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# **CJA**

# **e-NEWSLETTER**

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

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

Chandigarh Judicial Academy conducted a Workshop on Sensitization on Family Court Matters during February 25-26, 2017. Family Courts Act, 1984 came into force on September 14, 1984. The need for setting up Family Courts Act had been felt for good some time. This separate Legislation was enacted with a view to promote conciliation, secure settlement of disputes relating to marriage and family affairs and for matters connected therewith. In spite of the fact that this Central Legislation has been in existence for more than three decades yet the same had not been given due consideration in order to sensitize the Presiding Judges of the Family Courts across the country. Rule 5(C), the Mediation Rules, 2015 provides for expert Mediators. Accordingly, the extensive use of ADR mechanism including the services of Counsellors and expert Mediators in resolving Family Disputes is the need of the hour. The Mediation and Conciliation Project Committee (MCPC) of Hon'ble the Supreme Court of India has imparted 40 Hours Mediation Training to Advocates and Judicial Officers across the country. In the year 2016, the Supreme Court Committee for Sensitization of Family Court Matters was reconstituted by Hon'ble the Chief Justice of India under the Chairmanship of Hon'ble Mr. Justice Dipak Mishra, Judge Supreme Court of India. Justice Mishra maintains that "marriage as an institution is to be sustained and not merely maintained". Justice Mishra firmly believes that "The Family Judge is expected to be sensitive to the issues, for it is dealing with extremely delicate sensitive issues pertaining to the marriage and issues ancillary thereto. He adds: "The delineation of the Lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties have to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the Lis before him pertains to emotional fragmentation and delay can feed it to grow. The first Regional Conference for sensitization on Family Court Matters was organized by the Rajasthan State Judicial Academy on July 09, 2016.

The workshop which was conducted by the Chandigarh Judicial Academy was not Regional Conference. It was considered imperative by the Chandigarh Judicial Academy that the Presiding Judges of Family Courts and other Judges dealing with Family Court Matters in the States of Punjab, Haryana and the UT Chandigarh need to be sensitized on Family Court Matters. This was the first workshop covering certain districts of States of Punjab, Haryana and Chandigarh. Chandigarh Judicial Academy intends to hold two such more workshops in different parts of the States of Punjab and Haryana with the same objective and purpose. The whole effort is to cover Family Court Presiding Judges across both the States and Chandigarh. It is felt that this is most urgent. It was felt that it needs serious consideration. Accordingly, the first workshop of Family Courts was structured and organized. This workshop was designed to cover a wide spectrum of different areas which required due sensitization of the Family Court Judges.

Chandigarh Judicial Academy would continue its endeavour to equip the Judicial Brethren as effectively as possible. The concern is only one. How best our Judges can contribute to this Goal of Justice in different domains!

Balram K. Gupta

## LATEST CASES: CIVIL

“Administrative instructions cannot make inroads into statutory rights of an individual. But if an administrative authority prescribes a certain procedural safeguard to those affected against arbitrary exercise of powers, such safeguards or procedural equity and fairness will not fall foul of the rule to be dubbed *ultra vires* of the statute.”

T.S. Thakur, J. in *Veendra Kumar Dubey v. Chief of Army Staff*, (2016) 2 SCC 627

**Vijay Kumar Ahluwalia vs. Bishan Chand Maheshwari: 2017 (2) SCALE 271 – Held –** While considering the grant of leave to contest the eviction proceedings under the Rent Laws, the Authority/Court is not expected to examine the merits and demerits of the grounds raised in the application for grant of leave to contest and if the Authority/Court finds that the grounds raised *prima facie* disclose a defense which, if accepted, may result in non-suiting the landlord from claiming eviction, the tenant is entitled to obtain leave to contest the eviction proceedings on merits.

**Sandeep Khanuja vs. Atul Dande: 2017 (2) SCALE 314 – Held –** Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. Further held - what requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). It may, however, be noted that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation.

**Haryana Urban Development Authority vs. Orchid Infrastructure Developers Pvt. Ltd.: 2017 (1) SCALE 699–**The suit was filed for

declaration with consequential relief as against the appellants with regard to rejection of bid relating to the commercial tower situated in Sector 29, Urban Estate, Gurgaon. The Conditions of Auction made it perfectly clear that the Government was under no obligation to accept the highest bid and that no rights accrued to the bidder merely because his bid happened to be the highest. Hon'ble Supreme Court while saddling the plaintiff with the cost of Rs.5,00,000/-, made strict observations that plaintiff had come to the court for mandatory injunction, for issuance of allotment letter without payment of court fee. It was incumbent upon the plaintiff to pay the ad valorem court fee as prevailing and the valuation of the suit should not have been less than the bid amount of Rs.111.75 crores, as rightly held by the first appellate court. The plaintiff was directed to pay the ad valorem court fee not only before the trial court but also before the High Court. Plaintiff was directed to deposit the court fee within two months.

**The Special Land Acquisition Officer, Kiadb, Mysore vs. Anasuya Bai (D) by LRs.: 2017 (2) SCALE 41–**The question of law that was raised before the Hon'ble Apex Court was, whether provisions of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 are applicable, when the land was acquired under the provisions of KIAD Act? Hon'ble court observed that the KIAD Act is a self-contained code and the Central Act is not supplemental to it. It was, therefore, held that where a subsequent Act incorporates provisions of a previous Act, then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases:

- (a) where the subsequent Act and the previous Act are supplemental to each other;
- (b) where the two Acts are in *pari materia*;

(c) where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and  
 (d) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act.

**Meera Santosh Pal vs. Union of India: 2017 (1) SCALE 556**—

A 22 years old woman approached the court under Article 32 of the Constitution of India seeking permission to undergo medical termination of her pregnancy. She apprehended danger to her life, having discovered that her fetus was diagnosed with Anencephaly, a defect that leaves fetal skull bones unformed and is both untreatable and certain to cause the infant's death during or shortly after birth. This condition is also known to endanger the mother's life. It was reported that the continuation of pregnancy could gravely endanger the physical and mental health of the petitioner and the risk of her termination of pregnancy is within acceptable limits with institutional back up. The Apex Court observed that the overriding consideration is that she has a right to take all such steps as necessary to preserve her own life against the avoidable danger to it. In these circumstances given the danger to her life, there is no doubt that she has a right to protect and preserve her life and particularly since she has made an informed choice. The exercise of her right seems to be within the limits of reproductive autonomy. The court, accordingly, permitted the petitioner to undergo termination of pregnancy to be performed. It was further ordered that termination would be supervised by the medical board who shall maintain complete record of the procedure to be performed on petitioner.

**Nidhi vs. Ram Kripal Sharma (D) through LRs.: 2017 (2) SCALE 276** –

An eviction petition was filed on the basis of personal necessity by the female petitioner who got married during the pendency of the trial. Hon'ble Apex Court quoted Krishna Iyer, J. in Om Prakash Gupta Vs Ranbir B.Goyal (2002) 2 SCC 256, as under:

"the court can, so long as the litigation pends, take note of updated facts to promote

substantial justice. However, the Court cautioned:

- (i) the event should be one as would stultify or render inept the decretal remedy,
- (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or justice,
- (iii) such cognizance of subsequent events and developments should be cautious, and
- (iv) the rules of fairness to both sides should be scrupulously obeyed.

It was thus held that though the court has the power to take note of the subsequent events, court has to consider the effect of subsequent development on the bona fide need of the landlord. For the purpose of coming to the conclusion on bona fide need of the landlord, comparative hardship to the parties will have to be taken into consideration. In the present case, the appellant got married during the pendency of the appeal and settled with her husband; still her requirement to accommodate her parents and grandparents continued. Appellant has established her bona fide requirement for accommodating her parents and grandparents in the suit premises merely because the Appellant got married amidst the proceedings does not extinguish her claim for the relief of possession of the suit premises.

**Vivek Singh vs. Romani Singh: MANU/SC/0156/2017 – Custody of child –**

**Ss.7, 13 & 17 of Hindu Minority and Guardianship Act** – held that S.7 of this Act empowers the Court to make order as to guardianship. S.17 enumerates the matters which need to be considered by the Court in appointing guardian and among others, enshrines the principle of welfare of the minor child. This is also stated very eloquently in S.13 of the Act. Further held—The word 'welfare' used in S.13 has to construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well being. There is nothing which can stand in the way of the court exercising its *parens patriae* jurisdiction arising in such case.

## LATEST CASES: FAMILY LAW

**Jitender Arora & Ors. vs. Sukriti Arora & Ors: MANU/SC/0173/2017 – Question – custody of a minor child with reference to Hindu Minorities and Guardianship Act, 1956 – Principles** – Welfare of minor to be paramount consideration. The word "welfare" used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its parens patriae jurisdiction arising in such cases.

**Jobanjeet Singh vs. Ranvir Kaur: FAO No. M-464 of 2016 (O&M): DOD 06.02.2017 (P&H)** – Petition u/s 13-B HMA was dismissed by the trial court on the ground that the wife was not present physically for recording her statement in her second motion – High Court set aside the order of the trial court and remanded the matter to the trial court with the direction to record the statement of the wife in second motion by utilizing video conferencing facility and pass fresh and appropriate order.

**Anshuman Kaler vs. Garima Sumran: 2017(1) PLR 376** – Section 13 HMA – Where the husband while seeking divorce from the wife took the plea that the wife was a drug addict or that she used to consume sedative or intoxicating medicine – but failed to adduce evidence to prove the allegations – on other hand wife successfully rebutted the allegations by evidence – **held** – such kind of conduct of husband comes out to be harsh and cruel towards the wife. If having felt hurt by such allegations wife filed suit for damages – that could not be used by husband to say that litigation had caused cruelty to him.

**Swaranjit Kaur vs. Lt. Col. Avtar Singh & Ors: 2016 (5) RCR (Civil) 163 (P&H) – Divorce – Hindu Marriage Act, 1955, Section 11 and 13 (1)(vii) – Evidence Act 1872, Section 108** – Person not heard alive for seven years – Just because a spouse was not heard of for seven long years, the other spouse cannot contract second marriage – A party taking such plea should first establish

such a plea – It was established that the first husband was very much alive when the wife contracted second marriage – Such a marriage is taken illegal, null and void. (Paras 12 and 14) - **Cruelty** - Hindu Marriage Act, 1955, Section 13 – Wife having married during the subsistence of her first marriage has caused cruelty to the first husband – Husband entitled to decree of divorce under Section 13 of the Act (Para 20).

**Kala Singh vs. Jaspreet Kaur: 2016(3) RCR (Civil) P&H** – Void marriage – Hindu Marriage Act, 1955, Sections 5 and 11 – Custom – To be pleaded and proved – No evidence to prove existence of any such custom in the community – Parties by which the divorce can be granted – Appellant failed to substantiate his plea that his earlier marriage stood dissolved by legal means – Order of Family Court allowing petition under Section 11 filed by the respondent wife – Upheld.

**Sangeeta Rani vs. Sanjeev Kumar: FAO No.M-32 of 2014: DoD 14.12.2016 (P&H) – Cruelty as a ground of divorce** – vague assertions of jealousy, selfishness and possessiveness causing unhappiness or stress, mere coldness or lack of affection and other attendant circumstances in the normal wear and tear of a marriage do not constitute cruelty so as to form a basis for dissolution of marriage. **Further held** – ground of irretrievable break down of the marriage has not been provided by the legislature for granting a decree of divorce under Section 13 of the 1955 Act. As such, it was not open for the trial Court to have added such a ground to Section 13 of the 1955 Act as the same would tantamount to amending the Act itself. Such a course of action was not permissible.

**Rakesh vs. Monika:2017(1) RCR (Civil) 378** – Allegations of wife against husband and his family in criminal proceeding u/s 406, 498 A IPC found false resulting into acquittal of husband and his family – **held** – in such circumstances husband as also his parents have faced the pain, anguish and agony of a criminal trial on the basis of allegations which were found false and manufactured by the wife. Under such circumstances, there is a clear inference of cruelty inflicted at the hands of the wife upon the husband and also his parents.

## LATEST CRIMINAL CASES: SECTION 138 NEGOTIABLE INSTRUMENTS ACT

Simultaneously, the concept of fair trial cannot be allowed to such an extent, so that the systemic order of conducting a trial in accordance with Cr.P.C or other enactments get mortgaged to the whims and fancies of the defence or the prosecution. The command of Cr.P.C cannot be thrown to winds. In such situation, as has been laid down in many an authority, the courts have significantly an eminent role.”

Dipak Misra, J. in *State of Haryana v. Ram Mehar*, (2016) 8 SCC 762

**Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency: 2017 (1) SCC (Criminal) 149** – Vide loan agreement, the complainant advanced a loan of Rs. 11.50 crores to the accused company. The accused company issued post dated cheques towards repayment of the loan amount in installments. The agreement recorded that post-dated cheques towards payment of installment of loan were given by way of security. The cheques carried different dates depending on the dates when the installments were due. On dishonour of these cheques, complaints u/s 138 were filed. A submission on behalf of the accused was made that as no legally enforceable liability existed on the date the cheques were given, S.138 NI Act, was not attracted. **Held** – We are of the view that the question whether a post dated cheque is for discharge of debt or liability depends on the nature of the transaction. If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, the section is attracted and not otherwise.

**Charanjit Pal Jindal vs. L.N. Metalics: 2016(3) SCC (Criminal) 400** – In this case, the Director of M/s Naina Devi Steel Castings (P) Ltd. issued a cheque on behalf of the company in discharge of legally enforceable liability of the company. The cheque was dishonoured. Complaint u/s 138 NI Act was filed by the payee against the Director only without arraigning the company as accused. It was **held** that for maintaining prosecution u/ss. 138/141 NI Act, arraigning the company as an accused was imperative and the Director of the company could not be prosecuted in the absence of the company.

**Ajit Balse vs. Ranga Karkere:2016 (3) SCC (Criminal) 379** – The accused Ajit Balse is the Managing Director of Tim Tim Far East Export Trading Co. Pvt. Ltd. He issued the cheque on behalf of the company but the company was

not impleaded as accused. As per the ratio in *Aneeta Hada*, 2012 (5) SCC 661; Complaint u/s 138 NI Act against the Director is not maintainable in the absence of the company. The counsel for the complainant raised an argument that decision in *Aneeta Hada* cannot be made applicable retrospectively. The Hon'ble Supreme Court in the instant case **held** that decision in *Aneeta Handa* case may be prospective but that will be applicable to all the pending cases including the trial, appeal or revision or special leave petition / appeal.

**Tamil Nadu News Print and Papers Ltd. vs. D. Karunakar and others: 2016 (2) SCC (Criminal) 519** – Merely because a person holds the position of a Director in the company does not make him responsible for the cheque issued on behalf of the company. For a director to be liable u/s 138 NI Act 1881, he must be in- charge and responsible for conduct of business of the company. Moreover, there has to be specific averment in the complaint that the director who is arraigned as an accused was in charge of the conduct of business of the company at the time of commission of offence.

**Don Ayengia vs. State of Assam: 2016 (1) SCC (Criminal) 673** – Where a cheque is issued by a person in discharge of the liability of another, he can be convicted u/s 138 NI Act 1881 if the ingredients thereof are satisfied: 'Any debt or other liability' as referred to in S.138 need not be only of the person who has directly/ primarily enjoyed benefit thereof like the principal debtor. Person who is secondarily liable, such as surety or guarantor may also be convicted u/s 138 of the NI Act if the ingredients thereof are satisfied.

**Bridgestone India Private Ltd. vs. Inderpal Singh: 2016 (1) SCC (Criminal) 472** – In so far as offences u/s 138 NI Act 1881 are concerned, on the issue of territorial jurisdiction, provisions of Cr.P.C. would have

to give way to provisions of the NI Act. S.142(2) (a) NI Act 1881, vests jurisdiction for initiating proceedings u/s 138, inter alia, in the territorial jurisdiction of court, where the cheque is delivered for collection (through an account of branch of bank where payee or holder in due course maintains an account). And on account of the provisions of S. 142-A(1), any judgment, decree, order or direction issued by a court would have no effect in-so far as territorial jurisdiction for initiating proceedings u/s 138 is concerned. Further, **held** that in view of S. 142-A(1), NI Act, judgment of the Supreme Court in Dashrath Rupsingh Rathod, 2014 (9) SCC 129, shall not affect the territorial jurisdiction for complaints as determinable u/s 142 (2), that are filed after 15.06.2015.

**A.C. Narayanan vs. State of Maharashtra and another: 2016 (1) SCC (Criminal) 67 –**

Held – (i) Filing of complaint u/s 138 NI Act through power of attorney is perfectly legal and competent; (ii) The power of attorney holder can depose and verify on oath before the court in order to prove the contents of the complaint. However, the power of attorney holder must have witnessed the transaction as an agent of the payee / holder in due course or possess due knowledge regarding the said transaction; (iii) It is required by the complainant to make specific assertion as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint and the power of attorney holder who has no knowledge regarding the transaction cannot be examined as a witness in the case; (iv) In the light of S.145 NI Act, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant and he is not obliged to examine the complainant or his witnesses for taking the decision whether or not to issue process on the complaint u/s 138 NI Act 1881; (v) The functions under the general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney.

**Standard Chartered Bank vs. State of Maharashtra: 2016 (2) SCC (Criminal) 505 –**

The position u/s 141 NI Act 1881 can be summarized as under:

- (i) If the accused is MD or JMD of a company, it is not necessary to aver that

he is in charge of and responsible to the company for the conduct of its business.

- (ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or to make specific allegation about consent, connivance or negligence.
- (iii) In the case of other Directors, Secretary or Manager, an averment in the complaint that he was in charge of and responsible to the company for the conduct of its business is necessary.
- (iv) Other officers of the company can be made liable only u/s 141 (2), by averring in the complaint their position and duties and their role in regard to issue/ dishonor of the cheque disclosing consent, connivance or negligence.

**K.S. Joseph vs. Phillips Carbon Black Ltd. and another: AIR 2016 SC 2149 –**

One of the points raised before the Supreme Court was whether cognizance of belated complaint u/s 138 NI Act could be taken without issuing notice to the Respondent on the question of condoning the delay. The Supreme Court observed that “the other plea relating to delay of 62 days and taking cognizance without issuing notice to dispense with such delay is however found to have substance.” It was further observed that no doubt the court has been empowered to take cognizance even after the prescribed period but only if the complainant satisfied the court that he had sufficient cause for not making the complaint within the prescribed period.

**Krishna Export and Capital Markets Ltd. vs. Ila A. Agrawal and others: 2015 (3) PLR 307 (SC) –**

For dishonor of cheque drawn by company, notice issued to accused company, but no individual notices were given to Directors. Complaint filed against company and its Directors. Directors acquitted by trial court on the ground of non-issuance of individual notices to them. High Court concurred in this view. The Supreme Court held that there was no necessity to issue individual notices to the Directors. The Directors who are in charge and responsible for affairs of the company would be aware of receipt of notice by company u/s 138 NI Act.

## NOTIFICATIONS

### Benami Transactions (Prohibition) Amendment Act, 2016

- Came into force on 01<sup>st</sup> November, 2016 vide Notification No.98/2016 dated 25.10.2016.
- After coming into effect, the BTP Amendment Act, the existing Benami Transactions (Prohibition) Act, 1988, shall be renamed as Prohibition of Benami Property Transactions Act, 1988 (45 of 1988). In short, PBPT Act.

#### **Salient Features:**

1. The PBPT Act prohibits recovery of the property held Benami from Benamidar by the real owner. Properties held Benami are liable for confiscation by the government without payment of compensation.
2. Provides for an appellate mechanism in the form of an Adjudicating Authority and Appellate Tribunal. For the purpose, the Adjudicating Authority referred to in section 6(1) and appellate Tribunal referred to in Section 25 of the Prevention of Money Laundering Act, 2002 (PMLA), have been assigned the task under PBPT Act as well.
3. **Bar of Jurisdiction of Civil Courts:** No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which any of the authorities, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine, and no injunction shall be granted by any court or other forum in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.
4. **Constitution of special Courts:** Central Government in consultation with Chief Justice of the High Court shall, for trial of an offence punishable under the act, designate one or more courts of sessions as special court or special courts for such case or class or group of cases as may be specified in the notification.
5. While trying an offence under the Act, special court shall also try an offence other than offence referred to under the Act, with which the accused may, under the Cr.P.C be charged at the same trial.
6. **Bar of Cognizance:** The special court is barred from taking cognizance of any offence punishable under the Act except on a compliant in writing made by the Authority or any Officer of the central government or state government authorized in writing by that

government by a special or general order made in this behalf.

7. Every trial under the provisions shall be conducted as expeditiously as possible with an endeavour by the special court to conclude the trial within six month of date of filing of complaint.

8. **Procedure to be followed by the special court:** Provisions of Cr.P.C have been made applicable to the proceeding before the special court and the person conducting the prosecution shall be deemed to be Public Prosecutor.

9. **Offences and Prosecution:** Section 53 of the Act provides that any person who enters into Benami Transaction in order to defeat the provisions of the Act or avoids payment of statutory dues or payment to creditors, the beneficial owner, Benamidar and any other person who abets or induces any other person to enter into Benami Transaction shall be guilty of offence of Benami Transaction.

#### **The Repealing and Amending Act – Clarification:**

The Government of India, Ministry of Law Justice Legislative Department, vide notification No.F.No.11 (1)/2016-L.1 dated 16.05.2016 has made a **clarification** that:

The repeal of an Amending Act does not affect such portions of the statute which have been already incorporated into the principle/parent Act. The Act directing incorporation may be repealed. But the incorporated section or sections still operate in the former Act [AIR 1951 Cal.97 (99)]. Thus, the repeal of any Amending Act does not have the effect of destroying the amendment incorporated in the parent Act. The amendments made in the parent Act by the Amending Act would continue to remain in the parent Act. The repeal of the Amending Act will not affect the continuance in force of the amendments carried out by the Amending Act which have become part of the parent Act. The Supreme Court while interpreting Section 6 A of the General Clauses Act, observed that the functions of the incorporating legislature is taken almost while as the function of effecting the incorporation and when that function is accomplished, the legislation dies as it were, a natural death which is formally effected by its repeal [AIR 1962 SC 316 (334)].

## ACCESS TO JUSTICE AND SCIENTIFIC INVESTIGATION

The concept of justice is as old as origin and growth of human society itself is. It has become more conspicuous with the growth of state which ensures justice to its people through the instrumentality of law. As the law grew and developed, the concept of justice has also expanded its tentacles to different spheres of human activities.

The essence of legal justice lies in ensuring uniformity and certainty of law and at the same time ensuring that rights and duties are duly respected by the people. One has to be just and fair not only to him, but towards all members of society. Those were the days when the administration of justice was having the basis of oral evidence of the concerned. Now-a-days, we have travelled to deliver justice in the scientific techniques at least to culminate a trial in a proper and fair manner.

Justice and Science is a meaningful subject. Aristotle described Justice 'as the practice of perfect virtue, but perfect virtue is a question of abstract principle'. There is deep relation between law and justice, Forensic Science and Forensic Scientist. They are interlinked with deep bounds. Criminal Law recognizes the importance of Forensic Science. This advanced science helps in detecting crime and criminal which gives a bigger picture of investigation to trial in capturing the public interest at large. In criminal investigation use of scientific technology is need of the hour.

In the fixation of paternity or maternity and in settling of many other issues, the use of scientific techniques is a boon for the scientific community. The present world is the world of science and technology and new researches in every field. The Forensic

Science plays a vital role in crime detection. Law exists in almost every area of life. In a well ordered society, the public conception of justice provides a mutually recognized point of view from which citizens can adjudicate their claim or political right or their political institutions or against one another.

The aim and object of Criminal Justice System is to protect the innocent from wrong conviction and punishment and culprit and this is all possible by search of truth from the trial. The scientific aspects are helping to deliver criminal justice system like biological evidence cannot tell a lie and the decision arrived at by such an evidence is said to be justice through science. Criminal behaviour of an accused is determined by Forensic Psychology.

Recently, some Psycho-physiological tests are found good alternative to third degree torture to bring the truth on surface, like **narco-analysis, brain mapping and lie detector tests**. These tests are regularly used by law enforcement agencies which are providing more authentic, accurate and reliable results. All these scientific tools have been discussed at length by the Apex Court in *Selvi and others vs. State of Karnataka (2010) 7 SCC 263*. Moreover, the Delhi High Court while delivering complete justice allowed scientific techniques to a paternity test with DNA in *Rohit Shekhar vs. Narayan Dutt Tiwari & Anr.*" (2012) 189 DLT 105 (DB). The principle based on advance scientific technique, like DNA testing has proved that every person of this world can be traced at molecular level except of monozygotic twins.

## **Psycho-Physiological Tests for Criminal Investigation**

*Polygraph or Lie Detector Test:* A polygraph (also known as a lie detector) is an instrument that measures and records several physiological response such as blood pressure, pulse, respiration and skin conductivity while the subject is asked and answers a series of question, on a theory that false answers will produce distinctive measurements. The polygraph measures the physiological changes caused by the sympathetic nervous system during questioning.

*Brain Mapping or Brain Fingerprinting or P300 Test:* Brain Mapping or Brain fingerprinting is also a tool to read guilty thoughts. It has also been called P300 Test. It has been scientifically proved that major events of life are encoded in the brain and a solid record is maintained by brain. Suppose, you have robbed a person on gunpoint, if the gun and photo of the person is shown to you, your brain will emit electric signals as each photo is flashed before you. Whereas in case, a suspect chooses to remain silent, even then his brain will emit some electrical signals and fingerprinting, which will be proved almost hundred percent correct and accurate in test. Brain fingerprinting is a much better technology in comparison to lie detector i.e. polygraph. The latter records changes in breathing, heartbeat, blood pressure, etcetera and a clever person or a person of strong Will power can control his pulses, etc. and can deceive the interrogators, while the electrical brain waves called P-300 give information exactly within 300 milliseconds. But innocent

suspect would not emit such waves. That would mean that the person inadvertently emits such waves.

*Narco-analysis:* To conduct it, three grams of drug is dissolved in 3000 ml of distilled water and this mixture along with 10% dextrose is injected intravenously in the body of the subject over a period of 3 hours with the help of an experienced anesthetist. In normal conditions 0.5 ml to 1 ml or till subject becomes sedative. It varies according to subject of his age, sex, health and physical condition. The drug depresses central nervous system. It slows heart beat and lowers the blood pressure. On finding his slurred voice of the subject seems affect of that on him. In that hypnotic state the questions are asked and answers are audio and video recorded. It is believed that Sodium Pentothal, Sodium Amytal or Scopolamine makes the subject powerless to keep from divulging the required information. The drugs reduced inhibition, increases loquacity, so 100% accuracy is not expected.

## **Conclusion**

The scientific investigation has become a basic tool to investigate a crime especially found linked with white collar crime, which is not uncommon in the present culture of society. Scientific techniques to investigate a suspect are not violative to his fundamental rights. Rather a suspect can be investigated with honour to his respect and a scene of crime could be ascertained with certainty.

Dr. Ram Kumar Singla,  
ADJ, Gurdaspur

## **EVENTS OF THE MONTH**

1. The Ministry of Women and Child Development, Government of India organized a National Consultation on Hague Convention regarding Civil Aspects of International Child Abduction on February 03, 2017 in New Delhi. After discussion, it was inter alia recommended that Multi-member Committee be constituted under the Chairpersonship of HMJ Rajesh Bindal of Chandigarh Judicial Academy which would also include Justices from Delhi High Court, Representatives from the Law Commission and NRI Punjab Commission. The non-judicial members may include from Ministry of External Affairs / Ministry of Home Affairs / Ministry of Women and Child Development / National Commission for Women. It was suggested that a Model Legislation to safeguard not only the interests of child but also of the parents, especially women, must be developed irrespective of whether India signs the Convention or not. The Chandigarh Judicial Academy, Law Commission and NRI Commission of Punjab will examine in detail the legal issues involved by taking all viewpoints into account, including those of suffering women as several cases were highlighted during the consultation. The Committee would be submitting its report within four months.

2. Trainee Judicial Officers, HCS (JB): The Trainee Judicial Officers from the State of Haryana underwent Police Training from January 23 to February 11, 2017 at Police Academy, Madhuban. Thereafter, they were deputed for Field Training at their respective place of posting from February 13 to 26, 2017. They were relieved from their place of posting on February 25, 2017 to report for Bharat Darshan

on February 27, 2017 at Maharashtra State Judicial Academy, Mumbai. On return from Bharat Darshan, they would report for Institutional Training on March 09, 2017 in Chandigarh Judicial Academy.

3. Trainee Judicial Officers, PCS (JB): The Trainee Judicial Officers from the State of Punjab undergoing Institutional Training at Chandigarh Judicial Academy went for Bharat Darshan from February 12 to 21, 2017 to Gujarat State Judicial Academy, Ahmadabad. On return, they reported for Field Training from February 22, 2017 at their respective places of posting. They would report back to Chandigarh Judicial Academy for Institutional Training on March 04, 2017.

4. Two day Workshop on – Sensitization on Family Court Matters was organized during February 25-26, 2017 for District Judges, Family Courts, and other ADJs /Judges /Presiding Officers with Family Court Matters. The basic object of the Workshop was to sensitize the Presiding Officers with regard to the Family Court matters. The Family Court matters need different handling with different attitude and communication skills. In order to execute the Workshop, we had a distinguished Panel of Resource Persons: Hon'ble Dr. Justice D.Y. Chandrachud, Judge, Supreme Court of India, HMJ S.S. Saron, HMJ Mahesh Grover, HMJ Rajesh Bindal, HMJ Daya Chaudhary, HMJ Augustine George Masih, HMJ Amit Rawal, HMJ Shekher Dhawan: Judges, Punjab & Haryana High Court, Prof. Balram K. Gupta and Prof. Virendra Kumar. Ms. Navjot Kaur, Additional District and Sessions Judge-cum-Faculty, CJA was the co-ordinator of the Workshop.

## **FORTHCOMING EVENTS**

1. The Direct Taxes Regional Training Institute, Chandigarh will hold one day Workshop on 'Gender Sensitization' for Income Tax Department Officers and Judicial Officers undergoing Institutional Training at CJA on 8<sup>th</sup> March, International Women Day at Chandigarh Judicial Academy. HMJ Rajesh Bindal will deliver the Keynote Address. HMJ Daya Chaudhary and motivational speaker Shiv Khera will also address on this occasion.

2. National Consumer Disputes Redressal Commission, New Delhi proposes to hold a Workshop to sensitize the Members of District Consumer Forums of States of Punjab, Haryana and Chandigarh during March 18-19, 2017 at Chandigarh Judicial Academy.

3. Mediation and Conciliation Project Committee (MCPC), Supreme Court of India would be conducting three days, 20 Hours Capsule Course for participants from various States at Chandigarh Judicial Academy during March 23 to 25, 2017.

4. Chandigarh Judicial Academy is going to organize a Workshop on the applicability of the Forensic Science in the Administration of Criminal Justice System and the Technicalities involved on March 25-26, 2017. The participants to be sensitized will be diverse: Judicial Officers, Doctors, Senior Police Officers from the region.

5. Based upon the successful Programme which was held in December 2016, Chandigarh Judicial Academy would be organizing another Academic Programme for Sri Lankan Judges from April 21-25, 2017.