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# CJA e-NEWSLETTER

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For circulation among the stakeholders in Judicial Education

## FROM THE DESK OF CHIEF EDITOR

**Stress** is integral to every profession. Equally, its management is part of the skills which are developed peculiar to each profession. One factor is common to all. Every game in life is played on a six inch ground. The space between the two ears. The mind. We all live in minds. It is the mind that manages the stress. It is the mind game that keeps you free from stress. It is the mind-set that makes all the difference. Martina Navratilova was once asked, "how do you maintain your focus, physique and sharp game even at the age of 43!". 'The ball does not know how old I am', was the reply. How well you manage your mind. How well you keep your mind free from garbage. So that your mind is focused. To achieve the best results.

It is Judicial Culture. Judicial discipline. Judicial ethics and ethos. All these knit the Judicial Institution as a Global Institution. The beauty of this Institution is, its basic structure is universally the same. Different systems. Jurisdictions. Constitutions. The fundamentals of Fairness, Due Process, Principle of Natural Justice and Fair Trial remain the same. This, in fact, is the real strength of judges. If these fundamentals are followed, it would be the best balm for judicial stressed minds. A salve for judicial headache.

**There is judicial stress at all levels.** The best of judicial minds face difficult situations. Take the case of Justice H.R.Khanna. He wrote his dissent in ADM Jabalpur (1976). Before the judgment was pronounced, Justice Khanna shared his concern with his sister that the dissent he has written will cost him the Chief Justice-ship of India. Obviously, the concern was, should he pronounce the dissent or not. His sister told him, follow what your judicial conscious guides you. True, this dissent resulted in his supersession. He did what his conscious allowed him to do. It did not matter that if he had joined with the majority, he would have been the Chief Justice of India. In such a stressful situation, if you follow the dictate of your conscious, you are free from any stress. The reason being that even the highest position of CJI could not stop him from doing what he thought to be right. Justice Khanna is known for his fearless mind. Take the case of Justice R.F.Nariman. Sharp mind. Immense knowledge. Phenomenal grasping power. Clarity and erudition. His judgments bear the testimony to all these qualities. In the Sabarimala Ayyappa Temple matter, women of all ages were allowed entry by the constitution bench of five judges. Later, this matter came for consideration before a seven judge bench. In this context, Justice Nariman wrote his and Justice D.Y.Chandrachud dissent reiterating the earlier majority decision. To the surprise of many, Justice Nariman on November 15, 2019 asked Solicitor General Tushar Mehta to inform the government to ensure the implementation of the Sabarimala judgment. When Mr. Mehta urged Justice Nariman to remove the impression that the judgment will not be implemented, he retorted; "that impression is embedded in my mind and it is irremovable". If fine minds like Justice Nariman could be disturbed in a situation like this, is this not a reflection of judicial stress caused by a given situation. This unfolds the fact that in the journey of the best of judges, they encounter stress. Is there an effective recipe to deal with such situations!

It is the friction between the Bar and the Bench which causes judicial stress. The Members of the Bar are the officers of the court. Therefore, they certainly need to be treated accordingly. The judges need to realise that justice cannot be administered without the due assistance of the Bar. Having said that, the Bar also needs to realise that this is a two way traffic. The Bar must understand its role. Yes, they have to fight for their clients. They must do their best for them. They are paid for it. It ought to be clear to them that ultimately Truth must prevail. Justice must not become a casualty. Assuming, there is a judgment which is apparently against him. The duty of the advocate is not to by-pass it. He must deal with that. Even if the opposite counsel is not aware of the same. This is most essential for doing justice. It is open to the advocate to distinguish the judgment or bring it within the premise of his case. This would be his real skill. This would be assisting the Court effectively. Let me share a true story. Mr.K.L.Misra as Advocate General of U.P. was to appear against the socialist leader, Ram Manohar Lohia. Lohia was in jail. He had challenged his order. He had decided to argue in the High Court in person. He had no knowledge of law. Misra assisted him in jail with law and judgments in his favour. Misra was asked, was it proper on his part to assist the opposite party? Was it not breach of trust? His response was as Law officer, his duty was not win the case but to assist the court to arrive at just decision. Therefore, the version of both the sides should be known. This is essential for arriving at the Truth. This, in fact, is the true role. Once the judges are assured of 'due' assistance of the Bar, the judges would be free from judicial stress. They would be in a position to do 'complete' or 'wholesome' justice. Healthy and co-operative relationship between the Bar and the Bench is the only recipe for doing justice. Justice would be free from stress.

How do we reduce judicial stress! The Advocates must know the judge. This should not be misunderstood. Knowing the judge means knowing the mind of the judge. It is with experience that the advocates come to know the mind of the judge. A good advocate is one who can understand judge's mind. Argue the case keeping in mind his requirements. This is a double edged tool. The advocate renders proper assistance. The judge is comfortable. He gets his due assistance. He is able to write his judgments smoothly. A judge must enjoy writing/dictating his judgments. It must give him satisfaction. It is these judges who excel in their performance. They feel good. They are more productive. Because they have no stress.

Socrates gave four way test. Hear courteously. Consider soberly. Answer wisely. Decide impartially. This test has stood the test of times. It holds good even today. If this is followed, it would pave the way for healthy and harmonious court environment. In tense environment, the lawyers cannot give their best. The lawyers want that they should be heard. It is, of course, the prerogative of the court to decide. The judge must conduct the court evenly and fairly to all. Treat all lawyers equally. Uniformly too. Even if the lawyer fails to be present, the lawyers must have the trust and confidence in court. The assurance that the court would decide on merit and would do justice is the strength of the Judicial Institution. This helps in de-stressing judicial stress.

The pressure of work is an important factor. Therefore, court and case management are the skills which are to be learnt from the beginning. In the District Courts, we have a system of units. Every quarter, certain number of units are to be completed. It is mandatory. Resultantly, the court work is to be so managed that each judicial officer is able to complete the target. It is the skill of blending time and case management. Those who are not able to manage it, they remain under stress. The quantity and quality of work suffers. Proper handling would improve on both scores, Magna Carta (1215) proclaims: Justice is neither to be delayed nor denied. Each case goes through a long journey. After the case is argued, there should be no undue delay in pronouncing the judgment. Otherwise, it would be double jeopardy. In Kerala High Court, the 1<sup>st</sup> puisne judge reserved the judgment after hearing the arguments. It remained reserved for couple of years. A writ came to be filed seeking mandamus to pronounce the judgment. The judge still wanted at least 3 weeks time to write the judgment. He was told to take off the next day. Complete the judgment. The writ petition

was not posted the next day for hearing. The judgment was pronounced a day later in the morning. In the afternoon, the writ petition was rendered in-fructuous. It was an embarrassing situation. Throughout his judicial journey, he wrote few or very few judgments. Still, he rose to be the judge of the summit court. Post retirement, he was rewarded with the membership of NHRC. Probably this is attributable to destiny. However, one wonder's how stressful this journey must have been. Not writing judgments; A Judge is known through his judgments. If you wish to make your journey free from stress, write judgments on time. Keeping judgments pending is not only stressful. Even otherwise also, stories start floating. Under all circumstances, judgements must be pronounced on time.

Article 51-A(h) of the Constitution requires every citizen to develop scientific temper and humanism. Both these duties are part of Judge's personality and outlook. A Judge should never be temperamental. Adjudicative minds are cool minds. Scientific minds can handle any situation. Aggression in court is the insignia of Judicial Stress. Sometimes, ugly situations arise. In spite of the fact, the Judge may not be the contributory factor. It happened in the apex court, (March 13, 1968). A bench of three Judges including the CJI (Justice M. Hidayatullah). A civil appeal was heard. Arguments concluded. The Judgement was being dictated in open court. A man jumped up. Took out a flick-knife. Attacked Justice A.N. Grover on his head, incised his scalp. CJI grabbed the hand of the assailant. The man tried to stab Justice Grover in the neck. He was lucky and escaped. Assailant was apprehended. In fact, Justice Grover had two cuts and was bleeding. Immediately, Justice Grover was put in the car. CJI Hidayatullah himself drove him to Wellington Hospital. Jumped couple of traffic lights. In less than half an hour, he was on the operation table. He was saved. One more fact, Justice Hidayatullah had been sworn as CJI on February 25, 1968. He received a post-card that he would be murdered before the end of the next month. Justice Hidayatullah become a Judge of the Supreme Court on December 1, 1958. Retired as CJI on December 16, 1970. Probably, the longest tenure. More than 12 years. The idea of sharing this episode is that even when you are holding the highest position, difficult situations come in your way. How do you face them? How you keep the balance of your mind? In order to ward off stress, positivity of mind is important. Imagine after such an happening, Justice Hidayatullah himself drove the car. He must be very confident of himself. Normally, one is under a shock after such an happening. This makes all the difference. One needs to learn a lot from this incident. Still another one from the life story of Justice Hidayatullah. While being the CJI, he had become the acting President of India from July 20 to August 24, 1969 (35 days). President Nixon arrived in India on July 31. In the car, the Presidents of two largest democracies were being driven to the Rashtrapati Bhawan. Nixon asked Hidayatullah: "Mr. President, do people always turn out like this to greet the Indian President or is this because of the President of the United States?" Hidayatullah quietly replied: "Mr. President, I would not know, but I do suspect that many youngsters are here to see what a bullet-proof car looks like!" He smiled and said: 'you have a point.' What an embarrassing situation for the temporary Indian President (after all, his regular position was CJI)! How smartly, it was handled! It was like handling a seasoned senior lawyer in court. This all is demonstrative of managing stress smoothly.

Judges should be men and women of tough fibre. Not susceptible to pressure or stress. The conduct of the Judge within and out-side the court is the true-mirror of his or her mind. There is need to provide stress-free and intellectually stimulating atmosphere to Judicial fraternity. Minus this, the quality of Justice would suffer. This is the real assurance for the future of Judicial Institution.

**Balram K. Gupta**

## LATEST CASES : CIVIL

*“A decision which curtails fundamental rights without appropriate justification will be classified as disproportionate. The concept of proportionality requires a restriction to be tailored in accordance with the territorial extent of the restriction, the stage of emergency, nature of urgency, duration of such restrictive measure and nature of such restriction. The triangulation of a restriction requires the consideration of appropriateness, necessity and the least restrictive measure before being imposed.”*

*- N.V. Ramana, J. in Anuradha Bhasin v. Union of India, (2020) 3 SCC 637, para 80*

**Siri Chand (Deceased) Vs. Surinder Singh: 2020 SCC OnLine SC 516: Contingent Clause In Rent Deed To Increase Rent Each Year Cannot Be Read To Mean That Tenancy Was For More Than One Year Period—HELD-**

The Supreme Court has observed that, merely because a Rent deed contains a clause which binds the tenant to increase the rent by certain percentage each year, it cannot be read to mean that the tenancy was for a period of more than one year. The Supreme Court held that "When the lease deed does not mention the period of tenancy, other conditions of the lease/rent deed and intention of the parties has to be gathered to find out the true nature of the lease deed/rent deed."

**Shakti Bhog Food Industries Ltd. V. The Central Bank of India & Anr.: 2020 SCC OnLine SC 482:[Article 113 Limitation Act] Limitation Period Begins To Run When The Right To Sue Accrues And Not When It 'First' Accrues—HELD-**The Supreme court has held that in cases governed by Article 113 of the Limitation Act, the period of limitation begins to run "when the right to sue accrues" and not when the right to sue "first" accrues. The Supreme Court reiterated the ratio laid down in *Union of India & Ors. vs. West Coast Paper Mills Ltd. & Anr (2004) 2 SCC 747* and *Khatri Hotels Private Limited & Anr. Vs. Union of India (2011) 9 SCC 126*. In this case plaint

pertaining to rendition of accounts was rejected by courts upto high court. It has been observed by the Apex Court reversing the all the orders that the plaintiff had sent a legal notice on 28.11.2003 and again on 7.1.2005 and after receiving its reply filed the suit on 23.2.2005. No doubt, the first cause of action accrued in year 2000 and then correspondence regarding the clarification of amounts and figures continued but claim was finally rejected in the reply to notice by defendants.

**Guru Nanak Industries, Faridabad V. Amar Singh (Dead) Thr.LR's : 2020 SCC OnLine SC 469:Retirement Of One Partner Amounts To Dissolution Of Partnership Firm Consisting Of Only Two Partners: SC—HELD-**

The Supreme Court held that when there are only two partners and one has agreed to retire, then the retirement amounts to dissolution of the firm. The court also discussed the distinction between 'retirement of a partner' and 'dissolution of a partnership firm'. It has been further observed that when there are only two partners and one has agreed to retire, then the retirement amounts to dissolution of the firm [ref. *Erach F.D. Mehta v. Minoo F.D. Mehta*]

**Admissery Raghavan V. Cheruvalath Krishnadasan: 2020 SCC OnLine SC 491: Rent Control Act: HC Cannot Interfere With Finding Of Fact In Revisional Jurisdiction Unless There Is Perversity Or Misappreciation of Evidence—HELD-**The

Supreme Court has reiterated that the High Court, in its revisional jurisdiction conferred by Section 20 of the Kerala Building (Lease and Rent Control) Act, cannot interfere with the finding of fact by Appellate Authority, unless there is perversity or misappreciation of evidence by it. In the instant case, the Supreme Court noted that the High Court had interfered with the findings of fact by the First Appellate Authority. The court stated that Interfering with this finding of fact, again, without any perversity or misappreciation of evidence by the Appellate Authority would clearly be outside the High Court's ken in its revisional jurisdiction.

[Ramnath and Co. v. Commissioner of Income Tax: 2020 SCC OnLine SC 484:](#)

**Every consideration received in foreign exchange does not ipso facto fall within the ambit of Section 80-O IT Act-HELD-**

Explaining the law on the issue the Apex Court said that any foreign exchange receipt has to be attributable to the information or service contemplated by the provisions and only that part of foreign exchange receipt, which is so attributable to the activity contemplated by Section 80-O, would qualify for claiming deduction. The requisite enquiry is to be made by the Assessing Officer and evidently, such an enquiry by the Assessing Officer could be made only if concrete material is placed on record to show the requisite correlation. The Court noticed that, in the case at hand, all the clauses of the agreements read together make it absolutely clear that the appellant was merely a procuring agent and it was his responsibility to ensure that proper goods are supplied in proper packing to the satisfaction of the principal. It has been further observed that even if certain information was sent by the assessee to the principals, the information did not fall in the category of such professional services or information which could justify its claim for deduction under Section 80-O of the Act.

[Telangana State Southern Power Distribution Company Limited v. Srigdhaa Beverages: 2020 SCC OnLine SC 478:](#)

**Transferee has to pay the outstanding dues**

**if he desires to enjoy the Electricity connection –HELD-** The Supreme Court has held that electricity dues, where they are statutory in nature under the Electricity Act and as per the terms & conditions of supply, cannot be waived in view of the provisions of the Act itself more specifically Section 56 of the Electricity Act, 2003, which is pari materia with Section 24 of the Electricity Act, 1910. It is further observed that it cannot partake the character of dues of purely contractual nature. Reiterating the decision in Dakshin Haryana Bijli Vitran Nigam Ltd. v. Paramount Polymers (P) Ltd., (2006) 13 SCC 101, the court noticed that in such a scenario if a transferee desires to enjoy the service connection, he shall pay the outstanding dues, if any, to the supplier of electricity and a re-connection or a new connection shall not be given to any premises where there are arrears on account of dues to the supplier unless they are so declared in advance. A condition for clearance of dues cannot per se be termed as unreasonable or arbitrary.

[Surendra Kumar Bhilawe vs. The New India Assurance Company Limited: 2020 SCC OnLine SC 523:](#) **Person In Whose Name**

**Vehicle Stands Registered On The Date Of Accident To Be Treated As 'Owner': SC-**

**HELD-**The Supreme Court has observed that, it is the person in whose name the motor vehicle stands registered, who would be treated as the owner of the vehicle, for the purposes of the Motor Vehicles Act. *"If the insured continues to remain the owner in law in view of the statutory provisions of the Motor Vehicles Act, the Insurer cannot evade its liability in case of an accident."*

## LATEST CASES : CRIMINAL

*“Existence of a substantial question of law does not weigh on the stakes involved in the case, rather, it depends on the impact the “question of law” will have on the final determination. If the questions having a determining effect on the final outcome have already been decided by a conclusive authority, then such questions cannot be called as “substantial questions of law”.”*

— *N.V. Ramana, J. in Shrimanth Balasaheb Patil v. Karnataka Legislative Assembly, (2020) 2*

**Sonu @ Sunil V. State of Madhya Pradesh: 2020 SCC OnLine SC 473: There is no Law That The Person Accompanying Principal Culprit Shares His Intention In Respect Of Every Act Which The Latter Might Eventually Commit -HELD-**The Supreme Court has observed that there is no law that a person accompanying the principal culprit shares his intention in respect of every act the latter might eventually commit. The **Supreme Court** made this observation while allowing an appeal filed by a theft and murder accused. Referring to Section 34 IPC, the court observed that the principle which underlies criminal liability for the acts of another therein, is the shared intention or the common intention to commit an offence.

**Somasundaram @ Somu V. The State Rep. By The Deputy Commissioner of Police : 2020 SCC OnLine SC 480:Unsafe To Convict An Accused Solely On The Basis Of Uncorroborated Testimony Of Accomplice-HELD-**The Supreme Court has held that it would be unsafe to convict an accused solely based on uncorroborated testimony of an accomplice. The court said that an accomplice, to be believed, he must be corroborated in material particulars of his testimony. The Court upheld the convictions for the abduction and murder of politician.

**Ombir Singh V. State of UP: 2020 SCC OnLine SC 467:[Section 157 CrPC] Mere Delay In Forwarding FIR To Magistrate By Itself Is Not A Ground To Acquit The Accused-HELD-**The Supreme Court reiterated that the delay in sending the FIR to the Magistrate in compliance of Section 157 of the Code of Criminal Procedure

cannot, in itself, be a ground to acquit the accused. The Supreme Court reiterated the judgment of **Jafel Biswas v. State of West Bengal** wherein the effect of delay in compliance of Section 157 of the Code and its legal impact on the trial was examined. In the said decision, it was held that mere delay in sending the report itself cannot lead to a conclusion that the trial is vitiated or the accused is entitled to be acquitted on this ground.

**Subhash Sahebrao Deshmukh Vs Satish Atmaram Talekar And Others: Criminal Appeal No.2183 Of 2011 D.O.D 19.06.2020: Accused Is Entitled To Be Heard In A Revision Petition Against Dismissal Of Protest Petition-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 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.*"

**D. Devaraja Vs. Owais Sabeer Hussain: 2020 SCC OnLine SC 517: Power U/s 482**

**CrPC Can Be Exercised To Quash Criminal Proceedings Which Are Ex Facie Bad For Want Of Sanction-HELD-**

The Supreme Court has observed that the power under Section 482 of Code of Criminal Procedure can be exercised to quash criminal proceedings which are ex facie bad for want of sanction, frivolous or in abuse of process of court. The Court further observed that, sanction was a legal requirement which empowers the Court to take Cognizance and the High Court ought to have exercised its power to quash the complaint instead of remitting the appellant to an application under Section 245 of the Criminal Procedure Code to seek discharge.

**Amarjit Singh Vs. State of Punjab: 2020 SCC OnLine P&H 754: 'Africans Are Our Friends' : Punjab & Haryana HC Directs Police Not To Use Racial Slur Against African Nationals-HELD-**

The Punjab and Haryana High Court came down heavily upon the Police authorities in the state for using a racial slur while referring to an African national accused in a criminal case under the NDPS Act. It was further held that *"We are, professedly, a tolerant sub-continent of "browns" in all its shades, but more often than not, display a perverted and primitive mind-set looking down on others without looking within ourselves. For many centuries we have been slaves. Freedom does not lend its wings to our countrymen to fly anywhere they wish and in any manner they like and abuse foreigners on the street calling them 'kalla'. To the contrary, freedom teaches love for human dignity and respect for fellowman."*

**State Of Rajasthan Vs Mehram & Ors.: 2020 SCC OnLine SC 442 -Accused Can Challenge Conviction In Appeal Filed By The State Even If He Did Not Prefer A Formal Appeal-HELD-**

The Supreme Court has observed that an accused can challenge the finding and order of conviction in the appeal filed by the State, even though said accused had not preferred a formal appeal. Relying on **Chandrakant Patil vs.**

**State through CBI, Sumer Singh vs. Surajbhan Singh & Ors. , State of Rajasthan vs. Ramanand**

and Section 377(3) of the Code of Criminal Procedure, the accused's counsel contend that he had a right to challenge the finding of guilt and conviction under Section 326 and 148, IPC, recorded against him, even though said accused had not preferred a formal appeal against the impugned judgment. Agreeing with the said contention, the bench said: *The accused No. 5 (Mehram S/o Chhagna Ram) is justified in contending that it is open to the said accused to challenge the finding and order of conviction under Section 326/148, IPC recorded against him in the appeal filed by the State, assailing the impugned judgment of the High Court. That being the settled legal position, as expounded in Chandrakant Patil (supra), Sumer Singh (supra) and Ramanand (supra) including Section 377(3) of the Cr.P.C., which predicates that in the appeal filed against the sentence on the ground of its inadequacy, the accused may plead for his acquittal or for reduction of the sentence.*

**State of Gujarat vs Mansukhbhai Kanjibhai Shah: 2020 SCC OnLine SC 412: Deemed University Covered Under Prevention Of Corruption Act :-HELD-**

The Supreme Court held that a 'deemed university' will come under the ambit of Prevention of Corruption Act, 1988. Holding thus, a three-judge Supreme Court bench set aside a judgment of the High Court of Gujarat, which allowed the discharge of trustees of a deemed university from the prosecution of a corruption case. It further said that *"We are of the opinion that the High Court was incorrect in holding that a "Deemed University" is excluded from the ambit of the term "University" under Section 2(c)(xi) of the PC Act."*

## JUDGMENTS ON WOMEN EMPOWERMENT

*“Procedure entailing recovery of Narcotics/contraband from the body of the suspect requires invasion into the physical body of the suspect and an encroachment into his privacy. Such exercise being invasive in nature must not only be in strict compliance of statutory safeguards as contemplated in Section 103 of the Customs Act but also must be in consonance to the dignity of the suspect and ought not involve any cruel, degrading or inhuman treatment lest such procedure runs fowl of Article 21.”*

— *Joymalya Bagchi, J. in Mursaleen Mohammad vs. Union of India, (2018) SCC Online Cal 4885, Para 3*

**Union of India & Ors. vs. Lt Cdr Annie Nagaraja & Ors. : 2020 SCC OnLine SC 326**

**:History is replete with examples where women have been denied their just entitlements under law and the right to fair and equal treatment in the workplace - HELD-**In its judgment directing the Indian Navy to grant Permanent Commission for Serving Women SSC Officers, the Supreme Court reiterated its observations against gender stereotypes.

The Bench observed that the women should get a level playing field which will give them an opportunity to overcome their histories of discrimination. The judgment reads:

*The battle for gender equality is about confronting the battles of the mind. History is replete with examples where women have been denied their just entitlements under law and the right to fair and equal treatment in the workplace. In the context of the Armed Forces, specious reasons have been advanced by decision makers and administrators. They range from physiology, motherhood and physical attributes to the male dominated hierarchies. A hundred and one excuses are no answer to the constitutional entitlement to dignity, which attaches to every individual irrespective of gender, to fair and equal conditions of work and to a level playing field. A level playing field ensures that women have the opportunity to overcome their histories of discrimination with the surest of responses based on their competence, ability and performance*

**The Secretary, Ministry of Defence vs. Babita Puniya & Ors. The Secretary,**

**Ministry of Defence vs. Babita Puniya & Ors. : 2020 SCC OnLine SC 200: Permanent Commission should be granted to women**

**in the army regardless of their service, in all the ten streams where the Union Government has already taken a decision to grant the Short Service Commission for women-HELD-**The bench slammed the arguments made by the Centre in their written notes which had cited the physiological features and domestic obligations of women as reasons for denying them command appointments. The bench observed that such arguments perpetuate "gender stereotypes".

The court also held that the absolute exclusion of women from command assignments is against Article 14 of the Constitution and unjustified. Hence, the policy that women will be given only "staff appointments" was held to be unenforceable by the Court.

**Federation of Obstetric and Gynecological Societies of India (FOGSI) v. Union of India & Ors. : 2019 SCC OnLine SC 650:Giving preference to a male child is violative of**

**Article 39A of the constitution and against the mandate of Article 51A (e) which casts a Constitutional duty on citizens to renounce practices derogatory to the dignity of women -HELD-**While upholding the

constitutional validity of Section 23 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, the bench observed that female foeticide is the most inhumane, immoral and anti-social act. The court said that the PC PNDT Act is a

social welfare legislation, which was conceived in light of the skewed sex-ratio of India and to avoid the consequences of the same.

The court also observed that skewed sex-ratio is likely to lead to greater incidences of violence against women and an increase in practices of trafficking, 'bride-buying' etc. The rigorous implementation of the Act is an edifice on which rests the task of saving the girl child, the court said.

**Joseph Shine v. Union of India : (2019) 3 SCC 39: The five-judge bench unanimously struck down Section 497 IPC saying that it was unconstitutional since the very basis for criminalizing adultery was the assumption that a woman is considered as the property of the husband and cannot have relations outside the marriage. The said section violated the right to privacy as well as the liberty of women by discriminating against married women and perpetuating gender stereotypes-HELD-** The bench dealt with the petition challenging the constitutionality of the offence of adultery under Section 497 of the Indian Penal Code read with Section 198(2) of the CrPC. Section 497 of IPC criminalised adultery by imposing culpability on a man who engages in sexual intercourse with another person's wife. The same was punishable with a maximum imprisonment of five years. A married woman could not bring forth a complaint under Section 497 IPC when her husband was found to be engaged in sexual intercourse with an unmarried woman.

**Danamma @ Suman Surpur v. Amar : (2018) 3 SCC 343: The right of a daughter to be entitled to an equal share as a son in ancestral property, including daughters who were born before the Hindu Succession Act, 1956 ("HSA") came into force -HELD-** The Supreme Court has held that daughters who were born before the enactment of Hindu Succession Act 1956 are entitled to equal shares as son in ancestral property. The ruling was rendered in an appeal filed by daughters challenging a decree in a partition suit, which excluded them from partition.

The Court also held that the daughters were entitled to the benefit of 2005 amendment as well, and on that basis also they were entitled to shares.

**Shayara Bano vs Union Of India : (2017) 9 SCC 1: Triple Talaq Unconstitutional-HELD-** **“In view of the different opinions recorded, by a majority of 3:2 the practice of ‘talaq-e-biddat’ – triple talaq is set aside.”**

It is noted that given the fact that Triple Talaq is instant and irrevocable, it is obvious that any attempt at reconciliation between the husband and wife by two arbiters from their families, which is essential to save the marital tie, cannot ever take place. It was held that this form of Talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it. This form of Talaq must, therefore, be held to be violative of the fundamental right contained under Article 14 of the Constitution of India. The Court, hence, held that the Muslim Personal Law (Shariat) Application Act, 1937, insofar as it seeks to recognize and enforce Triple Talaq, is within the meaning of the expression “laws in force” in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq. After going through the Hanafi jurisprudence, the Court noticed that very jurisprudence castigates Triple Talaq as being sinful. The Court said that Triple Talaq is a form of Talaq which is itself considered to be something innovative, namely, that it is not in the Sunna, being an irregular or heretical form of Talaq, it was held that:

**“the fundamental nature of the Islamic religion, as seen through an Indian Sunni Muslim’s eyes, will not change without this practice.”**

It was, hence, held that Triple Talaq was not a part of Article 25(1) of the Constitution and hence, the Muslim Personal Board that the bill must be bounced back to the legislature does not hold good as Article 25(2)(b) would only apply if a particular religious practice is first covered under Article 25(1) of the Constitution.

# NOTIFICATION

## ESSENTIAL COMMODITIES (AMENDMENT) ORDINANCE, 2020

### ***Amendment Section 3***

In Section 3 of the ESA, 1955, after sub-section (1), the following sub-section shall be inserted, namely:

#### **‘(1A) Notwithstanding anything contained in sub-section (1)–**

(a) the supply of such food stuffs, including cereals, pulses, potato onions, edible oilseeds and oils, as the Central Government may, by notification in the Official Gazette, specify, may be regulated only under extraordinary circumstances which may include war, famine, extraordinary price rise and natural calamity of grave nature;

(b) any action on imposing stock limit shall be based on price rise and an order for regulating stock limit of any agricultural produce may be issued under this Act only if there is —

(i) hundred percent increase in the retail price of horticulture produce; or

(ii) fifty per cent increase in the retail price of non-perishable agricultural foodstuffs,

over the price prevailing immediately preceding twelve months or average retail price of last five years, whichever is lower:

Provided that such order for regulating stock limit shall not apply to a processor or value chain participant of any agricultural produce, if the stock limit of such person does not exceed the overall ceiling of installed capacity of processing, or the demand for export in case of an exporter:

Provided further that nothing contained in this sub-section shall apply to any order, relating to the Public Distribution System or the Targeted Public Distribution System, made by the Government under this Act or under any other law for the time being in force.

***Explanation*** — The expression “value chain participant”, in relation to any agricultural product, means and includes a set of participants, from production of any agricultural produce in the field to final consumption, involving processing, packaging, storage, transport and distribution, where at each stage value is added to the product.<sup>1</sup>

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<sup>1</sup>[https://www.prsindia.org/sites/default/files/bill\\_files/ECA.pdf](https://www.prsindia.org/sites/default/files/bill_files/ECA.pdf)

## **LIST OF WEBINARS HELD IN CJA**

**May 27 to June 25, 2020**

1. "Let Corona Virus Not Impact The Judicial Mind" by Dr. Balram K. Gupta, Director (Academics), Chandigarh Judicial Academy (May 27, 2020)
2. "General Aspects of Executions & Challenges by Dr. Gopal Arora, Faculty Member, Chandigarh Judicial Academy (May 28, 2020)
3. "Presumptions: Constitutional Limits and Relevance by Sh.Baljinder Singh Sra, Faculty Member, Chandigarh Judicial Academy (June 3, 2020)
4. "Challenge in Appreciation of Electronic Evidence" by Ms.Ranjana Aggarwal, Faculty Member, Chandigarh Judicial Academy (June 4, 2020)
5. "Interpreting Jamabandi Entries" by Sh.B.M.Lal, Faculty Member, Chandigarh Judicial Academy (June 10, 2020)
6. "Sanction for Persecution under P.C. Act" by Sh.Pradeep Mehta, Faculty Member, Chandigarh Judicial Academy (June 11, 2020)
7. "Specific Relief Act, Part-I upto Section 25" by Sh.Baljinder Singh Sra, Faculty Member, Chandigarh Judicial Academy (June 17, 2020)
8. "Specific Relief Act, Part-II, Section 26" onwards by Dr. Gopal Arora, Faculty Member, Chandigarh Judicial Academy (June 18, 2020)
9. "Right to Family, Proper Custody & Projection of Children" by Ms.Ranjana Aggarwal, Faculty Member, Chandigarh Judicial Academy (June 24, 2020)
10. "Lockdown and Surge in Cases of Domestic Violence in India" by Dr.Nandita Kaushik, Faculty Member, Chandigarh Judicial Academy (June 25, 2020)

## **WEBINARS IN JULY, 2020**

1. "NDPS Act: Law and Procedure – I" by Sh.Pradeep Mehta, Faculty Member, Chandigarh Judicial Academy (July 1, 2020)
2. "NDPS Act: Law and Procedure – II" by Sh.Pradeep Mehta, Faculty Member, Chandigarh Judicial Academy (July 2, 2020)
3. "Jamabandi Entries: Interpretation-II" by Sh.B.M.Lal, Faculty Member, Chandigarh Judicial Academy (July 8, 2020)
4. "Mutation & Khasra Girdawaries : I" by Sh.B.M.Lal, Faculty Member, Chandigarh Judicial Academy (July 9, 2020)