JANUARY 2017

CJA e-NEWSLETTER

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

VOLUME : 02
ISSUE : 01

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FROM THE DESK OF CHIEF EDITOR

This is the first e-Newsletter of the year 2017. The year 2016 was meaningful keeping in view the different Academic activities were carried out. It was a very satisfying year. The previous year e-Newsletters bear testimony to the role which Chandigarh Judicial Academy played in serving the Judicial Fraternity in various aspects of Judicial Education. It is, indeed, a continuous process. Through this medium, I wish to draw attention to a case decided by the Apex court :**Centre for Public Interest Litigation versus Registrar General of the High Court of Delhi**, 2016 (7) SCALE 496. Every year, public examinations are conducted to select officers for the State Judicial Services. In different states, often the result of such public examination is challenged before the High courts. In this instant case, a writ petition under Article 32 came to be filed before the Summit court challenging such examination conducted for the Delhi Judicial Service. 659 candidates had qualified the Preliminary Examination. They appeared in the Main Examination. Out of them, after interview, finally 15 candidates were selected. Total number of vacancies were 80. The law is well settled. If the suitable candidates are not available, the employer is not obliged to fill up the posts. The Apex court treated this case as a special case and gave certain directions. The Supreme Court of India also passed an order appointing Justice P.V. Reddy, former Judge of the Supreme Court to revalue the answer scripts and submit a report. On the basis of this report, 12 candidates were called for interview. 11 candidates appeared for interview. They all were selected. Normally, the matter would have ended at this stage. Certain suggestions were made for the future. Some of them were accepted. The Summit court recorded: "we assure that the high court, while conducting examinations in future, shall keep the aforesaid suggestions in view." The Bench also recorded :"…we may state that suggestions have been given so that the candidates, who participate in the examination must have intrinsic faith in the system of examination and simultaneously, they must also appreciate that a candidate, while appearing in an examination, has his/her own limitation. Faith in an institution and acceptance of individual limitation are the summum bonum of a progressive civilized society." The suggestions given are not only for the Delhi Judicial Service. The suggestions are equally relevant and binding to all states. This was most necessary. It would help in generating the basic trust and confidence in the system. This is healthy for the future of the Institution of Judiciary.

Balram K. Gupta

CASE COMMENT
Thana Singh vs. Central Bureau of Narcotics
(2013) 2 SCC 590

This was a bail matter before the Hon'ble Supreme Court in which the person was languishing in jail for more than 12 years and was denied bail consistently by the High Court, despite the fact that the maximum punishment provided for the offence is 20 years. Referring this callousness as lack of deference for humanity, certain directions and guidelines were given for due observance by all the concerned and these have been declared as law by the Hon'ble Supreme Court under Article 141.

The important directions which were issued by the Apex Court were regarding (a) Adjournments, (b) Examination of Witnesses, (c) Retesting of Samples apart from (d) 'Workload', (e) Narcotic Labs, (f) Public Prosecutors and other recommendations though it has been laid down that these directions are restricted only to procedure under NDPS Act. After reading this judgment one finds that the directions, with regard to Adjournments, Examination of Witnesses and Retesting of Samples, are to the courts which are dealing with the trials under NDPS Act.

DIRECTIONS REGARDING ADJOURNMENT:

Referring to the lavishness with which the grant of adjournments is there by the courts, it has been held that such practice needs complete abolishment. Discussing the law laid down under section 309 of Cr.P.C which refers to power to postpone or adjourn proceedings, it has been laid down that the fourth proviso to the Section 309 (2) deserves to be followed meticulously. Holding that this proviso must be treated as an exception, and must not be allowed to swallow the generic rule against grant of adjournment directions has been given that 'no NDPS court would grant adjournment at the request of the party except where the circumstances are beyond the control of the party'. Where the date for hearing has been fixed as per the convenience of the counsel, no adjournment shall be granted without exception. If adherence is made to this direction, it will cut short the delay in dispensation of justice.

DIRECTIONS WITH REGARD TO EXAMINATION OF WITNESSES:

The delay in examination of witnesses and non conclusion of the examination of a witness including cross examination in a day has also been attributed as one of the factor for delaying the trials. No legal system is able to dispense justice if not accompanied with conducive environment for witnesses to depose. Conclusion of examination leaving aside cross examination which is taking more than a day yet they are not examined on consecutive days, but adjournments are given spreading over months and they are required to incur expenditure repeatedly despite the inconvenience suffered. It also caters to unnecessary repetition by way of questioning and answering to rely upon one's ever fading memory. This compounds the duration of trial. Referring to the erstwhile method of holding "session's trials" the Hon'ble Supreme Court has directed to the courts concerned to adopt the method of "session's trial" and assign block dates for examination of witnesses. The erstwhile method of holding the "Session's trial" was that a blocked period of 3 to 4 days was fixed for the conducting of examination and cross examination of the witnesses. This

enabled a witness to take a stand after making one time arrangement for travel and accommodation and after that he was liberated from his civil duties qua a particular case. So the court should, after framing the charge, fix a block period of 4 or 5 days in consultation with the advocate for the defence and summon the witnesses for those block dates. This will of course benefit, in a manner that advocate will not be making request for adjournment as the period has been fixed as per his convenience and the witnesses will be present and their examination will be completed in those block dates.

DIRECTIONS WITH REGARD TO RETESTING OF SAMPLES:

The Hon'ble Supreme Court while making an observation that though NDPS Act does not permit re-sampling or re-testing of samples, yet there has been a trend that NDPS courts are consistently allowing the applications for re-testing and re-sampling which are invariably adding to delays as they are often received at the advance stages of trials and after significant lapse of time. Though re-testing has been held to be an important right of the accused but the manner of importing the right in which it is imported from other legislation without accompanying restrictions has been stated as impermissible. Referring to Section 25(4) of Drugs and Cosmetics Act 1940, Section 13(2) of Prevention of Food and Adulteration Act 1954 and Rule 56 of Central Excise Rules, 1944 it has been held that it is imperative to define re-testing right as an amalgamation of these legislation.

Referring to Section 52A of NDPS Act, which is for Disposal of seized Narcotic Drugs and Psychotropic Substances, it has been held that the time frame within which any application for re-testing may be permitted ought to be strictly defined. It has been held that "…we direct that, after the completion of necessary tests by the concerned laboratories, results of the same must be furnished to all parties concerned with the matter. Any requests as to re-resting/re-sampling shall not be entertained under the NDPS Act as a matter of course. These may, however, be permitted, in extremely exceptional circumstances, for cogent reasons to be recorded by the Presiding Judge. An application in such rare cases must be made within a period of fifteen days of the receipt of the test report; no applications for re-resting/re-sampling shall be entertained thereafter. However, in the absence of any compelling circumstances, any form of re-testing/re-sampling is strictly prohibited under the NDPS Act".

The other directions in the judgment are not meant for the courts and are for the Central Government, State Governments and Union Territories. Thus those are not reproduced here.

Despite the fact that this judgment relates back to January 23, 2013, the directions which have been given in this judgment with a special emphasis that these directions are declared as law under Article 141 by the Hon'ble Supreme Court for due observance by all the concerned are being observed more in flagrant violation of the same. It is required that the directions which are there in the above three fields must be observed meticulously in view of this judgment of Hon'ble Supreme Court.

Pardeep Mehta
Faculty Member

JUDGEMENTS ON FAMILY LAW

"Human life does not run on dotted lines or charted course laid down by statures. Before granting the prayer of the petitioner to permanently snap the relationship between the parties to the marriage every attempt should be made to maintain the sanctity of the relationship which is of importance not only for the individuals or their children but also for the society"

D.P. Mohapatra, J. in Hirachand Srinivas Managaonkar v. Sunanda, (2001) 4 SCC 125

Shailja & Anr. vs. Khobbanna:Criminal Appeal No.125-126 of 2017, SLP (Crl.) No. 6025-6026/2013, DoD 18.01.2017–The Family Court had directed payment of maintenance of `15,000 per month to the wife and `10,000/- per month to the son. The High court while considering the correctness of the order of the Family Court did not accept the contention of the husband that the wife was working. All that was held was that the **wife was capable of earning**. Therefore, the maintenance was reduced to an amount of `6,000/- from `15,000 for the wife and `6,000/- from `10,000/- for the son. Held that **capable** of earning and **actually earning** are two different requirements. Merely because the wife is capable of earning is not sufficient reason to reduce the maintenance awarded by the Family Court.

Damayanti Hemant Matani vs. Dr. Viren Bhagwandas Asher and another: AIR 2016 Supreme Court 5121–It is held that permission granted by High Court to father/respondent to take the child out of India for treatment / surgery for a period of four months in academic scheduled granted by High Court modified in better interest of the child. Directed that the father would file an affidavit to the effect that on completion of treatment, the child will be brought back to India and put in custody of the appellant.

Saheb Reddy vs. Sharanappa and others: AIR 2016 Supreme Court 5253 – Wherein Hon'ble Supreme Court held that property once vested in widow and three daughters of deceased - Would not be disturbed by virtue of subsequent adoption of son by widow. In view of Section 12 of the Hindu Adoptions and Maintenance Act, the property of widow having three daughters and subsequently adopting son and died intestate, her property would be divided among her adopted son and heirs of three daughters who had predeceased her.

Yogender Singh vs. Smt. Sunita : AIR 2016 Punjab and Haryana 244 – It is held that general allegations of cruelty and misbehavior on part of wife but no substantial evidence produced to establish alleged cruelty. Bald allegations that wife treated husband and his family members in cruel manner without any legal evidence to substantiate such plea is not sufficient to grant relief of divorce on ground of cruelty. Further held that mere allegation of desertion is not enough to seek relief of divorce. Spouse who alleges desertion as against the other spouse will have to prove animus deserendi on part of other spouse by leading cogent evidence of desertion. Mere livings of spouse separately in all circumstances by itself will not constitute desertion.

Amit Kumar vs. Navjot Dubey: MANU/PH/ 2583/2016 – On a claim of maintenance filed by the wife – Held – wife is entitled to enjoy the same amenities of life as she would have been enjoying had she been staying in the matrimonial home. The fact that the wife is drawing more salary than the husband is not a ground to deny her claim of maintenance in view of sky-rocketing of prices of basic necessities of life, expenses on education of children besides their needs to grow well and face peer pressure.

Varinder Kaur vs. Jatinder Kumar and another: 2016 (4) RCR (Civil) 993 – Held – a woman cannot claim as a matter of right to occupy any part of the self-acquired property of her husband's parents against their wishes. A daughter-in-law has no right to live in the self-acquired property of her father in law. During subsistence of marriage, maintenance of a married wife the personal obligation of the husband. Such an obligation can be met from the joint properties of the husband. Properties shown exclusively in the name of parents cannot be subject matter of any attachment or enforcement of any such right of maintenance.

Mandeep Kaur vs. Dharam Lingam
FAO–M No. 217 of 2015 (Q&M), D.O.D. 05.10.2016, Pb & Hry. High Court

In the instant case, the marriage of the appellant was solemnized with the respondent at village Gorsian Makhan, Tehsil Jagraon, District Ludhiana. The appellant submitted that after the marriage they lived and co-habited as husband and wife for about one and half month, before the respondent returned to Canada on the pretext of completing formalities of Immigration Department to call her to Canada. The respondent was Canadian citizen. The appellant wife filed the Petition for dissolution of marriage against the respondent husband u/s 13B-1(ia) (1b) of Hindu Marriage Act, 1955. On notice of the Petition, the respondent husband had appeared through counsel but when the case was fixed for filing written statement, he absented from the hearing and was proceeded against ex-parte. Learned ADJ, Ludhiana dismissed the Petition wide judgment dated 17.03.2015 on the ground of jurisdiction. Against the said judgment, the appellant wife filed appeal. Two fundamental contentions were raised:

(i) Extent and applicability of the HM Act as per Section 1(2) of the Act;
(ii) The court in which a petition under the Act can be presented.

On the basis of the provisions of Section 1(2) of the Act, it was held by the Division Bench of Punjab and Haryana High Court: "Therefore, in our considered opinion, the Act will apply to Hindu outside of the territory of India only if such a Hindu is domiciled in the territory of India." In the absence of the pleadings on the part of the respondent, it could not be assumed that he was not a Hindu domiciled in India by origin and residing outside the territory of India. Thus, issue no.(i) was decided accordingly.

Section 19 (iiia) of the Act provides that in case the wife is the petitioner, the petition shall be presented to the District court where she is residing on the date of presentation of the petition. This sub-section (iiia) was incorporated by Act 50 of 2003. As the Clause regarding jurisdiction stood originally, it caused serious prejudice to the cause of women. The same was unfair to women. Therefore, the sub-section (iiia) was introduced to S.19 of the Act. Accordingly, the wife is now entitled to file a matrimonial petition before the District court in whose territorial jurisdiction she is residing. The Division Bench held that the right of the wife cannot be defeated on a technical plea that such proceeding would not lie on account of foreign citizenship of the husband. Moreover, the Supreme Court in **Y. Narasimha Rao and others vs. Y. Venkata Lakshmi and another, (1991) 3 SCC 451** dealt with the issue regarding recognition of foreign judgment on matrimonial dispute passed by a foreign court. The marriage had been solemnized as per the provisions of HM Act. However, the decree of divorce was granted by the Court of Missouri. The Supreme Court held that the Court of Missouri had no jurisdiction to entertain a petition under the Hindu Marriage Act. It was categorically stated that marriages performed under the Hindu Marriage Act can be dissolved under the said Act. Relying upon this judgment of the Supreme Court, the Division Bench decided Issue no. (ii) accordingly.

LATEST CASES: CIVIL

"A Constitution cannot be regarded as a mere legal document to be read as a will or an agreement nor is Constitution like a plaint or written statement filed in a suit between two litigants."

H.R. Khanna, J. in Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225

Prabha Sharma vs. Sunil Goyal : C.A Nos. 632-633 of 2017 in SLP (C) Nos. 25552-25553 of 2011: DoD 17.01.2017– The Judicial Officer had approached the Apex court against the High court order. The High court order recorded that wrong interpretation or distinction of its judgment and that of the Supreme Court by a Subordinate Court amounts to disobedience of the orders, therefore, contemptuous. It also shows that legal knowledge or appreciation of the judgment of the Hon'ble Apex court, of the first Appellate Court is very poor. The Supreme court while refusing expunge the remarks, recorded that we do not find any observation in the impugned judgment which reflects on the integrity of the appellant. Based upon the judgment of the High court, disciplinary proceedings had been initiated against the appellant. Held that the High court is at liberty to proceed with the disciplinary proceedings and arrive at an independent decision of its own.

United Finance Corporation vs. M.S.M. Haneefa: 2017 (1) SCALE 516–In construing the meaning of the words "**when the sale becomes absolute**" in Article 180, the Limitation Act, regard must be had not only to the provisions of Order 21, Rule 92(1), of the Schedule to the Code of Civil Procedure, but also to the other material Sections and orders of the Code, including those which relate to appeals from orders made under Order 21, Rule 92(1). The result is that where there is an appeal from an order of the Subordinate Judge, disallowing the application to set aside the sale, the sale will not become absolute within the meaning of Article 180 of the Limitation Act, until the disposal of the appeal, even though the Subordinate Judge may have confirmed the sale, as he was bound to do, when he decided to disallow the above-mentioned application.

Yash Pal vs. Union of India: 2017 (1) SCALE 156–The apex court dealt with the problems of the Porters who provide valuable support to the Indian Army. Porters are integral, if not indispensible, requirement of operations in border areas. They belong to the poorest strata of society. They work as casual labour, for long years with little regard of safety. Faced with disability, injury and many times death, their families have virtually no social security. Such a situation cannot be contemplated having regard to the mandate in Articles 14 and 16 of the Constitution. The summit court took the view that it may not be in a position to issue a mandamus to the union government but surely that does not prevent the government from taking a robust view of reality in consultation with the Armed Forces whom the Porters serve with diligence and loyalty. Accordingly, the Supreme Court issued directions to the union government. The Porters are paid wages at par at the lowest pay scale applicable to multitasking staff. Further, if there are provisions enabling additional payments to be made (either by way of allowances or otherwise) for work in high altitude areas or in high risk/active field areas, such payments shall be allowed under the scheme. Secondly, the scheme must provide for regular medical facilities including in the case of injury or disability. Thirdly, the amount of compensation in the case of death or permanent disability should also be looked at afresh and suitably enhanced. The present scheme provides for an interim relief of rupees twenty thousand to be sanctioned at the discretion of the local formation commander. A maximum payment of rupees two lakhs as applicable under the Workmen's Compensation Act, 1923 is contemplated. The provision for compensation shall be enhanced to provide for dignified payments in the event of death or disability. Fourthly, a onetime severance grant of rupees fifty thousand is provided in the proposed scheme subject to a minimum service of ten years. This measly payment on severance does not fulfill the mandate of fairness, on the part of the State. We direct that the terminal benefits should be enhanced so as to provide for compensation not less than at a rate computed at fifteen days' salary for every completed year of service. The Union government shall bear in mind these directions in the course of the finalization of the scheme which shall be done within the next three months.

National Campaign on Dalit Human Rights vs. Union of India: 2016 (12) SCALE 955 – Article 39A of the Constitution provides for free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The Legal Services Authorities Act, 1987 ('the LSA Act') was enacted to constitute special authorities for providing free and competent legal services to weaker Sections of the society.

Section 4 (m) of the LSA Act provides for special efforts to be made for enlisting the support of voluntary social welfare institutions, particularly among Scheduled Castes and Scheduled Tribes. Section 12 of the LSA Act provides for free legal aid to the Scheduled Castes and Scheduled Tribes. There had been a failure on the part of the concerned authorities in complying with the provisions of the Act and Rules. The laudable object with which the Act had been made is defeated by the indifferent attitude of the authorities. The State Governments are responsible for carrying out the provisions of the Act as contended by the Union of India. The Central Government has an important role to play in ensuring the compliance of the provisions of the Act. S.21(4) of the Act provides for a report on the measures taken by the Central Government and State Governments for the effective implementation of the Act to be placed before the Parliament every year. The constitutional goal of equality for all the citizens of this country can be achieved only when the rights of the Scheduled Castes and Scheduled Tribes are protected. The abundant material on record proves that the authorities concerned are guilty of not enforcing the provisions of the Act. The travails of the members of the Scheduled Castes and the Scheduled Tribes continue unabated. The Central Government and State Governments were directed to strictly enforce the provisions of the Act. The National Commissions were also directed to discharge their duties to protect the Scheduled Castes and Scheduled Tribes. The National Legal Services Authority was requested to formulate appropriate schemes to spread awareness and provide free legal aid to members of the Scheduled Castes and Scheduled Tribes.

Anil Sabbarwal vs. Girija Shankar: MANU/SCOR/00057/2017: DoD 02.01.2017 – Girija Shankar's Special Leave Petition against the order of eviction was dismissed by the apex court in September 2012. Jagdish Tiwari, his son, refused to hand over the possession and contempt application had to be filed by the landlord. The motion bench orders passed by the Supreme Court depicted a sorry state of affairs, wherein, despite a final order passed by the summit court, Jagdish Tiwari, the son of the respondent made all out efforts to retain the possession. Even repeated warnings of the apex court did not have any effect on him. Held – such an attitude at the behest of an individual, needs to be curbed with a strong hand. Accordingly, the summit court disposed of the petition by **directing to pay rupee one lakh** towards cost. The said cost was to be deposited with the Supreme Court Advocates on Record Welfare Trust.

Shashi Bala vs. State of Haryana: MANU/PH/2588/2016:DOD 22.12.2016–Held**–** child care leave cannot be granted retrospectively and has to be applied for in advance by government employees. Due permission need to be acquired before taking advantage of this valuable right. Child care leave cannot be applied for to act, retrospectively and therefore, there is nothing wrong in the department holding that ex post facto permission cannot be granted.

Mohit vs. UOI: MANU/PH/2178/2016:DOD 16.11.2016–Held– A child's passport can carry the step-father's name without any declaration by the court appointing him as a legal guardian. Further held – step-father of the child is his legal guardian for all intents and purposes for which there is no need to obtain an order from the court for his appointment as legal guardian until and unless the capacity of the step-father, acting as a legal guardian, is challenged by the biological father, especially in a case where the custody is handed over by the court to the mother.

Sukhwinder Kaur vs. State of Punjab: 2016(3) RCR (Civil) 947 – In a claim for compassionate appointment filed by widow of retired BSF employee who along with his minor son were killed by the CRPF on account of their mistaken identity. Held–Adopted son is entitled to compassionate appointment though he was adopted after the death of the sole bread-winner of the family.

Rajesh Kumar Agrawal vs. Tulsi Electronic: MANU/CG/0362/2016:DoD 09.12.2016–In the light of provisions contained in Section 3 of the Act of 1986 and the judgments (supra) rendered by Their Lordships of the Supreme Court, it is evidently clear that the remedy available to the consumer under the Act of 1986 is an additional remedy and other statutory remedy available to the consumer under the other statutory law would not bar the consumer to avail the remedy available under the provision of the Act of 1986 and as such the District Forum committed an illegality in rejecting the complaint filed by the petitioner on the ground of availability of alternative remedy under Section 7-B of the Telegraph Act. The State Commission also committed grave illegality in affirming the order passed by the District forum ignoring the mandate of Section 3 of the Act of 1986.

LATEST CASES: CRIMINAL

"Performance of judicial duty in the manner prescribed by law is fundamental to the concept of Rule of law in a democratic State. It has been quite often said and, rightly so, that the judiciary is the protector and preserver of Rule of law."

Ajay Singh and others v. State of Chhattisgarh and others, 2017 (1) SCALE 400

Saloni Arora vs. State of NCT of Delhi: 2017 (1) SCALE 437–Whether prosecution u/s 182 of IPC could be launched without a formal complaint made by the public servant concerned?–Held–While relying upon the judgment of Supreme Court in the case of Daulat Ram vs. State of Punjab AIR 1962 SC 1206 – Held – There is an absolute bar against the Court taking seisin of the case under S.182 I.P.C. except in the manner provided by S.195 Cr.P.C. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. The offence under S.182 is complete when a person moves the public servant for action. Further held–Where a person reports to a Tehsildar to take action on averment of certain facts, believing that the Tehsildar would take some action upon it, and the facts alleged in the report are found to be false, it is incumbent, if the prosecution is to be launched, that the complaint in writing should be made by the Tehsildar, as the public servant concerned under S.182, and not leave it to the police to put a charge-sheet. The complaint must be in writing by the public servant concerned. The trial under S.182 without the Tehsildar's complaint in writing is, therefore, without jurisdiction ab initio.

State of Telangana vs. Habib Abdullah Jeelani: 2017 (1) SCALE 412–Held–Functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function. While interpreting the provisions of Section 154 Cr.P.C. Held – That the provision admits of no other construction but the literal one that a police officer is bound to register FIR upon receiving any information relating to commission of cognizable offence and reasonableness or credibility of the information is not a condition precedent for the registration of a case. Reading Section 154 Cr.P.C. in any other form would be detrimental to the scheme of the code but also to the society as a whole. While dealing with likelihood of misuse of the provision, the court emphasized on the rule laid by the Constitutional Bench in Lalita Kumari's case which carves out exceptional cases where preliminary inquiry is to be conducted before registration of FIR.

Ajay Singh and etc. vs. State of Chhattisgarh: 2017 (1) SCALE 400 – In a trial arising out of an FIR registered u/s 304B, 34 of IPC and other offences, the trial judge passed an order in the order sheet that recorded that the accused persons had been acquitted as per the judgment separately typed, signed and dated. The matter having been placed before full house of the High Court, the trial judge was placed under suspension and the case was transferred to another court for rehearing and disposal. While dealing with matter, the SC, referring to the provisions of Section 235 & 353 Cr.P.C., in view of the fact that there was no judgment, dictated, dated and signed available on the record, held - there can be no shadow of doubt that mere declaration of the result of the case cannot tantamount to a judgment as prescribed in the Cr.P.C. This leads to the inevitable conclusion that the trial in both the cases has to be treated to be pending – The Hon'ble SC reminded the courts of their solemn obligation by holding that performance of judicial duty in the manner prescribed by law is fundamental to the concept of rule of law in a democratic state. It has been quite often said and, rightly so, that the judiciary is the protector and preserver of rule of law. Effective functioning of the said sacrosanct duty has been entrusted to the judiciary and that entrustment expects the courts to conduct the judicial proceeding with dignity, objectivity and rationality and finally determine the same in accordance with law. Errors are bound to occur but there cannot be deliberate peccability which can never be countenanced.

Md. Sajjad @ Raju @ Salim vs. State of West Bengal: 2017 (1) SCALE 382 – Question – How much value is to be attached to a test identification parade?–Held–The fact that accused were identified by the witnesses in Court which is substantive evidence and the proceedings of test Identification parade are used to corroborate evidence–Further held–The value to be attached to a test identification parade depends on the facts and circumstances of each case and no hard-and-fast rule can be laid down. The court has to examine the facts of the case to find out

whether there was sufficient opportunity for the witnesses to identify the accused. The court has also to rule out the possibility of their having been shown to the witnesses before holding a test identification parade. Where there is an inordinate delay in holding a test identification parade, the court must adopt a cautious approach so as to prevent miscarriage of justice. In cases of inordinate delay, it may be that the witnesses may forget the features of the accused put up for identification in the test identification parade. However, it is not an absolute rule because it depends upon the facts of each case and the opportunity which the witnesses had to notice the features of the accused and the circumstances in which they had seen the accused committing the offence. Where the witnesses had only a fleeting glimpse of the accused at the time of occurrence, delay in holding a test identification parade has to be viewed seriously. Where, however, the court is satisfied that the witnesses had ample opportunity of seeing the accused at the time of the commission of the offence and there is no chance of mistaken identity and delay in holding the test identification parade may not be held to be fatal.

Sri Ganesh vs. State of Tamil Nadu: 2017 (1) SCALE 395– On the issue of ascertaining claim of **juvenility** raised before a court – Held– Age determination inquiry contemplated under Section 7-A of the Act read with Rule 12 of the 2007 rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted medical board arises only if the abovementioned documents are not available. In case, exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year. Further held – once the court, following the above-mentioned procedures, passes an order, that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in sub-rule (5) of Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of Rule 12. The Court, Juvenile Justice Board or a Committee functioning under the Juvenile Justice Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination.

Vijendra Singh vs. State of Uttar Pradesh: MANU/SC/0017/2017: DOD 04.01.2017 (SC) – While drawing a line of difference between the operation of Section 34 and 149 of the IPC – Held–In some ways the two sections are similar and in some cases they may overlap. Common intention which is the basis of Section 34 is different from the common object which is the basis of the composition of an unlawful assembly. Common intention denotes action-in-concert and necessarily postulates the existence of a prearranged plan and that must mean a prior meeting of minds. It would be noticed that cases to which Section 34 can be applied disclose an element of participation in action on the part of all the accused persons. The acts may be different; may vary in their character, but they are all actuated by the same common intention. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the fact of the case and circumstances of the situation.

State of Telangana vs. Habib Abdullah Jeelani: 2017 (1) SCALE 412 – Held that a high court, while refusing to exercise inherent powers u/s 482 of Cr.P.C to interfere in an application for quashment of the investigation, cannot restrain the investigating agencies from arresting the accused during the course of investigation. Setting aside such a high court order, terming it “absolutely inconceivable and unthinkable”, the bench observed that it has come to the notice of the court that high courts, while dismissing an application u/s 482 Cr.P.C, issue directions that on surrendering before the trial judge/magistrate concerned, the accused shall be enlarged on bail. Such directions do not come within the sweep of Article 226 of the Constitution of India nor Section 482 Cr.P.C. nor Section 438 Cr.P.C and are not acceptable.

NOTIFICATIONS

AMENDMENT IN THE PREVENTION OF CORRUPTION ACT (49 OF 1988) : Certain amendments were introduced in the said Act by way of the Lokpal and Lokayuktas Act, 2013 (1 of 2014) with effect from 16.01.2014 in which minimum punishment prescribed for offences u/s 7 and 13 of the Act has been enhanced. The amendment has not been taken notice of by the judicial officers. Accordingly, this has been included in this issue.

Part III
Amendments to the Prevention of Corruption Act, 1988(49 of 1988)

1. Amendment of sections 7, 8, 9 and 12.
In sections 7, 8, 9 and section 12,—
a. for the words ''six months'', the words ''three years'' shall respectively be substituted;
b. for the words ''five years'', the words ''seven years'' shall respectively be substituted.

2. Amendment of section 13.
In section 13, in sub-section (*2*),—
a. for the words ''one year'', the words ''four years'' shall be substituted;
b. for the words ''seven years'', the words ''ten years'' shall be substituted.

3. Amendment of section 14.
In section 14,—
a. for the words ''two years'', the words ''five years'' shall be substituted;
b. for the words ''seven years'', the words ''ten years'' shall be substituted.

4. Amendment of section 15.
In section 15, for the words ''which may extend to three years'', the words ''which shall not be less than two years but which may extend to five years'' shall be substituted.

5. Amendment of section 19.
In section 19, after the words ''except with the previous sanction'', the words ''save as otherwise provided in the Lokpal and Lokayuktas Act, 2013'' shall be inserted.

THE ADOPTION REGULATIONS, 2017 framed by 'Central Adoption Resource Authority' (CARA) as mandated under Section 68(c) of Juvenile Justice (Care and Protection of Children) Act, 2015 has been notified on 4th January 2017 by the Government Press and the Regulations shall be effective from 16 January 2017. The Adoption Regulations, 2017 replace the Adoption Guidelines, 2015. Salient features of the Adoption Regulations, 2017:

a) Procedures related to adoption by relatives both within the country and abroad have been defined in the Regulations.
b) Validity of Home Study Report has been increased from two to three years.
c) The time period available to the domestic PAPs for matching and acceptance, after reserving the child referred, has been increased to twenty days from the existing fifteen days.
d) District Child protection Unit (DCPU) shall maintain a panel of professionally qualified or trained social workers.
e) There are 32 Schedules annexed to the Regulations including model adoption applications to be filed in the Court and this would considerably address delays prevalent in obtaining the Court order.
f) CARA shall be facilitating all adoptions under the JJ Act, 2015 through Child Adoption Resource Information & Guidance System (CARINGS) and all kinds of adoptions, including adoptions by relatives shall be reported to CARA which would enable safeguards for all adopted children by maintaining their record and ensuring post adoption follow up.

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) MODEL RULES, 2016.
NOTIFICATION NO. GSR 898(E) [F.NO.1-2/2016-CW-II], DATED 21-9-2016.
These rules repeal the earlier JJ Rules, 2007. They provide detailed child friendly procedure for police, Juvenile Justice Board (JJB) and children's court. Some of these procedure include:

- No child to be sent to jail or lockup.
- Child not to be handcuffed.
- Child to be provided appropriate medical assistance, parent/guardian to informed about legal aid, etc.
- The JJB and Children's Court are required to put the child at ease and to encourage him to state the facts and circumstances without any fear.
- Every State Govt. is required to set up atleast one 'place of safety' in the state for rehabilitation of such children.
- All the procedure are based on principle of best interest of the child as primary condition.

EVENTS OF THE MONTH

1. The National Judicial Academy, India organized North Zone Regional Conference for Enhancing the Excellence of Judicial Institutions: Challenges & Opportunities in collaboration with the High Court of Punjab & Haryana and Chandigarh Judicial Academy on January 7-8, 2017. The measure of success of this Regional Conference would be clear from the fact that the Panel of Resource Persons included: HMJ Madan B. Lokur, HMJ R.K. Aggarwal, HMJ A.K. Goel, HMJ P.C. Pant (Sitting Judges of Supreme Court of India) : Justice G.S. Singhvi and Justice C.K. Thakker (former Judges of Supreme Court of India), HMJ S. Ravindra Bhat and HMJ Sanjeev Sachdeva, Judges of High Court of Delhi, HMJ Rajesh Bindal, Judge, High Court of Punjab & Haryana, HMJ S. Nagamuthu, Judge, High Court of Madras and Mr. C. Aryama Sundaram, Senior Advocate, Supreme Court of India. Besides this panel, Justice G. Raghuram, Director, National Judicial Academy and Prof. Balram K. Gupta, Director Academics, Chandigarh Judicial Academy monitored the discussions in the different sessions of the Regional Conference. The deliberations of the Conference related to Important Themes and Issues: Importance of Ethics, Integrity and Discipline, Strengthening Internal Vigilance Mechanism as Response to Rising Judicial Indiscipline, Impact of Media on Public Perception regarding Vitality of Justice Delivery, Relationship between High Court and District Judiciary, Social Context Judging (SCJ) as Principle for Exercise of Discretion and Application of SCJ in given Case Studies, E-Justice: Reengineering the Judicial Process through Effective use of ICT. There were 19 Hon'ble Judges from different High Courts of North Zone as also 67 Judicial Officers. The Regional Conference was also attended by 86 Trainee Judicial Officers of the States of Punjab and Haryana. The National Judicial Academy was represented besides the Director, Registrar (Administration), Research Fellow, Law Researcher and Technician. The Director (Administration), CJA played effective role in coordinating the different aspects of the North Zone Regional Conference. The Faculty of CJA looked after the different needs and requirements of the Resource Persons, Participating Judges and Judicial Officers.

2. The Trainee Judicial Officers from the State of Punjab were deputed to undergo Police Training at Police Academy Phillaur, Punjab from 02.01.2017 to 21.01.2017. They were given three week extensive training. During this period, Dr. Balram K. Gupta, Director (Academics) and Mr. Pradeep Mehta, the Faculty Member visited the Police Academy at Phillaur. Mr. Kuldeep Singh, IPS, ADGP, Director, Police Academy and the other officers of the Academy were present. They all had an interactive session with the Trainee Judicial Officers.

3. The Trainee Judicial Officers from the State of Haryana were deputed to undergo Police Training at the Haryana Police Academy, Madhuban from January 21 to February 11, 2017. During this period they would also be given extensive training in different aspects.

FORTHCOMING EVENTS

1. **Revenue Training Programme** of three days for the State Services and IAS (Probationers) will be organized from February 25-27, 2017. The High Court Judges and the Faculty, CJA will be the Resource Persons.

2. Two day Workshop on "Sensitization on **Family Court Matters**" will be organized on February 25-26, 2017 for District Judges Family Court and other Judges / Presiding Officers with Family Court Matters. This would also include the Additional District and Sessions Judges along with two Civil Judges–cum-JMIC dealing with Family Court Matters at their respective Sessions Division. The basic object of the Workshop would be to sensitize the Presiding Officers with regard to the Family Court matters. The Family Court matters need different handling with different attitude.

3. Based upon the successful Programme which was held in December 2016, a request has been received from the Sri Lankan Judges' Institute. Accordingly, there would be **Academic Programme for Sri Lankan Judges** from April 21-25, 2017.