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FROM THE DESK OF CHIEF EDITOR

In the journey of Chandigarh Judicial Academy, **e-Newsletter** has completed three years. It has served the Judicial Fraternity within and beyond India. It would continue to do so. The e-Newsletter covers the latest Case Law in different domains particularly relevant for the District Judiciary. It also includes case comments and other write-ups. The latest Notifications are also included. The events taking place in the Academy are shared. The basic objective of the e-Newsletter is to enhance the capacity of the judicial fraternity to perform its judicial functions effectively and efficiently. Finding this experience of e-Newsletter meaningful, Chandigarh Judicial Academy has come up with e-Books venture for judicial fraternity.

Dr. Nandita Kaushik, Chief Judicial Magistrate-cum-Faculty Member has prepared the e-Book on : Protection of Women from Domestic Violence Act, 2005. This e-Book is with a difference. Therefore, I am happy to write **Introduction** to this book. This Introduction is the visiting card of the e-Book. The whole idea is to introduce the e-Book to the Judicial Fraternity.

The very title of the enactment is highly suggestive. It is to protect women from domestic violence. Normally, ‘violence’ of any kind would fall within the Criminal Law domain. A woman when subjected to cruelty by her husband or his relatives, it is an offence u/s 498-A of the IPC. This legislation is Civil Law remedy. So far, the Civil Law had not addressed itself to this situation.

The protection from domestic violence is a human right. It is a serious concern to protect women against violence particularly occurring within the family. The present legislation has been enacted keeping in view **Articles 14, 15 and 21 of the Indian Constitution**. Private Law domain is gradually taking the space of Public Law. This legislation is a remedy under the Civil Law. It is intended to protect women from domestic violence. It also envisages to prevent the occurrence of domestic violence. It is a welfare legislation. Whenever, a party resorts to the remedy under the Criminal Law, invariably it results in breaking-up the ‘relationship’. The civil remedy is by way of protection. Further, it is not intended to break-up the relationship. In fact, to maintain and continue with the relationship. The roughs and toughs of relationship journey need to be repaired. The dents are to be removed. The smoothness of the relationship is to be retained and maintained. In short, this legislation is in the nature of providing ‘Balm’. If this legislation is implemented in its true spirit, it can prove that peace and harmony could be achieved in domestic domains. This legislation has been enacted with a laudable object and purpose. It can, indeed, go a long way. Marriage is a life long relationship. Even other ‘relations’ are meant to be sustained. The effort of this legislation is to help in keeping the relationship intact. The relationship is not meant to be snapped. The focus of the legislation is : how women can be protected against domestic violence. Also, at the same time, to continue with the relationship. Equally, there is concern for the children.

The origin of this legislation lies in Article 15 (2) of the Constitution. It says : "**State can make special provisions for women and children**". In India, there is a special problem. Even when a legislation is enacted, normally, the legislation does not provide the **mechanism** to implement the legislation. The beauty of this legislation is, it provides the **mechanism**. The Office of 'Protection Officer' has been provided. It recognizes the role of 'Service Providers'. The affirmative duties have been imposed on the Government. It is required to provide legal aid, medical facilities and shelter homes. It is hoped that women in distress will be given all these facilities. The legislation is a '**Statement of Commitment' by the State that domestic violence will not be tolerated**.

The Act defines "Domestic Violence" for the first time in Indian Law. Section 2 deals with definitions. "Domestic Violence'" has been defined separately in Section 3. It is a comprehensive definition. It includes not only the physical violence. It also covers such as, emotional, verbal, sexual and economic abuses. The definition is based on definitions in International Law like the UN Declaration on Violence against Women and the Model Code. The Act recognizes 'domestic violence' as a human right violation. It recognizes a woman's right to live in violence-free-home. To realize this right, the Act recognizes a woman's right to residence. It also recognizes her right to obtain protection orders under the Law. The Act is meant to provide immediate relief in emergency situations. It needs to be made clear that the **Act does not make any changes in the existing Personal Law on family matters**. The different reliefs under the Act are in addition to the existing laws and have been recognized with the objective of empowering women to tie over an emergency situation. Even if the woman obtains relief under this law, she can still go for relief under other laws also. It supplements the existing law. It strengthens the Family Law. It is a welcome legislation.

The scheme of this e-Book is laudable. It begins with the Table of cases. It includes 103 cases covering brief statement, what was held either by the summit court or the High Court. It also indicates the page of the e-Book against each case where the case has been dealt with in a detailed form. Consequently, the user of the book can conveniently refer to the relevant case. The full judgment is always time consuming. Moreover, to cull out the ratio of the case, it would further take-time. The details given of each case are not in the form of Head Notes which normally different Reporters provide. This scheme is different. It would be highly useful from the point of view of a judge looking forward to a particular case. This scheme would be useful both from the point of view of the judge as also the lawyer. This book needs to be distinguished from the Digest of cases. Any Digest normally does not give you the clear picture about each case. The reference to this book would help the reader to put his finger on the specific case without the consumption of much time. Indeed, Dr. Kaushik has taken pains in executing this scheme from the point of view of the reader.

This work has been divided into 23 different chapters. Each chapter deals with a separate topic. The scheme with each chapter is also unique. It is helpful and useful from the point of view of the user. The landmark and the latest cases have been included. The observations have been culled out. Separate notes have been added. Dr. Kaushik has supplemented her commentary on the observations providing insight, why the same was held and what makes it different from other judgment/s.

There is not speck of doubt that the present work will be useful and resourceful to judges, advocates, academicians and students as well. I am happy to add that it would even be a good education to those who may be looking forward to resolve domestic violence issues within the family structure. This work is highly digestive. Hugely contributory.

Balram K. Gupta

For the e-Book, refer CJA website at http://cja.gov.in/E-Books.html

LATEST CASES : CIVIL

"Freedom is what freedom does and Justice fails when judges quail."
V.R. Krishna Iyer, J. in S. Mulgaokar, In Re., (1978) 3 SCC 339

Shiv Narayan (D) by LRs. vs. Maniklal (D) Thr. LRs. & Ors. : 2019 (1) RCR (Civil) 985 — **Held** — The apex court while interpreting the provisions of Section 16 & 17 of CPC observed as: (i) The word 'property' occurring in Section 17 although has been used in 'singular' but by virtue of Section 13 of the General Clauses Act it may also be read as 'plural', i.e., "properties". (ii) The expression any portion of the property can be read as portion of one or more properties situated in jurisdiction of different courts and can be also read as portion of several properties situated in jurisdiction of different courts. (iii) A suit in respect to immovable property or properties situate in jurisdiction of different courts may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated. (iv) A suit in respect to more than one property situated in jurisdiction of different courts can be instituted in a court within local limits of jurisdiction where one or more properties are situated provided suit is based on same cause of action with respect to the properties situated in jurisdiction of different courts.

State of Punjab and Ors. vs. Gurbaran Singh: AIR 2019 SC 1650 — **Held** — The Apex Court allowing the appeal of State held that as per Rules since the past service would stand forfeited on resignation, the same would be excluded from the period of qualifying service, and as such for deciding the question of entitlement to pension, the employee would not have the qualifying period of service.

Ram Lal and Ors. vs. Salig Ram and Ors.: AIR 2019 SC 729 — **Held** — It has been observed by the Apex Court that if the report of the Local Commissioner was suffering from an irregularity i.e., want of following the applicable instructions, the proper course for the Court was either to issue a fresh commission or to remand the matter for reconsideration but the entire suit could not have been dismissed for any irregularity on the part of Local Commissioner. Further, if the Local Commissioner's report was found wanting in compliance of applicable instructions for the purpose of demarcation, it was only a matter of irregularity and could have only resulted in discarding of such a report and requiring a fresh report but any such flaw, by itself, could have neither resulted in nullifying the order requiring appointment of Local Commissioner and for recording a finding after taking his report nor in dismissal of the suit.

Punjab State Power Corporation Limited vs. Rajesh Kumar Jindal and Ors. : (2019) 3 SCC 547 — The Supreme Court while dealing with the issue of pay parity and allowing the appeal observed : 1. Ordinarily, courts will not enter upon task of job evaluation which was generally left to expert bodies like Pay Commission etc. aggrieved employees claiming parity must establish they were unjustly treated by arbitrary action or discriminated. 2. Burden of proof in establishing parity in pay scales and nature of duties and responsibilities was on person claiming such right. Person claiming parity must produce material before court to prove that nature of duties and functions were similar and that, they were entitled to parity of pay scales. It was duty of an employee seeking parity of pay to prove and establish that he had been discriminated against. 3. It was duty of an employee seeking parity of scale of pay to prove that educational qualifications required for both posts, mode of recruitment and nature of work performed by them were one and same. There were neither pleadings nor any material produced by Respondents to prove that nature of work performed by Internal Auditors was similar with that of Head Clerks. 4.Equation of posts and revision of pay scale was within domain of Government. Matter should be left to discretion and expertise of Pay Committee and Government to take decision on scale of pay / revision of pay scale by considering nature of duties and responsibilities.

Goli Vijayalakshmi and Ors. vs. Yendru Sathiraju (Dead) by LRs. and Ors. : 2019 (7) SCALE 6 — **Held** — While dealing with the subject of impleading LRs the Supreme Court ruled that the primary role of the Court is to adjudicate the dispute between the parties and to advance substantial justice. As the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed within the strict parameters

of law. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is by operation of law but once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek for the setting aside of an abatement.

Hari Sankaran vs. Union of India & Others : 2019 SCC OnLine SC 760 : Observations made in order u/s 241/242 of Companies Act are relevant for passing order of reopening of accounts — **Held** — The contention put forth in this case was that there is a specific finding/observation by the Tribunal in the order under Section 130 of the Companies Act itself that the accounts were not prepared in a fraudulent manner, and thus it could not be said that condition precedents to pass an order of reopening of accounts are satisfied. The bench observed that such an order can be passed when it is found that (i) the relevant earlier accounts were prepared in a fraudulent manner; OR (ii) the affairs of the company were mismanaged during the relevant period casting a doubt on the reliability of the financial statements. Therefore, the court held that the observations made by the National Company Law Tribunal while passing order under Section 241/242 of the Companies Act can be said to be relevant observations for passing the order under Section 130 of the Companies Act.

Punjab State Power Corporation Limited and Ors. vs. Nirval Singh : 2019 SCC OnLine SC 757 — **Held** — Retreating earlier decision in State Bank of India and Anr. vs. Raj Kumar (2010) 11 SCC 661 where it was observed "It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general Rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The descendants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished / withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant", the apex court granted benefit of solatium instead of appointment as per policy.

Abdul Kuddus vs. Union of India: 2019 SCC OnLine SC 733 — **Second round of litigation doesn't lie before Foreigners Tribunal** — Deciding the conflict between sub-paragraph (2) to paragraph 3 and paragraph 8 of the Schedule to the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, the apex court, **Held**, "*Paragraph 8 does not envisage and provide for a second round of litigation before the same authority i.e. the Foreigners Tribunal constituted under the 1964 Order on and after preparation of the final list. Provisions of paragraph 8 of the Schedule to the 2003 Rules will apply when there has not been an earlier adjudication and decision by the Foreigners Tribunal.*"Paragraph 3 deals with the preparation of consolidated list of original inhabitants of Assam, their children and descendants if their citizenship is ascertained beyond reasonable doubt and to the satisfaction of the Registering Authority. Paragraph 8 provides for a right of appeal to the person who had filed objections and is not satisfied with the outcome of the decision under the final list published under paragraph 7. The Court also **held**, "*Any order passed in case of close family members, subsequent to adjudication order determining the citizenship status of a person, would necessarily be a material evidence which can be duly taken note of and considered while deciding a writ petition or a review application.*"

BK Pavitra vs. Union of India: 2019 SCC OnLine SC 694 — **Karnataka Reservation Act, 2018 constitutional; Benefit of consequential seniority to be accorded retrospectively** — **Held** — Upholding the validity of the Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act 2018, the bench held, "The Reservation Act 2018 is a valid exercise of the enabling power conferred by Article 16 (4A) of the Constitution."

LATEST CASES : CRIMINAL

"Fraud and Justice never dwell together. Fraud is anathema to all equitable principles."

S.B Sinha, J. in Ram Chandra Singh vs. Savitri Devi, (2003) 8 SCC 319

State of Madhya Pradesh vs. Kalicharan & Ors.: 2019 SCC OnLine SC 753 : Case of death by single blow on vital part of body may fall under section 302 IPC, Reiterates SC — **Held** — The bench was considering an appeal filed by the State of Madhya Pradesh against alteration of the conviction of an accused from Sections 302/149 to Section 304 Part II of the IPC by the High Court. The bench noted that the injury caused by the accused Ramavtar was on the vital part of the body i.e. head and proved to be fatal. The court further added that *"Merely because the accused Ramavtar caused the injury on the head by the blunt side of Farsa, the High Court is not justified in altering the conviction to Section 304 Part II of the IPC. As held by this Court in catena of decisions, even in a case of a single blow, but on the vital part of the body, the case may fall under Section 302 of the IPC and the accused can be held guilty for the offence under Section 302 of the IPC."*

Taking note of the fact that it was a free fight, the bench said that the accused should have been held guilty for the offence under Section 304 Part I of the IPC. It then set aside the High Court judgment and altered the conviction from Section 302 of the IPC to Section 304 Part I of the IPC and is sentenced to undergo eight years R.I. with a fine of Rs.5000.

PuttuRajan vs. State of Tamil Nadu: (2019) 4 SCC 771 : Circumstantial Evidence — **Held** — while deciding matters resting on circumstantial evidence the court should always trend cautiously so as to not allow conjectures or suspicion, however strong, to take the place of proof. If the alleged circumstances are conclusively proved before the court by leading cogent and reliable evidence, the court need not look any further before affirming the guilt of the accused. Moreover, the human agency may be faulty in expressing the picturisation of actual incident, but circumstances cannot fail or be ignored.

Sunil Kumar Gupta vs. State of U.P. : (2019) 4 SCC 556 : Dying Declaration — **Held** — Section 319(1) of Cr.P.C empowered Court to proceed against any person not shown as an Accused if it appeared from evidence that such person had committed any offence for which such person could be tried together along with Accused. It was fairly well settled that, before Court exercised its jurisdiction in terms of Section 319 of Cr.P.C, it must arrive at satisfaction that, evidence adduced by prosecution, if unrebutted, would lead to conviction of persons sought to be added as Accused in case. **Further Held** — Under Section 319 of Cr.P.C, a person could be added as an Accused invoking provisions not only for same offence for which Accused was tried but for "any offence"; but that offence shall be such that in respect of which all Accused could be tried together. As held in Constitution Bench judgment in Hardeep Singh, for summoning an Accused under Section 319 of Cr.P.C, it

required much stronger evidence than mere probability of his complicity which was lacking in present case.

Digamber Vaishnav and Ors. vs. State of Chhattisgarh: (2019) 4 SCC 522 : Scope of Section 27 Evidence Act,1872 — **Held** — Under Section 27 of the Indian Evidence Act, it is not the discovery of every fact that is admissible but the discovery of relevant fact is alone admissible. Relevancy is nothing but the connection or the link between the facts discovered with the crime.

Khushwinder Singh vs. State of Punjab : (2019) 4 SCC 415: Sec. 302 I.P.C — Death Penalty — **Held** — Accused killed six innocent persons, out of which two were minors below 10 years of age. All the family members were done to death in a diabolical and dastardly manner. The convict meticulously planned the time. He first kidnapped three persons by way of deception and took them to the canal and after drugging them with sleeping tablets, pushed them in the canal at a mid—night to ensure that the crime is not detected. Therefore, considering the law laid down by this Court in the case of *Mukesh v. State (NCT of Delhi) (2017) 6 SCC 1*, the case would fall in the category of the "rarest of rare case" warranting death sentence / capital punishment. The aggravating circumstances are in favour of the prosecution and against the Accused. Therefore, striking a balance between the aggravating and mitigating circumstances, the court is of the opinion that the aggravating circumstance would tilt the balance in favour of the capital punishment. The crime is committed with extremist brutality and the collective conscious of the society would be shocked. Therefore, capital punishment/death sentence imposed by lower courts is affirmed.

Himanshu vs. B. Shivamurthy and Ors.: (2019) 3 SCC 797: Whether an authorized signatory of a company would be liable for prosecution under Section 138 of Act, 1881 without company being arraigned as an Accused — **Held** — In order to make out offence under Section 138 necessary conditions to be fulfilled are(i) presentation of cheque to bank within six months from date on which it is drawn or within period of its validity, whichever is earlier; (ii) demand being made in writing by payee or holder of cheque within 30 days of receipt of information from bank of return of cheques; and (iii) failure of drawer to make payment of amount of money to payee or holder in due course within fifteen days of receipt of notice. Only upon compliance with these conditions, offence under Section 138 can be said to have been committed by person issuing cheque. Further, it was held that commissioning of offence by company is express condition precedent to attract vicarious liability of others.

M.D. Dhanapal vs. State Rep. by The Inspector of Police: 2019 SCC Online SC 767 Bail cannot be made conditional upon heavy deposits beyond the financial capacity of applicant — **Held** — Holding that bail cannot be made conditional upon heavy deposit beyond the financial capacity of the applicant, the Supreme Court stated that *"If the petitioner lacks funds, undertaking ought not to have been given. Be that as it may, it is well settled that bail cannot be made conditional upon heavy deposits beyond the financial capacity of an applicant for bail*".

LATEST CASES : FAMILY LAW

"Hindu Law being one of the oldest known systems of jurisprudence has shown no signs of decrepitude and it has its values and importance even today."

Umesh C. Bannerjee, J. in Githa Hariharan vs. Reserve Bank of India, (1999) 2 SCC 228

Rupali Devi vs. State of Uttar Pradesh : 2019 SCC OnLine SC 493 — **Woman driven out of matrimonial home can file case under** Section 498-A from the place she has taken shelter at — **Held** — *"the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498-A of the Indian Penal Code."*

Ajit Kaur vs. Darshan Singh : 2019 SCC OnLine SC 470 — **Widow can't claim ownership over a mutated property under Section 14 of Hindu Succession Act** — **Held** — In a case where a widow claimed possession of a property mutated in her name on the basis of the oral gift from her husband before the enforcement of the Hindu Succession Act, 1956, the bench said, "*Section 14(1) of the Act, 1956 clearly envisage that the possession of the widow, however, must be under some vestige of a claim, right or title or under any of the devise which has been purported under the law.*" The Court also explained the concept of mutation and stated that "*the mutation of a property in the revenue records are fiscal proceedings and does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation has been ordered, to pay the land revenue. At the same time, the effect of a declaratory decree to restore the property alienated to the estate of the alienor and until and unless the alienees are able to convince the court that they have no subsisting interest in the property, the heirs of the alienees would be entitled to the benefits of the property as per the law of succession.*" The Court, hence, held that the widow although was holding possession but not under any of the devise referred to under explanation to Section 14(1) of the Act, 1956 and mere possession would not confer preexisting right of possession over the subject property to claim full ownership rights after the Act, 1956 came into force by operation of law.

Perry Kansagra vs. Smriti Madan Kansagra: 2019 SCC OnLine SC 211 — **Principle of confidentiality in mediation does not apply to matters of child custody** — **Held** — In the issue relating to custody of a child where the question is as to whether the Counsellor's report furnished in the course of mediation proceedings or the Mediator's report in case of mediation, when the process fails, can be used by either of the parties during trial. The court held that "*Complete adherence to confidentiality would absolutely be correct in normal matters where the role of the court is purely of an adjudicator. But such an approach may not essentially be conducive when the court is called upon and expected to discharge its role in the capacity as parens patriae and is concerned with the welfare of a child.*"

Lahari Sakhamuri vs. Sobhan Kodali: 2019 (5) SCALE 97 — **Custody of children** — **Held** — while deciding the case relating to custody, *"best interest of child"* which was always kept to be of paramount consideration was indeed wide in its connotation and it could not remain love and care of primary care giver, i.e., mother in case of infant or child who was only a few years old. Definition of "best interest of the child" was envisaged in Section 2(9) of Juvenile Justice (Care & Protection) Act, 2015, as to mean "basis for any decision taken regarding child, to ensure fulfilment of his basic rights and needs, identify, social well-being and physical, emotional and

intellectual development". **Further Held** — Crucial factors which had to be kept in mind by Courts for gauging welfare of children equally for parent's could be delineated, such as (1) maturity and judgment; (2) mental stability; (3) ability to provide access to schools; (4) moral character; (5) ability to provide continuing involvement in the community; (6) financial sufficiency and last but not least factors involving relationship with child, as opposed to characteristics of parent as an individual.

S. Subramanian vs. S. Ramasamy and Ors.: 2019 (7) SCALE 254 — **Under Section 100 of the CPC, the Second Appeal would be maintainable only on substantial question of law. The Second Appeal does not lie on question of facts or of law. The existence of a substantial question of law is a sine qua non for the exercise of the jurisdiction under Section 100 of the CPC** — **Held** — Original Defendant preferred the present appeals against impugned common judgment passed by High Court allowing Second Appeals and quashing judgment passed by Courts below which held that, suit properties were not ancestral properties of Sengoda Gounder but were self-acquired properties. On the question that came before the Hon'ble Court that "whether procedure adopted by High Court while deciding Second Appeals was beyond scope and ambit of exercise of its powers under Section 100 of CPC?" It observed, "As per catena of decisions of this Court and even as provided under Section 100 of the CPC, the Second Appeal would be maintainable only on substantial question of law. The Second Appeal does not lie on question of facts or of law. The existence of 'a substantial question of law' is a sine qua non for the exercise of the jurisdiction under Section 100 of the CPC. As observed and held by this Court in the case of Kondiba Dagadu Kadam, in a second appeal under Section 100 of the CPC, the High Court cannot substitute its own opinion for that of the First Appellate Court, unless it finds that the conclusions drawn by the lower Court were erroneous being: (i) Contrary to the mandatory provisions of the applicable law; or (ii) Contrary to the law as pronounced by the Apex Court; or (iii) Based on in-admissible evidence or no evidence. It is further observed by this Court in the aforesaid decision that if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. It is further observed that the Trial Court could have decided differently is not a question of law justifying interference in Second Appeal.

Sourav Sharma vs. Neetu Sharma: 2019 SCC OnLine Del 8480 — **Appeal against order granting maintenance to wife cannot be dismissed solely for husband's failure to deposit arrears of maintenance** — **Held** — the court held that *"appeal or revision cannot be dismissed solely on the ground of failure to pre-deposit the maintenance amount and the same would have been decided on merits."* Therefore, the impugned order was set aside and the appeal was restored to its original number.

Lopamudra Bhuyan vs. Surajit Singh: 2019 SCC OnLine Del 8267 — **Expenses of the child cannot be equally divided between parents; amount payable by husband under S. 125 Cr.P.C towards maintenance of child increased** — **Held** — In regard to the maintenance of the child, it was held that the trial court's approach of holding both parents equally liable to pay towards the maintenance of the child was not right. It was observed that *"It would be incorrect to hold that both the parents are equally responsible for the expenses of the child. A mother who has custody of a child not only spends money on the upbringing of the child but also spent substantial time and effort in bringing up the child. No doubt, mother, if she is earning, should also contribute towards the expenses of the child but the expenses cannot be divided equally between the two."*

NOTIFICATION

1. **Foreigners (Tribunals) Amendment Order, 2019 :** The Foreigners (Tribunals) Order, 1964 was issued by the Central Government under Section 3 of The Foreigners Act, 1946. It is applicable to the whole country. Major amendments in the Foreigners (Tribunals) Order, 1964 were undertaken in 2013. The last amendment was issued in May, 2019. All these orders are applicable to the whole country and are not specific to any state. Therefore, there is nothing new in this regard in the latest amendment of May 2019.

The May 2019 amendment only lays down the modalities for the Tribunals to decide on appeals made by persons not satisfied with the outcome of claims and objections filed against the NRC. Since NRC work is going on only in Assam, therefore, the aforementioned Order, issued on 30-05-2019 is applicable only to Assam as on date for all practical purposes. This Amendment Order also provides for reference by District Magistrate to the Tribunal for its opinion as to whether the Appellant is a "foreigner" or not within the meaning of the Foreigners Act, 1946.

G.S.R. 409(E).—In exercise of the powers conferred by Section 3 of the Foreigners Act, 1946 (31 of 1946), the Central Government hereby makes the following order further to amend the Foreigners (Tribunals) Order, 1964, namely:-

1. (1) This order may be called the **Foreigners (Tribunals) Amendment Order, 2019**.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In the Foreigners (Tribunals) Order, 1964,

(A) in paragraph 2,

(a) in sub-para 1, for the words "the Central Government may,", the words "the Central Government or the State Government or the Union territory administration or the District Collector or the District Magistrate may," shall be substituted;

(b) in sub-para (1A), for the words, figures and letters "Rule 16F of the Citizenship Rules, 1956", the words and figures "Rule 19 of the Citizenship Rules, 2009" shall be substituted;

(c) after sub-para (1A), the following sub-para shall be inserted, namely: "(1B) Any person referred to in paragraph 8 of the Schedule to the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 may prefer an appeal, on the terms and conditions specified therein, before the designated Tribunal constituted under this Order." (B) Paragraph 3A shall be renumbered as Paragraph 3C and before the Paragraph 3C as so renumbered, the following Paragraphs shall be inserted, namely:

"3A. **Procedure for disposal of appeal referred to in sub-para (1B) of paragraph 2.**

(1) While preferring an appeal, the applicant shall provide a certified copy of the rejection order received from the National Register of Indian Citizens hereinafter referred to as NRC authorities along with the grounds for appeal.

(2) The Appellant may appear either in person or through a legal practitioner or a relation authorised by the Appellant in writing subject to the acceptance of such representation by the Tribunal.

(3) The State Government may appoint a pleader to represent the District Magistrate.

(4) The Tribunal shall issue a notice to the District Magistrate to produce NRC Records within thirty days from date of receipt of the notice and a copy of the said notice shall also be sent to the pleader appearing for the Government and to the Appellant.

(5) The District Magistrate shall provide the NRC records in original including the Application Form

and documents submitted by the Appellant and orders passed by the NRC authorities to the pleader appearing for the Government against the claims or objections filed by the Appellant.

(6) The District Magistrate may also refer to the Tribunal for its opinion the question as to whether the Appellant is a foreigner or not within the meaning of the Foreigners Act, 1946 (31of 1946), in terms of sub-para (1) of paragraph 2. In case of such reference to the Tribunal, it shall be deemed as a reference to the Tribunal in terms of sub-para (1) of paragraph 2, the Tribunal shall examine the said reference along with the Appeal.

(7) Persons against whom a reference has already been made by the competent authority to any Foreigners Tribunal shall not be eligible to file the appeal before the Tribunal.

(8) If any Foreigners Tribunal has already given an opinion about a person earlier as a foreigner, such person shall not be eligible to file an appeal to any Tribunal.

(9) On behalf of the District Magistrate, the pleader shall produce the NRC records before the Tribunal and also the reference mentioned in sub-para (6).

(10) Upon production of the records, if the Tribunal finds merit in the Appeal, it shall issue a notice to the Appellant and the District Magistrate for hearing specifying the date of hearing and such date shall be within thirty days from the date of production of the records.

(11) The District Magistrate may depute an officer as authorised representative to act on his behalf in any proceeding before the Tribunal.

(12) During the hearing, the Tribunal shall give the Appellant, the pleader appearing for the Government and the authorised representative of the District Magistrate, if any, a reasonable opportunity to present their case including the filing of any representation or producing documents or evidence in support of their case.

(13) While disposing the appeal or reference mentioned in sub-para (6), the Tribunal shall be guided by sub-paras (9), (11) and (12) of paragraph 3 of this Order.

(14) After hearing the Appellant, the pleader appearing for the Government and the authorised representative of the District Magistrate, if any, the Tribunal shall dispose of the appeal and the reference from the District Magistrate mentioned in sub-para(6) by recording its opinion.

(15) The final order of the Tribunal shall contain its opinion on the matter whether the Appellant is eligible for inclusion in the NRC or not. It shall also contain the opinion of the Tribunal on the reference of the District Magistrate mentioned in sub-para (6). The final order of the Tribunal shall be a concise statement of facts and conclusion based on which the Tribunal has arrived at such an opinion.

(16) The final order of the Tribunal containing its opinion shall be given within a period of one hundred and twenty days from the date of production of the records.

(17) Subject to the provision of this Order, the Tribunal shall have the power to regulate its own procedure for disposal of the cases expeditiously in a time bound manner.

3B. **Procedure for disposal of cases in case of persons referred in sub-para (1B) of paragraph 2 not preferring an appeal** – In case a person referred to in paragraph 8 of the Schedule to the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 does not prefer an appeal within the period of sixty days before the designated Tribunal constituted under this Order, the authority mentioned in sub-para (1) of paragraph 2 of this Order may refer to the Tribunal for its opinion the question whether the said person is a foreigner or not within the meaning of the Foreigners Act, 1946 (31 of 1946) in terms of sub-para (1) of paragraph 2 of this Order. On receipt of such a reference, the Tribunal shall examine the same as per the procedure laid down in paragraph 3A of this Order."[1]

[1] http://pib.nic.in/newsite/PrintRelease.aspx?relid=190360