourers, and hence were not "employees" within the meaning of the UP Industrial Disputes Act. To decide the appeal, the bench reiterated the test laid down by SC in *General Manager, (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lala and Another* (2011) 1 SCC 635 to find out whether the contract labourers are the direct employees of the principal employer are : (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee.

Chairman and Managing Director, The Fertilizers and Chemicals, Tranvancore Ltd. & Anr. vs. General Secretary FACT Employees Association & Ors. : 2019 SCC OnLine SC 521 : Res judicata principle also applicable to labour/industrial proceedings, reiterates SC – Held – The Supreme Court has reiterated that principle of Res Judicata defined in Section 11 of the Code of Civil Procedure also applies to the labour/industrial proceedings. In 2004, the Government of Kerala made the following reference to labour court: *Whether the action of the management of FACT, Ltd. Udyogamandal in having reduced the age of superannuation of pre 1978 workers from 60 years to 58 years is justifiable or not?* Answering the reference, the Labour Court held that this question was already dealt with in the earlier round of litigation by the High Court (which had dismissed the challenge against age reduction) and the Supreme Court and the same having attained finality consequent upon

the dismissal of the SLPs by the Supreme Court, and thus barred by the principle of res judicata.

M.L. Singla vs. Punjab National Bank and Anr.: 2018 SCC OnLine SC 1585 : Labour Court can examine charges on merits only if domestic enquiry is held illegal – Held – The Supreme Court, while upholding the dismissal of a bank employee who was found drunk during duty, has explained the procedure to be followed by the Labour Court while dealing while examining an industrial reference to it pertaining to the dismissal of an employee. The bench observed that the Labour Court, while answering an industrial reference, would get jurisdiction to examine the charges on the merits only after the domestic enquiry had been held illegal and after the employer had sought permission to adduce evidence on merits to prove the charges and on permission being granted he had led the evidence. The Court observed, “*It was obligatory upon the Labour Court to first frame the preliminary issue on the question of legality and validity of the domestic enquiry and confined its discussion only for examining the legality and propriety of the enquiry proceedings.*”

Haryana Suraj Malting Limited vs. Phool Chand : 2018 SCC OnLine SC 631: Labour Court is not functus officio for considering application to set aside ex parte award – Held – The Supreme Court has held that labour court / industrial tribunal is not *functus officio* after the award has become enforceable as far as setting aside an ex parte award is concerned. The main issue before the three-judge bench in this civil appeal was whether the industrial tribunal/labour court is *functus officio* after the award has become enforceable, and is thus, prevented from considering an application for setting aside an ex parte award. Referring to relevant statutes and case laws, the bench observed that in case a party is in a position to show sufficient cause for its absence before the labour court/ tribunal when it was set ex parte, the labour court/tribunal, in exercise of its ancillary or incidental powers, is competent to

entertain such an application and such a power cannot be circumscribed by limitation. It observed: *“It is a matter of natural justice that any party to the judicial proceedings should get an opportunity of being heard, and if such an opportunity has been denied for want of sufficient reason, the Labour Court/Tribunal which denied such an opportunity, being satisfied of the sufficient cause and within a reasonable time, should be in a position to set right its own procedure. Otherwise, as held in Grindlays, an award which may be a nullity will have to be technically enforced. It is difficult to comprehend such a situation under law.”*

Nagar Ayukt Nagar Nigam, Kanpur vs. Sri Mujib Ullah Khan : 2019 SCC OnLine SC 462: Payment of Gratuity Act applies to employees of the local bodies – Held – In the case where the employees of Municipal Corporation governed by the Uttar Pradesh Municipal Corporation Act, 1959 claimed gratuity under the Payment of Gratuity Act, 1972, the Supreme Court held that liberal payment of gratuity is in the interest of the employees, thus, the gratuity would be payable under the Payment of Gratuity Act. Court noticed that the Payment of Gratuity Act is applicable to :

- (1) every factory, mine, oilfield, plantation, port and railway company;
- (2) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, the said provision has two conditions, viz.
 - (i) a shop or establishments within the meaning of a State law and
 - (ii) in which ten or more persons are employed; and
- (3) the establishments or class of establishments which Central Government may notify.

Hindustan Sanitaryware and Industries Ltd. vs. State of Haryana : 2019 SCC OnLine SC 632 : Minimum Wages Act does not empower Govt. to alter the terms of contract – Held – Partly upholding the validity of Notification dated 27.06.2007 issued under

Section 5(2) of the Minimum Wages Act, 1948, the bench held that the prohibition of segregation of wages into components in the form of allowances in the Notification is impermissible. By way of Notification dated 27.06.2007 issued under Section 5(2) of the Minimum Wages Act, 1948, the Finance Commissioner and Principal Secretary to the Government of Haryana, Labour Department fixed/revised the minimum rates of wages in respect of different scheduled employments. The court observed, “There is no power vested in the Government by the Act to make alterations to the terms of a contract. The Act only confers jurisdiction in Government to fix/revise the minimum rate of wages notwithstanding the contract. Such categorization or classification by deeming workmen in one category to belong to another category is in direct contravention of the contract between the employer and the employee and is beyond the jurisdiction of the Government.”

JK Jute Mill Mazdoor Morcha vs. Juggilal Kamlapat Jute Mills : 2019 SCC OnLine SC 619 : Trade Union is an operational creditor under the Insolvency and Bankruptcy Code, 2016 – Held – Holding that the trade union represents its members who are workers, to whom dues may be owed by the employer, which are certainly debts owed for services rendered by each individual workman, who are collectively represented by the trade union, the bench said, “to state that for each workman there will be a separate cause of action, a separate claim, and a separate date of default would ignore the fact that a joint petition could be filed under Rule 6 read with Form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, with authority from several workmen to one of them to file such petition on behalf of all.” The Court was deciding the question whether a trade union could be said to be an operational creditor for the purpose of the Insolvency and Bankruptcy Code, 2016.

NOTIFICATION

The Motor Vehicles (Amendment) Bill 2019

The Motor Vehicles (Amendment) Bill, 2019 was introduced in Lok Sabha on July 15, 2019 by the Minister for Road Transport and Highways, Mr. Nitin Gadkari. The Bill seeks to amend the Motor Vehicles Act, 1988 to provide for road safety. The Act provides for grant of licenses and permits related to motor vehicles, standards for motor vehicles, and penalties for violation of these provisions.

- **Compensation for road accident victims:** The central government will develop a scheme for cashless treatment of road accident victims during golden hour. The Bill defines golden hour as the time period of up to one hour following a traumatic injury, during which the likelihood of preventing death through prompt medical care is the highest. The central government may also make a scheme for providing interim relief to claimants seeking compensation under third party insurance. The Bill increases the minimum compensation for hit and run cases as follows: (i) in case of death, from Rs.25,000 to two lakh rupees, and (ii) in case of grievous injury, from Rs.12,500 to Rs.50,000.
- **Compulsory insurance:** The Bill requires the central government to constitute a Motor Vehicle Accident Fund, to provide compulsory insurance cover to all road users in India. It will be utilised for: (i) treatment of persons injured in road accidents as per the golden hour scheme, (ii) compensation to representatives of a person who died in a hit and run accident, (iii) compensation to a person grievously hurt in a hit and run accident, and (iv) compensation to any other persons as prescribed by the central government. This Fund will be credited through: (i) payment of a nature notified by the central government, (ii) a grant or loan made by the central government, (iii) balance of the Solatium Fund (existing fund under the Act to provide compensation for hit and run accidents), or (iv) any other source as prescribed the central government.
- **Good samaritans:** The Bill defines a good samaritan as a person who renders emergency medical or non-medical assistance to a victim at the scene of an accident. The assistance must have been (i) in good faith, (ii) voluntary, and (iii) without the expectation of any reward. Such a person will not be liable for any civil or criminal action for any injury to or death of an accident victim, caused due to their negligence in providing assistance to the victim.
- **Recall of vehicles:** The Bill allows the central government to order for recall of motor vehicles if a defect in the vehicle may cause damage to the environment, or the driver, or other road users. The manufacturer of the recalled vehicle will be required to: (i) reimburse the buyers for the full cost of the vehicle, or (ii) replace the defective vehicle with another vehicle with similar or better specifications.
- **National Transportation Policy:** The central government may develop a National Transportation Policy, in consultation with state governments. The Policy will: (i) establish a planning framework for road transport, (ii) develop a framework for grant of permits, and (iii) specify priorities for the transport system, among other things.
- **Road Safety Board:** The Bill provides for a National Road Safety Board, to be created by the central government through a notification. The Board will advise the central and state governments on all aspects of road safety and traffic management including: (i) standards of motor vehicles, (ii) registration and licensing of vehicles, (iii) standards for road safety, and (iv) promotion of new vehicle technology.
- **Offences and penalties:** The Bill increases penalties for several offences under the Act. For example, the maximum penalty for driving under the influence of alcohol or drugs has been increased from Rs 2,000 to Rs 10,000. If a vehicle manufacturer fails to comply with motor vehicle standards, the penalty will be a fine of up to Rs 100 crore, or imprisonment of up to one year, or both. If a contractor fails to comply with road design standards, the penalty will be a fine of up to one lakh rupees. The central government may increase fines mentioned under the Act every year by up to 10%.
- **Taxi aggregators:** The Bill defines aggregators as digital intermediaries or market places which can be used by passengers to connect with a driver for transportation purposes (taxi services). These aggregators will be issued licenses by state Further, they must comply with the Information Technology Act, 2000.¹⁰

¹⁰<https://www.livelaw.in/news-updates/lok-sabha-motor-vehicles-amendment-bill-146608>

EVENTS OF THE MONTH

1. **Ten Days Programme for Ninth Batch of 32 Public Prosecutors (30 from the State of Punjab and 2 from UT Chandigarh) commenced from July 03, 2019** at Chandigarh Judicial Academy. The training included four sessions of 1.15 hours per day. Total 39 sessions and the valedictory session were structured covering different aspects relevant for Public Prosecutors regarding Criminal and Civil Matters in order to enhance their capacity to perform their duties effectively and efficiently. The topics are : The Role of Prosecutor and the Constitution, Law on Bails – Regular and Anticipatory, General Aspect of Service Law, Protection against self Incrimination-Dimensions and Applicability, Sentencing Policy & Restitutive Justice – Legal and Procedural Aspects-I, Law of Admissions and Confessions, Interpretation of Revenue Records & their Applicability in Cases-I, SC-ST Act, Examination of witnesses –Principles and Procedures, Child in Conflict with Law – Legal Rights and Protection, Suits against and by the Government –Legal implications, Recent Changes in law-Substantive and Procedural, Law Relating to Under Trials, Parole, Furlough & Pre Mature Release of Prisoners, Cordiality amongst Prosecutors, Police, Judiciary & District Administration, Ballistics Examination and Fire Ammunition, Role of Post-mortem in Aid of Justice, Legal Facets of Human Trafficking, Law on Constructive & Joint Criminal Liability, DNA

Profiling & Evidence, Jurisprudence of Circumstantial Evidence, Law of Custody during Investigation and special legislations, Executions-Speedy & Expeditious Disposals, Medical Evidence-Legal Aspects, Access to Justice -Legal Aid Special Ref to Kasab Case, Process of Trial in Civil Cases-Best Practices & Law on Amendments of Pleadings, Prosecution Sanction for Public Servants, Delays in Criminal Trials-Causes & Remedial Measures, Awards under Arbitration & Reconciliation Act- Legal Issues, Important Aspects in Checking of Challans by the Prosecutor, Cyber Crime Parameters of Investigation- Challenge, Compensation under MACT Act, Electronic Evidence Admissibility & Appreciation, Sentencing Policy & Restitutive Justice- Legal and Procedural Aspects-II, Mens-Rea Presumptions under NDPS Act & its constitutionality, Interpretation of Revenue Records & their Applicability in Cases-II, Determination of Compensation under Land Acquisition Act, Salient Feature of POCSO, Miscellaneous Applications under Civil Procedure Code, Ramifications of Personal Search under NDPS Act. Dr. Gopal Arora, Faculty, CJA co-ordinated the programme. The different sessions were taken by : Dr. Balam K. Gupta, Director (Academics), CJA, Sh. Anil Malhotra, Advocate, P&H High Court, Dr. K.P. Singh, IPS, DG, State Vigilance Bureau, Haryana, Dr. J.S. Dalal, Prof. & Head, Forensic Medicine, CMC, Ludhiana,

Sh. V.K. Kapoor, IPS (Retd.) and Faculty from CJA, High Court & CFSL, Chandigarh.

2. **Refresher-cum-Orientation Course for ADJs of Punjab and Haryana was organized on July 13, 2019** at Chandigarh Judicial Academy. The ADJs were sensitized on the topics : Setting Aside Arbitral Awards u/s 34 of the Arbitration and Conciliation Act, 1996 – Powers of the Court, Court Management – Impact on Efficient and Speedy Disposal of Judicial Work, Interpreting Land Records – A Revisit I & II, Training on Practical Use of Computers in Courts. The first two sessions were taken by HMJ Kshetarpal, HMJ Arun Kumar Tyagi, Hon'ble Judges of Punjab and Haryana High Court respectively and the last two sessions by Mr. B.M. Lal, Faculty of CJA. The computer training session was taken by the Resource Person from Punjab and Haryana High Court. 57 Judicial Officers participated in the Refresher Course.

3. On July 15, 2019, **Training Judicial Officers, PCS (JB) undergoing One Year Induction Training at CJA came back after court attachment** to continue with their Institutional Training at CJA.

4. **Refresher-cum-Orientation Course for Civil Judges-cum-Judicial Magistrates of Punjab and Haryana** was organized on

July 27, 2019 at Chandigarh Judicial Academy. The Judicial Officers were sensitized on the topics : The Specific Relief Act, 1963 and (Amendment) Act, 2018, Court Management – Impact on Efficient and Speedy Disposal of Judicial Work, Bottlenecks in Proclamation Process under Section 82 & 83 of Cr.P.C., Evolution of Concept of Coparcenary under Hindu Law and its Present Status and Training on Practical Use of Computers in Courts. First two sessions were taken by HMJ Anil Kshetarpal & HMJ Arun Kumar Tyagi, Hon'ble Judges of Punjab and Haryana High Court. Other sessions were taken by In-Service Faculty of CJA and Resource Person from Punjab and Haryana High Court. 66 Judicial Officers participated in the Refresher Course.

5. **Mr. S.S. Upadhyay**, District & Sessions Judge (Retd.) from State of U.P. delivered lecture on July 30, 2019 on the topic **"Appreciation of Evidence in Civil Cases"** to the PCS (JB) Officers undergoing One Year Induction Training at CJA.

6. **Ten Days Programme for Tenth Batch of 32 Public Prosecutors (30 from the State of Punjab and 2 from UT Chandigarh)** commenced from July 31, 2019 at Chandigarh Judicial Academy. The programme would conclude on August 10, 2019.

FORTHCOMING EVENTS

1. **Refresher-cum-Orientation Course for Civil Judges from the States of Punjab and Haryana is scheduled on August 10th, 2019** at CJA.

2. **Sri Lankan Judges Training Programme is scheduled to be organized**

at CJA from August 14th to 18th, 2019 at CJA.

3. **Refresher-cum-Orientation Course through Video Conferencing on August 31st, 2019 for ADJs** from the States of Punjab and Haryana.