



CJA e-NEWSLETTER

APRIL 2018

Monthly Newsletter of
Chandigarh Judicial Academy of Punjab & Haryana High Court
For circulation among the stakeholders in Judicial Education

VOLUME : 03
ISSUE : 04

In this Issue:

From the Desk of Chief Editor

Case Comment

Latest Cases : Civil

Latest Cases : Criminal

Notification

Events of the Month &
Forthcoming Events

Editorial Board

HMJ A.B. Chaudhari
Editor-in-Chief

Dr. Balram K. Gupta
Chief Editor

Ms. Mandeep Pannu
Dr. Gopal Arora
Dr. Kusum
Editors

FROM THE DESK OF CHIEF EDITOR

We have assembled here to-day (24.04.2018) to express to my Lord the Chief Justice and Patron-in-Chief, Chandigarh Judicial Academy, HMJ S.J. Vazifdar, the affection which everyone has for him as also our pride and admiration for him. In little over a week's time, my Lord would be laying down the office. This evening, I have kept in mind, the command of Cromwell to his portrait painter – "paint me as I am. If you leave out the scars and the wrinkles, I will not pay you a shilling."

On my return from National Judicial Academy, I took charge of Chandigarh Judicial Academy on October 13, 2015. I never had the opportunity of appearing before my Lord, the Chief Justice. I am told, my Lord is the epitome of Socrates four way test : Hear courteously. Consider soberly. Answer wisely. Decide impartially. I, indeed, missed this best recipe.

My Lord the Chief Justice is so fair, not only complexion wise. Equally fair in his deeds and actions. What a rare blend of goodness and greatness. His magnanimity. His simplicity. His sincerity. His graciousness. All these blend him into a unique human being. My Lord, a good Indian. A good Judge. Above all, a good human being. Once, Nani Palkhivala was to visit Senior Sankaracharya of Kanchi. The Senior Saint was living in the temple complex itself. A question was raised, whether Palkhivala, a Non-Hindu and a Parsi could enter the place? The great saint remarked, "if a man like Palkhivala cannot enter this place, nobody else in this world can." This holds equally good for my Lord the Chief Justice. The higher you go, the humbler you get. What a perfect example! Humility personified. I have experienced myself. He would come out. He would insist to open the door of the car. Nothing could stop him from doing that. My driver was pleasantly surprised when my Lord wished him – Happy Dussehara. His humility is his strength. He is firm like a rock. He is truly an engine of justice. Justice blended with humanism and compassion. My Lord has proved that wise and detached judging is humanely possible.

My Lord symbolizes grace, dignity, consideration, thoughtfulness and courtesy. Always wears a smile, an expression of his intense humility and an expression of familiarity. A feeling of closeness. Of one-ness. Of togetherness. His smile is his logo.

My Lord is a mix of Bar and Bench. 21 years at the Bar. 17 years on the Bench. From December 2014, initially as Acting Chief Justice and thereafter as Chief Justice of Punjab and Haryana High Court. My Lord was presented with Seervai's collar buttons. A rare possession. This possession is a constant reminder of Seervai's legacy – cherish values. Cherishing values has throughout his journey of 38 years been a mission and a passion with my Lord.

During my entire tenure in the Chandigarh Judicial Academy, my Lord has been the Patron-in-Chief. There had been some occasions, when it was felt to seek his guidance. On each occasion, the response was, you are totally free to decide. You have full freedom. I do not interfere. It was such a comfortable feeling. There had been number of occasions when we had the opportunity to hear him speak in the Academy. What a feast it used to be to hear him speak. Each occasion, it was learning. It was education.

I wish to be excused to be personal. A full court reference regarding my elder brother who was judge of this court. My Lord never had the occasion of meeting him. Yet, in his reference, my Lord mentioned certain things which even I did not know. It was such an wholesome reference. I have kept a copy of the same. My treasure. After the reference, when the family met my Lord in his chamber, what a warm feeling emanated throughout.

In bidding his Lordship a most affectionate farewell, the Chandigarh Judicial Academy can wish nothing better than the brightness on the face will always be his. Success will abide him whatever he may choose to do. A little tinkering with the lines of Tennyson : while knowledge in us may grow from more to more, more of reverence for him would always dwell in us. We hold, my Lord in such Reverence, it would continue to dwell in us for all times to come.

Balram K. Gupta

CASE COMMENT

Until the recent decision of [Shafin Jahan vs. Asokan K.M. and Ors. : 2018 SCC OnLine SC 343](#) the scope of Article 21 was limited to only state actions infringing the fundamental rights of a person. However, using the power of well shaped weapon of judicial review, the Supreme Court has made it very clear that the fundamental rights conferred by our grundnorm are the inherent rights bestowed upon every person. Hence, it should be respected in any circumstance may it be a public domain or a private right. The present judgment is an apt example of giving new dimension to Article 21 paving its way in the arena of rights being infringed by private persons also.

The Apex court, encloses that there should be least interference by the society in determining the choice of a partner because Right to marry a person of one's own choice is part and parcel of Article 21 of the Indian Constitution.

"Marriage, plurality and individual choices should be zealously guarded from State intervention."

The High Court took a view that since the State is expected to facilitate the enjoyment of legal rights of a citizen, therefore, it supported the cause of a father, an obstinate one, who endeavored immensely in not allowing his daughter **to make her own choice in adhering to a faith and further making an effort to hinder her desire to live with the man with whom she has entered into wedlock.** The thought itself is a manifestation of the idea of patriarchal autocracy and possibly self-obsession with the feeling that a female is a chattel.

The Kerala High Court in its impugned judgment made some controversial observations like :

"...a girl aged 24 years is weak and vulnerable, capable of being exploited in many ways" and "her marriage being the most important decision in her life, can also be taken only with the active involvement of her parents".

The Supreme Court hearing a Special Leave Petition filed by Mr. Jahan, challenging the judgment passed by the Kerala High Court. He submitted that, *"...the impugned order is an insult to the independence of women of India as it completely takes away their right to think for themselves and brands them as persons who are weak and unable to think and make decisions for themselves. That the same is against their fundamental rights and should be struck down"*. And that is why the order becomes a sanctuary of errors.

In the context above submitted submissions, it was observed by the summit court with the bench comprising Chief Justice of India Dipak Misra, Justice A.M. Khanwilkar and Justice D.Y. Chandrachud opined that the Kerala High Court had transgressed the limits of its jurisdiction, and therefore set aside the impugned judgment. It observed **that if there was any criminality involved, it should have been left to the law enforcement agencies to take care of**, in the words:

"The High Court further erred by reflecting upon social radicalization and other aspects. In a writ of Habeas Corpus, it was absolutely unnecessary. If there was any criminality in any sphere it was for law enforcement agency to do the needful but as long as the detenu

has not been booked under law, the obligation of the court is to exercise the celebrated writ that breathes life into our Constitutional guarantee of freedom.”

It then emphasized on the freedom of choice being a constitutional as well as a human right and set aside the impugned judgment, observing:

“In the case at hand, the father in his own stand and perception may feel that there has been enormous transgression of his right to protect the interest of his daughter but his view point or position cannot be allowed to curtail the fundamental rights of his daughter who, out of her own volition, married the appellant. Therefore, the High Court has completely erred by taking upon itself the burden of annulling the marriage between the appellant and the respondent no. 9 when both stood embedded to their vow of matrimony.”

The Bench also held that **non-acceptance of her choice would simply mean creating discomfort to the constitutional right by a Constitutional Court** which is meant to be the protector of fundamental rights. Such a situation cannot remotely be conceived.

“The duty of the Court is to uphold the right and not to abridge the sphere of the right unless there is a valid authority of law. Sans lawful sanction, the centripodal value of liberty should allow an individual to write his/her script. The individual signature is the insignia of the concept”.

The Court further asserted that the High Court for its observations that Hadiya “*is weak and vulnerable, capable of being exploited in many ways*”, stated that she is a major and is entitled to “*lead her life exactly as she pleases*”. The court further highlighted the fact

that the society should have no role to play in determining our choice of partners and opined that the right to marry a person of one’s own choice is integral to **Article 21 of the Constitution of India**, observing :

“The strength of the Constitution, therefore, lies in the guarantee which it affords that each individual will have a protected entitlement in determining a choice of partner to share intimacies within or outside marriage.”

Furthermore, it is rightly asserted that,

“how Hadiya chooses to lead her life is entirely a matter of her choice”

The court opined that the High Court had also transgressed on Hadiya’s constitutional rights in the process. Spelling out the importance of respecting choices, he observed :

“In deciding whether Shafin Jahan is a fit person for Hadiya to marry, the High Court has entered into prohibited terrain. Our choices are respected because they are ours. Social approval for intimate personal decisions is not the basis for recognizing them. Indeed, the Constitution protects personal liberty from disapproving audiences.”

In the light of above judgment, it can be said that when the liberty of a person is illegally smothered and strangled and his/her choice is throttled by the State or a private person, the signature of life melts and living becomes a bare subsistence. That is fundamentally an expression of acrimony which gives indecent burial to the individuality of a person and refuses to recognize the other's identity. That is reflection of cruelty which the law does not countenance.

Ms. Mahima Sikka
Research Fellow, CJA

LATEST CASES: CIVIL

“...Medical Council of India is duty bound to cancel the request, if fundamental and minimum requirements are not satisfied or else the college will be producing half baked and poor quality doctors and they would do more harm to society than service.”

K.S.P Radhakrishnan, J. in *Manohar Lal Sharma vs. Medical Council of India*, (2013) 10 SCC 60

Mohd. Ali vs. State of Himachal Pradesh and Others: 2018 SCC OnLine SC 384: How days are to be calculated under ID Act 1947 –

The appellant was engaged as Casual Labourer on Muster roll basis in the year 1980. He had worked till the year 1991 under different work schemes i.e., Rabi and Kharif and completed 240 days in a calendar year during the years 1980, 1981, 1982 and 1986 to 1989. The case of the respondents is that he had abandoned the work without intimation. On reference, the Industrial Tribunal-cum-Labour Court passed an Award in favour of the appellant and directed the respondent-State to reinstate the appellant in service with seniority and continuity while denying the back wages. The respondent-State challenged award in High Court and succeeded and the appellant preferred a Letters Patent Appeal before the High Court which was also dismissed. Aggrieved by the judgment the appellant has preferred special leave and it is argued that it is not necessary that a workman has to complete the 240 days' period during the period of 12 months immediately preceding his disengagement and once the appellant completed 240 days of service in any calendar year of his employment then he becomes entitled for the benefits of provisions of Section 25F of the Act. It is held by Supreme Court that the language of provision is so clear qua the calculation of period. Further, it is an admitted position that though the appellant worked as such till 1991 but he worked only for 195 days in the year 1990 and 19.5 days in the immediate preceding year of his dismissal which is below the required 240 days of working in the period of 12 calendar months preceding the date of dismissal, therefore, he is not entitled to take the benefits of the provisions of Section 25F of the Act and the High Court was right in dismissing the appeal of the appellant.

Manimegalai vs. The Special Tehsildar (Land Acquisition Officer) Adi Dravidar Welfare : 2018 SCC OnLine SC 382 : Consideration of factors in assessing compensation in land acquisition – Being aggrieved by the meager compensation of Land Acquisition Officer, to

the tune of Rs. 400/- per cent, Reference court in reference under Section 18 of the LA Act had granted compensation at the rate of Rs. 2,500/- per cent together with 30% solatium and 12% additional amount from the date of issue of Notification. The High Court, allowed the appeal filed by the respondent by reducing the amount of compensation from Rs. 2,500/- to Rs. 1,670/- with solatium and other statutory benefits. The Supreme Court in appeal restored the order of reference court and held that the general principles which have been followed in assessing the compensation payable in all these matters are the location of the lands sought to be acquired, their potential for development, their proximity to areas which are already developed and the exorbitant rise in the value of the lands over the years. It is further observed that the fair and reasonable compensation means the price of a willing buyer which is to be paid to the willing seller. It is further observed that in the case at hand, it is a matter of record that the said land is fit for using the same for house sites and situated adjacent to the National highway and is also near to the busy area with various facilities. However, the Apex Court on the basis of the alleged sale deeds which were done in the proximity within a very short time, amply prove its value in relation to the adjoining lands and restored the award passed by the reference court holding that the subordinate Judge was right in holding the potential value of the suit lands.

Sucha Singh Sodhi (D) Thr. LRs. vs. Baldev Raj Walia & Anr. : 2018 SCC OnLine SC 373 : How to apply Order 2 Rule 2 in case of withdrawal of case – In this case, first suit seeking an injunction against the defendant was withdrawn without leave of the court though plaintiff stated he wants to file fresh suit. Later on, when a suit for specific performance was filed, the defendant objected to it, invoking Order 2 Rule 2, which states that the relief of specific performance ought to have claimed along with the relief of injunction in the earlier suit, which was withdrawn. The Trial Court and the High Court found favor with the defendant

on this contention and allowed application filed by the subsequent purchaser under Order 7 Rule 11 CPC. On appeal filed by the plaintiff, it was found that the cause of action to claim a relief of permanent injunction and the cause of action to claim a relief of specific performance of agreement are independent and one cannot include the other and vice versa. It is also observed that a conjoint reading of the order of the court and the statement of the plaintiff, clearly suggests that the suit was dismissed as withdrawn because the plaintiff wanted to file a fresh suit, obviously wherein the plaintiff would seek the decree of specific performance and not of a mere injunction as was prayed for in the suit which was sought to be withdrawn. In the subsequent suit, the first appellate court was not right in forming an opinion that liberty to file the fresh suit was not given to the plaintiff. The findings of the first appellate court and the High Court are set aside by the apex court by holding that Order 2 Rule 2 is not applicable.

Mangla Ram vs. The Oriental Insurance Company Ltd. & Ors. : 2018 SCC OnLine SC 335: Charge sheet against driver prima facie points towards his rashness and negligence – The appellant alleges while he was riding his motorcycle, was hit by jeep owned by respondent No.3 and purportedly being driven by respondent No.2 at the time, resulting in serious injuries and ultimately, amputation of his right leg above the knee. The Tribunal awarded compensation to the tune of Rs. 1,27,000/ but, owing to the purported negligence of the appellant, reduced the amount by half and finally awarded a sum of Rs. 63,500/ to the appellant payable by the respondent Nos. 2 and 3 jointly and absolved the insurance company on the ground that vehicle was not insured and the cover note purportedly taken for the jeep in question was fraudulent. It had been given unauthorizedly by its then Development Officer who was not in service. The High Court had set aside the Tribunal's award and allowed the appeal filed by the driver and owner of the jeep while dismissing the appeal filed by the appellant for enhancement of compensation. The apex court while accepting the appeal of claimant has held that the High Court committed manifest error in reversing the holistic view of the Tribunal and based its conclusion on surmises and conjectures. Further, the plea of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be

decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt and filing of charge sheet against driver prima facie points towards his negligence even his acquittal in the criminal case. Also, it is held, the Cover Note issued by the Development Officer of Insurance Company at a point of time when he was still working with company and in this regard invoked the principle of "pay and recover." The apex court allowed the appeal and awarded the compensation amount, taking the loss of monthly income due to permanent disability to the tune of Rs.2,25,792/[Rs.840 per month (i.e. 40 % of Rs.2,100/) + 40% future prospects [as per Pranay Sethi's case] x 12 x 16, i.e. (840 + 336) x 12 x 16 and other benefits.

Mohinder Singh (D) through LRs vs. Paramjit Singh & Ors. : 2018 SCC OnLine SC 298: Section 14 of the Limitation Act, 1963, and provisions contained in Punjab Limitation (Custom) Act, 1920 – The apex court while reversing the judgment of high court and restoring the judgment of trial court and first appellate court while interpreting the local law of Punjab pertaining to the limitation, it has been observed that both sides have relied on the exposition in the case of Consolidated Engineering Enterprises' case. In that case, the Court noted that Section 14 of the 1963 Act envisages that it is a provision to afford protection to a litigant against bar of limitation when he institutes a proceeding which by reason of some technical defects cannot be decided on merits and is dismissed. While considering the provisions of Section 14 and its application, Supreme Court has observed that a proper approach will have to be adopted and the provisions will have to be interpreted so as to advance cause of action in cases of mistaken remedy or selection of a wrong forum. In this case, no explanation or justification whatsoever has been offered by the plaintiff for the period between 2nd February, 1974 (when the third execution petition was dismissed) and 11th June, 1974 (when the suit for possession was filed by the plaintiff). It is held by Apex court while accepting the submissions of the appellants that Section 14 of the 1963 Act would be attracted in the fact situation of the present case, in the light of Section 5 of the 1920 Act and also Section 29(2) of the 1963 Act coupled with the fact that there is no express provision in the 1920 Act, to exclude the applicability of Section 14 of the 1963 Act.

LATEST CASES: CRIMINAL

“Relevancy is tendency to make a fact probable. Crimination is a tendency to make guilt probable. Confession is a potency to make crime conclusive.”

V.R. Krishna Iyer, J. in *Nandini Satpathy vs. P.L. Dani*, (1978) 2 SCC 424

Union of India vs. Leen Martin & Anr. : 2018 (2) RCR (Criminal) 122 (SC) – The trial court convicted the accused for Recovery of 12.03 Kg. Hashish. It has been observed by the Apex Court that the Statement of official witness cannot be sole basis for convicting respondent. Further, when statement of official witness/Intelligence Officer is impaired due to infirmities, it is not safe to place reliance upon same and pass conviction order against accused. Both panch witnesses deposed that when they were called by Intelligence Officer and by time they reached, bag was already opened. Further, panchanama was not read over to panch witnesses and accused asked to sign on number of papers to which they were not aware of contents. Moreover, Intelligence Officer failed to state that bag containing narcotic substance was opened in presence of panchas. The cross-examination of panch reveals that he does not agree to contents of panchanama with respect to fact that search and inspection of baggage took place in his presence and signatures obtained on panchanama were not voluntarily put. The Supreme Court dismissed the appeal of prosecution after affirming the order passed by High Court after taking into consideration the entire evidence and it is observed that , statements of independent panch witnesses contradicts statement of official witness/intelligence officer. Also, except the statement made under Section 67 of Act, 1985 by Intelligence Officer, there is no other material to substantiate case against accused for holding him guilty.

Navaneethakrishnan vs. The State by Inspector of Police : 2018 SCC OnLine SC 378 : Section 27 of Evidence Act applicable only if confessional statement leads to discovery of some new fact – The appellant /accused were convicted by trial court and High court under Sections 302 read with Section 34, Section 364 and Section 379 of the Indian Penal Code, whereby they were sentenced to undergo imprisonment for life with substantive sentences under the IPC. The Supreme has reiterated the settled legal proposition that Section 27 of the Evidence Act is applicable only if the confessional statement leads to the discovery of some new fact while setting aside

the conviction in a murder case. With regard to ‘*last seen theory*’, it is observed that, though the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty, this evidence alone can’t discharge the burden of establishing the guilt of accused beyond reasonable doubt and requires corroboration. It is also observed that in the absence of any connecting link between the crime and the things recovered, the recovery on the behest of accused will not have any material bearing on the facts of the case. It is further held after allowing the appeals preferred by the appellant accused that both the courts below have erred in relying that part of the statement which can be termed as confession which were given to the police officer while they were in custody and it will be hit by Section 26 of the Indian Evidence Act, 1872 and only that part of the statement which led to the discovery of various materials would be permissible.

Bharatkumar Rameshchandra Barot vs. State of Gujarat : 2018 SCC OnLine SC 272: SC expresses surprise about sessions judge sentencing murder convict to just 10-year imprisonment – The Supreme Court expressed surprise about an order of a Sessions judge who had sentenced a murder convict ‘*for ten years*’. It has been held that the object of Section 377 of the Code is that when the State files an appeal seeking enhancement of jail sentence awarded by the Sessions Judge, the jail sentence cannot be enhanced unless the accused is given an opportunity to defend it. The accused is also entitled to pray for his acquittal or award of lesser punishment. If the accused, after service of notice fails to raise this plea then the High Court would be justified in deciding the State’s appeal on merits which is confined to only for enhancement of jail sentence. The Apex Court did not remand back the case for rehearing of the appeal as accused failed to appear despite duly served. Further, it is observed that any punishment less than the life imprisonment, as prescribed under Section 302 IPC, if awarded by any Court is per se illegal and without authority of law. Indeed, there is no such discretion left with the Court in awarding the punishment except to award the

punishment which is prescribed under Section 302 IPC as mentioned.

Rambeer Shokeen vs. State of NCT of Delhi : 2018 (2) RCR (Criminal) 109 (SC) : Section 167 (2) Criminal Procedure Code, 1973 statutory bail to accused – Under the Maharashtra Control of Organized Crime Act, 1999, the accused has a right to claim statutory bail after the expiry of 90 days by invoking provisions of Section 167(2) Cr.P.C. The prosecution moved an application for extension of time to file charge sheet within time. It has been held by the apex court that mere fact that 90 days period from date of initial arrest of accused had lapsed would not entitle him to grant statutory bail to accused though, no decision was taken by Court on report submitted by Additional Public Prosecutor. It has been further observed that only upon rejection of prayer for extension of time sought by Public Prosecutor, right in favour of appellant for grant of statutory bail accrues. Also, in no case hearing of statutory bail application to precede consideration of prayer for extension of period for filing charge sheet.

K.K. Mishra vs. The State of Madhya Pradesh & Anr. : 2018 SCC OnLine SC 374 : Alleged defamatory statements shall have reasonable connection with the discharge of public duties by CM to invoke Section 199 (2) Cr.P.C proceedings – The Apex Court while interpreting the requirements of Section 199(2) and 199(4) Cr.P.C., has observed that a Public Prosecutor filing a complaint under Section 199 (2) Cr.P.C. without due satisfaction that the materials/allegations in complaint discloses an offence against an Authority or against a public functionary which adversely affects the interests of the State would be as per the provision under Section 199(2) and 199(4) Cr.P.C. and these provisions are not complied in the present case. Section 199(2) Cr.P.C. provides for a special procedure with regard to initiation of a prosecution for offence of defamation committed against the constitutional functionaries and public servants mentioned therein. However, the offence alleged to have been committed must be in respect of acts/conduct in the discharge of public functions of the concerned functionary or public servant, as the case may be. In this case taking note of alleged defamatory statements **“The appointment of persons from the area/place to which the wife of the Hon’ble Chief Minister belongs and the making of phone calls by the relatives of the Hon’ble**

Chief Minister have no reasonable nexus with the discharge of public duties by or the office of the Hon’ble Chief Minister. Such statements may be defamatory but then in the absence of a nexus between the same and the discharge of public duties of the office, the remedy under Section 199 (2) and 199 (4) Cr.P.C. will not be available. It is the remedy saved by the provisions of sub-section (6) of Section 199 Cr.P.C. i.e. a complaint by the Hon’ble Chief Minister before the ordinary Court i.e. the Court of Magistrate which would be available and could have been resorted to,” the supreme court observed that complaint is not maintainable and the Supreme Court while invoking its inherent powers under Article 142 of the Constitution, closed criminal proceedings against a chief spokesperson of the Congress party in Madhya Pradesh accused of making defamatory statements against the Chief Minister of the State, in a press meet.

Shafhi Mohammad vs. The State of Himachal Pradesh : 2018 SCC OnLine SC 233 : The Supreme Court issues directions to introduce best practices in crime scene videography – The Apex Court has observed that now investigating agencies in India are not fully equipped and prepared for the use of videography, the time is ripe that steps are taken to introduce videography in investigation, particularly for crime scene as desirable and acceptable best practice. Also, by the videography, crucial evidence can be captured and presented in a credible manner. The legal position that a party who is not in possession of the device from which the electronic document is produced, is not required to produce a certificate under Section 65B (4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies. Such evidence should always be relied with some caution and assessed in the light of all the circumstances of each case. Electronic evidence is held to be admissible subject to safeguards adopted by the Court about the authenticity of the same. In the case of tape-recording it was observed that voice of the speaker must be duly identified, accuracy of the statement was required to be proved by the maker of the record, possibility of tampering was required to be ruled out. Reliability of the piece of evidence is certainly a matter to be determined in the facts and circumstances of a fact situation.

NOTIFICATION

The President through an ordinance “The Criminal Law (Amendment) Ordinance, 2018”, has amended Indian Penal Code, Code of Criminal Procedure, Indian Evidence Act and Protection of Children from Sexual Offences Act by notification on 21.04.2018 and which shall be applicable at once.

Highlights of the Ordinance

- Ten Years Minimum Punishment for Rape
- Minimum Punishment of 20 years rigorous imprisonment and maximum Death penalty/Life Imprisonment for committing rape on a girl aged below 12
- Minimum punishment of twenty years to a person committing rape on a woman aged below 16
- Rigorous imprisonment of minimum ten years to Police officer committing rape anywhere
- Imposition of fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim
- Completion of investigation in rape cases within two months
- No Anticipatory bail for a person accused of rape of girls of age less than 16 years
- Disposal of Appeals in rape cases within six months

Amendments in IPC Provisions

- ✓ The minimum Punishment for Rape has been modified Ten Years. The Maximum punishment would remain the same, i.e. Life imprisonment under Section 376 IPC.
- ✓ Minimum punishment of twenty years to a person committing rape on a woman under Sixteen years of Age has been added to Section 376 under clause (3).
- ✓ New Section 376AB has been inserted which prescribes the minimum punishment of twenty years rigorous imprisonment to a person committing rape on a woman less than twelve years of Age and he can also be awarded capital sentence as well.
- ✓ Under newly added Section 376DA and 376DB there would be minimum punishment of life imprisonment for persons involved in gang rape of woman aged less than 16 years and 12 years respectively.

- ✓ Death penalty is also prescribed for persons involved in gang rape of a girl of age less than 12 years.
- ✓ It is also inserted in these sections, that such fine shall be imposed which shall be just and reasonable to meet the medical expenses and rehabilitation of the victim and the fine imposed is to be paid to the victim.
- ✓ Section 376 (2) (a), the sentence “within the limits of the police station to which such police officer is appointed” has been omitted.

Amendment of POCSO Act and Indian Evidence Act

Section 42 of the POCSO Act has been amended to incorporate newly inserted IPC provisions of section 376AB, section 376DA, and section 376DB. Section 53A of the Section 146 of Evidence Act which deals with evidence of character or previous sexual experience not relevant in certain cases and of the Act that deals with evidence of character or previous sexual experience not relevant in certain cases, is also amended to include newly inserted IPC provisions Section 376AB, Section 376DA, Section 376DB.

Relevant Amendments in Cr.P.C

- No Anticipatory bail can be granted to a person accused of rape of girls of age less than sixteen years.
- New Sub Section has been added to Section 439 which mandates presence of informant or any person authorized by him at the time of hearing application for bail of an accused under sub-section (3) of 376 / 376A / 376DA / 376DB of IPC.
- Investigation in all Rape cases may be completed within three months from the date on which the information was recorded by the officer-in-charge of the police station.
- The Provisions of Code of Criminal Procedure hearing the appeals have also been amended to insert a subsection which prescribes six months time to dispose of an appeal in rape cases.
- The relevant provisions of Sections 154, 164, 173, 197, 309, 327 are also amended accordingly.

EVENTS OF THE MONTH

1. Dr. Venkat Iyer, Barrister, Advocate, Professor and Author delivered a **Talk on Judicial Ethics – Comparative Perspective** based upon his experiences in India and U.K. on April 3, 2018 in the auditorium of Chandigarh Judicial Academy. This lecture was chaired by HMJ A.B. Chaudhari, President, Board of Governors, CJA. HMJ Jaswant Singh, Member, BOG was also present on this occasion. Besides, both the Advocate Generals, Mr. Atul Nanda and Baldev Raj Mahajan, a large number of law officers of both the states attended the lecture. The Judicial Officers of Tricity including the three District and Sessions Judges namely Mr. Balbir Singh, Ms. Archana Puri and Ms. Ritu Tagore were present. Number of Judicial Officers posted in the establishment of Punjab and Haryana attended the talk.

2. **Refresher-cum-Orientation Course for Civil Judges** from the States of Punjab and Haryana was organized on 07.04.2018 to sensitize them on some important aspects of Hindu Succession Act. The Programme covered: Rights of Coparceners with Special Reference to Women's Right to Property-I & II covering theoretical and practical aspects, Family Settlement–Legal Rights and Obligations thereof, Session on Dragon Dictation Software and visit to Paperless Court. 66 participants participated in the programme.

3. **Video-conferencing for Civil Judges (Punjab)** was organized on 12.04.2018 (from 3:30 p.m. to 5:00 p.m.) to sensitize them regarding Ramifications of Personal Search under NDPS Act by Mr. Pradeep Mehta, Faculty Member, Chandigarh Judicial Academy. This generated lot of interest in the topic as it was

evident from the inter-action which followed the presentation.

4. **Refresher-cum-Orientation Course for ADJs** from the States of Punjab and Haryana was organized on 21.04.2018 to sensitize them with regard to Cyber Crime and New Dimensions of Evidence. The Programme covered: Investigating Parameters for Cyber Crime in India, DNA Profiling and Evidence, Challenges in Appreciation of Electronic Evidence, Dragon Dictation Software and Practical use of computers in courts. 66 participants attended the programme.

5. A **multi member committee on Inter-Country Removal and Retention of Children** headed by HMJ Rajesh Bindal, Judge, Punjab and Haryana High Court was set up by the Union Ministry of Women and Child Development. The committee after detailed deliberation and examination of various aspects **submitted its report** on April 23, 2018. It has recommended the establishment of "Inter-Country Parental Child Removal Disputes Resolution Authority". Along with its recommendations, the committee has also submitted a draft legislation to the Government. The WCD Ministry will be sharing the report with Ministry of External Affairs, Law Ministry and Ministry of Home Affairs in order to have their inputs. In fact, protecting the rights of parents and children has become a critical issue of national and international importance due to rise in transnational marriages.

6. Hon'ble the Chief Justice, Justice Shiavax Jal Vazifdar and Patron-in-Chief, CJA will be superannuating on May 03, 2018. To bid farewell, **Chandigarh Judicial Academy organized farewell** dinner on April 24, 2018

which was attended by HMJ T.P.S. Mann, HMJ Rajesh Bindal, HMJ M.M.S. Bedi (past Presidents of BOG, CJA), HMJ A.B. Chaudhari, President, BOG, HMJ R.K. Jain, HMJ Jaswant Singh and HMJ Justice Augustine George Masih, Members, BOG. Besides them, both the Directors, the Faculty and the Registrar were part of the evening function. HMJ A.B. Chaudhari spoke on this occasion and Dr. Balram K. Gupta, Director (Academics) read out the farewell address.

7. The Chandigarh Judicial Academy organized a **Conference on Juvenile Justice Act, 2015** under the auspices of the Hon'ble Juvenile Justice Monitoring Committee of High Court of Punjab and Haryana on April 28, 2018. The keynote address was delivered by HMJ Jaswant Singh, Chairman, JJ Monitoring Committee. The Resource Persons in different sessions were : Mr. Amod K. Kanth, General Secretary, Prayas, Dr. K.P. Singh, DGP, Haryana Human Rights Commission and Mr. Aftab Mohammad, Child Protection Specialist, UNICEF. The presentations were made by Ms. Harpreet K. Jeewan, DSJ-cum-Member Secretary, PSLSA, Ms. Mandeep Pannu, ADJ-cum-Faculty Member, CJA, Mr. Mohit Handa, ACP

(Haryana), Dr. Upneet Lalli, Deputy Director, Institute of Correctional Administration, Ms. Sangita Vardhan, Chairperson, Child Welfare Committee and Dr. Sukhda Pritam, PM, JJB. Dr. Balram K. Gupta, Director (Academics) gave the overview of the entire programme covering all the four sessions. Mr. Inderjeet Mehta presented the expression of gratitude. Ms. Mandeep Pannu and Mr. Sundeep Singh, ADJ-cum-Registrar (Administration), High Court were the co-ordinators of the programme. 257 different stakeholders relating to the implementation of JJ Act attended and participated in the conference.

8. The Hon'ble Supreme Court constituted a Joint Committee consisting of Hon'ble Judges of the Hon'ble High Court of Punjab and Haryana and Delhi High Court to frame Draft Rules for Reception, Retrieval, Authentication and Preservation of Electronic Records. **Regional Consultation Conference on the Draft Rules** was held at the Chandigarh Judicial Academy on April 28, 2018. In this Consultation Conference, 12 Hon'ble Justices of different High Courts participated in the deliberations to finalize the Rules.

FORTHCOMING EVENTS

1. **Refresher-cum-Orientation Course for Civil Judges-cum-Judicial Magistrates** from the States of Punjab and Haryana will be held on 05.05.2018 to sensitize them with regard to ADR Mechanism and Important Civil Matters. The Programme will cover: Suits by and against the Government – Legal Issues, Alternative Disputes Resolution-Challenges, Role of Referral Judges in ADR, Dragon Dictation Software, Training on Practical Use of Computers in Courts.

2. There would be a **Refresher-cum-Orientation Course for ADJs** of Punjab and Haryana on May 19, 2018 to sensitize them regarding Civil Matters.

3. It is proposed to structure and organize 10 days **Training Programme for Public Prosecutors of Punjab** in the month of May 2018. The schedule of the programme would include different aspects relevant for Public Prosecutors of Criminal and Civil Matters in order to enhance their capacity to perform their duties effectively and efficiently.