



**VOLUME : 04**  
**ISSUE : 08**

### **In this Issue:**

**From the Desk of Chief Editor**

**Latest Cases: CIVIL**

**Latest Cases : CRIMINAL**

**Landmark Judgments:**  
**Arbitration and Conciliation Act**

**Notification**

**Events of the Month &  
Forthcoming Events**

### **Editorial Board**

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

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For circulation among the stakeholders in Judicial Education

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

Last month (July), I wrote a piece on 'Pursuit of Happiness'. Let this piece be on 'Pursuit of Justice'. Can the two be blended together! If you are happy, will it not help you in rendering Justice better! Equally, doing justice, will it not give you happiness! It is two-way traffic. The goal is common. If you are happy, you do whole-some justice. If you do whole-some justice, you are more happy.

It was only a couple of weeks back, Hon'ble the Chief Justice of India, Justice Ranjan Gogoi had focussed on the Role of Judicial Academies in building up Judicial Culture on the touch-stone of Happiness. Happiness is the basic ingredient of Judicial Culture. Judicial Culture means, how best Justice can be rendered. It is weaving of Judicial Human Fabric with the thread of Justice. Doing justice is the concern of all. Those who do justice as also for whom justice is done. The reason is, judges have to ensure that in doing justice, no injustice is done to anyone. In fact, injustice must be removed. Doing justice is not easy. Judges do what others avoid to do. Judges are mortals. Yet, they perform a function which is so divine. Therefore, the challenge for the Judicial Academies is how to train the young minds to perform this divine responsibility.

The change for the young judicial officers is from class-rooms to court-rooms. This is a vital change. A responsible change. From a student to a judge. How to conduct the court. As also, how to conduct themselves in-court and outside-court. The judicial academies must provide the nuts and bolts. The tips to new judges. Judicial Academies must nurture their mind-set : how to enjoy their work, how to feel good about their work? Not to treat the work as burden. Not to feel stressed. How to be relaxed and perform. How to feel good about the work they are doing. They must know the file. They must know the law. Good in communication. Good in dress. Good in appearance. Good in body language. Above all, good in conducting the court. Good in managing the lawyers. Good in keeping the environment of the court comfortable. This is important to extract the maximum assistance from the lawyers. Quick and effective handling of cases. You contribute more. You achieve more. You feel good and happy.

A judge must have a sharp mind. Must also have the skill to handle difficult situations in court. The court craft is an art. The court itself is the laboratory. Let me share a story of Swami Vivekananda. Swami Vivekananda was studying law at the University College, London. One professor, Peters disliked him. One day Prof. Peters was having lunch in the dining room. Vivekananda came with his tray and sat next to the professor. The professor told Vivekananda, how a pig can sit with a bird to have lunch together. Vivekananda calmly responded: please do not worry professor, I will fly away. He got up and walked away leaving him alone. The professor found it difficult to digest this. He felt small.

The next day in the class, the professor posed a question to Vivekananda. Assuming, you were walking down the street. You find two bags. One with money. The second with wisdom. Which one would you take? Vivekananda responded without hesitation : the one with money of course. The professor sarcastically said : I, in your place, would have taken the bag with wisdom. The spontaneous response of Vivekananda was: one takes what one does not have. The professor was full of anger. Ready to take revenge. The professor wrote on the examination sheet of Vivekananda: Idiot and handed over to him. Vivekananda, still kept his cool. Remained calm. After a while, he got up. Told the professor in most dignified and polite tone : you signed the sheet but you forgot to give the grade. This story is demonstrative of the fact that a judge must keep his cool in all circumstances. A judge must think wisely in responding to lawyers and others in court. Cool minds are happy minds. Even the most trying situation would leave the judge with a good and happy feeling.

It is said that judges must be free from all kinds of biases and prejudices. No labels. Pro-landlord or anti-establishment. Each case would be decided on its own merits. No influence. No pressure. A judge must, right in the beginning, build up a reputation that any such effort would do more harm than good. It would save him or her from disturbed mind day-in and day-out. The feeling that you would be doing injustice would itself be killing. It would give you sleepless nights. It would adversely affect your work. Your health. It would give you a miserable feeling. Your over all personality as a judge would be dented and tainted. If you are free from all this you would enjoy good reputation. Good reputation is the best health tonic for a judge. Happy minds are the best minds to do quality justice. Judicial Academies must irrigate judicial minds into happy minds.

A judge should never let the feeling go in the Bar that a particular lawyer or some lawyers alone get the relief in his court. This is damaging for the system. This is also damaging for the judge. This disturbs the balance of the court. This undermines the role of lawyers. To be an honest judge is the basic eligibility. Otherwise, one does not even qualify. Rejected at the threshold. If the message goes around, you are approachable, your life would become miserable. Stories would float that he takes money through a particular lawyer. Initially, people may whisper. Gradually, noise will be made. All this will disturb your peace of mind. You will not be able to perform. You will suffer. Your family would suffer. Some do not like to be a judge. Why! They have a particular life style. Therefore, they do not fit into the slot of a judge. It is much better to avoid than to accept judgeship. You would lose your peace of mind and happiness for the rest of your life.

Magna Carta more than eight centuries old (1215) has given three-fold recipe of justice. Not to sell justice. Not to deny justice. Not to delay justice. This three-way test is the test for judges to do justice. In the Supreme Court, there is a beautiful mural as one enters the Chief Justice's Court from the Judge's wing. In the centre, there is wheel of dharma. On the right side, the goddess of justice and on the left Mahatma Gandhi. Below the wheel of dharma, there is inscription in Sanskrit which means "Truth alone I uphold". The wheel of dharma encompasses truth, goodness and equity. It also signifies good and noble conduct. The eyes of the goddess of justice are not blindfolded. Why? A judge must consider everything for himself / herself. Apply the mind. The order / judgment must reflect due application of mind. The parties must know why they have won or lost the case. On the left side, there is picture of Mahatma Gandhi. We are celebrating 150<sup>th</sup> birth centenary of Mahatma. His abiding faith in truth, non-violence and peace has inspired the judges to deliver justice free from the shackles of rigid procedures. The underprivileged can send their grievances to the apex court even in the form of letters. These letters are treated as petitions for justice. Public Interest Petitions have linked the people of India with the Constitution of India. The Pursuit of Justice is the solemn pledge of judges. This is the first constitutional obligation of judges. They must continue to discharge their obligation. Heavens may fall, justice must be done.

## LATEST CASES : CIVIL

“Contracts of insurance are governed by the principle of utmost good faith. The duty of mutual fair dealing requires all parties to a contract to be fair and open with each other to create and maintain trust between them. In a contract of insurance, the insured can be expected to have information of which she/he has knowledge. This justifies a duty of good faith, leading to a positive duty of disclosure.”

Dr. D.Y. Chandrachud, J. in *Reliance Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod*, (2019) 6 SCC 175

**Madhukar Nivrutti Jagtap v. Pramila Bai Chandulal Parandekar : 2019 SCC OnLine SC 1026 – Alienation of suit property not illegal merely because it was done during pendency of suit – Held** – The Supreme Court observed that the effect of doctrine of *Lis Pendens* is not to annul all the transfers effected by the parties to a suit but only to render them subservient to the rights of the parties under the decree or order which may be made in that suit.

**Jayantibhai Raojibhai Patel v. Municipal Council, Narkhed & Ors.: 2019 SCC Online SC 1071 – Held** – While dealing with the matter of back wages after prolonged dismissal the Apex Court awarded lumpsum Rs.5 lakhs and has observed: “*In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalized. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L & S) 53].*”

**Kanwaljit Singh v. National Insurance Company Ltd. : 2019 SCC Online SC 1033 : Medical Claim – Held** – Allowing the appeal of claimant in family medical policy of child the apex court granted the relief to claimant by reversing the order of National Commission holding that child was not having predeceased disease. It was observed that “the claim could not have been repudiated by the Insurance Company as there was no pre-existing disease

when the initial individual Mediclaim Policy of child was taken in the year 2007-2008. Since then the policy was regularly renewed up to the year 2014-2015. Thus in the facts of the present case, the respondent – Insurance Company cannot take the plea of any pre-existing disease of child. Even otherwise, after having initially repudiated the claim of the appellant, the Insurance Company had itself allowed the claim to the extent of Rs.27,550/-, which amount was deposited in the account of the appellant, meaning thereby that the question of pre-existing disease in the case of the claimant was not considered to be material by the Insurance Company”.

**Menka Gupta v. Umashree Devi : Law Finder Id # 1563962 : Transferee pendente lite has locus standi to file application at the stage of order IX Rule 13 CPC – Held** – The Supreme Court held that a transferee pendente lite has locus standi to file an application seeking substitution of the original defendant who filed a petition to set aside ex parte decree.

**National Aluminium Company Limited v. Subhash Infra Engineers Pvt. Ltd. & Anr. : 2019 SCC Online SC 1091 : Law Finder Id # 1568222 : Jurisdiction of Civil Court – Held** – It has been held by the Apex Court that any objection with respect to existence or validity of the arbitration agreement, can be raised only by way of an application under Section 16 of the Act and Civil Court cannot have jurisdiction to go into such question.

**State of Rajasthan v. Shiv Dayal : 2019 SCC OnLine SC 1034 – Second appeal not to be dismissed merely on the ground of 'Concurrent Findings' – Held** – The Supreme Court observed that a High Court cannot dismiss a second appeal merely on the ground that that there is a concurrent finding of two Courts (whether of dismissal or decreeing of the suit), and thus such finding becomes unassailable. In this case the High Court dismissed a second appeal filed by the state on the ground that that since two Courts have decreed the suit, resulting in passing of the decree against the State, there arises no substantial question of law in the appeals.

**Vinod Kumar v. Ashok Kumar Gandhi : 2019 SCC OnLine SC 965 – Landlord can't be precluded from filing eviction petition on the**

**ground of bonafide need regarding non-residential premise – Held** – The Supreme Court while analyzing the judgment of *Satyawati Sharma vs. Union of India* which held that Section 14(1)(e) of the Delhi Rent Control Act is unconstitutional to the extent it discriminates between the premises let for residential and non-residential purposes, observed that it cannot be held to be per incuriam. Further, the bench also rejected the request that Satyawati Sharma judgment needs to be referred to a larger Bench for reconsideration.

**State of Andhra Pradesh v. B. Ranga Reddy: 2019 SCC OnLine SC 1009 – Filing of cross objections by defendants not necessary to dispute adverse findings in the dismissed suit – Held** – The Supreme Court observed that it is not necessary that defendants should file cross objections to the appeal against dismissal of a suit to dispute certain findings adverse to them in the judgment appealed against. The bench observed that, in such a situation, in the appeal filed by plaintiffs, the defendants have a right to support the ultimate decree passed by the trial court of dismissal of suit on grounds other than which weighed with trial court.

**Durgabai Deshmukh Memorial Sr. Sec. School & Anr. v. J.A.J Vasu Sena & Anr. : 2019 SCC Online SC 1075 : Deemed confirmation – Held** – The Supreme Court has observed that, where the relevant Service rule or the appointment letter stipulates a condition precedent to the confirmation of service there is no deemed confirmation of service merely because the services of a probationer are continued beyond the period of probation. It is only upon the issuance of an order of confirmation when the probationer is granted substantive appointment.

**Ravinder Kaur v. Manjeet Singh (Dead) through LRs. : 2019 SCC Online SC 1069 – Criminal / Civil action by wife – Held** – The Supreme Court has observed that legal course adopted by a wife to protect her rights cannot be considered as inflicting cruelty on the husband. In a divorce petition, the husband alleged that the wife had filed a false case under Section 107/151 of Cr.P.C. as a result of which he and his father were arrested. It was also alleged that the wife had filed a suit against him seeking declaration and permanent injunction with regard their house wherein she had alleged that the respondent had defrauded her. According to the husband, the said acts of the wife had amounted to cruelty and therefore had sought for dissolution of the marriage. The wife defended her action resorting to legal proceedings stating that she instituted these proceedings to protect

her rights and property and it was appreciated by the Apex Court.

**Ravinder Kaur Grewal & Ors. v. Manjit Kaur and Ors. : 2019 SCC Online SC 975 – Held – Plea of adverse possession** – In a significant judgment, the Supreme Court, held that any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession.

**Joginder Singh v. ICICI Lombard General Insurance Company : 2019 SCC OnLine SC 1029 : Deceased bachelor's age is the basis for computing multiplier in motor accident claims – Held** – The 'Multiplier' to be applied in the case of a deceased bachelor, should be computed on the basis of the age of the deceased, not the age of the parents, the Supreme court has reiterated. The bench was considering an appeal filed by parents of a deceased girl, who was just twenty year old and unmarried at the time of accident.

**Thankamony Amma v. Omana Amma N. : 2019 SCC OnLine SC 1022 : HC can't re-appreciate evidence while exercising revisional jurisdiction u/s 20 of Kerala Rent Control Act – Held** – While exercising revisional jurisdiction under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, the High Court cannot re-appreciate the evidence, the Supreme Court reiterated.

**Administration v. Hari Ram : 2019 SCC OnLine SC 970 – Slump in business cannot be the reason for default in payment of rent – Held** – Slump in the business cannot be the reason for default in payment of rent, remarked the Apex Court while considering an appeal filed by Chandigarh Administration against the High Court order that granted relief to its allottee.

**Air India Express Limited and Ors. v. Capt. Gurdarshan Kaur Sandhu : 2019 SCC Online SC 1082 – Withdrawal of resignation principles explained – Held** – The legal proposition is that the employee is entitled to withdraw her resignation before it become effective is not applicable if there is any stipulation to the contrary in the provisions governing the terms and conditions of the office/post. Also, a prospective resignation' cannot be withdrawn if there is a legal contractual or constitutional bar. Additional factor which may dilute the general principle is when the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter.

## LATEST CASES : CRIMINAL

“For our purposes, the dignity of human being inheres a capacity for understanding, rational choice, and free will inherent in human nature, etc. The right to dignity of an accused does not dry out with the Judges’ ink, rather, it subsists well beyond the prison gates and operates until his last breath. In the context of mentally ill prisoners it is pertinent to mention that Section 20(1) of the Mental Healthcare Act, 2017, Act 10 of 2017, explicitly provides that “every person with mental illness shall have a right to live with dignity.”

N.V. Ramana, J. in ‘X’ v. State of Maharashtra, (2019) 7 SCC 1

**Sanjay Rajak vs. State of Bihar : 2019 (9) SCALE 514 : Failure to recover dead body by itself doesn’t entitle accused to benefit of doubt – Held** – In conviction by the High court pertaining to the case of victim, a school going child aged about 5-6 years who was kidnapped from the school & murdered, the police failed to recover the dead body of the child. The SC held that “it is not an invariable rule of criminal jurisprudence that the failure of the police to recover the corpus delicti will render the prosecution case doubtful entitling the accused to acquittal on benefit of doubt. It is only one of the relevant factors to be considered along with all other attendant facts and circumstances to arrive at a finding based on reasonability and probability based on normal human prudence and behaviour”. It was further held that the failure of the police to recover the dead body is not much of consequence in the absence of any explanation by the appellant both with regard to the victim last being seen with him coupled with the recovery from his house of the belongings of the deceased.

**Naval Kishore Mishra v. State of U.P. (SC) : 2019 (3) RCR (Criminal) 679 : There is no need for victim to apply for leave to appeal against order of acquittal while preferring appeal – Held**–Reiterating that victim has a right to file the appeal against acquittal of the accused without seeking leave to Appeal, the Supreme Court observed that such appeal has to be dealt as a regular appeal. The SC set aside the High Court judgment which had dismissed appeal of the victim (styled as leave to appeal) on the ground that leave had not been granted to the Government to file the appeal.

**Ritesh Sinha v. State of U.P. : 2019 SCC Online SC 956 : Magistrate has power to direct an accused to give voice samples during investigation without his consent – Held**– In this case an FIR was registered against two accused including the appellant on the ground that were engaged in collection of money from different people promising them jobs. On the arrest of one of the accused, one mobile phone was seized from him. The Investigating Authority wanted to verify whether the recorded conversation in the mobile phone was between the accused and the appellant. They needed the voice sample of the appellant and filed an

application before the Chief Judicial Magistrate praying for summoning the appellant to the Court for recording his voice sample. The application was allowed by the CJM. The revision against the order was dismissed by the HC. The appeal against this order was heard and disposed of by a split verdict of a two Judge Bench of the Supreme Court. Therefore, the matter was referred to the larger bench. The Bench observed that, “until explicit provisions are engrafted in the Code of Criminal Procedure by Parliament, a Judicial Magistrate must be conceded the power to order a person to give a sample of his voice for the purpose of investigation of a crime”.

**Mauji Ram v. State of Uttar Pradesh (SC) : 2019 SCC Online SC 933 : Bail cannot be granted without assigning reasons – Held** – The Supreme Court held that while granting bail, the court must mention the grounds on which bail has been granted. It was stated that “Though it may not be necessary to give categorical finding while granting or rejecting the bail for want of full evidence adduced by the prosecution as also by the defence at that stage yet it must appear from a perusal of the order that the Court has applied its mind to the relevant facts in the light of the material filed by the prosecution at the time of consideration of bail application”.

**Ude Singh v. State of Haryana (SC) : 2019(9) SCALE 831: Offence of abetment to suicide may attract when accused played active role in tarnishing self respect of deceased victim – Held** – The Supreme Court made this observation in an appeal against the judgment of the High court whereby, the High Court upheld the conviction of the accused appellant under Section 306 IPC. The Accused person was guilty of taunting and insulting deceased girl of 18 years. As result of continuous indecent behaviour girl committed suicide by hanging herself.

**Girish Singh v. State of Uttarakhand (SC) – 2019 (9) SCALE 548: If cruelty is not related to dowry, it cannot be the basis of conviction under section 304B IPC – Held** – The facts are that the accused used to treat his wife with cruelty on account of dowry demand & that his father wanted to fulfil his lust with his daughter-in-law. The Trial Court acquitted the appellants.

The appeal against their acquittal by the State was allowed by the High Court. The appellants were convicted under Section 304B read with Section 34 of the IPC. The Supreme Court allowed the appeal and observed that the father-in-law of the deceased caused mental cruelty to the deceased because "in the state of intoxication, he asked her to sleep with him. The evidence regarding this is irrelevant and foreign to the scope of a trial for the offence under Section 304B of the IPC. It does not relate, at all, to the demand for dowry".

**Amir Hamza Shaikh & Ors. v. State of Maharashtra & Anr. : 2019 SCC Online SC 976 : Victim has a right to assist the court in a trial before the magistrate – Held** – The Supreme Court observed, "that though the Magistrate is not bound to grant permission to a victim to conduct prosecution at the mere asking but the victim has a right to assist the Court in a trial before the Magistrate". It was stated that the Magistrate may consider as to whether the victim is able to assist the Court and the trial does not involve such complexities which cannot be handled by the victim. On satisfaction of such facts, the Magistrate would be well within its jurisdiction to grant permission to the victim to take over the inquiry of the pendency before the Magistrate.

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

**Pavan Diliprao Dike v. Vishal Narendrabhai Parmar (SC) : 2019 (3) RCR (Criminal) 863 : Heavy burden cannot be placed on complainant to prove debt – Held** – In the present case the magistrate dismissed the complaint on the ground that the complainant failed to prove that the cheque which was dishonoured was given by the accused to the complainant to discharge the legal debt/liability. The High Court, on appeal filed by the complainant, reversed the order of the Trial Court, observing that, as per Section 139 of the Act of 1881, the burden to prove that the cheque in question was issued for some purpose other than discharging legal debt/liability was on the accused. While affirming the order of the High

Court, the Supreme Court observed, "We are of the opinion that the trial court committed an error in placing heavy burden on the complainant to prove the debt".

**Rajesh & Ors. v. State of Haryana : 2019 (3) R.C.R. (Criminal) 133 – Court can summon additional accused on the basis of examination-in-chief of witness concerned – Court need not wait till cross examination of such witness – Held** – The Supreme Court made this observation in appeal against the order of the High Court by which the High Court dismissed the petition preferred by the appellants & confirmed the order passed by the Trial Court vide which the appellants were summoned to face trial. The apex court observed that Court can exercise power to summon additional accused even on basis of statement made in examination-in-chief of witness concerned & the Court need not wait till cross-examination of such witness.

**Surinder Singh Deswal @ Col. S.S. Deswal and Others v. Virender Gandhi – 2019 (3) R.C.R. (Criminal) 186 – Section 148 (inserted by Amendment Act 2018) of NI Act – Power of Appellate Court directing the accused to deposit more than 20% of fine amount is mandatory in nature – Held** – In a complaint under section 138 of the NI Act the trial court convicted the appellants and sentenced them to undergo imprisonment of two years and to pay cheque amount plus 1% as interest and litigation expense as fine. The Supreme Court held that amended Section 148 confers power upon the appellate court to pass an order pending appeal to direct the appellants to deposit the sum which shall not be less than 20% of the fine or compensation. The Court has clarified that the said section shall be applicable in respect of the appeals against the order of conviction under section 138 of the NI Act, even in a case where the criminal complaints for the offence under section 138 were filed prior to the NI Amendment Act came into force.

**Bharat Sanchar Nigam Limited and Ors. v. Pramod V. Sawant & Anr. : 2019 SCC OnLine SC 1049 : Section 197 Cr.P.C : Employees of public sector corporations are not entitled to protection of sanction as 'Public Servant': SC – Held** – The Supreme Court has reiterated that those employees of public sector corporations are not entitled to the protection under Section 197 of the Code of Criminal Procedure, as 'public servant'. The bench held that "The fact that their past service may count for purposes of pension in case of removal or dismissal by the Corporation or that administrative approval of the concerned ministry may be formally required before any punitive action will not confer on them the status of 'public servant' under the Cr.P.C."

## LANDMARK JUDGMENTS: ARBITRATION AND CONCILIATION ACT

"The Press in India has greatly contributed to the strengthening of democracy in the country. It will have a pivotal role to play for the continued existence of a vibrant democracy in the country. The reach of the Press out of which the visual media in particular wields power, appears to be limitless. No segment of the population is impervious to its influence. Media's consumers are entitled to demand that the stream of information that flows from it, must remain unpolluted by considerations other than truth."

K.M. Joseph, J. in Yashwant  
Sinha v. CBI, (2019) 6 SCC 1

**The Government of Haryana, PWD Haryana (B and R) Branch v. M/s. G.F. Toll Road Pvt. Ltd. & Ors. : 2019 (1) SCALE 134 – Former employee not disqualified from acting as an arbitrator, even after 2015 amendment – Held** – The Supreme Court held that the Arbitration and Conciliation Act, 1996, does not disqualify a former employee from acting as an arbitrator, provided that there are no justifiable doubts as to his independence and impartiality.

**Rajasthan Small Industries Corporation Limited v. M/s Ganesh Containers Movers Syndicate : 2019 SCC OnLine SC 65 – Mere delay in passing the award by itself cannot be the ground to appoint another arbitrator – Held** – In this case, it was observed that mere neglect of an arbitrator to act or delay in passing the award by itself cannot be the ground to appoint another arbitrator in deviation from the terms agreed to by the parties. The Apex Court held thus while considering appeal against High Court order appointing a retired District Judge as the sole arbitrator to resolve the dispute between the parties, by allowing application under Section 11 and Section 15 of the Arbitration and Conciliation Act, 1996, filed by contractor.

**Jaiprakash Associates Ltd. v. Tehri Hydro Development corporation India Ltd.: 2019 SCC OnLine SC 143 – Arbitral Tribunal cannot award interest if agreement expressly bars its payment – Held** – It was reiterated that arbitrator cannot award interest on award if the agreement expressly

prohibits grant of interest. The bench dismissed an appeal to uphold a judgment of Delhi High Court, which had set aside an arbitration award to the extent it granted interest overlooking the prohibition in the agreement.

**LMJ International Ltd. v. Sleepwell Industries Co. Ltd : 2019 SCC OnLine SC 242 – Maintainability of execution case to be considered along with issue of enforceability of foreign award – Held** – The Apex Court observed that piecemeal consideration of the issue of maintainability of the execution case concerning the foreign awards, in the first place; and then the issue of enforceability thereof, is not envisaged under the scheme of Section 48 of the Arbitration and Conciliation Act, 1996. The bench observed that the Court is expected to consider both these aspects viz. maintainability and enforceability, simultaneously at the threshold.

**Union of India v. Parmar Construction Company: 2019 SCC OnLine SC 442 – Court can appoint independent arbitrator only after resorting to the procedure in arbitration agreement – Held** – The Supreme Court observed that the High Court, while dealing with an application under Section 11(6) of the Arbitration and Conciliation Act, seeking appointment of an 'independent Arbitrator', should first resort to the mechanism in appointment of an arbitrator as per the terms of contract as agreed by the parties. One of the issue in a batch of appeals was whether it was permissible for the High Court under Section

11(6) of the Arbitration and Conciliation Act, 1996 (prior to the Amendment Act, 2015) to appoint third party or an independent Arbitrator when the parties have mutually agreed for the procedure vis-à-vis the authority to appoint the designated arbitrator.

**Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engineering Ltd.: 2019 SCC OnLine SC 515 – Court can't appoint arbitrator when the contract containing arbitration clause is insufficiently stamped– Held** – The Supreme Court held that it would be necessary for the Court before considering and passing final orders on an application under Section 11(6) of the Act to await the adjudication by the stamp authorities, in a case where the document objected to, is not adequately stamped. The bench comprising Justice Rohinton Fali Nariman and Justice Vineet Saran observed that the law laid down in SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd. still applies, even after introduction of Section 11(6A), by way of the Arbitration and Conciliation (Amendment) Act, 2015.

**Bharat Broadband Network Limited v. United Telecoms Limited : 2018 SCC OnLine SC 3276 – Person ineligible to be arbitrator under Sec.12(5) of Arbitration Act cannot appoint another arbitrator – Held** – The Supreme Court 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 apex court followed the 2017 decision in TRF Ltd. v Energy Engineering Projects Ltd (2017) 8 SCC 377 (TRF Ltd), which had held that an ineligible person cannot appoint arbitrator.

**Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (NHAI) : 2019 SCC OnLine SC 677 – Sec.34 Arbitration Act – Unilateral addition to**

**contract by Arbitral Tribunal violates most basic notions of justice – Held** – Holding that "a unilateral addition or alteration of a contract can never be foisted upon an unwilling party", the Supreme Court set aside an arbitral award on the grounds of it being in conflict with "most basic notions of justice" and thereby conflicting with "public policy of India" as per Section 34(2)(b)(ii)(iii) of the Arbitration and Conciliation Act 1996. In addition to that, the Court held that the award was also liable to be set aside under Section 34(2)(a)(iii) on the finding that the party was rendered "unable to present his case".

**Sai Babu vs. Clariya Steels Pvt. Ltd. : 2019 (3) RCR (Civil) 180 – Termination of arbitration proceedings u/s 32 of arbitration and conciliation act cannot be recalled – Held** – The Supreme Court observed that the termination of Arbitration proceedings by the Arbitrator under Section 32(2) (c) of the Arbitration and Conciliation Act cannot be recalled. In this case, the sole arbitrator terminated proceedings under Section 32(2) (c) i.e. on the ground that the continuation of the proceedings become unnecessary or impossible. Later, he allowed an application by one of the parties seeking recall of the order terminating the proceedings. The Karnataka High Court dismissed the challenged against this 'recall' by the Arbitrator.

**MMTC Ltd. v. M/s Vedanta Ltd. : 2019 SCC OnLine Bom 220 – Independent assessment of merits of award cannot be made in an arbitration appeal – Held** – The Supreme Court observed that, a court while considering an appeal under Section 37 of the Arbitration and Conciliation Act, cannot undertake an independent assessment of the merits of the award. The bench observed that, in such appeals, the court must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision.

## NOTIFICATION

### 1.Parliament receives President's assent for Arbitration and Conciliation (Amendment) Bill, 2019:

On 09.08.2019, President gave its assent for the Arbitration and Conciliation (Amendment) Bill, 2019. Arbitration and Conciliation (Amendment) Act, 2019 will further amend the Arbitration and Conciliation Act, 1996. Following are the major amendments taken place under the Act:

#### Features & Highlights of the Arbitration and Conciliation (Amendment) Act, 2019:

- **Amendment of Section 2:** Insertion of clause (ca) in sub-section 1 of Section 2:

(ca) "arbitral institution" means an arbitral institution designated by the Supreme Court or a High Court under this Act;

#### Insertion of clause (i) & (j) after clause (h):

- "prescribed" means prescribed by rules made under this Act

(j) "regulations" means the regulations made by the Council under this Act.

- **Amendment of Section 11:** Insertion of **sub-section (3A)** which is as follows:

"(3A) The Supreme Court and the High Court shall have the power to designate, arbitral institutions, from time to time, which have been graded by the Council under Section 43-I, for the purposes of this Act:

Provided that in respect of those High Court jurisdictions, where no graded arbitral institution are available, then, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institution and any reference to the arbitrator shall be deemed to be an arbitral institution for the purposes of this section and the arbitrator appointed by a party shall be entitled to such fee at the rate as specified in the Fourth Schedule:

Provided further that the Chief Justice of the concerned High Court may, from time to time, review the panel of arbitrators.";

#### Substitution made in Sub-section (4) of Section 11

Old	New (Amended)
<p>(4) If the appointment procedure in sub-section (3) applies and— (a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or (b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, <b>the appointment shall be made, upon request of a party, by [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such court].</b></p>	<p><b>(4)</b> If the appointment procedure in sub-section (3) applies and— (a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or (b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, <b>"the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be"</b></p>

#### Substitution made in Sub-section (5) of Section 11

Old	New (Amended)
<p>(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a</p>	<p>(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of</p>

request by one party from the other party to so <b>agree the appointment shall be made, upon request of a party, by 11</b> [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such court].	a request by one party from the other party to so <b>“the appointment shall be made on an application of the party in accordance with the provisions contained in sub-section (4)”</b> ;
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**Substitution in sub-section (6) of Section 11**

<b>Old</b>	<b>New (As amended)</b>
<p>(6) Where, under an appointment procedure agreed upon by the parties,—</p> <p>(a) a party fails to act as required under that procedure; or</p> <p>(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or</p> <p>(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,</p> <p><b>a party may request [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such court] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.</b></p>	<p>(6) Where, under an appointment procedure agreed upon by the parties,—</p> <p>(a) a party fails to act as required under that procedure; or</p> <p>(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or</p> <p>(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,</p> <p><b>“the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be”</b></p>

**Omission of sub-sections (6A) and 7 under Section 11**

<b>Old</b>	<b>New (As amended)</b>
<p>(8) <b>The Supreme Court or, as the case may be, the High Court or the person or institution designated by such court,</b> before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of Section 12, and have due regard to -</p> <p>(a) any qualifications required for the arbitrator by the agreement of the parties; and</p> <p>(b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.]</p>	<p>(8) <b>“The arbitral institution referred to in sub-sections (4), (5) and (6)”</b>, before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of Section 12, and have due regard to -</p> <p>(a) any qualifications required for the arbitrator by the agreement of the parties; and</p> <p>(b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.]</p>

**Substitution in sub-section (9) of Section 11**

<b>Old</b>	<b>New (As amended)</b>
<p>(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, <b>[the Supreme Court or the person or institution designated by that court]</b> may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.</p>	<p>(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, <b>[“the arbitral institution designated by the Supreme Court”]</b> may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities</p>

**Sub-section (10) of Section 11 has been omitted.**

**Sub-sections (11) to (14) have been substituted as follows:**

“(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to different arbitral institutions, the arbitral institution to which the request has been first made under the relevant sub-section shall be competent to appoint.

(12) Where the matter referred to in sub-sections (4), (5), (6) and (8) arise in an international commercial arbitration or any other arbitration, the reference to the arbitral institution in those sub-sections shall be construed as a reference to the arbitral institution designated under sub-section (3A).

(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the arbitral institution within a period of thirty days from the date of service of notice on the opposite party.

(14) The arbitral institution shall determine the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal subject to the rates specified in the Fourth Schedule.

Explanation.—For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) where parties have agreed for determination of fees as per the rules of an arbitral institution.”

- **Amendment in Section 17: The following highlighted part will be omitted.**

Interim Measures ordered by Arbitral Tribunal:

(1) A party may, during the arbitral proceedings **or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36**, apply to the arbitral tribunal—

- **Amendment of Section 23:**

**Sub-section (4) shall be inserted after sub-section (3):**

**(4)** The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment.”

- **Amendment of Section 29A:**

**Substitution of sub-section (1):**

“(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23.”

**Insertion of provisos after the existing proviso in sub-section (4):**

“Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.”

- **Amendment of Section 34**
- **Amendment of Section 37**
- **Insertion of new sections: Sections 42A & 42B after Section 42:**

**Confidentiality of Information**

“**42A.** Notwithstanding anything contained in any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentiality of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of the award.

**Protection of action taken in good faith**

**42B.** No suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.”

- **Insertion of new part: PART 1A – Arbitration Council of India**
- **Insertion of the new schedule: 8<sup>th</sup> Schedule after Schedule 7<sup>th</sup> – Qualifications and Experience of Arbitrator.<sup>1</sup>**

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<sup>1</sup><http://egazette.nic.in/WriteReadData/2019/210414.pdf>

## EVENTS OF THE MONTH

1. On August 05, 2019, Special Lecture was delivered by Dr. Sukhsimranjit Singh, Managing Director, Straus Institute for Dispute Resolution, Pepperdine University School of Law for the PCS (JB) (Trainee Judicial Officers) at Chandigarh Judicial Academy. The lecture was on the topic : **The Challenge of Dispute Resolution through the Medium of Mediation**. It was chaired by Dr. Balram K. Gupta, Director (Academics), CJA. The lecture was followed by meaningful interaction.

2. **Refresher-cum-Orientation Course for Civil Judges** from the States of Punjab and Haryana was scheduled on August 10, 2019 at CJA. The Judicial Officers were sensitized on the topics : Role of Referral Judges – Mediation, Crimes relating to Trafficking and the Immoral Trafficking (Prevention) Act, 1956, Appreciation of Digital Evidence–I&II and Training on Practical use of Computers in Courts. First two sessions were taken by Dr. Gopal Arora and Sh. Baljinder Singh Sra, Faculty, CJA. Sh. Gurcharan Singh, Faculty, Cyber Crimes, CDIT, Chandigarh took third and fourth session. The fifth session was taken by Faculty from Punjab and Haryana High Court. 63 Judicial Officers participated in the Refresher Course.

3. **Seventh Workshop was conducted for Sri Lankan Judges at Chandigarh Judicial Academy** during August 14-18, 2019. The group of 25 Sri Lankan Judges was led by Justice K. Priyantha Fernando, Judge, Court of Appeal, Sri Lanka. Justice Jitendra Chauhan, President, BoG, CJA addressed the workshop both at the inaugural and the valedictory sessions. The sessions were

taken by Justice Swatanter Kumar, HMJ Rajiv Sharma, HMJ A.G. Masih, HMJ A.K. Tyagi, Justices S.S. Saron, Rajive Bhalla, M.M.S. Bedi, B.B. Parsoon, Dr. Balram K. Gupta, Mr. Atul Lakhnopal, Senior Advocate and Mr. Neeraj Aarora, Cyber Lawyer & International Arbitrator. The administrative component of the workshop was skillfully managed by Ms. Shalini Singh Nagpal. The workshop was coordinated by Mr. Pradeep Mehta. The focus of the workshop was on Strengthening the Judicial Human Fabric and Sharing of Knowledge. The basic recipe was, be a good human being in order to be a good judge.

4. **Ten Days Programme of First Batch of 26 Prosecutors from the State of Haryana was organized from August 19-30, 2019** at Chandigarh Judicial Academy. The training included four sessions of 1.15 hours per day. Total 39 sessions and the valedictory session were structured covering different aspects relevant for Public Prosecutors regarding Criminal and Civil Matters in order to enhance their capacity to perform their duties effectively and efficiently. The topics are : The Role of Prosecutor and the Constitution, Law of Custody during Investigation and special legislations, Interpretation of Revenue Records and their Applicability in Cases-I, Protection against self Incrimination-Dimensions and Applicability, Law on Bails-Regular and Anticipatory, Mens Rea Presumptions under NDPS Act & its constitutionality, General Aspect of Service Law, Examination of witnesses – Principles and Procedures, Interpretation of Revenue Records & their Applicability in Cases-II, Sentencing Policy & Restitutive Justice- Legal

and Procedural Aspects-I, Recent Changes in Criminal law-Substantive and Procedural, DNA Profiling & Evidence, Compensation under MACT Act, Important provision of SC-ST Act, Sentencing Policy & Restitutive Justice – Legal and Procedural Aspects-II, Role of Post-mortem in Aid of Justice, Suits against and by the Government – Legal implications, Executions-Speedy & Expeditious Disposals, Law Relating to Under Trials, Parole, Furlough & Pre Mature Release of Prisoners, Cordiality amongst Prosecutors, Police, Judiciary & District Administration, Electronic Evidence Admissibility & Appreciation, Ramifications of Personal Search under NDPS Act, Miscellaneous Applications under Civil Procedure Code, Cyber Crime Parameters of Investigation-Challenge, Legal Facets of Human Trafficking, Awards under Arbitration & Reconciliation Act-Legal Issues., Law on Constructive & Joint Criminal Liability, Criminal Appeals & Revisions –Law and Procedure, Prosecution Sanction for Public Servants, Summoning of Additional Accused and Evidence-Legal Parameters, Determination of Compensation under Land Acquisition Act, Jurisprudence of

Circumstantial Evidence, Delays in Criminal Trials-Causes & Remedial Measures, Process of Trial in Civil Cases-Best Practices & Law on Amendments of Pleadings, Important Aspects in Checking of Challans by the Prosecutor, Access to Justice- Legal Aid Special Ref to Kasab Case, Salient Feature of POCSO, Law of Admissions and Confessions, Forensic Evidence- Legal Scenario. Sh.Pradeep Mehta & Dr. Nandita Kaushik, Faculty, CJA co-ordinated the programme. The different sessions were taken by : Dr. Balram K. Gupta, Director (Academics), CJA, Dr. K.P. Singh, IPS, DG, State Vigilance Bureau, Haryana, Dr. D.V. Saharan, Dr. J.S. Dalal, Prof. & Head, Forensic Medicine, CMC, Ludhiana, Faculty from CJA & CFSL, Chandigarh,

5. **Refresher-cum-Orientation Course through Video Conferencing on the topic “Crimes relating to Trafficking and Immoral Trafficking (Prevention) Act, 1956** was organized at CJA for ADJs from the States of Punjab and Haryana on August 31<sup>st</sup>, 2019. Sh. Baljinder Singh Sra, ADJ-cum-Faculty Member, CJA was the Resource Person for video-conferencing.

## **FORTHCOMING EVENTS**

1. **Public Prosecutors Training** from Punjab will commence w.e.f. September 02, 2019.
2. On 09.09.2019 TJOs would be returning back from Punjab Police Academy, Phillaur to continue with their **Institutional Training** at CJA.
3. **Refresher-cum-Orientation Course for Civil Judges** from the States of Punjab and Haryana is scheduled on September 14, 2019 at CJA.
4. **Refresher-cum-Orientation Course for ADJs** from the States of Punjab and Haryana is scheduled on September 28, 2019 at CJA.