



# CJA e-NEWSLETTER

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## FROM THE DESK OF CHIEF EDITOR

Justice is human right. It is the right of every human being. Armed Forces are no exception. Soldiers and officers of all ranks face many roughs and toughs during their life journey. It is not easy journey. During their journey, they make sacrifices. I wish to share a real story regarding the son of Field Marshal Cariappa. In 1965, Indo-Pak War, the air-craft of Field Marshal Cariappa's son was shot down by Pakis and he was taken in custody as prisoner of war. On realizing his identity, the General of the Pakistan Army, Ayub Khan personally contacted Field Marshal Cariappa (retired) and offered to release his son immediately. The great man replied : He is no longer my son. He is the son of the county. A soldier fighting for his motherland. Many thanks. I request you, either release all or release none. Give him no special treatment. This is the pride of our legacy. We take legitimate pride in this. If they are not entitled to justice, who else would be !

Those who belong to Armed Forces are also human beings. They also make mistakes. Commit offences. They have family disputes. They have service disputes. Like any other human being, they have their own problems. This is inspite and despite of their uniform. Disciplined force.

Surely, Justice cannot be denied to them. The Court Martial strikes fear. They are different from Courts of Law or Courts of Justice. They do not get the feeling of justice when they are subjected to Court Martial. There is no separation of powers. The investigation, the prosecution and the adjudication form part of those who belong to the Armed Forces. The command influence is visible in this process. By becoming part of the Armed Forces, they cannot be denied Rule of Law. They cannot be delinked from the judicial system. Link with the Constitution continues. Persons undergoing sentence are not delinked from fundamental rights. Their rights can be restricted. In fact, they are restricted. Understandably. But they cannot be abrogated.

In this background, Raksha Mantri's Committee of Experts submitted a report in the year 2015. The report acknowledges that various Courts have adversely commented upon lack of proper training of JAG Officers as well as legal training of Members of Court Martial. The report makes reference to the case of Commander Harneet Singh (2015) of Armed Forces Tribunal. This decision has focussed on the need and necessity for proper training to JAG Officers in interpretative, Constitutional and Administrative Law. Accordingly, the Committee recommended that there is a need to provide exposure to young JAG Officers to the actual judicial and legal functioning of Constitutional, Civil and Criminal Courts so as to gain proper well-rounded knowledge rather than remain inward looking within the organization. In furtherance to this, CJA received a written request from JAG, India for organizing an Orientation Course for young JAG Officers.

CJA structured a Course of 21 days (March 14 – April 03, 2019) to provide a window outside the Court Martial and Court of Inquiry functioning and operating. The whole idea of the course was to provide an exposure to the Judicial System. The object of this course was to bring a change and sensitize the JAG Officers as to how they can do justice within their own system. There is a need for a change in mind-set. This change itself can build-up trust and confidence in JAG Department. This was the beginning. Lot more needs to be done.

Balram K. Gupta

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## Justice A.K. Sikri – A Unique Judge\*

I sat down to write this piece. I pondered, how should I describe Justice A.K. Sikri. Many parts of his ‘personality’ flashed my mind. Justice Sikri’s “Aadhaar” Judgement opens with the words : “It is better to be unique than the best because being the best makes you the number one, but being unique makes you the only one.”

He is, indeed, the only one. Difficult to find a Judge who combines and blends so many ‘parts’ into one. What an academic-mind! The teacher-in-him. The Professor-Judge. Soft spoken. Congenial demeanour. An insignia of Humility. No ego. No arrogance. Only elegance. An engine of Justice. A Judge who firmly believed in brining a smile on the faces of ‘helpless persons’. Case after case. A Judge who worked tirelessly. Work is his sustenance. Work is his life-line. Work gives him satisfaction. A productive mind. A mind that has contributed hugely during his twenty years Judge-Journey. In his six-year Journey of Judge of the top-court, his over 900 Judgments bear testimony to his scholarship. His contribution to Constitutional – Jurisprudence has helped in making the Constitution durable. He has connected the people of India with the Constitution of India.

His Advocate – Judge Journey covers a space of 42 years (1977–2019). He was born in 1954. I in 1944. I wish to share my experiences with Justice Sikri. While being an Advocate, he was also visiting faculty at Campus Law Centre, Delhi University (1984-89). I was at the Panjab University. I did not have much of an opportunity of meeting and inter-acting with him. I joined the Bar in early 1991. I used to meet him sometimes when he would come to argue cases in the High Court at Chandigarh. There also used to be occasional meetings in the corridors and court-rooms of the Supreme Court. He came to be elevated as Chief Justice of Punjab and Haryana High Court on Sept. 23, 2012. I joined National Judicial Academy, Bhopal in April, 2013. During this short span of six months, I had the opportunity of arguing cases before the first Division bench. I also argued a full bench presided over by Justice Sikri. Appearing before CJ Sikri was an experience class-apart. A treat. Truly, he fulfills the four-way test given by Socrates. What a satisfying experience. I remember, in the full bench matter, I was being opposed by Manmohan Lal Sarin, Senior Advocate. I was keen to argue the matter. Sarin was some-what reluctant. Chief Justice Sikri asked Sarin, how much time, you would take. His response was, I alone would need a full day. Justice Sikri looked at me. Being the counsel for the petitioner, still, I said half-an-hour. I did not take a minute more. Sarin was not cut-short in his response. The matter was over in less than an hour. He believes : ‘Be to the point’. Briefly and clearly. No ‘ifs and ‘buts’. No doubts. This speaks of his sharpness of mind. Quick understanding. What adjudicatory skills.

It was early March, 2013. I was asked to take over as Director, National Judicial Academy. I met CJ Sikri. I shared with him that my son tells me : These are your crop years in the profession. You are running away. He smiled. He firmly told me, now is the time for you to give back to the society. He asked me, do you know, why you have been picked up for this position. I looked at

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\* Justice A.K. Sikri retired from the Supreme Court on March 06, 2019.

him, curiously. You have grown in an environment through-out which is needed for this responsibility. You are also a blend of academic and professional skills which are needed at NJA. Go and take over was the mandate. Of course, I did. This was the time when CJ Sikri's elevation to the Supreme Court was to be announced. When I met justice Sikri before leaving for Bhopal, I requested him to come to NJA as Judge, Supreme Court of India. He was elevated on April 12, 2013. He came to NJA in April itself. This is Justice Sikri. It was joy to have him at NJA. Thereafter, he used to come regularly. Contribute richly in different programmes. I remember, he was to deliver public lecture on Rule of Law at the NJA Regional Conference at Bilaspur on May 11, 2014. He fell sick. He was not in a position to travel. He completed the dictation of his lecture past mid-night. It was mailed in the early hours of morning of May 11 to be read out in the morning session. This is the level of commitment. He was sui-generis in every possible way. Unmatchable.

Justice Sikri was to release my daughter's book on Jan. 10, 2016. He was also to deliver the Founder's Day Lecture at Chandigarh Judicial Academy the same after-noon. My elder brother expired on Jan. 3, 2016. The prayer meeting was to take place on Jan. 14. Justice Sikri rang up to say, why not change the date. He even suggested that he would himself talk to the CJ in Chandigarh. I thought for a moment. I told him, we would have it on Jan. 10 itself. Justice Sikri spontaneously responded. The event itself would be a silent tribute to him. Speaking on this occasion, he shared his feelings. He said, many work hard. Only some reach the top. Justice Sikri asked, what is that 'extra' that makes all the difference? It is the "Blessings" of the elders which make you 'achieve' which others fail to achieve. How true! Blessed are those who have the blessings of elders. Why Justice Sikri is unique. He still continues to enjoy the blessings of his elders. In-abundance. Blessings add flavour to your hard-work. Sensitivity and sincerity.

Justice Sikri was chosen as one of the 50 most influential persons in Intellectual Property in the world. This was according to the survey for the year 2007. The last twelve years have been the most productive years of Justice Sikri. In the year 2019, he must be one of 10 most productive minds.

Justice Sikri's contribution and participation in national and inter-national conferences, seminars and workshops is singular. There is a catalogue of Convocation Addresses, Memorial and Public Lectures delivered by him. I am sure, his Researchers-Team would soon come out with a compilation of a rich volume for generations to come. His mind is productive. His pen flows. His next 25 years are bound to be equally or even more contributory. He has played many innings. As a student. As an advocate. As a Judge. Excelled in each. One better than the earlier. The fourth innings would be enriching the Academic Institutions and Judicial Academies across the country and beyond the country. With his scholarship. With his lawyering and judging skills. A rare human-resource. No match. No comparison.

Justice Sikri, a Unique Judge. Equally, a Unique human being. May he score the century and plus.

Balram K. Gupta

## LATEST CASES : CIVIL

“The holder of public office holds a trust for public good and therefore his actions should all be above board.”

G.B. Pattanaik, J. in *Padma vs. Hiralal Motilal Desarda*, (2002) 7 SCC 564

**Swapnanjali Sandeep Patil vs. Sandeep Ananda Patil : 2019 SCC Online SC 329 : No limitation period to seek declaration of a marriage as 'Null And Void'** – The Supreme Court observed that no period of limitation is prescribed so far as presentation of petition for declaration to declare a marriage being nullity / void marriage, under Section 24 of the Special Marriage Act. The bench observed that once the marriage is void the same is a nullity and at any time the same can be declared as nullity being a void marriage. The court further observed that no period of limitation is prescribed so far as presentation of petition for declaration to declare a marriage being nullity/void marriage, under Section 24 of the Act and rightly so, as once the marriage is void the same is a nullity and at any time the same can be declared as nullity being a void marriage. Also, the trial court as well as the High Court erred in observing that the marriage petition was barred by limitation.

**M/s Anjaneya Jewellery vs. New India Assurance Co. Ltd.: 2019 SCC Online SC 335: Consumer Forums have jurisdiction to dismiss complaints in limine** – The Supreme Court observed that consumer forums have the jurisdiction to dismiss the complaint in limine and decline its admission without notice to the opposite party. The bench, taking note of the amendment brought to Section 13 of the Consumer Protection Act, observed that such jurisdiction to dismiss the complaint in limine has to be exercised by the Commission having regard to facts of each case, i.e., in appropriate case. It was brought to the notice of the bench that Section 13 of the Act has undergone amendment w.e.f. 15.03.2003. Earlier Section 13 had the words "procedure on receipt of complaint". However, after 15.03.2003, in place of these words, the words "on admission of a complaint" were substituted, the bench has observed.

**M.R. Krishna Murthi vs. The New India Assurance Company Ltd. & Ors.: 2019 SCC Online SC 315 – Held** – **The effect of injuries while calculating compensation by MACT has been explained** – The Apex Court has directed to constitute MAMC for early disposal

and various principles are laid down. It has been further held that the ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether:

- (i) The claimant is totally disabled from earning any kind of livelihood, or
- (ii) Whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or
- (iii) Whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

**MTNL vs. Tata Telecommunications Ltd.: 2019 SCC Online SC 278 – Held** – **Claim under Section 70 Contract Act cannot be raised when parties are governed by contract** – The Supreme Court reiterating the dictum in *Mulamchand v. State of M.P.*, (1968) 3 SCR 214, has explained that claim of quantum meruit under Section 70 of the Indian Contract Act cannot be raised when parties are otherwise governed by contract. This is because Section 70 occurs in Chapter V of the Contract Act which deals with "certain relations resembling those created by contract". Section 70 deals with obligation of a person enjoying benefit of a non-gratuitous act to compensate the person giving the benefit. This is because Section 70 occurs in Chapter V of the Contract Act which deals with "certain relations resembling those created by contract". Section 70 deals with obligation of a person enjoying benefit of a non-gratuitous act to compensate the person giving the benefit.

**Varun Pahwa vs. Renu Chaudhary: 2019 SCC Online SC 300 – Inadvertent mistakes in the plaint cannot be refused to be corrected**

– The Supreme Court observed that inadvertent mistake made in the plaint cannot be refused to be corrected when the mistake is apparent from the reading of the plaint Amendment that was sought in this case was simple. In the plaint, the Plaintiff was described as Varun Pahwa through Director of Siddharth Garments Pvt. Ltd. though it should have been Siddharth Garments Pvt. Ltd. through its Director Varun Pahwa. The Trial Court, whose order was later upheld by the High court, declined the amendment on the ground that the application is an attempt to convert the suit filed by a private individual into a suit filed by a Private Limited Company which is not permissible as it completely changes the nature of the suit, was not a correct approach.

**The Competent Authority, Calcutta vs. David Mantosh: 2019 SCC Online SC 277 : Civil Suit in relation to land which is subject to ceiling proceedings under urban land ceiling act not maintainable**

– The Supreme Court held that a Civil Court has no jurisdiction to try the civil suit in relation to the land which is subject to ceiling proceedings under Urban Land Ceiling Act. The bench also observed that Civil Court have the jurisdiction to declare the proceedings held under the Act, as void or illegal or non est, since it was impliedly excluded and barred under the Act. The bench held thus while setting aside a Calcutta High Court judgment that held that that the Civil Court has the jurisdiction to try the civil suit in relation to the suit property which was subjected to ceiling proceedings under the Act.

**Murugan vs. Kesava Gounder: 2019 SCC Online SC 270 : Sale of minor's property by guardian can be avoided only by filing suit to set aside deed within period under Art.60 Limitation Act** – The Supreme Court held that a sale of minor's property by guardian can be avoided only by filing a suit to set aside the deed within the period of limitation prescribed under Article 60 of the Limitation Act, which is three years from the date of attaining majority by the minor.

**Meg Raj (D) through LRs. & Ors. vs. Manphool (D) through LRs. & Ors. : 2019 SCC Online SC 387 – Held** – The dispute relates to 4/5th share in the land measuring 643 Bighas and 4 Biswas situated in village Umedpura, District Sirsa, State of Haryana (hereinafter referred to as "the suit land"). The suit land was subjected to ceiling proceedings

under the Haryana Ceiling on Land Holdings Act, 1972 (for short, "the Act") wherein the Prescribed Authority had passed an order in relation to the suit land. In the suit, the plaintiffs sought a declaration that the order passed by the Prescribed Authority under the Act is null and void. The trial court had dismissed the suit as being barred. The Supreme Court while upholding the findings of all courts dismissing the suit held that the High Court was justified in holding that both the civil suit was barred and thus were not triable by the Civil Court in the light of express bar contained in Section 26 of the Act.

**P. Bandopadhyaya & Ors. vs. Union of India & Ors. : 2019 SCC Online SC 398 – Held**

– Reiterating Daryao's case, it has been held by the Apex Court that The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32.

**Dilip Mani Dubey vs. M/s Siel Ltd. & Anr. : 2019 SCC Online SC 369 – Held**

– Reiterating earlier decisions in Dena Bank vs. Kirti Kumar T. Patel, (1999) 2 SCC 106, Dena Bank vs. Ghanshyam, (2001) 5 SCC 169 and Rajeshwar Mahto vs. Alok Kumar Gupta (2018) 4 SCC 341, the Apex Court has ruled that if the Court/Tribunal, eventually upholds the termination order as being legal against the workman, yet the employer will have no right to recover the amount already paid by him to the delinquent workman pursuant to order passed under Section 17B of the ID Act during pendency of these proceedings.

**P. Subramaniam vs. Union of India & Ors.: Civil Appeal No. 7779 of 2012 (SC) : DoD 15.03.2019 : MANU/SC/0385/2019 – Held**

– It has been observed by the Supreme Court that the learned Tribunal as well as the High Court were not justified in directing to put said respondent in the seniority list above the appellant who, in fact, was appointed in the LDCE quota and the respondent never accepted his promotion in the LDCE quota. It was for the employee to know the rule. The department was not expected to advise and/or tell the employee about how the seniority will be fixed and/or about the rota-quota rule.

## LATEST CASES: CRIMINAL

“Crime is to be punished gossamer web niceties must yield to realistic appraisal.”

V.R. Krishna Iyer, J. in *Dharam Das Wadhvani vs. State of U.P.*, (1974) 4 SCC 267

**Dr. Dhruvaram Murlidhar Sonar vs. The State of Maharashtra & Ors.: 2018 SCC Online SC 3100 – Consensual sex between live-in partners not rape if man fails to marry woman due to circumstances beyond his control – Held** – The Apex Court said that when live-in partners are living together out of love and having consensual sex under the promise of marriage then the woman cannot be allowed to initiate criminal proceedings for rape in case of breakdown of relationship without tying the knot. The verdict came on an appeal filed by a government doctor for quashing a FIR which was lodged by a nurse working under him. She alleged in her complaint that she was living with the appellant after falling in love with him and indulged in a physical relationship as he promised to marry her. She lodged an FIR for offences punishable under Sections 376 (2)(b), 420 read with Section 34 of IPC when appellant married another woman. The Apex Court quashed the criminal proceedings after examining the complaint and observed, “It is not her case that he has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened.”

**M/s Sicagen India Ltd. vs. Mahindra Vadineni: AIR 2019 SC 502 : 2019 (1) SCALE 429 – Held** – The Supreme Court has held that ‘cheque bounce’ complaint filed based on the second statutory notice issued after re-presentation of cheques, is maintainable. In the instant matter, three cheques issued by the accused were presented by the complainant, and after they were dishonoured, a notice was issued to the accused demanding the repayment of the amount. Thereafter, these cheques were again presented which were dishonoured again. The complainant issued a statutory notice and later filed the complaint under Section 138 of the Negotiable Instruments Act based on the second statutory notice. Thereafter, the Accused filed a petition for quashing of the complaint before the High Court which allowed the said petition and quashed the complaint by holding that the amount has been specifically mentioned in the first notice and that the complainant himself has postponed the matter and issued the second notice and the

complaint filed on the same cause of action was not maintainable. Relying on *MSR Leathers vs. S. Palaniappan*, the Apex Court held that there was nothing in the provisions of Section 138 of the Act that forbade the holder of the cheque to make successive presentation of the cheque and institute the criminal complaint based on the second or successive dishonour of the cheque on its presentation.

**Bharat Sanchar Nigam Limited vs. Surya Narayanan & Anr. : 2018 SCC Online SC 3098 – Held** – Respondent was found in possession of 5,060 Kgs of copper lead alloy moulds which was sold to him by accused after committing theft from godown of appellant/telecom department. Application filed by respondent regarding release of seized material was disposed of by trial court to prove his title and was affirmed by Session Court whereas High Court reversed the order and restored released seized material in favour of respondent. The Apex Court held, where a claim is made before court that property does not belong to person from whom it was seized, Section-452 IPC does not mandate that its custody should be handed over to person from whose possession it was seized, overriding claim of genuine title which is asserted on behalf of a third party. It was further observed that in case of conflicting claims regarding entitlement of property, the Magistrate could deal with them or, where it was found that rival claims needed to be resolved after evidentiary trial, would relegate conflicting claimants to prove their rights and entitlements before a competent court.

**Rohitbhai Jiwantal Patel vs. State of Gujarat: 2019 SCC Online SC 389 : Once the presumption under Sec.139 NI Act is drawn, complainant need not prove source of fund till accused discharges his burden – Held** – In appeal against the order of the High Court, the Supreme Court has held that once the court has drawn presumption of existence of legally enforceable debt as per Section 139 of the Negotiable Instruments Act, factors like source of funds are not relevant, if the accused has not been able to rebut the presumption. Referring to *Kumar Exports v Sharma Carpets* (2009) 2 SCC 519, the SC observed that “When such a presumption is drawn, the factors relating to the

want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not". The trial court held that that there was no documentary evidence to show source of the amount, transaction was not reflected in records and income tax returns etc. and acquitted the accused. In appeal the High Court reversed the acquittal & observed that if the complainant succeeds in showing the lending of amount, the existence of legally enforceable debt could not be denied but reversed by the Apex Court.

**A.R. Radhakrishna vs. Dasari Deepthi & Ors.: 2019 SCC Online SC 357 : A 'cheque bounce' complaint against a Company and its Director, must contain a specific averments of his charge and responsibilities – Held –**

The Apex Court was considering an appeal against an order of the High Court which quashed a cheque complaint against directors of the Company, accused of dishonouring the cheque. The apex court said that the appellant specifically averred in his complaint that the respondent nos. 1 and 2 were actively participating in the day-to-day affairs of the accused no.1 company. Further, the accused nos. 2 to 4 (including the respondent nos. 1 and 2 herein) were alleged to be from the same family and running the accused no.1 company together. The complaint also specified that all the accused, in active connivance, mischievously and intentionally issued the cheques in favour of the appellant and later issued instructions to the Bank to "Stop Payment". The order of the High Court was set aside.

**Shoda Devi vs. DDU / Ripon Hospital Shimla: 2019 SCC Online SC 334 – Held – Medical negligence – Award of compensation cannot go restrictive when the victim is from poor and rural background:** Responsiveness and diligence of Medical Professionals has to be equi-balanced for all their consumers, said the Supreme Court, while enhancing compensation to a woman who suffered due to medical negligence. The court observed "The general damages towards pain and suffering as also loss of amenities of life deserve to be considered uniformly for the human beings and the award of compensation cannot go restrictive when the victim is coming from a poor and rural background."

**State of Madhya Pradesh vs. Laxmi Narayan & Ors.: 2019 SCC OnLine SC 320 – Held – Heinous & serious offences, offences by public servants can't be quashed on the ground of compromise between parties:**

Supreme Court of India issued guidelines regarding quashing of Criminal Proceedings on the ground of compromise between the parties. The bench was considering a reference made by a two Judge bench in view of the apparent conflict between the two decisions of the Court in the cases of Narinder Singh vs. State of Punjab (2014) 6 SCC 466 and State of Rajasthan vs. Shambhu Kewat (2014) 4 SCC 149. It is held that "While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc."

**Periyasami vs. S. Nallasamy : 2019 SCC OnLine SC 379 – Held – Mere disclosure of names by some witnesses during trial not enough to add persons not named in FIR as additional accused:**

The Supreme Court observed that mere disclosure of the names of some persons by the witnesses during trial cannot be said to be strong and cogent evidence to summon them under Section 319 of the Criminal Procedure Code. The court added that additional accused cannot be summoned under Section 319 of the Code in casual and cavalier manner in the absence of strong and cogent evidence. Setting aside the High Court order, the bench observed: "The High Court has set aside the order passed by the learned Magistrate only on the basis of the statements of some of the witnesses examined by the Complainant. Mere disclosing the names of the appellants cannot be said to be strong and cogent evidence to make them to stand trial for the offence under Section 319 of the Code, especially when the Complainant is a husband and has initiated criminal proceedings against family of his in-laws and when their names or other identity were not disclosed at the first opportunity.

## IMPORTANT CASES : PREVENTION OF CORRUPTION ACT

“Supreme Court has consistently held that no latitude can be given in the matter of corruption.”

Dr. B.S. Chauhan, J. in *CBI vs. Ashok Kumar Aggarwal*, (2014) 14 SCC 295

**Nanjappa vs. State of Karnataka : 2015 SCC OnLine SC 649: Trial of Public Servant with Invalid Sanction is Null and void and Non-est; Second Trial is permissible with Valid Sanction: : Held :** The Apex court has observed that that a Trial of Public Servant with Invalid Sanction is Null and void and Non-est. In such cases, second Trial is permissible with Valid Sanction.

The core issue to be considered by the Supreme Court was whether in the absence of a valid previous sanction required under Section 19 of the Prevention of Corruption Act, the trial Court was not competent to take cognizance of the offence alleged against the appellant. The Court observed that the question, regarding validity of a sanction for taking cognizance of the complaint against a public servant, can be raised at any stage of the proceedings. “In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law. If the trial Court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non-est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution.”

The Court further observed that the rationale behind section 19(3) and 19(4) is that “if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning prosecution under Section 19(1).”

**Dashrath Singh Chauhan vs. Central Bureau of Investigation: 2018 SCC OnLine SC 1841: To attract rigors of S7, S13(2) PC Act, twin requirement of demand and acceptance of bribe must be proved : Held :** The Supreme Court observed that in order to prove the offence of any public servant demanding and accepting illegal gratification, one has to necessarily prove the “twin requirement of “demand and acceptance

of the bribe amount”. The bench clarified that an accused cannot be held guilty of demanding and accepting a bribe and criminal misconduct if both demand and acceptance of bribe are not proven.

**Shanti Lal Meena vs. State of NCT of Delhi, C.B.I. : AIR 2015 SC 2678 : Prevention of Corruption Act gives no scope for reform; hence misplaced leniency should not be shown : Held :** Supreme Court has reportedly held that there is no scope for a public official convicted of corruption to reform. His punishment under the Prevention of Corruption Act, 1988 should hence reflect the public’s repugnance for his crime. The court observed, “The judgment on sentence shall not shock the common man. It should reflect the public abhorrence of the crime. Misplaced sympathy or unwarranted leniency will send a wrong signal to the public, giving room to suspect institutional integrity, affecting credibility of its verdict,”

Delving into the legislative intent and philosophy behind the punishment for offences under the Act, the Bench said that the Act does not give scope for a corrupt official to reform. Since a public official immediately loses his job after being convicted under the Act, he gets no opportunities to redeem his conduct thereafter. The Bench further observed that the objective of punishment under the Act is deterrence and denunciation.

**Tarsem Lal Chandla vs. The State Of Himachal Pradesh: 2018 SCC OnLine SC 3089: Public servant’s retirement due to efflux of time irrelevant while determining his criminal liability in corruption cases: Held :** The Supreme Court in *Tarsem Lal Chandla v State of Himachal Pradesh* has observed that merely because the accused-public servant retired from service due to efflux of time, it would not be a relevant consideration in determining the criminal liability particularly for an offence under the Prevention of Corruption Act. In this case, the High Court of Himachal Pradesh had reversed an order of acquittal by the trial court and convicted two public servants for misappropriating cement

intended for use in the construction of a school building. The court observed, "A close consideration of the order of the learned trial Court would go to show that the findings recorded are inconclusive to arrive at a determination of the absence of criminal liability of the accused. Besides, the learned trial Court also seems to have been influenced by the fact that, in the meantime, by efflux of time both the accused-appellants have retired from service and one of them, namely, Attar Singh had severe health problems. In our considered view, such a consideration would not be relevant in determining the criminal liability of an accused, particularly, for an offence under the Prevention of Corruption Act, 1988."

**Central Bureau of Investigation, Bank Securities & Fraud Cell vs. Ramesh Gelli and Ors.: 2016 SCC OnLine SC 1641: Prosecution for Corruption (PC Act) against Officials of Private Bank is maintainable as they are deemed Public Servants :** It was observed by the Apex court that Chairman, Directors and Officers of Global Trust Bank Ltd. (a private bank before its amalgamation with the Oriental Bank of Commerce), can be said to be public servants for the purposes of their prosecution in respect of offences punishable under Prevention of Corruption Act, 1988. The Bench held that by virtue of the provisions of Section 46A of the Banking Regulation Act, 1949 prosecutions launched against the accused officials are maintainable in law. The Court further held that Section 46-A of Banking Regulation Act, 1949, cannot be left meaningless and requires harmonious construction.

The court observed," In view of definition of public servant in Section 46A of Banking Regulation Act, 1949 as amended the Managing Director and Executive Director of a Banking Company operating under licence issued by Reserve Bank Of India, were already public servants, as such they cannot be excluded from definition of 'public servant'. We are of the view that over the general definition of 'public servant' given in Section 21 of IPC, it is the definition of 'public servant' given in the P.C. Act, 1988, read with Section 46-A of Banking Regulation Act, which holds the field for the purposes of offences under the said Act. For banking business what cannot be forgotten is Section 46A of Banking Regulation Act, 1949 and merely for the reason that

Sections 161 to 165A of IPC have been repealed by the P.C. Act, 1988, relevance of Section 46A of Banking Regulation Act, 1949, is not lost."

**Dr. Vijai Tripathi vs. Central Bureau of Investigation and Others: 2016 AIR (SC) 3705 : Special Court for PC Act can try Non-PC Act offences and Non-Public Servants :** **Held :** The Supreme Court while dismissing the appeals concerning the jurisdiction of the Special Judge designated under the Prevention of Corruption Act 1988 to try cases under the National Rural Health Mission Scam the court observed, "undoubtedly, while Special Judge alone could deal with cases under the PC Act, non- PC Act could also be allowed to be tried by the Special Judge under Section 26 of the Code of Criminal Procedure and there is no legal bar to do so."

The question for consideration before the Apex court was related to the jurisdiction of the Special Judge appointed under the Prevention of Corruption Act, 1988 (PC Act) to try a person other than a public servant if the public servant dies before the commencement of the trial. Further question was whether the Special Judge can try a non PC Act case when his appointment is to try all cases of the category which covers the present case.

**Vinod Kumar vs. State of Punjab: AIR 2015 Supreme Court 1206: Deferring cross examination for a long time is anathema to the concept of fair trail :** **Held :** The Supreme Court while dismissing an Appeal and confirming the conviction of the appellant under Prevention of Corruption Act observed, "It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial... Let it be remembered that law cannot allowed to be lonely; a destitute." This laxity was chided by the Supreme Court, observing that, "A fair trial is to be fair both to the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial Judge could exhibit such laxity in granting so much time for cross-examination in a case of this nature."

## NOTIFICATIONS

**President Approves Amendments to Indian Stamp Act 1899:** Assent has been given to the amendments to the Indian Stamp Act 1899 introduced as part of the Finance Act 2019.

### Amendments Proposed:

The amendments proposed are:

- Creation of the legal and institutional mechanism to enable states to collect stamp duty on securities market instruments at one place by one agency (through the Stock Exchanges or Clearing Corporations authorised by the stock exchange or by the Depositories).
- A Mechanism for appropriate sharing the stamp duty with relevant state governments based on the state of domicile of the buying client.
- Creation of a Coordination Council comprising representatives from Union and States under Article 263 of the Indian Constitution tasked with the responsibility of making recommendations regarding review/revision of stamp duty rates.

### Stamp Duty Rates

- The duties levied by Maharashtra will be taken as a benchmark as the state of Maharashtra accounts for 70% of the total collection.
- The rates would be chosen in such a manner that it provides a revenue neutral position to the state governments while reducing the overall tax burden.
- The stamp duty will have to be paid by either the buyer or seller of financial security, as against the current practice of levying the duty on both.

### Benefits of Proposed Amendments:

The amendments will rationalise and harmonise the system of levying stamp duty and help curb tax evasion. The cost of collection would be minimised while revenue productivity is enhanced. Further adoption of the centralised collection mechanism is expected to bring in not only more revenue but greater stability to the revenue collection by the states.

The amendments would further aid in developing equity markets and equity culture across the length and breadth of the country, ushering in balanced regional development.

**Amendments to Representation of People's Act 1951:** The Election Commission of India has sought an amendment to the Representation of People Act 1951 to prevent print media, social media and other digital platforms from carrying political advertisements in the last 48 hours before the polling begins.

### Why the amendment is necessary?

Section 126 of the Representation of People Act 1951 prevents electronic media from airing any political advertisements in the silent period (48 hours before polling begins).

The Election Commission has also made it mandatory to seek pre-certification of the campaign material to be published in newspapers during the 48 hour.

But the Social media platforms which are have gained huge prominence for their ability to influence election outcomes, are completely out of the purview of the pre-screening and prohibition rules.

The committee headed Deputy Election Commissioner Umesh Sinha had noted that an anomalous situation exists in Section 126 of having differential treatment to print media as compared to other media platforms.

The committee noted that while Section 126 explicitly bans television channels from broadcasting political matter during the silent period, lack of backing by law has led to Print media carrying political advertisements during the silent period despite the curbs imposed by the EC.

### What are the amendments sought?

The Election Commission of India has written to the Union Ministry of Law suggesting to extend the provisions under Section 126 to digital and print media as well. The Commission has sought inclusion of 'print media' and 'other entities' within the ambit of Section 126 (1) (b). The other entities would refer to all social media formats.

## EVENTS OF THE MONTH

1. **Refresher-cum-Orientation Course for Civil Judges-cum-Judicial Magistrates of Punjab and Haryana** was organized on 09.03.2019 at Chandigarh Judicial Academy. The Judicial Officers were sensitized on the topics : Challenges in Appreciation of Electronic Evidence, Role of Referral Judges – Mediation, Bottlenecks in Proclamation Process under Section 82, 83 of Cr.P.C., Recent Changes in Criminal Law – Substantive and Procedural, Training on Practical Use of Computers in Courts. 53 Judicial Officers participated in the Refresher Course.

2. 21 Days **Orientation Course for young JAG Officers was inaugurated at CJA** on March 14, 2019. The Inaugural Address was delivered by HMJ Krishna Murari, Chief Justice & Patron-in-Chief of CJA. HMsJ Daya Chaudhary, President, BoG, CJA also addressed at the Inaugural Function. Major Gen. Praveen Kumar, SM, VSM, JAG, India spoke about the genesis and the need of this course. He also brought out as to how Chandigarh Judicial Academy was chosen for this programme which was being conducted for the first time in India outside their own system. Dr. Balram K. Gupta, Director (Academics) focussed on, why this kind of Course and the scope and ambit of the same. Ms. Shalini Singh Nagpal, Director (Administration) proposed the vote of thanks. The inaugural function was also graced by HMJ Ajay Tewari and HMsJ Lisa Gill,

Members, BoG, CJA. The co-coordinator from the JAG Department, Col. Jatinder Singh also attended the same. During this three weeks Course, besides the CJA faculty, the following took different sessions : HMsJ Daya Chaudhary, J. R.S. Randhawa, J. Rajive Bhalla, J.M.S. Chauhan, J.Surinder Singh Thakur, Dr. Balram K. Gupta, Director (Academics), CJA, Mr.Ramesh Inder Singh, formerly Chief Secretary and Chief Information Commissioner, Pb., Dr. K.P. Singh, Director General, State Vigilance Bureau, Col. Dr. A.K. Vashisht, Dr.Krishan Vij, Ms. Nilambari Jagadale, IPS, SSP, UT, Mr. Tejinderbir Singh, Adv. Ex. JAG Officer & ADJ, Mr. Navdeep Singh, Advocate and Dr. Deepa Singh, Advocate. Prof. (Dr.) Eugene R. Fidell, Yale Law School, US took a session on International Military Justice through the medium of Skype. The lecture was followed by a very meaningful inter-active session for half an hour. The JAG Officers were also taken for visit to the High Court, Chandigarh District Court and Central Forensic Science Laboratory, Chandigarh. Mr. Pradeep Metha, Faculty Member, CJA has co-ordinated the Course.

3. The **directly selected ADJs undergoing four month training at CJA** were deputed for three weeks practical training by court attachment from 18.03.2019 to 06.04.2019. During this period of three weeks, they were attached with different Special Courts.

## FORTHCOMING EVENTS

1. **Seventh Programme for the Public Prosecutors** will be organized during the month of April, 2019.

2. **Refresher-cum-Orientation Course for Civil Judges-cum-Judicial Magistrates of Punjab and Haryana** is scheduled to be held on April 07, 2019 at Chandigarh Judicial Academy.

3. **Refresher-cum-Orientation Course for ADJs of Punjab and Haryana** is scheduled to

be organized on 07.04.2019 at Chandigarh Judicial Academy.

4. The Directorate of Enforcement, Govt. of India will be organizing one day **workshop on 'The Prevention of Money-Laundering Act, 2002' on April 27, 2019** for Special Judges and Sessions Judges at Chandigarh Judicial Academy.