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FROM THE DESK OF CHIEF EDITOR

Indian Constitution is seventy years old. It is the longest Constitution. The meaning and scope of different Articles has undergone change with change of times. There are still **Silences** of the Constitution. Gradually, these **Silences** are being given **Voice**. So that they can speak. They can play their role in developing the Constitutional Jurisprudence. In the first quarter (1950-75), the Constitution stood amended 39 times. The first amendment itself (1951) added the ninth schedule. By the year 1975, 124 different Enactments had been added to 9th schedule. This provided the constitutional cover so that these enactments could be saved from being declared unconstitutional. The U.S. Constitution (1787) is 233 years old. Till date there are only 27 amendments. Indian Constitution has already crossed the century mark (in fact – 104)

The Supreme Court is the 'Light-house' and the 'Lamp' of the Constitution. It is the 'Balancing-Wheel'. It provides 'Illumination' during dark and difficult times. It was laid down in 1973 that the 'Basic-Structure' of the Constitution cannot be diluted, damaged or destroyed. The journey from 1973 has proved that the 'Basic Structure' is the saviour of the Constitution. The Constitution no-where speaks of 'Basic Structure'. This silence which was given Constitutional Voice has made its presence felt loud and clear.

There are other Constitutional Silences also like '**Constitutional Morality**' and 'Constitutional Values'. The word 'Morality' has been used in Articles 19, 25 and 26. The expression 'Constitutional Morality' has nowhere in the Constitution been used. The summit court used it in **Keshavananda Bharati** (1973). It is important that 'Basic Structure' and 'Constitutional Morality' were used in the same case. Both expressions are pregnant with elements of growth of Constitutional Jurisprudence. Both are guiding Constitutional Principles for the three organs of the state. They are brothers. Elder and younger. Crafting a constitution is one aspect. Working out a constitution for generations is equally, probably, a much bigger constitutional discipline and skill. It is a continuous process.

Constitutional Morality is culled-out from different provisions of the Constitution dealing with specific situations. It is the substance of those provisions which would speak of Constitutional Morality. It is adherence to the **core principles** of constitutional democracy. **Governance** of the system in accordance with **Rule of Law** is a complex exercise. No system is good or bad. It is **human beings** who run the system make the difference. Rule of Law though not defined in the Constitution regulates and controls the system. The **Three Organs** of the State play different roles. The roles are demarcated. Not with mathematical precision.

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Therefore, there is need for co-ordination. Co-operation. Connectivity. Understanding. It is in this process that **Constitutional Morality** links them together. Each organ must understand its role in the context of **Constitutional Morality**. **Constitutional Morality** is a running thread. **Constitutional Morality** will help each organ to take up its role in the constitutional perspective. Morality may have different perspectives. In the governance of the country, the focus will have to be on **Constitutional Morality**.

It is suggested that **Constitutional Morality** is unruly-horse. It would be difficult to regulate and control it. It would differ from Judge to Judge. From Bench-to-Bench. Opinions differ in this regard. The same used to be said about the Basic Structure. To-day, Basic Structure has merged and emerged as the focal point of the Indian Constitution. Other countries being governed by modern Constitutions are considering Basic Structure as an **importable constitutional device**. Therefore, why should it not be adopted and adapted in different respective systems? It is felt that it is only a matter of time. In due course of time, even **Constitutional Morality** will become a tool of good governance.

Indian apex court has already used **Constitutional Morality** in some situations. As a concept, it has been used meaningfully. This virus of **Constitutional Morality** will create anti-bodies. In due course of time, it is hoped that **Constitutional Morality** will be a potent constitutional weaponry to introduce constitutional discipline in the governance of the country.

Dr. B.R.Ambedkar while introducing the Draft Constitution on November 4, 1948 made it clear that **Constitutional Morality** was to be cultivated. The expression was not used in the body of the Constitution. It required commitment to certain core aspects of the Constitution. This commitment was to be cultivated. Cultivation takes time. In A.K.Gopalan (1951), the summit court gave literal and restricted meaning to "Procedure establish by law". It was overruled in Maneka Gandhi (1978). It took almost 3 decades to understand the **Constitutional Morality** of Article 21. Its cultivation has given a new vision to Article 21. To-day Article 21 is the face of **Constitutional Morality**.

In Sabarimala Temple case (2019), there was prohibition on the entry of women of age-group of 10 to 50 years into the temple for worshipping of Lord Ayyappa. This was based upon custom and usage. The constitution bench held (4:1) that this ban was violative of the right to dignity and equality. Such exclusionary practice was declared as violative of **Constitutional Morality**. The dissenting view was that Equality and non-discrimination are the facets of **Constitutional Morality**. These facets are to be balanced and harmonised with freedom of faith, belief and worship under Articles 25 and 26. This is understandable. This needs to be viewed in the backdrop that the ban is lifted. This only means that those who wish to worship Lord Ayyappa are free to visit the temple. However, those who have their faith and belief, they are free **not** to visit the temple. No compulsion. In fact, this is real freedom. **Constitutional Morality** in-action. The real **Constitutional Morality** means freedom according to one's faith and belief. This freedom, in fact, is itself integral to **Constitutional Morality**.

In Joseph Shine case (2019), the Constitution Bench declared S.497-IPC-Adultery as violative of Articles 14, 15 (1) and 21 of the Constitution. It was found arbitrary and gender discriminatory. It was considered encroachment into women dignity, identity and privacy. This was in consonance with commitment to **Constitutional Morality**. This commitment requires to enforce constitutional guarantees.

In the matter of Lt. Governor- Delhi (2018), the constitution bench relied upon **Constitutional Morality**. It was made clear that **Constitutional Morality** negates the idea of concentration of power in the hands of few. All high constitutional functionaries must follow constitutional norms. **Constitutional Morality** acts as a check on lapses by authorities. A constitution establishes the structure of the Govt. The working of the structure is dependent upon the fulcrum of **Constitutional Morality**. Constitutional values work as the barometer of Good Governance. How much one wished that the **Constitutional Morality** needle had guided the Rajasthan situation!

Justice is the first promise of the Indian Constitution. Article 142 ordains the Supreme Court to make such orders which are necessary for doing **complete justice**. This concept of complete justice has been invoked by the summit court from time to time and in different situations. One of the issue is, if there is any legislation or rule which obstructs the doing of complete justice, can an order be passed by bye-passing the specific provision of law. In some cases, the view is in the affirmative. In some not. The basic reason to take the affirmative view is, Article 142 requires the doing of complete justice. If there is any provision which comes in the way of the apex court, such obstruction is violative of Article 142. It seems reasonable to suggest that **Constitutional Morality** can certainly play a definite role in furtherance of doing complete justice. In fact, the doing of complete justice in itself is **Constitutional Morality**. Therefore, it is pertinent, wherever the issue arises of doing complete justice, **Constitutional Morality** notion needs to be read from different provisions of the Constitution. This notion of **Constitutional Morality** needs to be mixed with doing of complete justice. This would emerge as new jurisprudence of doing complete justice in accordance with **Constitutional Morality**.

The Indian Supreme Court, during the last 3-4 years (in-particular) has given meaning to **Constitutional Morality**. Applied it in different situations. **Constitutional Morality** is evident in the goals set in the Preamble. Indeed, the whole Constitution is an Essay on **Constitutional Morality**. Each organ of the state. The citizenry. They all must be wedded to the Constitution and its Morality. This is the holy book. Hold it. Keep it on your table. Follow it. Act according to it. Nurture it. Make it a way of life. This would be the real Constitutional beauty.

Balram K. Gupta

LATEST CASES : CIVIL

"The freedom to criticise the judgments of the Supreme Court is not being interfered with. Bona fide criticism of a judgment, albeit of the highest court of the land, is certainly permissible, but thwarting, or encouraging persons to thwart, the directions or orders of the highest court cannot be countenanced in our constitutional scheme of things. After all, in India's tryst with destiny, we have chosen to be wedded to the rule of law as laid down by the Constitution of India. Let every person remember that the "holy book" is the Constitution of India, and it is with this book in hand that the citizens of India march together as a nation, so that they may move forward in all spheres of human endeavour to achieve the great goals set out by this "Magna Carta" or Great Charter of India."

— Rohinton Fali Nariman, J. in *Kantaru Rajeevaru (Sabarimala Temple Review-5 J.) v. Indian Young Lawyers Assn.*, (2020) 2 SCC 1, paras 77 and 78

Dahiben V. Arvindbhai Kalyanji Bhansuli (Gajra)(D) Thr LRs: 2020 SCC OnLine SC 562 - [Order VII Rule 11 CPC] If Plaintiff Does Not Disclose Cause Of Action or Suit Is Barred By Any Law, The Court Has No Option But To Reject The Plaintiff: SC-HELD- The Supreme Court has observed that the provision of Order VII Rule 11 Code of Civil Procedure regarding 'Rejection of Plaintiff' is mandatory in nature. "It states that the plaintiff "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaintiff does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaintiff."

United India Insurance Co. Ltd. v. Satinder Kaur: 2020 SCC OnLine SC 410- Treating 'loss of love and affection' as a separate head not justified when compensation for 'loss of consortium' already awarded- HELD- Taking note of the fact that several Tribunals and High Courts have been awarding compensation for both loss of consortium and loss of love and affection, the three judges bench of apex Court while hearing an issue relating to determination of compensation in a motor vehicle accident case directed the Tribunals and High Courts to award compensation for loss of consortium, which is a legitimate conventional head. "There is no justification to award compensation towards loss of love and affection as a separate head." The Court noticed and approved the law laid down by two judges bench in *Magma General Insurance Co. Ltd. v. Nanu Ram*, (2018) 18 SCC 130, this Court gave a comprehensive interpretation to consortium to include spousal consortium,

parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium. The Court, hence, said that it was necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection.

Aryan Raj Vs. Chandigarh Administration: Civil Appeal No. 2718 Of 2020 d.o.d 13.07.2020: Persons with Disability to be given the Same Benefits as SC-ST candidates in all domains: SC- HELD- The Supreme Court opined that people suffering from any kind of disability are also socially backward and thus should be entitled to the same benefits as given to the Scheduled Castes/ Scheduled Tribes candidates. The bench, when the appeal came up for final hearing noted that it had become infructuous as the seat that was reserved for the handicapped had already been given to another person hence, "***We are of the view that the High Court is correct on the bifurcation aspect. Further, insofar as the aptitude test having to be passed is concerned, the High Court is correct in saying that no exemption ought to be granted, but we follow the principle laid down in the Delhi High Court's judgment in Anamol Bhandari (Minor) through his father/Natural Guardian v. Delhi Technological University 2012 (131) DRJ 583 in which the High Court has correctly held that people suffering from disabilities are also socially backward, and are therefore, at the very least, entitled to the same benefits as given to the Scheduled Castes/ Scheduled Tribes candidates.***"

Aruna Oswal V. Pankaj Oswal: 2020 SCC OnLine SC 557 - Dispute As To Inheritance

Of Shares Cannot Be Decided In Proceedings U/s 241/242 Of Companies Act, 2013: SC- HELD- It was held that the dispute as to inheritance of shares is eminently a civil dispute and cannot be said to be a dispute as regards oppression and/or mismanagement so as to attract Company Court's jurisdiction under sections 397 and 398 of Companies Act, 1956. In holding this, the Supreme Court followed: **Sangramsinh P. Gaekwad and Ors. v. Shantadevi P. Gaekwad (Dead) through LRs. and Ors., (2005) 11 SCC 314.**

Bhagwat Sharan Vs. Purushottam: 2020 SCC OnLine SC 348 - Person Who Takes Benefit of A Portion of The Will Cannot Challenge The Remaining Portion: SC-HELD- The Supreme Court has observed that a person who takes benefit of a portion of the Will cannot challenge the remaining portion of the Will. In this case, it had come on record that the plaintiff (who filed a suit for partition claiming that the subject property is a Hindu Undivided Family one) had earlier filed a suit for eviction of the tenant by claiming that the property had been bequeathed to him by one Hari Ram by the way of the will. In the present suit filed by him, he disputed the will by contending that the subject property was not self acquired, but HUF. The bench taking note of these undisputed facts said: *"It is trite law that a party cannot be permitted to approbate and reprobate at the same time. This principle is based on the principle of doctrine of election. In respect of Wills, this doctrine has been held to mean that a person who takes benefit of a portion of the Will cannot challenge the remaining portion of the Will."*

Rajasthan State Road Transport Corporation Ltd. Vs. Smt. Mohani Devi & Anr.: 2020 SCC OnLine SC 368- Gratuity Payable On Resignation From Employment After 5 Years Of Continuous Service: SC-HELD- The Supreme Court has observed that the gratuity under the **Payment of Gratuity Act** shall be payable on resignation from employment after 5 years of continuous service. The Supreme Court bench noted that the term 'termination' in Section 4 of the Act would include resignation as well. However, the bench further observed that

"As rightly pointed out by the learned counsel for the respondents, Section 4(1)(b) of the Payment of Gratuity Act, 1972 provides that the gratuity shall be payable if the termination of employment is after 5 years of continuous service and such termination would include resignation as well". Further, In that view, if the gratuity amount has not been paid to the respondent's husband, the liability to pay the same would subsist and the respondent No.1 will be entitled to receive the same in accordance with the provisions of the Act.

Inspector General of Registration, Tamil Nadu v. K. Baskaran: 2020 SCC OnLine SC 509- Property's market value can be enhanced while deciding appeal under Section 47A of Stamp Act in case of obvious illegality-HELD- Dealing with the questions relating to interpretation of Section 47-A of the Indian Stamp Act, 1899 and the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 as amended from time to time, the Supreme Court bench has held, **"There is nothing in the scheme of the Act which purports to restrict the exercise of suo motu power under Section 47-A, and confines it to cases where knowledge of any illegality or infirmity in the proceedings undertaken by the subordinate officers must be gathered from sources other than through a pending appeal."**

Sushilaben Indravadan Gandhi and another Vs The New India Assurance Co Ltd and Others: 2020 SCC OnLine SC 367 - Exemption Clauses In Insurance Contracts Are To Be Construed Against Insurer In Case Of Doubt : SC-HELD- In a notable judgment in a motor accident compensation case, the Supreme Court applied the well-settled principle that exemption of liability clauses in insurance contracts are to be construed against the insurance company in case of ambiguity. Based on this principle of *contra proferentum*, the bench restored the liability of New India Assurance Company Ltd to pay compensation of roughly Rs 37.6 lakhs and interest thereon with respect to a motor vehicle accident which took place twenty three years ago.

LATEST CASES : CRIMINAL

"The principle of fair trial now informs and energises many areas of the law. It is a constant, ongoing, evolutionary process continually adapting itself to changing circumstances, and endeavouring to meet the exigencies of the situation — peculiar at times — and related to the nature of crime, persons involved, directly or operating from behind, and so many other powerful factors which may come in the way of administration of criminal justice, wherefore the endeavour of the higher courts, while interpreting the law, is to strike the right balance."

— NavinSinha, J. in *Varinder Kumar v. State of H.P.*, (2020) 3 SCC 321, para 14

Sakunthala Vs. State Case No.: Criminal Appeal No. 474/ 2020 D.O.D 10.07.2020

:Criminal Appeal Against Order Of Conviction Cannot Be Dismissed For Default:

SC- HELD-The Supreme Court recently set aside a Madras High Court order that had dismissed a Criminal Appeal against an order of conviction for default. The Supreme Court bench agreed with the contention put forth by the counsel, relying on the decision of the Supreme Court in **K. S. Panduranga v. State of Karnataka (2013) 3 SCC 721**, that an appeal against an order of conviction cannot be dismissed in default but must be taken up and decided on merits even if the appellant in-person or the counsel representing him, is not present.

Even though the counsel for the state did not appear, the bench, taking into account the dictum laid down in the above cited case, set aside the High Court order and remanded the matter to be disposed of on merits. The court, taking note that the accused has been in jail for a period of almost 11 years, also granted him bail subject to the satisfaction of the trial Court.

Paramvir Singh Saini v. Baljit Singh & Ors.: 2020 SCC OnLine SC 578 -Audio Video

Recording Of Examination of Witnesses By Police U/S 161CrPC And Installation Of CCTV Cameras In Police Stations-HELD-

The Supreme Court has issued notice to the Union Ministry of Home Affairs seeking implementation of audio-video recording of witness statements recorded by a Police officer under Section 161 CrPC. The bench said that it is important to "follow up" on the directions issued by the Top Court in **Shafhi Mohammad v. State of Himachal Pradesh' (2018) 5 SCC 311**, with respect to introduction of "videography in investigation". Furthermore, The Court has also directed that with a view to check human rights abuse, CCTV cameras be installed in all police stations as well as in prisons. *"There is need for a further direction that in every State an oversight mechanism be created whereby an independent committee can study the CCTV*

camera footages and periodically publish report of its observations," the Supreme Court observed.

State of Telangana V. Polepakka Praveen @ Pawan:SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 9597/2020d.o.d 15.06.2020-Death Penalty Cannot Be Imposed

By Giving Retrospective Effect To POC SO Amendment To An Offence Committed Prior To Amendment: SC-HELD-

The Supreme Court refused to apply retrospectively the imposition of death sentence under the Protection of Children from Sexual Offences Act, 2012, included with effect from 6th August, 2019. The bench was hearing a special leave petition preferred by the State of Telangana on the limited issue that the death sentence imposed by the Trial Court has been modified by the High Court to a life sentence albeit with a rider that the respondent-convict shall not be released till his last breath. It was the submission of the counsel for the petitioner-state that a signal goes to the society by imposition of the death sentence. The Court further added that *"The punishment of not being released till his last breath is punitive enough to send a signal to the society and it cannot be that only the death sentence can send a right signal"*

Subhash Sahebrao Deshmukh Vs Satish Atmaram Talekar And Others:2020 SCC

OnLine SC 520 -Accused Is Entitled To Be Heard In A Revision Petition Against Dismissal Of Protest Petition: Supreme

Court-HELD-The Supreme Court reiterated that an accused person has the right to be heard

before a court hearing a revision petition against the order of dismissal of the complaint, filed against him.

Recalling the verdict of a three-Judge bench of the Supreme Court in **Manharibhai Muljibhai Kakadia & Anr. v. Shaileshbhai Mohanbhai Patel & Ors., 2012 (10) SCC 517**, the division bench reiterated, *"We hold, as it must be, that in a revision petition preferred by the complainant before the High Court or the Sessions Judge*

challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed the crime is entitled to hearing by the Revisional Court."

Prem Chand Singh v. State of U.P. :(2020) 3 SCC 54- S.300 CrPC, 1973 -HELD - Qua principle of Double Jeopardy, if the substratum of two proceedings/FIRs is common, mere addition of charge(s) under different/additional sections in subsequent FIR, cannot be considered as different ingredients to justify the latter FIR as being based on different materials, allegations and grounds.

Ramesan v. State of Kerala: (2020) 3 SCC 45-S. 394(2) CrPC, 1973 -HELD-qua continuance of criminal appeal arising from composite sentence of imprisonment and fine, after death of appellant-accused must be treated as an appeal against sentence of fine and therefore must not abate with regard to that sentence of fine as provided under S. 394(2) CrPC..

Paul v. State of Kerala: (2020) 3 SCC 115-Ss. 86, 302 and 304 IPC, 1860 -HELD- qua drunkenness when a defence or mitigating factor, in cases of voluntary drunkenness, knowledge is to be presumed in the same manner as if there was no drunkenness. So far as intention is concerned, it must be gathered from attending general circumstances of the case paying due regard to the degree of intoxication.

In Re Cognizance For Extension Of Limitation:2020 SCC OnLine SC 343 -'Not Appropriate To Interfere With Period Prescribed By RBI' : SC Refuses To Extend Validity Period Of Cheques-HELD-*The Supreme Court has refused to extend the period of validity of a cheque, while holding that a decision on the same may be taken by the Reserve Bank of India, in its discretion. It further added that "We do not consider it appropriate to interfere with the period prescribed by the Reserve Bank of India, particularly, since the entire banking system functions on the basis of the period so prescribed. The Reserve Bank of India may in its discretion, alter such period as it thinks fit.*

Bholu v. State of Haryana: 2020 SCC OnLine P&H 835:"Accused being treated as adult; possibility of tampering with minor witnesses": Reasons for which Court

rejected bail to accused in Gurugram School Murder case-HELD-The Punjab and Haryana High Court dismissed the revision petition filed against the rejection of bail to the accused. The revision petition was filed by the juvenile accused of murdering another child in the washroom of a private school in Gurugram. The Bench found it appropriate not to grant bail for the following reasons:

- The High Court was not inclined to grant any relief to the petitioner, in view of the order dated 28.02.2019 passed by the Hon'ble Supreme Court, directing that for deciding the bail application, the petitioner be treated as an "Adult", therefore, there is little scope for this Court to find out whether the petitioner can be granted the relief under Section 12 of the Act.
- The Board and the Appellate Court have passed a detailed order declining the concession of bail to the petitioner in view of the proviso to Section 12(1) of the Act and this Court finds no reason to form a different opinion.
- The prosecution has cited certain witnesses, who are minors including the sister of the deceased and therefore, possibility of tampering the evidence, cannot be ruled out, at this stage in view of the totality of circumstances and the affidavit filed by the CBI.

Shubham Singh v. State of Punjab: 2020 SCC OnLine P&H 702-Registered owner of a phone number from which offence is committed, has to take responsibility for the same-HELD-The Punjab and Haryana High Court held that once an offence takes place from the a mobile phone number, then the registered owner of the number has to explain as to how the said number was used for the commission of the offence.

The present petition was filed for grant of pre-arrest bail with regard to FIR under Section 420 Penal Code, 1860 read with Section 34 IPC and Section 66 of IT Act, 2000.

Once the recovery of the phone is to be effected, the custodial interrogation of the petitioner is necessary so as to find out as to whether petitioner is also involved in any other case of the similar nature or not. The Court found no ground to allow the petitioner the benefit of pre-arrest bail.

LATEST CASES : ARBITRATION

“The freedom to criticise the judgments of the Supreme Court is not being interfered with. Bona fide criticism of a judgment, albeit of the highest court of the land, is certainly permissible, but thwarting, or encouraging persons to thwart, the directions or orders of the highest court cannot be countenanced in our constitutional scheme of things. After all, in India’s tryst with destiny, we have chosen to be wedded to the rule of law as laid down by the Constitution of India. Let every person remember that the “holy book” is the Constitution of India, and it is with this book in hand that the citizens of India march together as a nation, so that they may move forward in all spheres of human endeavour to achieve the great goals set out by this “Magna Carta” or Great Charter of India.”

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Shri Chand Construction and Apartments Pvt. Ltd. v. Tata Capital Housing Finance Ltd.: Judgment dated March 4, 2020 in CS(OS) 179/2019 : MANU/DE/0706/2020- **Whether there can be a valid arbitration clause providing for arbitration of claims of one of the party and providing for the remedy of the Court or any other forum for claims of the other party?-HELD-** The Court held that the use of words “all or certain disputes” in Section 7 of the Act permit classification of disputes but do not permit classification of claims. It was further held that once the time for filing written statement has been extended then the time for filing the application under section 8 of the Arbitration Act also stands extended.

SSIPL Lifestyle Pvt. Ltd. v. Vama Apparels (India) Private Limited & Anr.: Judgment dated February 19, 2020 in CS (COMM) 735/2018: MANU/DE/0521/2020 -**Whether the limitation for filing of written statement as prescribed in the CPC, 1908 as well as Commercial Courts Act, 2015 would be applicable for filing of an application under Section 8 of the Arbitration and Conciliation Act?-HELD-** The court held that arbitration clause can be waived by a party under dual circumstances- one by filing a statement of defence or submitting to jurisdiction and secondly, by unduly delaying the filing of the application under Section 8 by not filing the same till the date by which the statement of defence could have been filed. In the background of the amendments in the CPC including recent amendments in the context of Commercial Courts Act, 2015 and the amendments in the Arbitration Act, the court concluded that the amendment to Section 8 is a conscious step towards prescribing a limitation period for filing the Section 8 application. Thus, the limitation period for filing of written statement as prescribed in the CPC, 1908 as well as Commercial Courts Act, 2015 would be applicable for filing of an application under Section 8.

Power Mech Projects Ltd. v. Sepco Electric Power Construction Corporation : Judgment dated February 17, 2020 in OMP (I) (COMM) 523/2017- **Whether the Court under Section 9 can secure the entire amount awarded under the Award?-HELD-** Relying on the recent judgments of the Supreme Court and considering the facts of the case, the Court directed deposit of 100% of the awarded amount with the Registry of the High Court.

Inter Ads Exhibition Private Limited v. Busworld International Cooperative Vennootschap Met Beperkte Anasprakelijkheid : Judgment dated January 13, 2020 in O.M.P(I) (COMM.) 273/2019- **Whether an injunction under Section 9 of the Arbitration Act could be granted to revive or restore a contract which is specifically determinable in nature and has been duly terminated?-HELD-** The Court upheld the well-established legal position that specific performance of a determinable contract cannot be enforced, due to the specific bar under S.14(d) of the Specific Relief Act, 1963. The remedies sought by the petitioner would in essence amount to specific enforcement of the contract between the parties, which is a determinable contract i.e., a contract which can be put to an end. Upon review of numerous judgments on the subject, as brought forth by the respondent, the Court concluded that it cannot exercise interference under S.9 of the Arbitration Act to grant an injunction against the operation of termination, or in the alternative, enforcement of the terminated agreement.

M/s Dharmaratnakara Rai Bahadur v. M/s Bhaskar Raju & Brothers : 2020 SCC OnLine SC 183 - **Whether a lease deed which was not sufficiently stamped, could be acted upon to enforce arbitration clause contained therein?-HELD-** The Court held that when a lease deed or any other instrument is relied upon as containing the arbitration agreement, the Court is required to consider at the outset, whether the document is

properly stamped or not. If the instrument is not properly stamped, it should be impounded and the Court cannot act upon such a document or the arbitration clause therein. The Court reiterated view in *SMS Tea Estates Private Limited vs. Chandmari Tea Company Private Limited*, and held that unless the stamp duty and penalty due in respect of an instrument is paid, a Court cannot act upon an arbitration agreement which forms part of such an unstamped instrument.

M/s Arvind Kumar Jain v. Union of India :Judgment dated February 4, 2020 in Arb. P 779/2019- Whether a party can insist on appointment of Gazetted Officer of Railways as the Arbitrator?-HELD- Reiterating *Perkins Eastman Architects DPC v HSCC (India) Limited*, 2019 SCC OnLine SC 1517, the Court rejected the contention of the Respondent for appointment of Gazetted Railway Officer. It was further held that a party cannot be compelled to furnish a waiver from the applicability of Section 12(5) of the Act.

Proddatur Cable TV Digi Services v. Siti Cable Network Limited : 2020 SCC OnLine Del 350 - Whether the judgment in Perkins Eastman Architects DPC. v. HSCC (India) Limited would also apply to ongoing arbitrations?-HELD- The Court found merit in the petitioner's argument, and reiterated that the Hon'ble Supreme Court, in the *Perkins*, dictum (supra), had stated that there could be two categories of cases, one where the managing director himself is made an arbitrator and second where the managing director unilaterally elects the arbitrator. The Supreme Court held that all such parties who would be interested in the outcome of the case would be deemed ineligible for unilaterally appointing the arbitrator. Relying on this principle, the Court proceeded to hold that unilateral appointment of an arbitrator by an authority which is interested in the outcome of the decision is impermissible in law. On whether the decision in *Perkins* (supra) case, applied onto on-going arbitrations, the Court answered in the affirmative. After reiterating *Bharat Broadband Limited v. United Telecoms Limited*, (2019) 5 SCC 755, court has held that decision in *Perkins* (supra) case will apply to on-going matters as well.

State of Gujarat v. Amber Builders : (2020) 2 SCC 540 - Whether the Gujarat Public works Contract Disputes Arbitration Tribunal constituted under section 3 of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 has jurisdiction to make interim order in terms of Section 17 of the Act?-HELD- The Court held that on a conjoint reading of the Acts together, it is clear that the powers vested in the

Tribunal in terms of Section 17 of the A&C Act are concerned, such powers can be exercised by Arbitral Tribunal constituted under the Gujarat Act because there is no inconsistency in these two Acts as far as the grant of interim relief is concerned. The court opined that the judgment rendered in *Gangotri Enterprises Limited v Union of India*, (2016) 11 SCC 720 is *per incuriam* as it relies upon *Raman Iron Foundry* which has been specifically overruled by three judges bench in the case of *H.M. Kamaluddin Ansari*, (1983) 4 SCC 417.

Sona Corporation India Private Limited v. Ingram Micro India Private Limited :Judgment dated 20.01.2020 in ARB. A. (COMM.) 4/2019: MANU/DE/0247/2020- Whether there is a bar in law for a tribunal to pass an Order in a subsequent Section 17 Application in variation of an Order passed in the original Section 17 Application?-HELD- The Court in the present case compared the powers of arbitral tribunal under S.17 of the Arbitration Act to powers of the Court under S.9 of the Arbitration Act. The decision takes note of the fact that S.9 of the Arbitration Act provides for "various interim orders that a Court could pass", however, S.17 of the Arbitration Act used the expression "any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute". Therefore, it was a pre-requisite for the party applying for interim relief before the arbitral tribunal to show that a specific interim relief covered under S.9, was also covered within the limited language of S.17 of the Arbitration Act. It is in this background that the amended S.17 was introduced to the Arbitration Act, the wording of which has been moulded to bring it in line with the wording of S.9 of the Arbitration Act. An arbitral tribunal now has the same powers as a Court, when it comes to granting interim relief to the parties. It is necessary for the Courts to limit judicial review of arbitral orders. Since no perversity or infirmity was observed in the order of the arbitral tribunal in this matter, no interference was made by the Court.

Dr. Bina Modi v. Lalit Modi & Ors. :Judgment dated March 3, 2020 in CS (OS) 84/2020: MANU/DE/0685/2020- Whether the procedure being followed by ICC is repugnant to Arbitration Act and whether the principles pertaining to anti suit injunction are attracted to anti arbitration injunction suits?-HELD- The Court held that the Arbitration Act is governed by the principle of freedom of parties and Section 19 thereof expressly provides that the parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting the proceedings. The

Court observed that considering the status of the parties, who belong to business family and are well alive to litigations and arbitrations of all kinds, it cannot be said that they were not aware of the procedure of ICC. It was clarified that principles pertaining to anti suit injunction suits, are not attracted to anti arbitration injunction suits, for the reason of the Arbitration Act being a complete code in itself and the 1996 Act empowers the Arbitral Tribunal to rule on its own jurisdiction.

Indian Oil Corporation Limited v Toyo Engineering Corporation :Judgment dated March 6, 2020 in OMP (COMM) 316/2019: MANU/DE/0728/2020- Whether the interim order passed by the Court for deposit of 20% of the awarded amount can be modified if there has been no change of circumstances?-HELD- The Court held that there is no mandate of law that in every case the Court should direct 100% deposit of the awarded amount. This is purely in the discretion of the Court and discretion has to be exercised in the facts and circumstances of each case. Further, it was held that since the Court has exercised its discretion once and there has been no change of circumstances, the Order calls for no modification.

Badri Singh Vinmay Private Limited v. MMTC Limited :Judgment dated 06.01.2020 in O.M.P. 225/2015: MANU/DE/0036/2020 - Whether a communication specifically claiming a disputed amount and narrating the background facts as also contemplating legal action in general, would qualify as a notice of request for arbitration?-HELD- The Court held that a communication specifically claiming a disputed amount and narrating the background facts as also contemplating legal action in general, as against initiation of arbitration proceedings in particular, would qualify as a notice of request for arbitration.

Mahanagar Telephone Nigam Limited v. M/s Haryana Telecom Ltd. :Judgment dated March 14, 2020 in OMP 1113/2012- Whether the Arbitrator is bound by the terms of the Contract?-Held-The Court held that as per Section 28 of the Arbitration Act, 1996 the Arbitrator is bound to decide as per the terms of the Contract.

MBL Infrastructures Ltd. v. Rites Limited :Judgment dated February 10, 2020 in OMP (Misc) (Comm.) 56/2020- Whether Sections 23(4) and 29(A) 1 of the Arbitration and Conciliation Act would apply to the pending arbitrations as on the date of the amendment?-HELD-The Court held that it is clear from a bare perusal of the Arbitration & Conciliation (Amendment) Act, 2019 which was notified on 30.08.2019 that it does not have a retrospective

effect and thus, amended Section 29(A) will not be applicable on pending arbitrations as on the date of the amendment.

Shapoorji Pallonji and Co. Pvt. Ltd. v. Jindal India Thermal Power Limited :Judgment dated January 23, 2020 OMP (Misc.) (Comm.) 512/2019- Whether Sections 23(4) and 29(A) 1 of the Arbitration and Conciliation Act would apply to the pending arbitrations as on the date of the amendment?-HELD- The Court held that amended Sections 23(4) and 29(A) 1 of the Arbitration and Conciliation Act, being procedural law, would apply to pending arbitrations as on the date of the amendment.

M/s Morgan Securities & Credits Pvt. Ltd. v. Videocon Industries Ltd. :Judgment dated February 26, 2020 in FAO(OS) (COMM) 9/2020- Whether the post-award interest ought to have been granted on the principal sum plus the interest component, taken collectively?-HELD- The Court held that it shall be assumed that the arbitrator has granted the post award interest only on the principal sum with full intent and while doing so, was mindful of the respective claims of the parties, the relevant merits/demerits of the pleas taken before him, the equities required to be balanced between the parties and all other relevant factors for granting the rate of interest as awarded. The Court further held that the view taken by the Arbitrator for granting interest cannot be treated as patently illegal or perverse so as to go to the root of the matter.

Parmeet Singh Chatwal & Ors. v. Ashwani Sahani :Judgment dated February 14, 2020 in OMP 1445/2014- Whether the arbitration clause reproduced at the bottom of an invoice, in a small font, is valid?-HELD- The Court held that the so called Arbitration Clause which was affixed on the invoice was reproduced in a small font at the bottom of the invoice. Thus, it is doubtful that the petitioner even noticed that he was signing a document which has an Arbitration Clause and it cannot be concluded that parties were ad idem.

First Global Stock Broking Private Limited v. Tarun Gupta :Judgment dated 14.01.2020 in FAO (OS) (COMM.) 50/2019- Whether an Award can be set aside on the ground that the vital documents relevant to the controversy had not been taken into consideration by the arbitral tribunal?-HELD-The Court upheld the Order setting aside an arbitral award wherein the Court had found that various vital documents relevant to the controversy had not been taken into consideration by the arbitral tribunal.

Meera Goyal v. Priti Saraf :Judgment dated February 26, 2020 in OMP 2/2020- Whether the Order by the Arbitrator that Section 16 application will be decided at the time of passing of the final award can be deemed as a 'rejection' of the objections and whether such an Order can be termed as an interim award?-

HELD- The court held that when there has been no determination by the Arbitrator on the objections raised by the petitioner, it cannot be said that any right of the parties was finally determined which is a pre-condition for an Order to be termed as an interim award under Section 31(6) of the Act.

MMTC Limited v. Anglo American Metallurgical Coal Pty Ltd. :Judgment dated March 2, 2020 in FAO(OS) 532/2015- What is the scope of interference by Court in proceedings under Section 37 of the Arbitration Act?-HELD-

The Court held that on general principles of Section 37, the court should forbear from interfering in conclusions of fact reached by the Tribunal however, if the Court finds that a conclusion of inference drawn by the Arbitral Tribunal, even if upheld in proceedings under Section 34, is not supported by a plain, objective and clear-eyed reading of documents, the Court would not flinch in interfering or correcting such conclusion especially if it goes to the root of the matter.

Hindustan Construction Company Ltd. v. NHPC Ltd. & Anr. :Judgment dated March 4, 2020 in Transfer Petition (C) No. 3053 of 2019- Whether the fact that the first application was made at the Faridabad Court would confer exclusive jurisdiction on Faridabad Court even if the seat of arbitration was at Delhi?-HELD-Reiterating *BGS SGS Soma JV v. NHPC, 2019 (17) SCALE 369* the Delhi High court clarified that once the seat of arbitration is designated, such clause then becomes the exclusive jurisdiction clause as a result of which only the courts where there seat is located would then have jurisdiction to have the exclusion of all other courts. It was further held that even if an application was first made to the Faridabad Court that application would be made to a court without jurisdiction.

Mankastu Impex Private Limited v. Airvisual Limited :Judgment dated March 5, 2020 in Arbitration Petition No. 32 of 2018- Whether in view of clause 17.2 of the MOU the parties have agreed that the seat of arbitration is at Hong Kong and whether the court in Delhi lacks jurisdiction to entertain the petition filed under Section 11 of the Act?-HELD- The Court held that since the arbitration is seated at Hong Kong, the

petition filed by the petitioner under Section 11(6) of the Act will not be maintainable. The Court held that seat of arbitration is a vital aspect of any arbitration proceedings. Significance of seat of arbitration is that it determines the applicable law when deciding the arbitration proceedings and arbitration procedure as well as judicial review over the arbitration award.

Cairn India Ltd. & Ors. v. Government of India :Judgment dated February 19, 2020 in OMP (EFA) (COMM) 15/2016- Whether Article 136 or Article 137 of the Limitation Act would apply to enforcement petitions?-HELD-

The Court held that provisions of Article 136 of the Limitation Act would apply to an enforcement petition. Further, it was held that the arbitral tribunal, once vested with jurisdiction by the parties to adjudicate their inter se disputes has the right to make both right and wrong decisions as these are errors which fall within their jurisdiction. The Court observed that perusal of Section 48 of the 1996 Act shows that ground of objections available to a party against whom the foreign award is sought to be enforced does not pertain to the merits of the dispute.

Vijay Karia v. Prysmian Cavi E Sistemi SRL & Ors. :Judgment dated February 13, 2020 in Civil Appeal No. 1544 of 2020- Whether a Foreign Award that fails to determine a material issue can be set aside?-HELD-

The Court held that if a foreign award fails to determine a material issue which goes to the root of the matter, the award may shock the conscience of the Court and may be set aside. Further, it was held that a foreign award must be read as a whole, fairly and without nit-picking. If read as a whole, the Award addresses the basic issues raised by the parties and decides the claims and counter-claims then enforcement must follow.

Chief General Manager (Contracts) Neyveli Lignite Corporation Limited v Driplex Water Engineering Limited : Judgment dated 29.01.2020 in L.P.A. 688/2019- Whether a supplier under the MSMED Act, 2006 that had not obtained registration within the period prescribed but had done so after entering into a contract with the buyer, would be entitled to benefits contained in the MSMED Act?-HELD-

The Court held that a supplier that was already in existence at the time of the commencement of the MSMED Act and which had not obtained registration within the period prescribed but had done so after entering into a contract with the buyer, was entitled to seek recourse to the beneficial provision of statutory arbitration as contained in the MSMED Act.

NOTIFICATION

1. Central Government notifies — Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Amendment Rules, 2020 : In exercise of the powers conferred by clause (i) of sub-section (2) of section 32 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (57 of 1994), the **Central Government hereby makes the following rules further to amend the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 2014, namely :-**

1. (1) These rules may be called the **Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Amendment Rules, 2020.**

2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Rules, 2014.(hereinafter referred to as the said rules),

(a) In rule 6 for sub-rule (2), the following sub-rules shall be substituted namely

“(2) The existing registered medical practitioners, who are conducting ultrasound procedures in a Genetic Clinic or Ultrasound Clinic or Imaging Centre on the basis of one year experience or six months training are exempted from undertaking the said training provided they are able to qualify the competency based assessment as specified in Schedule II.

(3) If a medical practitioner fails to clear the said competency based examination after three attempts, he shall undertake the complete six months training, as provided under these rules, for the purpose of renewal of registration.”

<http://egazette.nic.in/WriteReadData/2020/220247.pdf>

2. The National Judicial Academy has prepared “Fair Trial Manual” for the benefit of the Judicial fraternity in the performance of their judicial functions. The link :
<https://www.humanrightsinitiative.org/press-releases/new-edition-of-fair-trials-manual-edited-by-maja-daruwala-and-prof-mrinal-satish>

LIST OF WEBINARS HELD IN CJA

S. No.	Date	Topic	Speaker
1	1 st July	NDPS Act: Law & Procedure - I	Mr. Pradeep Mehta, Faculty Member
2	2 nd July	NDPS Act: Law & Procedure - II	Mr. Pradeep Mehta, Faculty Member
3	8 th July	Jamabandi Entries: Interpretation - II	Mr. B.M. Lal, Faculty Member
4	9 th July	Mutations & Khasra Girdwaries: I	Mr. B.M. Lal, Faculty Member
5	15 th July	Criminal Appeals	Mr. H.S. Bhangoo, Faculty Member
6	16 th July	Management of Judicial Stress	Dr. Balram K. Gupta, Director (Academics)
7	22 nd July	Role of Trial Courts and Juvenile Justice Boards under Juvenile Justice Act, 2015	Mr. Baljinder Singh Sra, Faculty Member
8	23 rd July	Determination of Compensation for Actionable Wrongs	Dr. Gopal Arora, Faculty Member
9	29 th July	Practical Aspects of Court Management	Justice Surinder Gupta, Former Judge, High Court of Punjab & Haryana
10	30 th July	Arbitration and Conciliation Act: Jurisprudence of Enforcement of Domestic Awards	Mrs. Ranjana Aggarwal, Faculty Member

FORTHCOMING WEBINARS IN THE MONTH OF AUGUST

S. No.	Date	Topic	Speaker
1	6 th August	Law on Sentencing	Mr.H.S.Bhangoo, Faculty Member
2	7 th August	Defences of Insurance & Related Issues in Accident Cases	Dr. Gopal Arora, Faculty Member

FOUNDATION TRAINING (ONE YEAR)

Foundation training online for the newly selected judicial officers from the states of Punjab and Haryana (numbering – 55) will begin from August 10, 2020.