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# **CJA** **e-NEWSLETTER**

**APRIL 2019**

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

## **FROM THE DESK OF CHIEF EDITOR**

The work of drafting the Constitution of India began on December 09, 1946. In the Objectives Resolution Speech, Nehru said that even the framing of the Constitution was a “Moment” in India’s history. This was a moment of transition and transformation. The drafting of the Constitution was a serious exercise. The best of minds were engaged. It took 166 days spread over 2 years 11 months and 18 days to frame the Indian Constitution. It was approved and adopted on November 26, 1949. The Constitution was signed by 308 members of the Constituent Assembly on January 24, 1950. It came into effect as a whole two days later on January 26, 1950. This period of two months that lapsed between the approval and formal signing was consumed by artists and calligraphers who worked tirelessly to handcraft the entire Constitution. There are two handcrafted Constitutions. One in Hindi. The other in English. Both these handcrafted Constitutions are housed in special helium cases in the Library of the Parliament of India.

The entire calligraphic work is covered over 250 pages of the Constitution. The Constitution of India is one of the few Constitutions in the world to be illustrated and decorated. The original Constitution consisted of 22 parts. Equally, there are 22 major illustrative panels. The Ashokan Lion was adopted as the emblem of Modern Nation of India. This emblem is on the cover of the manuscript of the Constitution of India.

The Preamble to the Constitution of India opens with the words : We, the people of India. The Preamble is the introduction to the Constitution. It is the visiting card of the Constitution. Reading the Preamble, one comes to know the different basic components of the Constitution. It is the key to open the minds of framers of the Constitution. Over a period of time, gradually, the framers are no more with us. The Preamble unfolds their minds. The Preamble is the integral part of the Constitution. It is the best guide to guide the judges in interpreting the different provisions of the Constitution. It helps in filling the silences of the constitution.

The Constitution of India is seven decades old. The original Constitution kept in the Library of the Parliament would be much different than the Constitution as it stands in 2019. These 70 years have brought lot of change. Lot of Developments. Therefore, lot many changes in the Constitution of India. The Constitution has been amended by the Parliament 103 times. Parliament can do what the Constitution permits. Every legislation is tested on the touch stone of the Constitution. Even constitutional amendments are tested on the touch stone of the basic structure of the Constitution. If the concept of Basic Structure had not been introduced in the year 1973, shape of the Indian Constitution would have been different. Moreover, the basic structure theory has helped in retaining the basic features of the Constitution. This is most essential.

The basic structure has helped in providing durability and longevity to the Constitution. Good governance envisages to work within limitations of the Constitution. There is always temptation to overcome constitutional limitations. The framing of the Constitution was “Moment”. The working out of the Constitution is still a bigger “Moment”. It is a continuous one. Constant effort is required. It is, indeed gigantic task. The constant weaving of the Constitution will keep the Constitution young. No wrinkles. No ageing.

Balram K. Gupta

## LATEST CASES : CIVIL

“The holder of public office holds a trust for public good and therefore his actions should all be above board.”

G.B. Pattanaik, J. in *Padma vs. Hiralal Motilal Desarda*, (2002) 7 SCC 564

**Dr. R.S. Grewal & Ors. vs. Chander Parkash Soni & Anr : 2019 SCC OnLine SC 546 : Held :** **Tenants can be evicted only by following procedure laid down in applicable Rent Control Laws** – The Supreme Court has observed that the protection offered to a statutory tenant by Rent Control Laws can only be overcome by following the procedure laid out in such laws. The bench observed that such a statutory tenant can be evicted only by following the procedure laid down in applicable rent control laws and not by filing suit for possession against him/her. The court further observed that statutory protection granted for the benefit of the tenants under specific tenancy laws is to be viewed from a standpoint of protecting the interests of a particular class. Also, the restrictions on recovery of possession of the premises let out to the tenants have been imposed for the benefit of the tenants as a matter of legislative policy.

**Bharat Watch Company vs. National Insurance Co. Ltd: 2019 SCC OnLine SC 544: Held:** **If terms on exclusion of policy are not communicated to insured, insurer cannot rely on them to repudiate claim** – Setting aside the judgment of National Consumer Disputes Redressal Commission (NCDRC), the Supreme Court has held that if the terms of exclusion of policy are not communicated to the insured, the insurer cannot rely on them to repudiate a claim. The court observed, "The NCDRC missed the concurrent findings of both the District Forum and the SCDRC that the terms of exclusion were not made known to the insured. If those conditions were not made known to the insured, as is the concurrent finding, there was no occasion for the NCDRC to render a decision on the effect of such an exclusion."

**Bharat Broadband Network Ltd. vs. United Telecoms Limited: 2019 SCC OnLine SC 547: Held:** **Person ineligible to be arbitrator under Sec.12(5) of Arbitration Act cannot appoint another arbitrator** – The Supreme Court has held that the appointment of arbitrator by a person who himself is ineligible to be an arbitrator as per Section 12(5) of the Arbitration and Conciliation Act 1996 is void ab initio. The

bench followed the 2017 decision in *TRF Ltd. vs. Energy Engineering Projects Ltd* (2017) 8 SCC 377 (TRF Ltd)., which had held that an ineligible person cannot appoint arbitrator. It observed that ineligibility under Section 12(5) of the Act was de jure in nature, leading to automatic termination of his mandate.

**Chairman & MD, Fertilizers and Chemicals Travancore Ltd. vs. Gen. Secretary, FACT Employees Association : 2019 SCC OnLine SC 521 : Held :** **Res Judicata principle also applicable to labour / industrial proceedings** – The Supreme Court reiterated that principle of Res Judicata defined in Section 11 of the Code of Civil Procedure also applies to the labour/industrial proceedings. The Apex Court reiterated the law by holding that principle of res judicata applies to the labour proceedings or not, remains no more res integra.

**Royal Sundaram Alliance Insurance Company Ltd vs. Mandala Yadagari Goud: 2019 SCC OnLine SC 495 : Held :** **Deceased bachelor's age to be considered for calculating 'multiplier' in motor accident claim cases** – Supreme Court has held that, in the case of a motor accident where there is death of a person, who is a bachelor, it is the age of the deceased which should be taken into account for calculating the multiplier, not that of dependents. The bench reiterated the law in *Sube Singh's* case and observed: "We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents."

**P. Leelavathi vs. Shankarnarayana Rao: 2019 SCC OnLine SC 489 : Held :** **Mere financial assistance to buy property cannot be termed benami transaction** – The Supreme Court observed that mere financial assistance to buy a property cannot be the sole determinative factor/circumstance to hold the transaction as benami in nature. The issue before the bench in an appeal arising out of a suit filed by a lady against her brothers was whether the transactions can be said to be benami in nature merely because some

financial assistance has been given by the father to the sons (defendants) to purchase the properties, subject matter of the suit (filed by his daughter, claiming share in these properties). The bench referred to judgment in Binapani Paul v. Pratima Ghosh that had held that the source of money had never been the sole consideration, and is only merely one of the relevant considerations but not determinative in character. It also reiterated the observations made in Valliammal vs. Subramaniam, which delineated six circumstances to check whether the transaction is benami or not.

**Shri N. K. Janu vs. Lakshmi Chandra: 2019 SCC OnLine SC 518 : Held : Practice of summoning officers to court is not proper** – The Supreme Court observed that practice of summoning officers to court is not proper and does not serve the purpose of administration of justice in view of the separation of powers of the Executive and the Judiciary. The bench observed thus in an appeal, while noticing that numerous orders were passed by the High Court from time to time seeking personal presence of the officers of the State. The court further noted that, with these orders it is the public at large who suffer on account of their absence from the duties assigned to them.

**The Secretary, Lucy Sequeira Trust vs. Kailash Ramesh Tandel : 2019 SCC OnLine SC 479 : Held : Domestic inquiry during pending criminal trial not contempt** – While upholding termination of a teacher accused of harassing girl students in a Private school, the Supreme Court observed that pendency of criminal trial does not have any bearing on the domestic inquiry against the teacher. The bench observed that the initiation of the process in a departmental proceeding, in matters like these, cannot be said to be amounting to contempt of court even if the criminal proceedings were pending.

**Pioneer Urban Land & Infrastructure Ltd. vs. Govindan Raghavan : 2019 SCC OnLine SC 458 : Held : One sided clauses in builder-buyer agreements is an unfair trade practice** – The Supreme Court held that the incorporation of one-sided clauses in a builder-buyer agreement constitutes an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986. The bench also observed that a builder could not seek to bind a flat buyer with one-sided contractual terms. The bench also referred to Law Commission of India 199th Report which recommended that legislation be enacted to counter such unfair terms in contracts. "A contract or a term thereof is

substantively unfair if such contract or the term thereof is in itself harsh, oppressive or unconscionable to one of the parties.", the report had stated.

**Raj Narain vs. Union of India : 2019 SCC OnLine SC 452 : Held : Employee not entitled to full back wages on acquittal, unless his prosecution was found malicious** – The Supreme Court has held that the employer cannot be mulcted with full back wages on the acquittal of an employee by a criminal Court, unless it is found that the prosecution is malicious. The bench observed, "The learned counsel for the Appellant endeavored to distinguish the prosecution launched by the police for involvement of an employee in a criminal case and the criminal proceedings initiated at the behest of the employer. The observation made in the judgment in Union of India and Others v. Jaipal Singh (supra) has to be understood in a manner in which the department would become liable for back wages in the event of a finding that the initiation of the criminal proceedings was mala fide or with vexatious intent. In all other cases, we do not see any difference between initiation of the criminal proceedings by the department vis-a-vis a criminal case lodged by the police. For example, if an employee is involved in embezzlement of funds or is found indulging in demand and acceptance of illegal gratification, the employer cannot be mulcted with full back wages on the acquittal of the person by a criminal Court, unless it is found that the prosecution is malicious.

**Nagar Ayukt Nagar Nigam, Kanpur vs. Mujib Ullah Khan: 2019 SCC OnLine SC 462 : Held: Employees of 'local bodies' entitled to gratuity under Payment of Gratuity Act:** The Supreme Court held that the employees of the local bodies like Municipalities are entitled for gratuity under Payment of Gratuity Act, 1972. The bench upheld High Court judgments while upholding appeals filed by Kanpur and Gorakhpur Municipalities. The bench also took note of a notification published by Central Government on 08.01.1982 which specified Local Bodies in which ten or more persons are employed, or were employed, on any day of the preceding twelve months as a class of establishment to which this Act shall apply. Referring to Section 3(c) of the Act, the bench said that the Act shall be applicable to such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

## LATEST CASES: CRIMINAL

“If crime is to be punished gossamer web niceties must yield to realistic appraisal.”

V.R. Krishna Iyer, J. in *Dharam Das Wadhvani vs. State of U.P.*, (1974) 4 SCC 267

**Accused X vs. State of Maharashtra: 2019 SCC OnLine SC 543 : Held : Pre-sentence hearing on a separate date not mandatory** – The Supreme Court observed that there is no bar on the pre-sentencing hearing taking place on the same day after passing the judgment of conviction, if the accused and the prosecution are ready to submit their arguments. The bench observed that the object of Section 235 (2) of the Code of Criminal Procedure is to provide an opportunity for accused to adduce mitigating circumstances, but it does not mean that the Trial Court can fulfil the requirements of Section 235(2) of the Cr.P.C. only by adjourning the matter for one or two days to hear the parties on sentence. The court further observed that even if a procedural irregularity is committed by the trial court to a certain extent on the question of hearing on sentence, the violation can be remedied by the appellate Court by providing sufficient opportunity of being heard on sentence.

**Md. Allauddin Khan vs. State of Bihar : 2019 SCC OnLine SC 539 : Held : HC has no jurisdiction to appreciate evidence while hearing a petition under Section 482 Cr.P.C.** – The Supreme Court has held that the High Court has no jurisdiction to appreciate the evidence of the proceedings under section 482 Cr.P.C. The Apex Court held so while allowing the appeal against the order of the High Court of Judicature of Patna, quashing the order of Magistrate wherein cognizance of complaint was taken for commission of offence under sections 323 and 379 r/w section 34 of IPC. The bench while allowing the appeal and restoring the order of the Judicial Magistrate to proceed to conclude the trial on merits reiterated that contradictions or inconsistencies in the statements of witnesses is essentially an issue relating to the appreciation of evidence and the same can only be gone into by the Judicial Magistrate during the trial when the entire evidence is adduced by the parties.

**Atma Ram vs. State of Rajasthan : 2019 SCC OnLine SC 523 : Held : Examination of witnesses in the absence of accused is a curable irregularity** – Absence of the accused while taking evidence of prosecution witnesses, by itself, would not vitiate the trial, unless great

prejudice has caused to the accused, the Supreme Court held, while upholding a High Court judgment which ordered fresh trial in a murder case. The bench was considering an appeal against High court judgment which ordered fresh trial / de-novo by directing the trial court to lawfully re-record statements of the witnesses whose evidence was recorded in the first round without ensuring presence of the accused in the court. It was further observed that, barring those stipulated in Section 461, the thrust of the Chapter XXXV of the Criminal Procedure Code deals with "Irregular Proceedings", is that any infringement or irregularity would not vitiate the proceedings unless, as a result of such infringement or irregularity, great prejudice had occasioned to the accused.

**Rupali Devi vs. State of Uttar Pradesh: 2019 SCC OnLine SC 493: Held: 498A case can be filed at a place where a woman driven out of matrimonial home takes shelter** – The Supreme Court held that 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 498A of the Indian Penal Code. The court also noticed that under Section 179 of the Code of Criminal Procedure, if by reason of the consequences emanating from a criminal act an offence is occasioned in another jurisdiction, the court in that jurisdiction would also be competent to take cognizance. The court further observed that definition of cruelty under the Protection of Women from Domestic Violence Act have a close connection with Explanation A & B to Section 498A, Indian Penal Code which defines cruelty.

**Basalingappa vs. Mudibasappa : 2019 SCC OnLine SC 491 : Held : Section 138 NI Act: Complainant bound to explain his financial capacity when it is questioned by the accused** – The Supreme Court observed that a complainant in a cheque bounce case is bound to explain his financial capacity, when the same is questioned by the accused, by leading evidence to that effect. "Court cannot insist on a

person to lead negative evidence. The observation of the High Court that trial court's finding that the complainant failed to prove his financial capacity of lending money is perverse cannot be supported." Referring to some decisions on Sections 118(a) and 139 of the Negotiable Instruments Act, the bench also summarized the principles:

- Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.
- The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.
- To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.
- That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.
- It is not necessary for the accused to come in the witness box to support his defence.

**Devendra Prasad Singh vs. State of Bihar : 2019 SCC OnLine SC 464 : Held : Sanction under Sec.197 Cr.P.C required only if offence has nexus with duties of public servant** – In order to attract the rigor of Section 197 Cr.P.C. the offence alleged against a Government Officer must have some nexus with the discharge of his official duties as Government Officer, held the Supreme Court. It has been further observed that in order to attract the rigor of Section 197 of the Cr.P.C., it is necessary that the offence alleged against a Government Officer must have some nexus or/and relation with the discharge of his official duties as a Government Officer. While allowing the appeal and restoring the compliant to its original file, the court held that the High Court had no jurisdiction under section 482 Cr.P.C. to appreciate the statement of witnesses and to record the inconsistencies in their statements.

**State of Madhya Pradesh vs. Uday Singh : 2019 SCC OnLine SC 420 : Held : Forest Act**

**– Magistrate can't invoke jurisdiction under S.451 Cr.P.C to release a seized vehicle, once authorized officer initiates confiscation proceedings** – Statutory interpretation must remain eternally vigilant to the daily assaults on the environment, said the Supreme Court while it set aside the High Court order that directed the Magistrate to order interim release of a vehicle seized for being involved in the illegal excavation of sand from the Chambal River. The bench held that a Magistrate has no jurisdiction under Section 451 of the Criminal Procedure to release a seized vehicle, once the Authorised Officer initiated confiscation proceedings. The bench further observed that, upon the receipt of an intimation by the Magistrate of the initiation of confiscation proceedings under sub-section (4)(a) of Section 52, the bar of jurisdiction under sub-section (1) of Section 52-C is clearly attracted. The scheme contained in the amendments enacted to the Indian Forest Act 1927 in relation to the State of Madhya Pradesh, makes it abundantly clear that the direction which was issued by the High Court in the present case, in a petition under Section 482 of the Cr.P.C, to the Magistrate to direct the interim release of the vehicle, which had been seized, was contrary to law, the court added.

**Ripudaman Singh vs. Balkrishna : 2019 SCC OnLine SC 413 : Complaint under Section 138 NI Act maintainable against dishonour of cheques issued in pursuance of agreement for sale – Held** – A couple entered into an agreement to sell with the accused, who paid some amount in cash and towards balance, issued two post- dated cheques, each in the amount of Rs. 25 lakhs. On failure to pay the amount, complaint was filed under Section 138 of the Negotiable Instruments Act. The accused moved the High Court which quashed the complaint holding that cheques had not been issued for creating any liability or debt but for the payment of balance consideration. In appeal, the Apex court observed that admittedly the cheques were issued under and in pursuance of the agreement to sell. Though an agreement to sell does not create any interest in immovable property, it nonetheless constitutes a legally enforceable contract between the parties to it, the court added. While setting aside the High Court order, the court said: "A payment which is made in pursuance of such an agreement is hence a payment made in pursuance of a duly enforceable debt or liability for the purposes of Section 138."

## IMPORTANT CASES : INJUNCTIONS

“A prayer for injunction, which is an equitable remedy, must be governed by the principles of ‘uberrima fides’.”

**Hammad Ahmed vs. Abdul Majeed : 2019 SCC OnLine SC 467 : Held : No prohibition in granting interim mandatory injunctions in appropriate cases** – The Supreme Court has observed that grant of interim mandatory injunction is not prohibited, and it can be granted in 'appropriate' cases. The bench observed that an ad interim mandatory injunction, is to be granted not at the asking but on strong circumstance so that to protect the rights and interest of the parties so as not to frustrate their rights regarding mandatory injunction. The court was dealing with a contention that an application under Order XXXIX Rules 1 and 2 of the Code, the Court will not grant interim mandatory relief resulting in creation of entirely new state of affairs which hitherto never existed. In this case, an interim mandatory injunction to hand over of the passwords and management of Hamdard (wakf) to appellant was sought. Reliance was placed upon the judgment of the Apex Court in Samir Narain Bhojwani v. Arora Properties and Investments. The bench also referred to Deoraj vs. State of Maharashtra which held that such interim relief only if it is satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice.

**Balkrishna Dattatraya Galande vs. Balkrishna Rambharose Gupta & Another: 2019 SCC OnLine SC 135: Held : Section 38 Specific Relief Act : Plaintiff has to prove his actual possession on the date of filing the suit** – The Supreme Court has observed that in a suit filed under Section 38 of the Specific Relief Act, permanent injunction can be granted only to a person who is in actual possession of the property on the date of suit. In this case, the trial court had dismissed the suit filed by a

A.K. Ganguly, J. in Amar Singh vs. Union of India, (2011) 7 SCC 69

tenant seeking permanent injunction against the landlord, on the ground that the tenant-plaintiff did not produce any relevant documents showing that he has been carrying on the business from the suit premises. The first appellate court reversed these findings and the High court affirmed the same. The court observed, "In a suit filed under Section 38 of the Specific Relief Act, possession on the date of suit is a must for grant of permanent injunction. When the first respondent-plaintiff has failed to prove that he was in actual possession of the property on the date of the suit, he is not entitled for the decree for permanent injunction."

**Jharkhand State Housing Board vs. Didar Singh & Anr.: 2018 SCC OnLine SC 2170: Held : Suit for mere injunction not maintainable when defendant can successfully raise cloud over plaintiff's title** – The Supreme Court has reiterated that a suit for bare injunction would not be maintainable when a defendant could successfully raise cloud over the title of the plaintiff. The bench observed that the board by relying upon the land acquisition proceedings and the possession certificate could successfully raise cloud over the title of the plaintiff and in those circumstances plaintiff ought to have sought for the relief of declaration and the suit for injunction simplicitor could not have been entertained. The court said, "It is well settled by catena of Judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction."

**Dinesh Singh Thakur vs. Sonal Thakur: 2018 SCC OnLine SC 390 : Held : SC rejects husband's plea for anti-suit injunction against wife's plea in US Court seeking divorce on ground of irretrievable breakdown of marriage** – The Supreme Court dismissed a husband's plea seeking an anti-suit injunction against his wife to restrain her from pursuing petition she had filed in a Florida (US) court, seeking divorce on the ground of irretrievable breakdown of marriage. The husband had approached the apex court challenging the Punjab and Haryana High Court order that rejected his challenge against district court order which vacated ad-interim injunction granted against the wife. The bench explained anti-suit injunctions as follows: "Anti-Suit Injunctions are meant to restrain a party to a suit/proceeding from instituting or prosecuting a case in another court, including a foreign court. Simply put, an anti-suit injunction is a judicial order restraining one party from prosecuting a case in another court outside its jurisdiction. The principles governing grant of injunction are common to that of granting anti-suit injunction. The cases of injunction are basically governed by the doctrine of equity. It is a well-settled law that the courts in India have power to issue an anti-suit injunction to a party over whom it has personal jurisdiction, in an appropriate case. However, before passing the order of anti-suit injunction, courts should be very cautious and careful, and it should be granted sparingly and not as a matter of routine as such orders involve a court impinging on the jurisdiction of another court, which is not entertained very easily especially when it restrains the parties from instituting or continuing a case in a foreign court."

**Sucha Singh Sodhi vs. Baldev Raj Walia : 2018 SCC OnLine SC 373 : Held : Plaintiff can't seek specific performance and injunction in one suit** – The Supreme Court has held that a plaintiff could not claim the relief of specific performance of agreement along with the relief of a permanent injunction in a suit. 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, the court said.

**Prabhakara Adiga vs. Gowri & Ors.: 2017 SCC OnLine SC 153 : Held : Decree of injunction can be executed against legal representatives of deceased Judgment-Debtor** – The Supreme Court has held that a decree for injunction can also be executed against legal representatives of the deceased judgment-debtor, in view of the specific provisions contained in Section 50 of the Code of Civil Procedure. The bench observed that when the right litigated upon is heritable, the decree would not normally abate and can be enforced by legal representatives of decree-holder and against the judgment-debtor or his legal representatives. It would be against the public policy to ask the decree-holder to litigate once over again against the legal representatives of the judgment-debtor when the cause and injunction survives, the bench said.

**M/s Adani Agri Fresh Ltd. vs. Mahaboob Sharif & Ors. : 2015 SCC OnLine SC 1302 : Held: Injunction of an unconditional Bank Guarantee cannot be granted except in case of fraud or 'special equities'** – Resolving the legal issue as to whether the beneficiary of an unconditional and irrevocable bank guarantee can be enjoined from enforcing the guarantee at the instance of the customer of the bank on whose behalf the guarantee has been furnished, the Supreme Court reiterated the dicta laid down in U.P. Cooperative Federation Ltd. vs. Singh Consultants and Engineers (P) Ltd., (1988) 1 SCC 174, and Vinitec Electronics Private Ltd. vs. HCL Infosystems Ltd., (2008) 1 SCC 544 wherein the law on the subject has been laid down to the effect that the person in whose favour the guarantee is furnished by the bank cannot be prevented by way of an injunction from enforcing the guarantee on the pretext that the condition for enforcing the bank guarantee in terms of the agreement entered into between the parties has not been fulfilled, and that the seller cannot raise the dispute of whatsoever nature and prevent the purchaser from enforcing the bank guarantee by way of injunction except on the ground of fraud and irretrievable injury.

**NOTIFICATION****MINISTRY OF LAW AND JUSTICE  
(Legislative Department)**

New Delhi, the 21st February, 2019 / Phalguna 2, 1940 (Saka)

The following Act of Parliament received the assent of the President on the 21st February, 2019, and is hereby published for general information:—

**THE PERSONAL LAWS (AMENDMENT) ACT, 2019****NO. 6 OF 2019 [21st February, 2019.]**

An Act further to amend the Divorce Act, 1869, the Dissolution of Muslim Marriages Act, 1939, the Special Marriage Act, 1954, the Hindu Marriage Act, 1955 and the Hindu Adoptions and Maintenance Act, 1956.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

**CHAPTER I****PRELIMINARY**

1.(1) This Act may be called the Personal Laws (Amendment) Act, 2019. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**CHAPTER II****AMENDMENT TO THE DIVORCE ACT, 1869**

2. In the Divorce Act, 1869, in section 10, in sub-section (1), clause (iv) shall be omitted

**CHAPTER III****AMENDMENT TO THE DISSOLUTION OF MUSLIM MARRIAGES ACT, 1939**

3. In the Dissolution of Muslim Marriages Act, 1939, in section 2, in ground (vi), the words "leprosy or" shall be omitted.

**CHAPTER IV****AMENDMENT TO THE SPECIAL MARRIAGE ACT, 1954**

4. In the Special Marriage Act, 1954, in section 27, in sub-section (1), clause (g) shall be omitted.

**CHAPTER V****AMENDMENT TO THE HINDU MARRIAGE ACT, 1955**

5. In the Hindu Marriage Act, 1955, in section 13, in sub-section (1), clause (iv) shall be omitted.

**CHAPTER VI****AMENDMENT TO THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956**

6. In the Hindu Adoptions and Maintenance Act, 1956 in section 18, in sub-section (2), clause (c) shall be omitted.

## EVENTS OF THE MONTH

1. The Trainee Judicial Officers completed their first part of Institutional Training on April 05, 2019. **HMJ Rajan Gupta, President, BOG, CJA** addressed the Judicial Officers. On this occasion, they were advised that they must take their court placement work for the next four weeks seriously. They must equip themselves with the different skills which are required by the Judicial Officers in performing their judicial work. On coming back to the Academy the reflective feedback would be taken. **HMJ Rajesh Bindal, Judge, J&K High Court** delivered a Special Lecture to TJOs on Building Up Judicial Skills so that they could perform their duties effectively.

2. **Refresher-cum-Orientation Course for Civil Judges-cum-Judicial Magistrates of Punjab and Haryana** was organized on April 07, 2019 at Chandigarh Judicial Academy. The Civil Judges were sensitized on topics : Guidelines for Recording of Statements under Section 164 Cr.P.C, PC & PNDT Act 1994 : An insight from Judicial Magistrate's Point of View, Recent Changes in Criminal Law – Substantive and Procedural, Role of Referral Judges – Mediation and Training regarding Practical Use of Computers in Courts. Dr. K.P. Singh, IPS, Director General, Vigilance Bureau, Haryana was the Resource for second session (PC&PNDT Act) and other sessions were taken by in-service Judicial Officers-cum-Faculty Members. 56 Judicial Officers attended this programme. On the same date (07.04.2019), **Refresher-cum-Orientation Course** was organized for **ADJs of Punjab and Haryana**. The topics for sensitizing for ADJs were : The Art and Science of Writing Judgments, Management Skills in Court Working, Revenue Terminology-I & II and Training on Practical Use of Computers in Courts. The aforesaid sessions for ADJs were taken by Dr. Balram K. Gupta, Director (Academics), Ms. Shalini Singh Nagpal, Director (Administration), Sh. B.M. Lal, Faculty CJA & Faculty from Punjab and Haryana High Court respectively. 56 ADJs attended this programme.

3. **Ten Days Programme for Seventh Batch of 32 Public Prosecutors (30 from the State of Punjab and 2 from UT Chandigarh)** commenced from April 22, 2019 at Chandigarh

Judicial Academy. The programme would conclude on May 02, 2019. 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. Sh. Pradeep Mehta & Dr. Nandita Kaushik, Faculty, CJA co-ordinated the programme. The different sessions were taken by Dr. Balram K. Gupta, Director (Academics), Dr. K.P. Singh, IPS, Director General, State Vigilance Bureau, Haryana, Anil Malhotra, Advocate, Punjab & Haryana High Court, Dr. Krishan Vij, Ex. Prof. & Head, Department of Forensic Medicine, Govt. Medical College, Chandigarh, Faculty from CJA and CFSL, Chandigarh. The valedictory session will be held on 02.05.2019.

4. Chandigarh Judicial Academy organized one day **workshop on "The Prevention of Money-Laundering Act, 2002"** in collaboration with The Directorate of Enforcement, Govt. of India on April 27, 2019. The District and Sessions Judges and ADJs from States of Punjab, ADJs under training at CJA and Special Public Prosecutors of Enforcement Directorate (total 33) participated in this workshop. The workshop was inaugurated by HMJ Rajan Gupta, President, BOG, CJA. The inaugural session was also addressed by Dr. Balram K. Gupta, Director (Academics), CJA and Mr. Sanjay Mishra, Director, Enforcement Director, New Delhi. The different sessions were addressed by Mr. Sanjay Mishra, Director, Mr. A.C. Singh, Deputy Legal Advisor, ED and Mr. S.K. Sharma, Legal Advisor, NIA. The certificates were awarded by Dr. Balram K. Gupta and Mr. Sanjay Mishra.

5. **Refresher-cum-Orientation Course through video conferencing for Civil Judges from the States of Haryana and UT Chandigarh** was organized on 30.04.2019. The Civil Judges were sensitized on the topic "Forgery of Documents and its Detection" at their respective District Court offices by Sh. Yash Pal Chand Jain, Handwriting and Document Expert through video-conferencing.

## FORTHCOMING EVENTS

1. **Refresher-cum-Orientation Course for Civil Judges-cum-Judicial Magistrates of Punjab and Haryana** is scheduled to be held on May 07, 2019 at Chandigarh Judicial Academy.

2. **8<sup>th</sup> Programme of ten days for Public Prosecutors of Punjab** and another programme for Public Prosecutors from the State of Haryana will be organized during the month of May 2019.