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FROM THE DESK OF CHIEF EDITOR

It was 101 years back **Nani Palkhivala** was born on January 16, 1920. He played his innings till December 11, 2002 (almost 82 years). On the day of his death, a banner was put up at the Marine Drive with the caption:-

“We the nation”

“We the people”

Have lost a LEGEND.

He belonged to the 20th century. He continues to be relevant in 21st century. Legends do not die. In fact, he created a permanent legacy in the legal – Judicial Coparcenary. It is said that Nani was God’s gift to India. Therefore, this piece.

Nani on birth was called Nanabhoy by his parents. He belonged to a humble middle class Parsi family. His ancestors used to make and fix ‘Palkhis’ – Palanquins. Therefore, the surname Palkhivala. Not very tall. He stood 5 feet 7 inches. Slim. Not many kilos to carry.

It is recorded that as a child, Nani suffered from a dreadful stammer. What a handicap! He used to struggle to say a few words. Even unable to complete a sentence. It was a hard sight. His father used to make him run on the beach with an almond under his tongue. He would read by speaking reasonably loud. He made every effort to overcome this. Nani would take part regularly in debates and elocution contests. He hated to come second. He was determined to get over this handicap. It is said that he would not have been such a speaker and a great orator if he did not have this stammer. Nani was, indeed, a rare example. He overcome completely his handicap during his student days only. Nobody could say that he ever suffered from a stammer. He flowed so smoothly. He was like the Rolls-Royce. He became a genius in the art of communication. Both oral and written.

It was his father who inculcated in him the passion for literature. This remained abiding joy for him throughout his life. He recalled that as a child of ten he started enjoying the magic that lies in the words. He developed the skill to use the right word for the right occasion. He was a voracious reader from his childhood. He used to save money to buy second hand books. He used to visit regularly a book shop on Grant Road in Bombay. Palkhivala used to sit for hours reading the latest arrivals. Biographies, history and literature books. M.C. Chagla was elevated as a judge of Bombay High Court in 1941. He narrates an incident. It was lunch interval. He was in his chamber. His secretary

told him that some Palkhivala wants to meet him. The secretary was asked to bring him in. Justice Chagla saw that a shy and diffident young man was standing in front of him. Justice Chagla was a member of the Syndicate of the University. Palkhivala requested Justice Chagla that he wants a note from him to permit him to read in the university library. Justice Chagla was happy to give him such a note. He was happier to find that young persons did not merely read law but were also interested in literature and history. Such was the passion of Nani.

Nani after completing his matriculation joined the St. Xavier's College. He completed his B.A. with Honours in English literature. After graduation, Palkhivala's ambition was to become a lecturer in a local college. He appeared for the interview. A lady candidate was selected. He was not. The lady had prior teaching experience. This proved to be the turning point in his life journey. Palkhivala continued to be in touch with the lady lecturer. He used to invite her for lunch in later years. But for her selection, he would have never become a lawyer.

It would not be wrong to say that the greatest lawyer of India had come to law accidentally. Even his rejection as a lecturer did not bring him to law. He joined M.A. in English literature. Two more years were spent in getting his M.A. degree. Nani wanted to take the Indian Civil Service (ICS) examination. This was at that time the dream of young Indians. The ICS examination was scheduled to be held in New Delhi. A severe epidemic broke out that year. Accordingly, he was told not to go to Delhi. In fact, he did not submit his application in view of the epidemic. The Government later declared that the examination would be held at Bombay. It was too late to submit the application form. Consequently, Palkhivala could not attempt the ICS examination.

It was under these circumstances that Palkhivala joined the Government law college in 1942. His father was always keen that he should do law. He stood first in the First and Second LLB examinations in 1943 and 1944 (LLB used to be two years course). He joined the Bar in 1944. Since, Palkhivala wanted to practice on the original side; he was required to pass 'Advocates (O.S.)' examination. He not only stood first in this examination but secured the highest marks in every individual paper of this examination. It has been rightly said that Palkhivala seemed genetically coded to be an outstanding lawyer.

Palkhivala joined the chamber of Sir Jamshed Ji Kanga. He was the tallest leader of the Bar. Kanga had a talented and formidable team of lawyers. His chamber was crowded. Kanga had a large table for himself. The other juniors – Kolah, Mistri and Seervai had one table each. Palkhivala also had a table but with only one chair. Soon, Palkhivala got so busy. He would frequently have conferences sitting in his car. There was simply no space in his chamber to have conferences with his clients. Palkhivala in the beginning of his career got an opportunity. Palkhivala was assisting R.J.Kolah in a matter which was fixed before Justice N.H.Bhagwati (father of former CJI P.N.Bhagwati). R.J.Kolah and the Advocate General concluded their arguments on a particular day. The case was fixed for the next day for the rejoinder of Kolah. It so happened that Kolah was busy in another matter the next day. He asked Palkhivala to complete the arguments in the rejoinder. Palkhivala did not sleep the night. He prepared the case. Palkhivala urged new points which are normally are not allowed in a rejoinder. The Advocate General M.P.Amin was gracious enough. He did not object to raising the new points. He only requested that he should be allowed the right of surrejoinder. Palkhivala continued for the whole day. A word spread around that Palkhivala was arguing an important

matter. The students from the university rushed to the Bombay High Court to listen to him. He performed so well. He ultimately persuaded the judge to take a contrary view. For a two year old lawyer, this was an achievement of its own kind. The judgment was taken in appeal before the Division Bench. The view taken by the single judge was upheld. This case has been described as the 'booster rocket' in the professional journey of Palkhivala. He was hardly for three years at the Bar (1946-47) when his annual income was Rs.60,000/- This amount be equal to one crore today. Within seven years of his journey at the Bar, he purchased a large flat of 5,000 sq. feet at Commonwealth Building on Marine Drive. He continued to live in this flat till he breathed his last. From the age of 33 (1953), he started appearing regularly in the Supreme Court independently. Destiny also plays its own role. He was engaged to argue a Special Leave Petition in the Supreme Court on May 8, 1953. The return ticket from Delhi to Bombay was booked by the night flight on the same day. On May 5, Nani developed bad cold with fever. He returned the brief. The next day, Nani changed his mind. It meant a lot to the poor litigant. It so happened that on May 7, the temperature rose still higher and Nani had no option but to return the brief once again. C.K.Daphtary, the then Solicitor General who lived in Delhi, agreed to step into Nani's place. The plane which left Delhi on the late evening of May 8, with full passenger load, crashed. There was no survival. He was destined to make his contributions to legal literature and constitutional jurisprudence.

Justice Y.V.Chandrachud, former CJI was one year senior to Palkhivala. They both were at the bar. Both were selected as part time lecturer by Chief Justice Chagla in 1949. Nariman, Sorabjee, Ashok Desai and Anil Dewan were the students of Palkhivala. This is a good practice. Young lawyers lecture as the visiting faculty. They get a real good exposure. I myself was taught by Dr.A.S.Anand (1964-66) who later became the CJI. This practice has also been followed in the Panjab University. M.M.Punchhi and J.S.Khehar taught at the Panjab University who later became CJIs. Palkhivala taught till 1952. His love for teaching was genuine. One could gauge the measure of his scholarship from the fact that he was appointed Tagore Professor of Law at the Culcutta University. While being the Indian Ambassador to the United States between 1977 to 1979, he addressed the U.S. Universities, other academic institutions and Think Tanks all over the world. The university of Princeton, New Jersey (USA), conferred upon him the Honorary Degree of Doctor of Laws. The same honour was bestowed on him by the Lawrence University, Wisconsin (USA). He was a unique blend of academic scholarship and professional excellence.

The memory of Nani was phenomenal. He could read passages from his favorite poems effortlessly from memory. Iqbal Chagla, Senior Advocate has a story to share about Palkhivala's grasp and memory. Palkhivala would take notes on a 'thumb-nail' size paper. He would argue the case in depth and in detail with perfect recall for days together. His memory never failed him. It was both sharp and photographic. Soli Sorabjee in his tribute says that Nani was the reincarnation of Macaulay. Nani even surpassed him so far as memory was concerned. Macaulay did not have to grapple with intricate and complex details of finance bills. Year after year. He used to analyze the 'budget' without the budget papers at the Brabourne Stadium. It was a feast to watch Nani. This, in fact, had become the annual feature. The yearly event. There used to be two budget speeches. One by the Finance Minister in the Parliament. The other by Palkhivala outside the Parliament. Palkhivala's budget speech was well greased with quotations and punch lines. Yet without reference to

notes. The FM used to carry the budget papers in a special brief case. Palkhivala's memory container never failed him. Unmatchable. Mind bogging. A real asset of a lawyer.

Nani was only 6 years into the legal profession when the Indian Constitution came into existence on January 26, 1950. Nani played the role of the savior of the Indian Constitution. During the period from 1950 to 1972, the Indian Constitution was frequently amended as it suited to the Political Executive and the Parliament. There was a popular joke that the law book shops will not keep a copy of the Constitution. The Constitution was being treated like the '*periodical*'. In the words of Nani, the Constitution had become 'Defaced and Defiled'. Many constitutional cases like *Golak Nath (1967)*, *Bank Nationalization (1970)*, *Privy Purses (1971)* and *Bennett Coleman (1972)* were argued by Palkhivala in the top court of the country. *Keshavananda Bharti (1973)* created constitutional history. The Constitution Bench of thirteen judges laid down that the *Basic Structure* of the Constitution cannot be altered, amended and destroyed. This one case which was argued for months together by Palkhivala ultimately proved to be the savior of the Constitution. In 1975, Chief Justice A.N.Ray assembled a Bench of 13 judges to overturn *Keshavananda* and the unamendability of the *Basic Structure*. Nani was at his best. Chief Justice Ray was left alone and was forced to dissolve the bench. Justice H.R.Khanna was part of this bench. He has recorded: "the height of eloquence to which Palkhivala rose on that day has seldom been equalled and never surpassed in the Supreme Court". Even after *Keshvananda Bharti*, Palkhivala argued *St. Xavier (1974)*, the *Minerva Mills (1980)* and the *Mandal (1993)* cases. His contribution in shaping the Indian Constitution for the future is unique. Today, Indian Constitution has completed 71 years of its journey. The *Basics* of the Indian Constitution continue to be the same. The concept of *Basic Structure* has become an 'exportable' constitutional recipe in many other jurisdictions. It would not be wrong to say that today the Indian Constitutional Jurisprudence is wholesome. Constitutional Morality, Values and Complete Justice are *Basics* of the Indian Constitution. This would not have been possible but for the role played by Nani Palkhivala.

It was in early sixties (when he was in early forties), Palkhivala was offered Judgeship of the Supreme Court. Directly from the Bar. These days, in early forties, the Judgeship of the High Court is not offered. If he had accepted the offer, he would have the longest term as a judge and Chief Justice of India. His inner voice did not allow him to accept the offer. He also declined the constitutional position of Attorney General of India. The moot point remains, if he had accepted, could Palkhivala had earned the distinction of being the savior of the Constitution. Let me be clear without hesitation, on the occasion of 72nd Republic Day, the shape of the Indian Constitution would have been different. If not a new Constitution. Palkhivala accepted Indian Ambassadorship to United States in 1977 though reluctantly. India had just gone through the Emergency period of 1975-76. He returned to India in 1979. He immediately wore the black robes. He argued *Minerva Mills* case. It commenced on October 22, 1979. The judgment was reserved on November 16, 1979. Once again, the focus was on saving the *BASICS* of the Constitution.

What was the source of his sustenance? Pleasure did not please him. He enjoyed his work. Every moment. The urge to contribute more and more. His work was his multi-vitamin. May his tribe multiply!

LATEST CASES: CIVIL

"Reservation was not contemplated for all the time by the Framers of the Constitution. On the one hand, there is no exclusion of those who have come up, on the other hand, if sub-classification is denied, it would defeat right to equality by treating unequal as equal."

- Arun Mishra, J. in State of Punjab v. Davinder Singh, (2020) 8 SCC 1, para 45

Steel Authority of India Ltd. v. Raghendra Singh: 2020 SCC OnLine SC 1063: Penal rent can be levied & adjusted against the dues payable including gratuity if an employee occupies a quarter beyond the specified period: SC-HELD-The Supreme Court has observed that if an employee occupies a quarter beyond the specified period, the penal rent would be the natural consequence and such penal rent can be adjusted against the dues payable including gratuity. The Supreme Court, while setting aside the judgment passed by the High Court *qua* the principles of penal rent being charged and placed reliance on the judgment in **Secretary, ONGC Ltd. v. V.U. Warriar, (2005) 5 SCC 245.**

Ireo Grace Realtech Pvt. Ltd. v. Abhishek Khanna: 2021 SCC OnLine SC 14 : CIVIL APPEAL NO. 5785 OF 2019 dt. 12.01.2021: Incorporation Of One-sided And Unreasonable Clauses In Apartment Buyer's Agreement Constitutes An 'Unfair Trade Practice': Supreme Court-HELD- The Supreme Court held that the incorporation of one-sided and unreasonable clauses in the Apartment Buyer's Agreement constitutes an unfair trade practice under Section 2(1)(r) of the Consumer Protection Act. It also observed that the Developer cannot compel the apartment buyers to be bound by the one-sided contractual terms contained in the Apartment Buyer's Agreement. The Court held thus while disposing an appeal filed by a Developer against an order passed by National Consumer Disputes Redressal Commission directing it to refund of the amounts deposited by the Apartment

Buyers on account of the inordinate delay in completing the construction and obtaining the Occupation Certificate.

Himachal Pradesh Bus Stand Management and Development Authority (HPBSM&DA) v. Central Empowered Committee: 2021 SCC OnLine SC 15: Civil Appeal Nos. 5231-32 of 2016 dt. 12.01.2021: 'Entirely Illegal Construction': Supreme Court Directs Demolition Of A Hotel-cum-Restaurant Built In Forest Land In Himachal Pradesh-HELD-The Supreme court dismissed an appeal filed by Himachal Pradesh Bus Stand Management and Development Authority and the NGT order directing demolition of a Hotel-cum-Restaurant in the Bus Stand Complex at McLeod Ganj in Himachal Pradesh. The bench discussed the concept of Environmental rule of law and also the role of courts in ensuring environmental protection. The court said that the environmental rule of law, at a certain level, is a facet of the concept of the rule of law. In this case, NGT had found that the Bus Stand Complex seriously disturbs the ecology of the area in which it has been constructed and also violates the provisions of the Forest (Conservation) Act. It directed the authority to pay a compensation of Rs. 15 lacs in terms of Sections 15 and 17 of the NGT Act; and a compensation of Rs. 10 lacs. The State of Himachal Pradesh and its Department of Tourism was directed to pay a compensation of Rs. 5 lacs each. The Tribunal had also ordered an enquiry to be conducted against the officers of the Authority.

Mavilayi Service Cooperative Bank Ltd. v. Commissioner Of Income Tax, Calicut

& Anr: 2021 SCC OnLine SC 16: CIVIL APPEAL NOS. 7343-7350 OF 2019 dt. 13.01.2021: Primary Agricultural Credit Society Entitled To Deduction U/s 80P Income Tax Act Even If They Give Loans To Members For Non-Agricultural Activities: Supreme Court-HELD- The apex court held that Cooperative Societies registered as primary agricultural credit societies are entitled to deductions under section 80P(2)(a)(i) of the Income-Tax Act, even when they may also be giving loans to their members which are not related to agriculture. It thereby set aside a Full Bench judgment of the High Court which had held that such societies are not entitled to the deduction under Section 80P when loans are given to members for non-agricultural purposes. The Supreme Court observed that "Once it is clear that the co-operative society in question is providing credit facilities to its members, the fact that it is providing credit facilities to non-members does not disentitle the society in question from availing of the deduction".

N.N. Global Mercantile Pvt. Ltd Vs. Indo Unique Flame Ltd. : 2021 SCC OnLine SC 13: Civil Appeal Nos. 3802 - 3803 / 2020 Dt. 13.01.2021: The Ground That Allegations Of Fraud Are Not Arbitrable Is A Wholly Archaic View, Deserves To Be Discarded: Supreme Court-HELD- The ground that allegations of fraud are not arbitrable is a wholly archaic view, which has become obsolete, and deserves to be discarded. It observed thus while holding that the allegations of fraud with respect to the invocation of the Bank Guarantee are arbitrable, since it arises out of disputes between parties inter se, and is not in the realm of public law. If it is clear that a civil dispute involves questions of fraud, misrepresentation, etc. which can be the subject matter of a proceeding under Section 17 of the Indian Contract, 1872, and/or the tort of deceit, the mere fact that criminal proceedings can or have been instituted in respect of the same subject matter, would not lead to the conclusion that a dispute which is otherwise arbitrable, ceases to be so.

Padia Timber Company (P) Ltd. v. Visakhapatnam Port Trust: 2021 SCC OnLine SC 1: Can a conditional acceptance of an offer be considered a concluded contract? HELD- The Supreme Court held that when the acceptor puts in a new condition while accepting the contract already signed by the proposer, the contract is not complete until the proposer accepts that condition. The Court cited *Haridwar Singh v. Bagun Sumbrui* (1973) 3 SCC 889, wherein it was held that ***an acceptance with a variation is no acceptance. It is, in effect and substance, simply a counter proposal which must be accepted fully by the original proposer, before a contract is made.*** The Court further relied on *Union of India v. Bhim Sen Walaiti Ram*, (1969) 3 SCC 146, where a three-Judge Bench of this Court had held that, ***“acceptance of an offer may be either absolute or conditional. If the acceptance is conditional, offer can be withdrawn at any moment until absolute acceptance has taken place.”*** It was further observed that the Trial Court and the High Court over-looked the main point that, in response to the tender floated by the respondent, the appellant had submitted its offer conditionally subject to inspection being held at the Depot of the Appellant and the said condition was not accepted by the respondent unconditionally. The respondent had agreed to inspection at the Depot of the appellant, but it imposed a further condition that the goods would be finally inspected at the showroom of the respondent. This Condition was not accepted by the Appellant. It could not, therefore, be said that there was a concluded contract. Therefore, there could be no question of any breach on the part of the appellant or of damages or any risk purchase at the cost of the appellant. The Court, while setting aside impugned judgments and orders held that the appellant was entitled to refund of earnest money deposited with the respondent within four weeks with interest at 6% per annum from the date of institution of suit till the date of refund.

LATEST CASES: CRIMINAL

"It is well established that a hospital is vicariously liable for the acts of negligence committed by the doctors engaged or empanelled to provide medical care. It is common experience that when a patient goes to a hospital, he/she goes there on account of the reputation of the hospital, and with the hope that due and proper care will be taken by the hospital authorities. If the hospital fails to discharge their duties through their doctors, being employed on job basis or employed on contract basis, it is the hospital which has to justify the acts of commission or omission on behalf of their doctors."

- Indu Malhotra, J. in *Maharaja Agrasen Hospital v. Rishabh Sharma*, (2020) 6 SCC 501, para 12.4.21

Dr. Naresh Kumar Mangla v. Anita Agarwal: 2020 SCC OnLine SC 1031: After a suicide note made it to newspapers in a dowry death case, Supreme Court says 'Selective leaks to media neither fair to accused nor to victims'-**HELD**-In a case where within a couple of days of the alleged dowry death of a doctor in Agra, a suicide note was leaked to the newspapers of the city, the 3-judge bench of the Supreme Court has said that selective disclosures to the media affect the rights of the accused in some cases and the rights of victims families in others. "The media does have a legitimate stake in fair reporting. But events such as what has happened in this case show how the selective divulging of information, including the disclosure of material which may eventually form a crucial part of the evidentiary record at the criminal trial, can be used to derail the administration of criminal justice."

Rakesh Mishra v. The state of West Bengal :SLP (crl.) no. 5772 of 2020 (DOD 18.01.2021): The apex court while granting bail to the accused expressed anguish that the appellant is in jail in connection with the crime registered by FIR No. 226 of 2009 for more than 12 years and the trial still not concluded.

Sanjay and others v. State of U.P. and Anr. : 2021 SCC OnLine All 44: Application no. 184221 of 2020: The Allahabad High court deprecated the practice of issuing summoning order on pre-printed format by observing that a Judge acts like a God, he/she should not make mistakes due to haste or excess of work. How will a normal man get justice when a judge makes a mistake because of the excess of his/ her work? Lamented the High court.

Social Democratic Party of India v. State: 2021 SCC OnLine Kar 90: Writ Petition No 10760 of 2020: The Karnataka High Court has held that it is not required in all circumstances to issue a summons prior to issuance of a search warrant. A search warrant could be issued in terms of Section 93(1)(c) without issuing a summons under Section 91 of the Cr.P.C.

The entire provision (Section 93(1)(c)) would have to be read as a whole to arrive at the meaning and purport thereof more so when Section 93 (1)(a), (b) and (c) are qualified with the word 'or' after each of said sub-clauses. That would mean that they are in the alternate to each other and if any of the requirements are satisfied, a search warrant could be issued."

Gurbir Singh v. Maheshinder Singh Grewal, (Punjab And Haryana) : Law

Finder Doc Id # 1796289 : There is no revision maintainable against the revisional order passed by the ASJ. The coextensive and concurrent revisional jurisdiction is created in both the fora by the same provision and one forum, viz., the High Court, even if it is considered superior in the ordinary scheme of things, cannot assume unto itself the power of revisional jurisdiction against the revisionary order passed by the other forum, viz., the Sessions Judge. Unless a separate revisional remedy is created by the statute itself against the revisionary order passed by the Sessions Judge, Section 397 Cr.P.C., 1973 as it stands, does not lend itself to an interpretation that allows the remedy of a revision before the High Court against the revisionary order of the Sessions Judge. That is the reason why the 'Explanation' to Section 397(1) Cr.P.C., 1973 makes no mention of the Sessions Judge being inferior to the High Court for the purposes of the statutory revisional scheme in Chapter XXX and limits itself to clarifying as to who would be inferior to the Sessions Judge. Had it been the intention of the lawmakers that the revisionary order of the Sessions Judge should be amenable to a further revision before the High Court, the provision itself would have indicated so.

Rama Narang vs. Ramesh Narang and Ors. (19.01.2021 - SC): 2021 SCC OnLine SC 29: MANU/SC/0025/2021 : The apex Court has observed, that the contempt proceedings are quasi-criminal in nature and the standard of proof required is in the same manner as in the other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut

case of obstruction of administration of justice by a party intentionally, to bring the matter within the ambit of the said provision. The Court has also referred to the observations made by this Court in the case of Debabrata Bandopadhyay and Ors. v. State of West Bengal and Anr. AIR 1969 SC 189, wherein it was observed, that punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority.

Lakhvir Singh and Ors. Vs. The State of Punjab and Ors. (Decided On: 19.01.2021): 2021 SCC OnLine SC 25: MANU/SC/0026/2021 : That the benefit of probation under the Probation of Offenders Act, 1958 is not excluded by the provisions of the mandatory minimum sentence under Section 397 of Indian Penal Code. The Probation of Offenders Act, 1958 may not apply in cases where a specific law enacted after 1958 prescribes a mandatory minimum sentence, and the law contains a non-obstante clause. Thus, the benefits of the Act did not apply in case of mandatory minimum sentences prescribed by special legislation enacted after the Act. But IPC is prior to that Act and thus benefit was extended to the convicts. In Masarullah v. State of Tamil Nadu (1982) 3 SCC 458 there are observations to the effect that "in case of an offender under the age of twenty one years on the date of commission of the offence, the Court is expected ordinarily to give benefit of the provisions of the Act and there is an embargo on the power of the Court to award sentence unless the Court considers otherwise, 'having regard to the circumstances of the case including nature of the offence and the character of the offender', and reasons for awarding sentence have to be recorded.

LATEST CASES 2020 : CONSTITUTION LAW

"Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the institution or make the right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law."

- Uday U. Lalit, J. in Sk. Mohd. Rafique v. Contai Rahamania High Madrasah, (2020) 6 SCC 689, para 42.2

Sushila Aggarwal And Others V/S State (NCT Of Delhi): (2020) 5 SCC 1 : 2020 SCC OnLine SC 98: Anticipatory Bail Cannot Be Limited To A Fixed Period Except In Special And Peculiar Circumstances-HELD-The Supreme Court held that anticipatory bail should not invariably be limited to a fixed period. But if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so, the five judge bench headed by Justice Arun Mishra has held. The Court also held that life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial except in special and peculiar cases. Justices MR Shah and Justice S. Ravindra Bhat penned separate judgments agreeing with each other. **Justices Arun Mishra, Indira Banerjee and Vineet Saran** concurred with the conclusion reached by both the judges. The judges said that the judgment in [Shri Gurbaksh Singh Sibbia and others v. State of Punjab](#) 1980 (2) SCC 565 needs reiteration. It overruled the judgment in [Salauddin Abdulsamad Shaikh v. State of Maharashtra](#) 1996 (1) SCC 667 which restricted the scope of Section 438 of the Cr.PC. It also overruled [Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors.](#) 2011 (1) SCC 694, to the extent it held that no conditions can be imposed while granting an order of anticipatory bail, is incorrect.

Indore Development Authority V/S Manoharlal: (2020) 8 SCC 129 : (2020) 4 SCC (Civ) 496: Land Acquisition : No

Lapse Of Proceedings Under Old Act If Compensation Is Deposited In Treasury-HELD-The Supreme Court held that proceedings under the Land Acquisition Act 1894 will not lapse if the compensation has been tendered by deposit in treasury. The Court held that land owners cannot insist that the amount should be deposited in Court so as to sustain the land acquisition proceedings under the old Act on the commencement of the new land acquisition law with effect from January 1, 2014. The bench affirmed the view in the 2018 [Indore Development Authority case](#), overruling the 2014 judgment in [Pune Municipal Corporation case](#). The case involved the interpretation of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. As per this provision, compensation proceedings under the Land Acquisition Act 1894 will lapse on the commencement of the 2013 Act, if "compensation has not been paid". **Pandurang Ganpati Ghaugule vs. Svishwasrao Patil Murgud Sahakari Bank Limited: (2020) 9 SCC 215 : 2020 SCC OnLine SC 431: SARFEASI Act Applicable To Cooperative Banks-HELD-**The Supreme Court has held that the Securitization and Reconstruction of Financial Assets and Enforcement of Security Act 2002 is applicable to cooperative banks. "The cooperative banks under the State legislation and multi State cooperative banks are 'banks' under section 2(1)(c) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002", held the Constitution Bench

Mukesh Singh V/S State (Narcotic Branch Of Delhi): (2020) 10 SCC 120 : 2020 SCC OnLine SC 700: Merely Because The Investigation Officer And Complainant Are The Same The Trial In NDPS Cases Will Not Be Vitiating And Accused Cannot Be Acquitted On That Ground-HELD-The Supreme Court held that it cannot be held as a general proposition that an accused under NDPS Act is entitled to an acquittal merely because the complainant is the investigating officer. "Merely because the informant and the investigating officer is the same, it cannot be said that the investigation is biased and the trial is vitiating", the bench observed while specifically overruling [Mohan Lal v. State of Punjab \(2018\) 17 SCC 627](#). In Mohanlal, it was held by a three judge bench that the trial of cases under NDPS Act will be vitiating if the informant and the investigating officer is the same person. "It is therefore held that 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.", it was held in the said judgment.

Tamil Nadu Medical Officers Association and Ors. Vs. Union of India (UOI): 2020 SCC OnLine SC 699: Medical Council Of India Has No Power To Make Any Reservation For In-Service Candidates; States Have -HELD- The Constitution Bench held that Medical Council of India has no power to make any reservation for in-service candidates in Post Graduate Medical Course in any particular state. It was observed that the power of Medical Council of India Act is referable to Entry 66, List 1, which is a limited source of power to lay down standards. It held that the Medical Council of India regulations providing for reservation for in-service candidates in PG Medical Courses are ultra vires the Medical Council of India Act.

100% ST Reservations For Teacher Posts In Scheduled Areas Unconstitutional: SC-HELD-A Constitution bench comprising Justices Arun Mishra, Indira Banerjee, Vineet Saran, M.R. Shah and Aniruddha Bose held that 100 per cent reservation of teachers belonging to the Scheduled Tribe category at schools situated in "Scheduled Areas" is constitutionally invalid. The Bench also quashed the Government order issued under the hand of Governor of State of Andhra Pradesh which had affirmed absolute reservation for ST teachers and imposed costs on both Andhra Pradesh & Telangana Government's, seeking reasons from the Government's for breaching the 50% ceiling in reservations.

New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd.: (2020) 5 SCC 757 : 2020 SCC OnLine SC 287: Consumer Forum Has No Power To Extend Time Beyond 45 Days For Opposite Party's Version-HELD- that the time period for filing opposite party's version in Consumer case cannot be extended beyond the period of 45 days prescribed under the Consumer Protection Act. The Court held that Consumer Protection Act 1986 did not empower the Consumer Forum to extend the time beyond the period of 45 days. The time period prescribed under Section 13 of the Consumer Protection Act is mandatory, and not directory, held the judgment.

West U P Sugar Mills Association & Ors V/S State Of Uttar Pradesh: (2020) 9 SCC 548 : 2020 SCC OnLine SC 380: State & Centre Have Concurrent Power To Fix Sugarcane Prices; No Conflict If State's Price Is Higher Than Centre's 'Minimum Price'-HELD- The Supreme Court held that both the Centre and the State have concurrent powers to fix the prices of sugarcane. At the same time, the price fixed by the State Government for sugarcane cannot be lower than the 'minimum price' fixed by the centre, the Court added. Also, it is open to the States to fix the price higher than the price fixed by the Centre.

NOTIFICATION

1. **Centre notifies “Real Estate Agents” with annual turnover of Rs 20 lakhs or above as “persons carrying on designated businesses or professions” under PMLA, 2002; Rescinds earlier notification:** In exercise of the powers conferred by sub-clause (iv) of clause (sa) of sub-section (1) of section 2 of the Prevention of Money-Laundering Act, 2002, the Central Government hereby **rescinds** the notification of the Government of India, Ministry of Finance, Department of Revenue, No. 8/2017, dated 15 November, 2017, published in the Gazette of India, Part II, Section 3, Sub-section (ii), extra-ordinary, vide GSR 1423 (E) dated the 16 November 2017, **except** as respects things done or omitted to be done before such rescission and **notifies** the — **“Real Estate Agents”**, as a person engaged in providing services in relation to sale or purchase of real estate and having annual turnover of Rupees twenty lakhs or above, as — **“persons carrying on designated businesses or professions”**.

Central Government makes the following amendment to the Prevention of Money-laundering (Maintenance of Records) Rules, 2005:

- Rules may be called the Prevention of Money-laundering (Maintenance of Records) Fourth Amendment Rules, 2020.
- In the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, in rule 2, in subrule (1), in clause (fa);-
 - (a) For the sub-clause (iii), the following sub-clause shall be substituted, namely:-
 - *“(iii) the Central Board of Indirect Taxes and Customs, constituted under Central Boards of Revenue Act, 1963, with respect to the dealers in precious metals and precious stones.”*
 - (b) After the sub-clause (iii) as so substituted, the following sub-clause shall be inserted, namely; — *“(iv) the Central Board of Indirect Taxes and Customs, constituted under Central Boards of Revenue Act, 1963, with respect to the real estate agents.”¹*

¹ <http://egazette.nic.in/WriteReadData/2020/223972.pdf>