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FROM THE DESK OF CHIEF EDITOR

Chandigarh Judicial Academy organized inaugural function on Feb. 21, 2019 for 60 (39 female and 21 male) Judicial Officers from the state of Punjab for one year Foundation Training. I shared my recipe of Judicial Education.

Judicial Education is different from Legal Education. You have equipped yourself with legal knowledge. Judicial Education is providing of opportunities to Judges. To meet senior judges. To share their experiences. To gain knowledge. To update them. To sensitize to the fast changing social needs. To learn the tools of judicial decision making. To develop judicial and judicious temperament. To cultivate the habit of giving fair hearing. To consider every matter soberly. To decide impartially. In short, Judicial Education is all about making a good human being. In order to be a good Judge. The process is creating judicial culture through the medium of Judicial Education. Chandigarh Judicial Academy would be the nursery of Judicial Education.

It is only the fortunate ones who get the opportunity to do justice. This is the best kind of service to the humanity. It is divine service. Lot of sacrifices are made to serve the judiciary. Justice Arun Mishra of the Supreme Court of India in a judgement of January 28, 2019 has said – “to serve judiciary is not less than a call of military service”. Think of any society. Any country. Without the role and contribution of judges. Judges make Rule of Law, inter-act with Rule of Life. Judges enforce Constitutional discipline. They are not engines of power. They are the engines of justice. They weave judicial culture.

To be a good judge, be a good human being. It is good to know that some of the best poetry was written by Milton. He was blind. Some of the best music was composed by Beethoven. He was deaf. One of the greatest President of US was Franklin D. Roosevelt. He served from wheel chair. Basically, they were all good human beings.

Justice M.C. Chagla was the Chief Justice of Bombay High Court from 1947-58. He expired on February 9, 1981. It was on August 15, 1985, his statue was unveiled outside Court No.52, Chief's Court. The inscription reads:

A great judge
A great citizen
And above all, a great human being.

Justice H.R. Khanna occupies unique position on the Judicial map of India. He was born on July 3, 1912. He was no more on February 25, 2008. He played his innings for 96 years. A life of fulfillment. A life of sacrifice. A life full of service. His portrait continues to adorn Court No.2 of the summit court of the country. It is a reminder of the sacrifice he made. He never came to occupy Court No. 1 as the Chief Justice of India. He was superseded because of his Habeas Corpus decision. He did not decide cases looking forward to the office of Chief Justice of India. He decided cases in the service of citizens of India in accordance with Rule of Law. What 'courage' he displayed. He would be remembered for all times to come. Judges need to be bold and fearless. They take oath to decide cases without fear or favour, affection or ill-will.

The insignia of a judge is humility. Be a good human being. In court, one needs to observe and absorb. Chandigarh Judicial Academy shapes the future Judges. Their future too. Wish the young Judicial Officers a bond with CJA. A bond to be remembered for all times to come. You are the future partners in doing justice to humanity. May the Almighty shower His blessings on you. My blessings too.

Balram K. Gupta

INAUGURAL ADDRESS – HMJ KRISHNA MURARI
Chief Justice, Punjab & Haryana High Court & Patron-In-Chief, CJA

1. Justice Daya Chaudhary, President and other Members of Board of Governors, Chandigarh Judicial Academy, My other esteemed colleagues, Prof. (Dr.) Balram K. Gupta, Director (Academics), Smt. Shalini Singh Nagpal, Director (Administration), Judicial Officers, Parents of the newly appointed Judicial Officers, Ladies & Gentlemen.

2. It is moment of pride and pleasure for me to commence the today's Induction Programme. I have been told that as many as 60 Officers from Punjab Civil Services (Judicial Branch) would be inducted today for undergoing this prestigious one year training.

3. To begin with I would like to congratulate your parents as without their active co-operation your journey wouldn't have been the same. Whatever you all have been able to achieve till now wouldn't have been possible in absence of their co-operation. It is not only your success but of your parents as well.

4. As we all know India is on its path to be a leader in the world, with the rise in technological access and developments the problems which you will face will be unique in its own form. We are in need of sharp and honest judicial officers who are vigilant enough to notice the change, and firm, yet enterprising while implementing the law. This training at this magnificent Judicial Academy is a step toward making you well equipped with the tools which will help you in conducting your duty effectively and efficiently.

5. Judicial education through training will enhance your skills as Judicial Officers and your training will help you in conducting your courts as well. It will also be beneficial for you in removing the inconsistencies and conflicts you will face while delivering the decisions. However, whenever you are faced with a difficulty in any case I would like you to think of Mahatma Gandhi, the Father of Nation, as he used to say in his morning prayer, "*O God – Enable me in taking first step in right direction, the rest will follow.*"

6. Your training at this Chandigarh Judicial Academy will provide you an opportunity to enhance your rationality in interpretation and application of laws.

7. Since you all are now set to embark upon a new journey in your judicial service, I would like to emphasize upon few important things

- I. Every judicial Officer has to lead a disciplined life. I expect you all to be punctual and regular in the court. Sitting in court late, without reasonable cause, causes frustration to the litigants. Therefore, Non-adherence to court timings must be avoided at all cost.
- II. Integrity is an essential quality of a Judicial Officer. You must resolve to work very hard. Always be courteous to the litigants, witnesses and the members of the Bar. You have to gain the respect of the people and of the Bar by your behavior and knowledge.
- III. You will be working at the grass root level of our judicial system. The aspiration and hope of our society is bestowed upon the shoulders of judicial officers. Thereby, leaving a duty to instill trust and confidence in the masses.
- IV. It is said Justice is not only to be done but must be seen to be done and this should be your motto. You should make every endeavor to achieve a standard of perfection and maintain judicial discipline
- V. To be updated with all the latest developments and changes in different fields of law is a duty of every judge. You should inculcate the habit of reading updated reference books and journals.
- VI. Delay in disposal of cases may sometime by itself result into injustice, undue harassment, mental agony and may in turn disturb the peace and harmony in our society. With the induction of more and more bright judicial officers like you we hope to eliminate the delays in disposal of cases.

8. Dear Judicial Officers, I hope your training at the Chandigarh Judicial Academy would be of immense help to all of you. You would get a chance to interact with each other and share your experiences. I wish you all success and pray that your future be meritoriously crowned.

God Bless you all.

Jai Hind!!!

ADDRESS BY HMJ DAYA CHAUDHARY
Judge, Punjab & Haryana High Court & President, BOG, CJA

Hon'ble the Chief Justice of Punjab and Haryana High Court-cum-Patron-in-Chief, Chandigarh Judicial Academy Sh. Krishna Murari Ji, Hon'ble brother Justice Rajan Gupta, Chairman, Recruitment Committee and Member, BoG, Hon'ble Mr. Justice Ajay Tewari, Hon'ble Mr. Justice Arun Palli and Hon'ble Mrs. Justice Lisa Gill, Members, BoG, Director (Administration) and Academics, Ms. Shalini Nagpal and Dr. Balram Gupta, Brother / Sister Judges, former Judges of this Court, Judicial Officers of the tricity, Trainee Judicial Officers and their parents, Ladies and Gentlemen.

Rightly said that the purpose of life is not to be happy but to be useful, honourable and also compassionate to make it that you have lived and lived well.

First of all, let me congratulate all the new recruits to the judicial service, who are undergoing this training programme. Judicial service might be the dream of thousands of young advocates of this country. In a recent survey conducted in Delhi and Bangalore, 49% in Delhi and 45% in Bangalore, first preference was the judiciary. There is no other service where there is so much independence in working. I can well imagine the amount of industry, patience and stern discipline and how many hours of self denying toil has been put in by the young boys and girls, who have been able to make it to this service.

Many of you might have wondered as to why you have been asked to undergo this training even after passing judicial examination. No doubt you had your basic routine education in school and professional education in Law college and some of you might have spent some years at the Bar also before taking judicial service examination. Then why this training?

Judicial education and training are synonymous, though they aim at the objective of judicial competence and efficiency. "Education" is more concerned with the knowledge and sensitivity, whereas, "training" revolves around skills, attitude and professionalism. The two reinforce each other in judicial performance.

The principal aim of the induction training for the newly appointed Civil Judges is to build a strong foundation for grooming them as good Judges. The object of the training is not to teach out to inculcate an attitude as to how to apply the law as an engine of social justice.

It is required and expected from every Judicial Officer / Judge that his or her conduct should be above board. He / she should be courteous, patient, punctual, just impartial, fearless, indifferent to private / outer influences. You are to administer justice according to law and deal with the appointment as public trust. Judges are expected to be impeccable in their dealings.

In nutshell, it aims to build an environment through various training programmes and platforms for the sharing of knowledge and experience where Judges are encouraged to teach, share and learn from each other by being part of community. By building a strong sense of community amongst the Judges, we hope to develop a leaning culture to facilitate the sharing of judicial knowledge and expertise for better administration of justice.

You are to imbibe yourself with good qualities in conducting yourself in a dignified and decent manner when you are in the Court as well as outside the Court. The image so formed by seeing your conduct should enhance the reputation of the judiciary.

After this training as well as interaction with your colleagues, you would be in a better position to understand as to what are your duties and responsibilities as a Judicial Officer. Let me also make a small effort to share with you what I perceive as duties and responsibilities of a Judicial Officer. As a Judicial Officer, you have to play multifaceted roles on judicial as well as administrative side. You must not see judicial service as service in the sense of employment. The Judges are not employees. They exercise sovereign judicial power of the State as prime dispensers of justice. Working in the Court of law is not purely mechanical but demands ability, alertness, resourcefulness and imagination.

You should be a person with high moral fiber character, commitment and capacity, which should be your hallmark. Simplicity and clarity should be your virtues. You have to achieve excellence in the administration of your duties. You have to restore the faith of people in the system.

I conclude with strong belief and immense faith that all the Judicial Officers on completion of their training will conform to establish time tested Court etiquettes and uphold the dignity and enhance the decorum of temple of justice. I am sure this training programme will keep you in good stead. I wish each and everyone of you a successful and fruitful career as Judicial Officer by the grace of great Architect of this Universe.

As you step out of the portals of this Academy, our wishes, prayers, blessings and advices are with you. You are the base of Judicial Pyramid. Be strong and brave to uphold Judiciary. God bless you. Jai Hind.

ADDRESS BY HMJ RAJAN GUPTA
Judge, Punjab & Haryana High Court & Member, BOG, CJA

Hon'ble Mr. Justice Krishna Murari, Chief Justice, High Court of Punjab and Haryana, Mrs. Justice Daya Chaudhary, Judge, High Court of Punjab and Haryana and the President, Board of Governors, Chandigarh Judicial Academy, my esteemed sister and brother Judges, Sh. Balram Gupta, Director (Academics), Mrs. Shalini Singh Nagpal, Director (Administration), Chandigarh Judicial Academy, the faculty, judicial officers, Trainee Judicial officers, their parents, distinguished dignitaries, members of the press, ladies and gentlemen.

It is a great pleasure to be here on the occasion of today's induction programme. Sixty judicial officers have been selected from Punjab Civil Services (Judicial Branch) and they would be undergoing one year training at the Academy.

First of all let me congratulate you all for joining judicial service. You would be undergoing training in this Judicial Academy which is having state of the art facilities.

With the ever increasing public awareness, economic growth and technological advancement, litigation is also on the rise and it is important that judges in order to work efficiently should continuously keep on updating their knowledge and in this context training plays an important role because learning is a continuous process.

Sharing of knowledge is also gaining of knowledge and judicial education through training forms a very essential part of judicial career for enhancing the skills as a judicial officer. The training which you would be undergoing will be helpful in improving your efficiency and productivity and the same would give you a chance to develop judicial acumen. It would provide you an opportunity to enhance your rationality in interpretation and application of laws.

Since you are to embark upon a new journey of your judicial career, therefore, you should always keep in mind that a judicial officer has to lead a disciplined life, has to observe punctuality and above all integrity. While holding court you should also be courteous to the litigants, witnesses and the members of the bar.

You will often hear from people that a Judge is next to God. I may clarify here that a judge like all others working in their respective fields performs his duties to best of his ability. If the police officer, with whom the citizen comes in contact for the first time, does his job well, he can also give justice to the citizens. Same is true of the officers of the civil administration. Only difference is that in case the citizen has to ultimately knock at the doors of the court, his grievance is dealt with by a legally trained mind. This in fact, is last ray of hope, that is why the onerous duty, the Judge has to perform. While performing this duty, humility should be the hallmark of the officer and not a bureaucratic bent of the mind.

Another important aspect is that you should keep on updating yourself with the latest development in law and avoid delay in disposal of cases. Your decisions should reflect judiciousness, fairness, equality and compassion.

I hope your training at the Chandigarh Judicial Academy would be of immense help to all of you. You would get a chance to interact with new thoughts, views, ideas and suggestions which would be discussed and exchanged during the course of your training.

Last but not the least, I am sanguine that under the Leadership of Hon'ble the Chief Justice Krishna Murari, who is President and Patron-in-Chief of the Academy, enthusiasm of the administrative and academic wings shall be enhanced as the academy now comes into operation after a little lull for some time. Thus, wherever necessary, innovative changes shall be made to revitalize the Academy even by revamping the systems which may have become redundant or outdated.

LATEST CASES : CIVIL

“Property is a social institution upon an economic need in a society organized through division of labour.”

Balakrishna Dattatraya Galande vs. Balakrishna Rambharose Gupta : 2019 SCC OnLine SC 135 : Section 38 Specific Relief Act : Plaintiff has to prove his actual possession on the date of filing the suit – Held – The Supreme Court 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 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.

Shiv Narayan vs. Manik Lal : 2019 SCC OnLine SC 136 : Suit in respect to properties situated in jurisdiction of different courts can be instituted in one of those courts – Held – The Supreme Court observed that, a suit in respect to immovable property or properties situate in jurisdiction of different courts may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated. The bench observed that interpretation of word "portion of the property" in Section 17 CPC cannot only be understood in a limited and restrictive sense of being portion of one property situated in jurisdiction of two courts. "The word "portion of the property" occurring in Section-17 has to be understood in context of more than one property also, meaning thereby one property out of a lot of several properties can be treated as portion of the property as occurring in Section 17."

Punjab Wakf Board vs. Sham Singh Harike : 2019 SCC OnLine SC 142 : Civil court has no jurisdiction when there is a dispute as to whether suit property is wakf or not – Held – The Supreme Court observed that when issue in the suit is as to whether suit property is Wakf property or not, it is required to be decided by the Tribunal and the Civil Court would have no jurisdiction. The bench were considering appeals filed by Punjab Wakf Board against two orders of the Punjab and Haryana High

K. Ramaswamy, J. in Air India Statutory Corpn. vs. United Labour Union, (1997) 9 SCC 377

Court in different cases. It observed, “When issue in the suit is as to whether suit property is Wakf property or not it is covered by specific provision of Sections 6 and 7 of the Wakf Act, 1995, hence, it is required to be decided by the Tribunal under Section 83 and bar under Section 85 shall come into existence with regard to jurisdiction of Civil Court.”

Poona Ram vs. Moti Ram : 2019 (2) SCALE 207 : Casual act of possession over property does not confer 'Possessory Title' – Held – Holding that possessory title over property cannot be claimed merely on the basis of 'casual possession', the Supreme Court observed that a casual act of possession does not have the effect of interrupting the possession of the rightful owner. In the appeal the Apex court considered the issue whether the plaintiff had better title over the suit property and whether he was in settled possession of the property, which required dispossession in accordance with law. It is observed, “Settled possession means such possession over the property which has existed for a sufficiently long period of time, and has been acquiesced to by the true owner. A casual act of possession does not have the effect of interrupting the possession of the rightful owner.”

Bhimabai Mahadeo Kambekar vs. Arthur Import and Export Company : 2019 SCC OnLine SC 99 : Mutation of land in revenue records do not create title over land – Held – Mutation of a land in the revenue records does not create or extinguish the title over land nor does it have any presumptive value on the title and it only enables the person in whose favour mutation if ordered to pay the land revenue in question, the Supreme Court has reiterated in a dispute arising out of entries made in the revenue records in relation to the disputed land.

H. K. Sharma vs. Sri Ram Lal : 2019 SCC OnLine SC 76 : Mere agreement to sell the leased property to tenant would not terminate landlord-tenant relationship – Held – The Supreme Court observed that mere agreement to sell the property of the landlord to the tenant would not result in termination of landlord-tenant relationship between the parties

unless there is a stipulation in the agreement itself to that effect. Referring to the provisions of Transfer of Property Act, the bench said: "A fortiori, the parties did not intend to surrender the tenancy rights despite entering into an agreement of sale of the tenanted property. In other words, if the parties really intended surrender their tenancy rights as contemplated in clauses (e) or (f) of Section 111 of the TP Act while entering into an agreement to sell the suit house, it would have made necessary provision to that effect by providing a specific clause in the agreement. It was, however, not done."

Ram Lal vs. Salig Ram : 2019 SCC OnLine SC 121: Irregularity in local commissioner's report not a ground to dismiss the suit (SC)

– **Held** – The Supreme Court observed that a civil suit could not be dismissed merely for some irregularity in the report of the Local Commissioner appointed for local investigation. The issue before the Apex Court in the appeal filed by plaintiff was whether High Court was justified in setting aside the decree of First Appellate Court on the ground that the Local Commissioner had not carried out demarcation in accordance with the applicable instructions? The bench noted that the Local Commissioner omitted to scrupulously follow the applicable instructions for carrying out such demarcation and particularly omitted to fix three reference points on different sides of the land in question. But the court disapproved the dismissal of the suit by the High Court and observed that where the Court is dissatisfied with the proceedings of such a Local Commissioner, it could direct such further inquiry to be made as considered fit. "We are clearly of the view that if the report of the Local Commissioner was suffering from an irregularity i.e., want of following the applicable Instructions, the proper course for the High Court was either to issue a fresh commission or to remand the matter for reconsideration but the entire suit could not have been dismissed for any irregularity on the part of Local Commissioner."

Ratna Raj by LRs vs. Sri Muthukumara Swamy Permanent Fund Ltd. : 2019 SCC OnLine SC 114: Decree passed on plaintiff's evidence without defendant's appearance at trial is ex-parte decree – Held – The Supreme Court held that a decree passed after taking plaintiff's evidence, without the appearance of defendant at the trial stage, is an ex-parte decree, which could be set aside under Order IX Rule 13 of the Code of Civil Procedure. The preliminary decree was passed in a suit for

redemption of mortgage. Though the defendants had made appearance and filed written statement, they did not appear at the stage of evidence. So, the plaintiff's evidence was recorded in the absence of defendant. The defendant's evidence was closed on its non-appearance. Based on plaintiff's evidence, the trial court passed a preliminary decree, upon which the defendant filed application under Order IX Rule 13 CPC. The application was rejected by the trial court holding that the decree was not passed ex-parte. This was challenged in the High Court, which reversed the trial court's rejection and set-aside the decree. The Apex Court ruled that the decree was not passed invoking Explanation 2 of Rule 2, Order 17. That situation will arise only if the party absent is the party who had given evidence. But here, the party absent is the defendant, who had not given evidence.

Ramesh Sanka vs. Union of India : 2019 SCC OnLine SC 75 : Writ under Article 32 not maintainable for enforcement of personal contractual rights – Held

– **Held** – The Supreme Court held that employees cannot be granted a writ under Article 32 of the Constitution of India for claiming enforcement of any personal contractual rights against their employers. The Supreme Court ruled, "Even otherwise, no writ lies under Article 32 of the Constitution at the instance of any employee or the employer for claiming enforcement of any personal contractual rights inter se the employee and his employer."

The court opined that the petition cannot be entertained under Article 32 of the Constitution of India, and that if the petitioner has any personal grievance in relation to any of his contractual personal rights flowing from any service conditions or any other agreement, his legal remedy lies in filing a civil suit or taking recourse to any other civil law remedy. "It is not in dispute that the parties are already prosecuting their grievances against each other in Civil Court in their respective civil suits filed by them against each other. If that be the position, the same have to be pursued by them in accordance with law against each other," it observed. The petition was therefore dismissed, with the court clarifying that it has not expressed any opinion on the various factual issues alleged and denied by the parties in the petition. It left it open for them to raise their grievances against the company before an appropriate judicial forum in accordance with law.

LATEST CASES: CRIMINAL

“Justice is ‘the crowning glory’, ‘the sovereign mistress’ and ‘the queen of virtue’ as Cicero had said.”

Dipak Mishra, J. in *State of Punjab vs. Saurabh Bakshi*, (2015) 5 SCC 182

Sangita Saha vs. Abhijit Saha: MANU/SCOR/03656/2019 : Petitions for Special Leave to Appeal (Crl.) Nos. 2600-2601 of 2016 : DoD 29.01.2019 : Wife entitled to 'residence order' only if she establishes domestic violence – Held – The Supreme Court while upholding High Court judgment has held that entitlement of a wife to claim residence in the shared household is only when she could establish domestic violence. In this case, the wife had filed a case under the Protection of Women from Domestic Violence Act, 2005 seeking right of residence in the share household and for maintenance to herself and her daughter. The Magistrate dismissed her application. On appeal, the District court held she has a right to accommodation in the share household and maintenance of Rs.2,500 for herself and Rs. 4,000 for the child. The High court, setting aside this order, held that the wife was unable to establish any incident of torture or demand of money or physical violence. The High Court held that the wife was entitled to claim residence in the shared household only in case she established domestic violence, which she did not. The court observed that “Unless it is satisfactorily established that domestic violence has taken place neither any protection order under Section 18 nor any residence order under Section 19 nor any order for monetary relief under Section 20 nor any compensation order under Section 22 of the Protection of Women from Domestic Violence Act, 2005 should be passed.” It, however, held that the child has to be paid maintenance at the rate of Rs.4,000 as was determined by the District court.

State of Gujarat vs. Afroz Mohammed Hasanfatta : 2019 SCC OnLine SC 132 : Magistrate is not required to record reasons for summoning accused in cases instituted on police report – Held – Allowing appeal against High Court Judgment the Apex Court

has explained the procedure to be adopted by a Magistrate in a case instituted upon a Police Report. The Bench observed that in summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. It is also held that at the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 Cr.P.C., detailed enquiry regarding the merits and demerits of the case is not required. According to the bench the fact that after investigation of the case, the police has filed charge sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204 Cr.P.C.

The State of Madhya Pradesh vs. Kanha @ Om Prakash : 2019 SCC OnLine SC 120 : Proof of grievous / life threatening hurt not necessary for conviction under Section 307 IPC (attempt to murder) – Held – The Supreme Court observed that proof of grievous or life-threatening hurt is not a sine qua non for the offence under Section 307 [Attempt to Murder] of the Indian Penal Code. The bench set aside the Madhya Pradesh High Court judgment that had acquitted the accused from attempt to murder charges on the ground that there was no evidence to prove that the injuries caused to the deceased were grievous in nature or life-threatening. The court observed, “The lack of forensic evidence to prove grievous or a life-threatening injury cannot be a basis to hold that Section 307 is inapplicable.”

Bir Singh vs. Mukesh Kumar : 2019 SCC OnLine SC 138 : 138 NI Act - Subsequent filling of an unfilled signed cheque is not an alteration – Held – The Supreme Court has held that subsequent filling in of an unfilled signed cheque is not an alteration and even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable

Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt. The court also observed that existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The main issue considered was whether the payee of a cheque is disentitled to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, of a cheque duly drawn, having been issued in discharge of a debt or other liability, only because he is in a fiduciary relationship with the person who has drawn the cheque. Referring to various judgments on this aspect, the bench observed that that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.

Rameshwar Yadav @ Umesh Singh vs. State of Bihar: MANU/SCOR/03637/2019 : Criminal Appeal No.189 of 2019 (arising out of SLP (Crl.) No.11175 of 2018) : DoD 02.02.2019 : Accused can't be kept in custody for a long time citing 'Possible Sentence of Imprisonment'-Held- Observing that 'Possible Sentence of Imprisonment' is not a ground for deferment of bail after a long time in custody, the Supreme Court granted bail to a man who is in custody since last July. In the present case Rameshwar Yadav was arrested on 16th July, 2018, after a country-made rifle along with two live cartridges was recovered from his possession. He was accused of offences under Sections 25(1-b)/26 of the Arms Act. While disposing of his bail plea, the High Court directed him to be released on bail after completion of nine months of custody on furnishing bail bond of Rs.20,000 with two sureties of the like amount to the satisfaction of the trial court where the case was pending. While considering his appeal, the apex court bench observed that the High Court did not furnish any reason for issuing a direction for deferment of bail by a period of nine months.

Nawaz vs. State : 2019 SCC OnLine SC 67 : Section 300 Murder- Exception-I : Deceased termed his wife and daughter 'Prostitutes' : SC finds it sufficient 'Grave and Sudden Provocation' - Held - The Supreme Court modified the conviction of a woman accused of murdering her husband to 'culpable homicide not amounting to murder' on the ground that it was a result of a sudden and grave provocation by him by calling her and their daughter 'prostitutes'. The bench while converting the conviction under Section 302 IPC (murder) to Section 304 Part 1 IPC (culpable homicide not amounting to murder), observed: "The deceased provoked the accused by uttering the word 'prostitute'. In our society, no lady would like to hear such a word from her husband. Most importantly, she would not be ready to hear such a word against her daughters. The incident is a result of a sudden and grave provocation by the deceased."

Ex. Lt. Gen. Avadhesh Prakash vs. Union of India: MANU/AF/0006/2010 : Criminal Appeal No. 140 of 2019 : DoD 04.02.2019: Lieutenant General (retd.) cannot be tried in a General Court Martial consisting of members below his rank - Held - The Supreme Court observed that an army officer holding the rank of Lieutenant General cannot be tried by the General Court Martial (GCM) consisting of members below his rank. The bench was considering an appeal filed by Ex. Lt. Gen. Avadhesh Prakash who was dismissed from service by the GCM for his alleged involvement in 'Sukna Land Scam'. The Armed Forces Tribunal had also held him guilty of the second charge i.e. 'Unbecoming conduct' under Section 45 of the Army Act. Though the challenge against constitution of GCM was made before the Tribunal, it had rejected it on the ground that the officer had already retired as Lieutenant General. When this contention was reiterated before the apex court bench, it observed that merely because he had retired in the meantime could not be a ground to discard and give a go by to the provisions of Rule 40(2) of the Army Rules. It further observed that, "It is a travesty of justice that a person holding the rank of Lieutenant General is tried by the GCM which consisted of members below his rank. Such a composition cannot be countenanced in law."

LATEST CASES : NDPS ACT

“It is duty of a judge to see that the justice is appropriately administered, for that is the paramount consideration of a judge.”

Varinder Kumar vs. State of Himachal Pradesh : 2019 SCC OnLine SC 170 : Acquittal if IO & Informant is the same person: Benefit of 'Mohan Lal' judgment not available to cases prior to it –

The Supreme Court has observed that all pending criminal prosecutions, trials and appeals prior to the law laid down in the judgment in Mohan Lal vs. State of Punjab (acquittal if investigator-informant is the same person), shall continue to be governed by the individual facts of the case. The court stated, “A proper administration of the criminal justice delivery system, therefore requires balancing the rights of the accused and the prosecution, so that the law laid down in Mohan Lal is not allowed to become a spring board for acquittal in prosecutions prior to the same, irrespective of all other considerations.” The bench initially explained why in Mohan Lal case, it did not carve out any exceptions. The bench said: "The facts of that case did not show any need to visualize what all exceptions must be carved out and provided for. The attention of the Court was also not invited to the need for considering the carving out of exceptions."

State of Punjab vs. Rakesh Kumar : 2018 SCC OnLine SC 2651 : Unauthorised bulk possession of manufactured drugs containing narcotic drugs or psychotropic substances triable under NDPS Act as well –

Held – The Supreme Court has held that persons who are found in bulk possession of manufactured drugs without any valid authorization can be tried under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, apart from the Drugs and Cosmetics Act, 1940. The State of Punjab had approached the apex court assailing some observations made by the Punjab and Haryana High Court that ‘manufactured drugs’, be it containing narcotic drugs or psychotropic substances, if manufactured by a manufacturer, must be tried, if violation is there, under the Drugs and

Dipak Misra, J. in *K. Anbazhagan vs. State of Karnataka*, (2015) 6 SCC 158

Cosmetics Act and not under the NDPS Act, except those in loose form by way of powder, liquid etc. Taking note of both the legislations, the court observed that, while the Drugs and Cosmetics Act deals with drugs which are intended to be used for therapeutic or medicinal usage, the NDPS Act intends to curb and penalize the usage of drugs which are used for intoxication or for getting a stimulant effect. It also highlighted that Section 80 of the NDPS Act clearly lays down that application of the Drugs and Cosmetics Act is not barred, and provisions of NDPS Act can be applicable in addition to that of the provisions of the Drugs and Cosmetics Act. It is further observed, “the NDPS Act, should not be read in exclusion to Drugs and Cosmetics Act, 1940. Additionally, it is the prerogative of the State to prosecute the offender in accordance with law. In the present case, since the action of the accused-Respondents amounted to a prima-facie violation of Section 8 of the NDPS Act, they were charged under Section 22 of the NDPS Act.”

Arif Khan @ Agha Khan vs. State of Uttarakhand : 2018 SCC OnLine SC 459 : The requirements of S. 50 of the NDPS Act are mandatory and so far as the officer is concerned, an obligation is cast upon him to apprise the suspect of his right to be searched before a Gazetted Officer or a magistrate –

Held – The Supreme Court reiterated the settled position of law that Section 50 of NDPS Act (Narcotic Drugs and Psychotropic Substances Act, 1985) is a mandatory provision. Section 50 of NDPS Act enumerates the conditions under which search of person shall be conducted. In the case the appellant-accused was convicted for the offence punishable under Section 20 of the NDPS Act. In appeal, the accused while assailing the legality and correctness of conviction contended that the prosecution had failed to ensure

mandatory compliance of Section 50 of NDPS Act inasmuch as the alleged recovery/search of the contraband (Charas) made by the raiding police party from the appellant's body was not done in accordance with the procedure prescribed under Section 50 of NDPS Act, which is a mandatory provision. The court observes, "That it is imperative on the part of the Police Officer to apprise the person intended to be searched of his right under Section 50 to be **searched only before a Gazetted officer or a Magistrate**. It was held that it is equally mandatory on the part of the authorized officer to make the suspect aware of the existence of his right to be searched before a **Gazetted Officer or a Magistrate, if so required by him and this requires a strict compliance**. It is ruled that the suspect person may or may not choose to exercise the right provided to him under Section 50 of the NDPS Act but so far as the officer is concerned, an obligation is cast upon him under Section 50 of NDPS Act to apprise the suspect of his right to be searched before a Gazetted Officer or a Magistrate.

Mohan Lal vs. The State of Punjab : 2018 SCC OnLine SC 974 : Accused entitled to acquittal if informant and investigating officer is the same person – Held – The issue "Whether in a criminal prosecution, it will be in consonance with the principles of justice, fair play and a fair investigation, if the informant and the investigating officer were to be the same person. In such a case, is it necessary for the accused to demonstrate prejudice, especially under laws such as NDPS Act, carrying a reverse burden of proof?" This question was considered in the said case by the Apex court. The court observed, "Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded...a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a

predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof." "If an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion.

Surinder Kumar Khanna vs. Intelligence Officer Directorate of Revenue Intelligence: 2018 SCC OnLine SC 757: Conviction cannot be based solely on co-accused's 'Confessional Statement' – Held – The Supreme Court has held that conviction under Narcotic Drugs and Psychotropic Substances Act, 1985, cannot be based solely on the confessional statement of a co-accused, in the absence of a substantive piece of evidence. The bench observed: "Even if we are to proceed on the premise that such statement under Section 67 of the NDPS Act may amount to confession, in our view, certain additional features must be established before such a confessional statement could be relied upon against a co-accused. It is noteworthy that unlike Section 15 of Terrorist and Disruptive Activities Act, 1987 which specifically makes confession of a co-accused admissible against other accused in certain eventualities; there is no such similar or identical provision in the NDPS Act making such confession admissible against a co-accused. The matter, therefore, has to be seen in the light of the law laid down by this Court as regards general application of a confession of a co-accused as against other accused." "On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court."

NOTIFICATIONS

The Right of Children to Free and Compulsory Education (Amendment) Act, 2019

The Right of Children to Free and Compulsory Education (Amendment) Act, 2019 which was passed by the Parliament on January 03, 2019 received the assent of the President of India on January 10, 2019. It has now been notified in the Gazette of India. The Act seeks to do away with the no-detention policy in schools.

The legislation is significant as it brings accountability in the elementary education system. The proposal received the support of a majority of state governments.

Key Provisions :

- The Act seeks to amend the Right to Education (RTE) Act to abolish the “no-detention” policy in schools. Under the current provisions of the Act, no student can be detained up to class VIII.
- As per the amendment, it would be left to the states to decide whether to continue the no-detention policy. This Act has been analysed by a Parliamentary standing committee, which also recommended bringing back the concept of detention in schools.
- The policy has been brought back as it was felt that compelling children to repeat a class was demotivating, often forcing them to abandon school.
- The act provides for regular examination in classes V and VIII, and if a child fails, the amendment act bill grants a provision to give her or him additional opportunity to take a re-examination within two months.
- Such children will be provided with two-month remedial teaching to perform better in the re-examinations.
- If the students still do not pass the exam, the state government may decide to detain them.

National Council for Teacher Education (Amendment) Act, 2019

The National Council for Teacher Education (Amendment) Act, 2019, has come into force on 10th Jan. 2019.

The Act aims to grant retrospective recognition to Central and State institutions which had conducted teacher education courses without approval by the Council. This will ensure that the future of about 17 thousand students having degrees from such institutions is secured.

All institutions running teacher education courses, such as B.Ed., have to obtain recognition from the Council.

The Act seeks to grant retrospective recognition to these institutions:

- Institutions notified by the central government
- Institutions funded by the central government or state/union territory government
- Institutions which do not have recognition under the Act
- Institutions which must have offered teacher education courses on or after the establishment of the NCTE until the academic year 2017-2018

The Act also seeks to grant retrospective permission to start a new course or training in teacher education to these institutions:

- Institutions notified by the central government
- Institutions funded by the central government or state/union territory government
- Institutions which have satisfied certain conditions required for the conduct of a new course or training in teacher education
- Institutions which must have offered teacher education courses on or after the establishment of the NCTE until the academic year 2017-2018.

EVENTS OF THE MONTH

1. Chandigarh Judicial Academy organized **Inaugural Function of Induction Training Programme of 60 Judicial Officers from the State of Punjab** (39 female and 21 male) on Feb. 21, 2019. The Chief Guest at the inaugural function was Hon'ble the Chief Justice and Patron-in-Chief, CJA, Justice Krishna Murari. Justice Murari gave a recipe to the Judicial Officers. Judicial Officers must be disciplined. They must be persons of integrity. They ought to render justice with mercy. They were urged that their motto should be : Justice is not only to be done but must be seen to be done. Justice Daya Chaudhary, President, Board of Governors, CJA focused on the aim of Induction Training to build strong foundation for grooming them as good judges. The object of the training is to inculcate an attitude to apply law as an engine of social justice. She reminded that judicial service is not an employment but a 'service' to humanity. Justice Rajan Gupta, Member, Board of Governors, CJA reminded that the object and purpose of judicial education is to enhance skills of judicial officers and also to sharpen rationality in interpretation and application of laws. Judicial Officers lead a disciplined life. Integrity and punctuality are the basic hallmarks of a judicial officer. All the three addresses have been

included in this e-Newsletter. Dr. Balram K. Gupta, Director (Academics) delivered the welcome address. Mrs. Shalini Singh Nagpal, Director (Administration) gave vote of thanks.

2. **Justice Mohan Pieris, former Chief Justice and Attorney General of Sri Lanka** delivered a thought provoking and inspiring lecture to the young Judicial Officers from the state of Punjab on : **What Makes a Good Judge** at Chandigarh Judicial Academy on Feb.23, 2019. He shared his experiences. It was a meaningful and useful exposure for the young Judicial Officers.

3. Special lecture on **Cyber Awareness** was delivered by Mr. Sunil Mundan on Feb. 25, 2019 to the Judicial Officers from the State of Punjab as also Additional District Judges undergoing training at CJA.

4. **Refresher-cum-Orientation Course through Video Conferencing for Civil Judges** from the State of Punjab was organized on 28.02.2019 at Chandigarh Judicial Academy. The Judicial Officers were sensitized on the topic : "Forgery of Documents and its Detection" at their respective District Court Offices. Sh. Yash Pal Chand Jain, Handwriting and Document Expert was the Resource Person in this video programme.

FORTHCOMING EVENTS

1. Seventh Programme for the Public Prosecutors will also be organized during the month of March 2019.

2. Orientation Programme for the officers of JAG Department is proposed to be organized in Chandigarh Judicial Academy from March 14 to April 03, 2019 (21 days). The course curriculum would include different aspects of Constitution, Administrative Law, Criminal Procedure, Civil Procedure Code, Law of Evidence, Limitation

Act, 1963, General Clauses Act, Duties and Responsibilities of Judges, Legal Reasoning and Provisions relating to Concurrent Jurisdiction. This is for the first time that CJA has structured a programme of this nature.

3. Refresher-cum-Orientation Course for Civil Judges and Judicial Magistrates from the State of Punjab and Haryana is scheduled to be held on March 09, 2019.