



**VOLUME : 03**  
**ISSUE : 05**

### In this Issue:

From the Desk of Chief Editor  
Report of Justice Rajesh Bindal  
Committee: Some Recommendations  
CJA : Some Recent Strides  
Latest Cases : Civil  
Latest Cases : Criminal  
Important Cases : Juvenile Justice  
Events of the Month & Forthcoming  
Events

### Editorial Board

**HMJ A.B. Chaudhari**  
Editor-in-Chief  
**Dr. Balram K. Gupta**  
Chief Editor  
**Ms. Ranjana Aggarwal**  
**Dr. Gopal Arora**  
**Dr. Kusum**  
Editors

**MAY 2018**

# CJA e-NEWSLETTER

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

## FROM THE DESK OF CHIEF EDITOR

The monthly e-Newsletter of Chandigarh Judicial Academy was started in May 2016. It completed its two years journey in April 2018. The May issue of 2018 ushers in the beginning of third year. I am happy that this e-Newsletter has been a meaningful medium of connectivity of the Judicial Fraternity across the States of Punjab, Haryana and Chandigarh. We have been able to reach out to a large audience within India and even beyond India. In the times to come, we look forward to serve a much larger audience.

To build up Human Resource for the Judicial Academies is a challenge. Basically, there are two sources. The retired and serving judges and others who are connected with legal and judicial coparcenary. Both the sources bring in rich experience of long many years. Judicial Education means senior judges sharing their experience with the younger judges and others who constitute part of this coparcenary. **Judicial temperament** is the basic raw fabric which is needed both in court rooms and class rooms. Judges in court rooms have to exhibit the best kind of judicial temperament. The same is required in class rooms of Judicial Academies. **Judicial Adult Education** is a different game plan.

**Chief Justice Y.V. Chandrachud** in 1981 in the case of R.K. Garg: (1981) 3 SCC 166, counseled and cautioned in loud and clear words:

**It is unquestionably true that courtesy breeds courtesy and just as charity has to begin at home, courtesy must begin with the judge. A discourteous judge is like an ill-tuned instrument in the setting of a courtroom.**

Permit me to add, class room also.

Young, not so young as also the senior judges need to follow this meaningful and wholesome advice. My 50 years of journey in class rooms and court rooms has been enriching experience. Good encounters in class rooms with young brilliant minds as also old, experienced and mature minds have been life long learning and education. In court rooms, I had the opportunity to appear before intellectually strong and temperamentally sound judges. Not always. Sometimes intellectually not so strong but temperamentally difficult. On other occasions, intellectually weak and temperamentally unique minds. Still another category. Those who always remain agitated. They are the most difficult to deal with. Experience has been varied. I believe that a good judge must be a good human being. In order to be a good human being, one must be compassionate. Also must follow the humane approach. The best advice is, never to lose your temper. Whatever be the situation. May be highly provocative. Never forget. He is a fool who cannot get angry. He is wise who will not. Rough and agitated minds can neither do justice nor take effective sessions in class rooms. If you are holding a senior position, the same does not mean that you can treat other senior people in a disparaging manner. The higher you go, the humbler you get. If you are in reverse situation, you will never be able to command respect. Respect is earned. Not commanded. A judge should never be temperamental.

A judge should never have ego. Equally, no arrogance. Only elegance. I believe, judges are engines of justice. They have to find the truth. Judges need to cultivate judicial temperament. Those who are short tempered, should not chose judicial career. In-service judges are considered for promotion. Besides everything else, temperament must also be given due consideration. Cool minds prove to be good judges. Moreover, the environment in court must be congenial. In tense environment, neither lawyers nor judges can give their very best.

Balram K. Gupta

## REPORT OF JUSTICE RAJESH BINDAL COMMITTEE

### Some Recommendations

It was on May 18, 2017, the Ministry of Women and Child Development constituted 12 Members High Level Committee under the Chairmanship of HMJ Rajesh Bindal, Judge, Punjab and Haryana High Court to examine the issues relating to Inter-country Parental Child Removal. Besides the recommendations, the committee was also required to suggest model legislation in order to safeguard the interests of parents and children within India and across borders. The committee considered the issues in depth. It solicited public views, comments and suggestions not only at the national level but also at the international level. The committee submitted its report ([Volume-I](#) & [Volume-II](#)) to the Hon'ble Minister, Smt. Maneka Sanjay Gandhi on April 23, 2018. It would be meaningful and useful to list out some of the recommendations of the Committee :

- (i) The main recommendation / proposal of the Committee is that there should be "Inter-country Parental Child Removal Disputes Resolution Authority". It is proposed that this authority should be headed by a sitting or retired Supreme Court Judge, sitting or retired Chief Justice or Judge of the High Court. The proposed authority shall encourage the couples to adopt healthy joint parenting plan and keep welfare of the child as the sole paramount consideration. The confidentiality of all the proceedings and entire record of the hearing of the proposed authority should be maintained, keeping in view the best interest of the children and parties to the litigation.
- (ii) The committee has recommended that the Stakeholders, Members of the proposed authority and the Judges who conduct cases of Inter-country Parental Child Removal should be regularly updated by way of Conferences, Seminars and Training for which National Judicial Academy, Bhopal or any State Judicial Academy should be required to prepare a module. Consequently, an onerous duty has been put on the Judicial Academies in this regard.
- (iii) The Committee has recommended that the Authority should promote Mediation as the first resort. Mediation has proved a successful technique to resolve disputes amongst couples at odds. In most of the cases where one of the spouses removes child from joint custody / custody by other spouses, the root cause is lack of harmony in the spousal relationship. In this backdrop, if couples are made sit across the table with a Mediator, the likelihood of better sense prevailing upon the couple increases. The Mediation is the latest technique. If used meaningfully, skillfully and purposefully, it can achieve desired results. Consequently, the Committee felt that this would be the best recipe to deal with issues in question. The Hague Conference on Private International Law has issued "Guide to Good Practice on Mediation" in 2012 and is promoting Mediation at the very first stage, not only for resolution of disputes pertaining to parties belonging to Contracting states but even non-Contracting states to the Hague Convention.
- (iv) The Committee did not find favour with 'foster' care. The reasons are more than one. It alienates the child from both the parents. In fact, the role in this situation which grand-parents can play, possibly 'foster' care cannot play. In the Indian System, grand-parenting in such situations can go a long way.
- (v) The Committee feels that the process of decision making regarding custody of children is not a mechanical exercise. It needs due application of mind. The best interest of child cannot be compromised for speedy return.
- (vi) Indian Embassies across the world should educate the Indian diaspora abroad with the Embassies or Consulate Officers abroad shall be the first point of contact in cases of international parental child removal or any dispute, wherever any guide or assistance is required. Thus, the Indian Embassies / Consulate shall be required to play a vital role in this domain.

We look forward, if this Report, could carve a path meaningful for the future.

Balram K. Gupta

## CJA : SOME RECENT STRIDES

Chandigarh Judicial Academy during the years 2016, 2017 and part of 2018 has made new strides. It is deemed meaningful to share some of the achievements which have brought CJA on the national and international map.

1. **A multi member committee on Inter Country Removal and Retention of Children under the chairmanship of HMJ Rajesh Bindal, Judge, Punjab and Haryana High Court was set up by the Union Ministry of Women and Child Development on 18.05.2017.** Justice Bindal was also the President of BOG, CJA at that time. The committee after detailed deliberations and examination of various aspects submitted its report on April 23, 2018. It has recommended the establishment of "Inter Country Parental Child Removal Disputes Resolution Authority". Along with its recommendations, the committee has also submitted draft model legislation to the Government. The WCD Ministry will be sharing the report with Ministry of External Affairs, Law Ministry and Ministry of Home Affairs in order to have their inputs. In fact, protecting the rights of parents and children has become a critical issue of national and international importance due to rise in transnational marriages. Dr. Balram K. Gupta, Director (Academics) was also nominated as a member of the Committee. As a consequence, CJA was closely and actively associated with the Committee in the preparation of the Report at different stages. The Report was prepared by and under the supervision of Justice Bindal. It is hoped that this Report would prove to be meaningful in bringing out a wholesome legislation dealing with this vital and important issue. Volume-I of the Report covers various aspects, particularly the Mechanism to address the difficulties being faced by the affected parents. The Report also includes the draft Bill. Volume-II covers rich background material relevant to the issue in question.
2. **Mr. Pradeep Mehta, Faculty Member, CJA prepared a Handbook on Forensic Science and Criminal Justice System** which was published by CJA. This Handbook has been widely acclaimed :

**HMJ Madan B. Lokur, Judge, Supreme Court of India**

Many thanks for sending me a copy of "Handbook on Forensic Science and Criminal Justice System prepared by Chandigarh Judicial Academy.

It is an extremely useful publication and I am sure that it will go a long way in the development of forensics.

**HMJ Kurian Joseph, Judge, Supreme Court of India**

Thank you very much for a copy of the Newsletter and the Handbook published and prepared by the Chandigarh Judicial Academy. It is indeed heartening to note that you have taken pains to publish this book. Honestly, I only had a glance which has given me an impression that you have covered all important areas.

Heartiest congratulations.

**Smt. Maneka Sanjay Gandhi, Minister, Ministry of Women & Child Development, Government of India**

Thank you for the hand book on Forensic Science and Criminal Justice System. This book will be extremely useful for the cause of new forensic laboratories that we are setting up utilizing the Nirbhaya Fund.

We will also use this book to design, if required, the standard forensic kit for the police officers investigating the crimes of sexual assault.

**Prof. Anil Kumar Gupta, Medicinal Superintendent-cum-Professor & Head Department of Hospital Administration, Nehru Hospital, PGI, Chandigarh**

I take this opportunity to congratulate you for bringing out a Handbook on Forensic Science and Criminal justice System. I am sure that the Handbook would be very helpful for reference by

various functionaries of the Criminal Justice System, such as Judicial Officers, Prosecutors, Police Officials, Doctors and Lawyers. The efforts in preparing this Handbook are indeed commendable.

**Mr. Suresh Arora, Director General of Police, Punjab**

Thank you very much for sending me a copy of handbook on Forensic Science and Criminal Justice System. I am sure that this is going to assist the investigating officers in using forensic science during investigation.

**Mr. P.K. Agrawal, IPS, Addl. Director General of Police, State Crime Branch, Haryana, Moginand, Panchkula**

This book shall prove to be of immense help to the Investigating Officers of Haryana Police and shall go a long way in improving the standards of investigation and collection of evidence in various criminal cases.

**Dr. M.S. Dahiya, Director, Gujarat Forensic Sciences University**

Congratulations. I am very happy to receive your book titled 'A Hand book on Forensic Science and Criminal Justice System'. I find it as an excellent compilation of the Forensic Science entities those are very much vital for the officers of the law enforcement agencies and the judiciary. This would definitely be useful as a ready reckoner for these officers.

I would like to inform you that the five copies those have been sent to me has been already distributed to the various faculty members and the library of our university for the students reference too.

I wish the Chandigarh Judicial Academy come out with a number of such books in the future for the benefit of the officers involved in the criminal investigations and Justice Administration."

**Dr. S. Joychandra Singh, Director, Forensic Science Laboratory, Manipur, Pangei**

Hope that this book will be useful, reliable and give a good impact on criminal investigation system.

**Dr. H.K. Pratihari, Director, Tripura State Forensic Science Laboratory, Narsingarh, Agartala**

The book is useful to the IOs / Forensic Scientists / Legal Experts and Forensic Students and 'no doubt' will help to investigate the qualitative crime now being reported all over the country.

3. During this period, four different Academic Programmes were organized for Sri Lankan Judges. The first programme was inaugurated by the then Chief Justice of Sri Lanka, Justice K. Sripavan. The subsequent programmes were inaugurated by Justice Nalin Perera and Justice Eva Wanasundera, Judges of Supreme Court of Sri Lanka. One week long programme was also organized for Judges from Bangladesh.
4. Dr. Balram K. Gupta, Director (Academics), CJA was declared by the Hon'ble Division Bench of High Court of Uttrakhand in its judgement dated 30.03.2017 in the matter of Lalit Miglani versus State of Uttrakhand along with certain other authorities as the person in *loco parentis* as the human face. Thus, assigned the onerous responsibility to protect, conserve and preserve all the Glaciers including Gangotri and Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls in the State of Uttrakhand.
5. During the years 2017 and 2018, CJA hosted two Regional Conferences in collaboration with National Judicial Academy, India for the North Zone High Courts : Allahabad, Delhi, Himachal Pradesh, Jammu and Kashmir, Punjab and Haryana, Rajasthan and Uttrakhand.
6. Founder's Day Lectures were delivered in the years 2016 and 2017 by HMJ A.K. Sikri and HMJ Sanjay Kishan Kaul, Judges, Supreme Court of India.

## LATEST CASES: CIVIL

“where parties have by contract agreed to refer their disputes to arbitration the Courts should as far as possible proceed to give an opportunity for resolution of disputes by arbitration rather than by judicial adjudication.”

### Gurbakhsh Singh & Ors. vs. Buta Singh and Anr. : 2018 SCC OnLine SC 465: Proviso to Order 6 Rule 17 of the Code of Civil Procedure –

In the present case the record of Civil Suit of 1968 in which an ex parte decree was passed in the year 1969 was not traceable and no detail of the vendees and their successors-in-interest has been given in the plaint and the appellant sought amendment regarding this along with other facts. It has been held by the apex Court that in the circumstances, there could possibly be some inability in obtaining correct particulars well in time on part of the appellants. At the time when the application for amendment was preferred, only two official witnesses were examined. The nature of amendment as proposed neither changes the character and nature of the suit nor does it introduce any fresh ground. The object of the rule is that courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. Further, it is well settled that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. Also, it was observed that the High Court itself was conscious that the amendment would not change the nature of the suit. In the given circumstances, the amendment ought to have been allowed and in any case it could not have caused any prejudice to the defendants.

**The Kerala Assistant Public Prosecutors Association vs. State of Kerala & Ors. : 2018 SCC OnLine SC 551 : Parity in pay scale of Public Prosecutors and Assistant Public Prosecutors officers –** The Public Prosecutors as well as the Assistant Public Prosecutors act as officers of the Court when appearing in Court

V.R. Krishna Iyer, J. in *State of Punjab vs. Geeta Iron & Brass Works Ltd.*, (1978) 1 SCC 68

and both have an important role in the criminal justice system. On these assertions, the appellant claims that Assistant Public Prosecutors are also entitled to be treated at par with Public Prosecutors and other officers whose age of superannuation is specified at 60 years. It has been observed by the Apex Court that after appointment, Assistant Public Prosecutors are entitled to all service benefits as are enjoyed by the other government employees without any exception. Public Prosecutors, however, are appointed from a panel of advocates furnished by the Advocate General and the term of appointment of Public Prosecutors is for a period of 3 years only. They are not considered as government employees and do not derive any service benefits as in the case of government employees. They can even be terminated by the Government at any time before the expiry of normal term of appointment, without assigning any reason.

### United Bank of India & Ors. vs. United Bank of India Retirees' Welfare Association : 2018 SCC OnLine SC 541 : Payment of DA –

The Supreme Court had upheld the distinction between pre-November 2002 bank retirees and post-November 2002 retirees in payment of dearness relief as both the categories of retirees stand on different footing and the parameters which govern the computation of dearness relief are also on a different level. Both the categories of retirees, namely, pre November 2002 and post November, 2002 stand on different footing, the parameters which govern the computation of dearness relief are also on a different level. It is further held that the decisions rendered by the Single Judge as well as by the Division Bench of the High Court are completely erroneous as they have failed to appreciate these aspects.

**Oriental Insurance Company Ltd. vs. M/s. Narbheram Power and Steel Pvt. Ltd. : 2018 SCC OnLine SC 479: Parties are bound by the clauses enumerated in the policy and the court does not transplant any equity to the same by rewriting a clause –** The insurer appellant had declined to accede to the request of the

respondent in an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for brevity, 'the 1996 Act') for appointment of an arbitrator. On the objection of the insurer, the High Court, considering the language employed in Clause 13 of the policy and the reasons advanced while repudiating the claim of the claimant, appointed a retired Judge of the High Court as an arbitrator. The said order was assailed by way of special leave in this case. **It is held** that the Part of the Clause 13 clearly spells out that the parties have agreed and understood that no differences and disputes shall be referable to arbitration if the company has disputed or not accepted the liability. The communication indicates the denial of liability by the insurer in toto and in this case the dispute is not pertaining to the quantum. In the present case, the issue as to whether the policy was void was not raised by the insurer. The insurance-company has, on facts, repudiated the claim by denying in accepting the liability on the basis of the aforesaid reasons. No inference can be drawn that there is some kind of dispute with regard to quantification. It is a denial to indemnify the loss as claimed by the respondent. **Also, it is held** that such a situation falls on all fours within the concept of denial of disputes and non-acceptance of liability. It is not one of the arbitration clauses which can be interpreted in a way that denial of a claim would itself amount to dispute and, therefore, it has to be referred to arbitration. The parties are bound by the terms and conditions agreed under the policy and the arbitration clause contained in it. **Further, it is observed** that it is not a case where mere allegation of fraud is leaned upon to avoid the arbitration. It is not a situation where a stand is taken that certain claims pertain to excepted matters and are, hence, not arbitrable. The language used in the second part is absolutely categorical and unequivocal inasmuch as it stipulates that it is clearly agreed and understood that no difference or disputes shall be referable to arbitration, if the company has disputed or not accepted the liability. After reiterating the three-Judge Bench decision in The Vulcan Insurance Co. Ltd's case the appeal was accepted by the Supreme Court and liberty was granted to respondent to take recourse to institute a civil suit for and if a civil suit is filed

within two months then the benefit of Section 14 of the Limitation Act, 1963 would be given.

**Purushottam s/o Tulsiram Badwaik vs. Anil & Ors. : 2018 SCC OnLine SC 485 – Incorrect reference regarding applicability of Indian Arbitration Act, 1940 wouldn't render entire arbitration agreement invalid—Held—** Even if an arbitration agreement entered into after Arbitration and Conciliation Act, 1996 had come into force makes a reference to the applicable provisions of those under Indian Arbitration Act or 1940 Act, such stipulation would be of no consequence and the matter must be governed under provisions of 1996 Act. Any reference to 1940 Act in the arbitration agreement would be of no consequence and the matter would be referred to arbitration only in terms of 1996 Act consistent with the basic intent of the parties as discernible from the arbitration agreement to refer the disputes to arbitration.

**Indore Development Authority vs. Shailendra (Dead) : AIR 2018 SC 824 : Scope of Section 24 of New Land Acquisition Act –** The Supreme Court of India while dealing with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has observed as under:

- a) The term 'paid' used in Section 24 (2) old Act and 31 (2) new Act means deposit only in treasury or with Land Acquisition Collector for payment. Also the word paid / tender and deposited are different meaning / expressions. Further the word paid means applied, settled or satisfied. If the land owner refuses to accept it then it cannot be said that it has not been paid and paid does not mean receipt or deposit in court.
- b) While computing the period of five years the consideration must be paid to the fact that the land owner has not refused to accept the compensation and the period of five years would not lapse by the conduct of the persons.
- c) The meaning of 'taking of possession' under Section 24 means preparing of panchanama.
- d) Section 24 does not revive non-existing or dead claims and it only ensures claims which were alive.

## LATEST CASES: CRIMINAL

“The civilized goal of criminal justice is the reformation of the criminal and death penalty means abandonment of this goal for those who suffer it.”

P.N. Bhagwati, J. in *Bachan Singh vs. State of Punjab*, (1982) 3 SCC 24

**Dr. Subhash Kashinath Mahajan vs. State of Maharashtra & Anr.: 2018 (2) RCR (Criminal) 552 : Exclusion of right of anticipatory bail under SC & ST (Prevention of Atrocities) Act** – The Respondent-Complainant, a store-keeper at the Government Distance Education Institute, Pune & a member of Scheduled Castes/Scheduled Tribes (SC/ST), lodged an FIR against the Directors of the College, for making adverse entry in his annual confidential report. The investigating officers applied for sanction to the Appellant, which was refused by the Appellant and five years after passing such order, the Respondent filed an FIR under the Act against the Appellant. After reiterating the ratio of **Lalita Kumari’s** case the Supreme Court has **observed**: “Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time”. The Apex court observed that cases under the Atrocities Act also fall in exceptional category where preliminary inquiry must be held. Such inquiry must be time-bound and should not exceed seven days in view of directions in *Lalita Kumari* (supra). Even if preliminary inquiry is held and case is registered, arrest is not a must. The **Apex court issued following directions**:

- i) “There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.
- ii) Arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases, if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.
- iii) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.”

iv) Any violation of direction (ii) and (iii) will be actionable by way of disciplinary action as well as contempt.

**Ishwar Pratap Singh & Ors. vs. State of Uttar Pradesh : 2018 (2) RCR (Criminal) 478 (SC) : No external agency can dictate course of investigation in criminal cases** – The appellants are aggrieved by the order passed by the High Court of Judicature at Allahabad, Lucknow Bench. The High Court declined to exercise its jurisdiction under Section 482 of Cr.P.C on a prayer made by the appellants for quashing the Supplementary Report filed under Section 173 of Cr.P.C. by the Investigating Officer. It was stated in the Report itself that the charges were being added at the instance of the National Commission for Scheduled Castes (in short commission). The Respondent No. 2/complainant lodged a complaint dated 25.07.2004 against the appellants for offences under Sections 323, 504 and 506 IPC. In the first charge sheet filed by the Police before the Chief Judicial Magistrate, the appellants were charged under Sections 323, 504 and 506 of the IPC. More than two years after the first charge sheet was filed, the Respondent No. 2 made a complaint dated 03.12.2006 before the Commission, the Commission requested for the addition of Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. The **Apex court observed** that the ingredients under Section 3 (1)(x) were not made out and there was not even a whisper of allegation of harassment based on caste. The first charge sheet was only under Sections 323, 504 and 506 of the IPC. It was over two years later that the Respondent No. 2 complained to the Commission. Under Rule 7.5.2(vi), of procedure of the Commission, the commission is empowered to conduct an inquiry as to “whether proper charge sheet has been filed mentioning the relevant sections of IPC together with the PCR Act, 1955 and SCs & STs (POA) Act, 1989 in Court”. It had no power to dictate the course of the investigation. The Apex court quashed the Supplementary Report filed by the Police, at the direction of the Commission.

**Satyendra Kumar Mehra @ Satendera Kumar Mehra vs. State of Jharkhand : 2018 (2) RCR**

**(Criminal) 530** : The appellate court could suspend sentence of imprisonment as well as of fine without any conditions or with conditions u/sec. 389 Cr.P.C – The trial court convicted the appellant, who was one of the accused & was awarded custodial sentence of which fine formed a part. The appellant filed Criminal Appeal before the High Court and also filed application praying suspension of sentence. The High Court allowed the application granting suspension of sentence and directed that the appellant be released on bail and the HC directed the appellant to deposit the fine amount. Appellant aggrieved only against that part of the order by which the High Court directed the deposit of fine amount approached the Apex Court. Relying upon Section 357(2) Cr.P.C it was argued that fine was part of sentence which stood automatically stayed till the decision of the appeal. **It is held** that Sections 357 and 389 Cr.P.C. operate in two different fields. Section 357 Cr.P.C. contained an embargo that on passing a judgment of sentence of fine, the fine be not utilized for payment of compensation till contingency as mentioned therein did not occur. The operation of Section 357(2) Cr.P.C. was restricted to payment of compensation where as Sec. 389(1) Cr.P.C empowered the appellate court to order that the execution of sentence or order appealed against be suspended & also if the accused was in confinement, he be released on bail. It was observed that power of suspension of sentence emanates from Section 389 Cr.P.C. The operation of Sec. 357(2) was restricted to payment of compensation where as in the present case there was no direction of the trial court to pay compensation out of the fine imposed as part of the sentence. Therefore, there was no question of applicability of Section 357(2) Cr.P.C. The Apex court **upheld** the order of the High Court whereby the High Court directed the appellant to deposit the fine awarded by the trial court.

**Sheila Sebastian vs. R. Jawaharaj : 2018 SCC OnLine SC 522** : Making of fake document is different than causing it to be made; only maker can be charged with forgery – **It is held** by apex Court that a charge of forgery cannot be imposed on a person who is not the maker of the same. Referring to Sections 463-465 of Indian Penal Code, the bench observed that unless and until ingredients under Section 463 are satisfied a person cannot be convicted u/s465 by solely relying on the ingredients of

Section 464, as the offence of forgery would remain incomplete. The bench, **further elaborating** the scope of these provisions, said that “The key to unfold the present dispute lies in understanding Explanation 2 as given in Section 464 of IPC. As Collin J., puts it precisely in **Dickins v. Gill, (1896) 2 QB 310**, a case dealing with the possession and making of fictitious stamp wherein he stated that “to make”, in itself involves conscious act on the part of the maker. Therefore, an offence of forgery cannot lie against a person who has not created it or signed it.”

**Punam Thakur vs. State of Haryana: 2018 (2) RCR (Criminal) 500 (P&H) : Evidence Act Sec. 65B Sexual abuse with grand-daughter by paternal grandfather** – The mobile phone on which a video was recorded by the mother of the minor victim, in which the minor prosecutrix had stated and given details of the offence committed upon her, was a part of the challan presented u/s 173(2) of the code. **Whether the pen drive and the transcript attached with the charge sheet can be looked into without certification in terms of Section 65-B of the Evidence Act at the time of framing of charge?** This issue came up for consideration before the High Court in a revision petition files seeking to challenge the order vide which the trial court framed the charge against the petitioner. **The High Court relied upon** Paras Jain vs. State of Rajasthan 2015 Law Suit (Raj) 1457, wherein it was held that such certificate must be produced along with the charge sheet and if not produced along with the charge sheet, the doors were not closed. Not producing the certificate along with the electronic record was a mere irregularity which could be cured by subsequently producing the certificate during the trial. **The High Court observed** that Criminal jurisprudence was such where every liberty was given to both the parties, be it prosecution or the defence, to lead its evidence virtually at any stage of the trial. It is not feasible that the courts would close out evidence only because the certificate under Section 65 B is not accompanying the pen drive /mobile phone/ computer /CD etc. and does not form a part of the challan as put up u/s 173 (2) of the Code. Even though there has to be strict compliance of Section 65 B of the Evidence Act pertaining to any electronic data, non-compliance of the same would not render the said document inadmissible at the time of framing of the charge. The revision petition was dismissed.



## IMPORTANT CASES : JUVENILE JUSTICE

“We should abandon the notion that secure detention is good for the child.”

V.R. Krishna Iyer, J. in *Satto vs. State of U.P.*, (1979) 2 SCC 628

**Re: Exploitation of Children in Orphanages in the State of Tamil Nadu vs. Union of India & Ors.: 2017 SCC OnLine SC 534: Benefits of beneficial legislations on child / juvenile care & protection shall be extended to all categories of children – Held** – The Supreme Court issued guidelines to protect and augment the rights and welfare of children and for the proper implementation of beneficial legislations like The Commissions for Protection of Child Rights Act, 2005, The Right of Children to Free and Compulsory Education Act, 2009, The Protection of Children from Sexual Offences Act, 2012 and The Juvenile Justice (Care and Protection of Children) Act, 2000. It deals with several issues such as social audits, de-institutionalization, and training of personnel, rehabilitation and social-reintegration, utilization of grants and minimum standards of care.

**Sampurna Behura vs. Union of India (UOI) and Ors.: (2018) 4 SCC 433 : Whether laws beneficial to voiceless children are implemented in true sense – Held** – The Court issued various directions such as the Ministry of Women and Child Development in the Government of India and the State Governments should ensure that all positions in the National Commission for Protection of Child Rights (NCPCR) and the State Commission for Protection of Child Rights (SCPR) are filled up well in time and adequate staff is provided to these statutory bodies so that they can function effectively and meaningfully for the benefit of the children. The NCPCR and the SCPCRs should take their duties, functions and responsibilities with great earnestness keeping in mind the faith reposed in them by Parliament. A position in these statutory institutions is not a sinecure.

These bodies have a very significant and proactive role to play in improving the lives of children across the country. The State Governments must ensure that all positions in the JJBs and CWCs are filled up expeditiously and in accordance with the Model Rules or the Rules framed by the State Government.

Any delay in filling up the positions might adversely impact on children and this should be avoided. The Juvenile Justice Boards (JJB) and Child Welfare Committees (CWC) must

appreciate that it is necessary to have sittings on a regular basis so that a minimal number of inquiries are pending at any given point of time and justice is given to all juveniles in conflict with law and social justice to children in need of care and protection. This is a constitutional obligation. The NCPCR and the SCPCRs must carry out time- bound studies on various issues, as deemed appropriate, under the Juvenile Justice Act, 2015. Based on these studies, the State Governments and the Union Territories must take remedial steps.

**National Commission for Protection of Child Rights and Ors. vs. Rajesh Kumar and Ors. : 2018 (1) SCALE 418 : Right of Child – Held** – It was contended before High Court that Petitioner had received summons from National Commission of Protection of Child Rights informing that State Commission had been informed with regard to incidents and said Commission had already taken cognizance of matter jurisdiction of National Commission was barred under Section 13(2) of Commissions for Protection of Child Rights Act, 2005. High Court accepted above contention and accordingly issued notice and directed National Commission to file affidavit and further not to proceed with matter. Hence, present petition by Petitioner to the Supreme Court. Held, while listing the matter that (i) Court was absolutely conscious that the children should not be compelled to work in factories, which were source of danger. That being the position, when the children were sold, nothing could be more disastrous than this. That was situation which could not be allowed to prevail. Right of child in a society is sacred, for the future of the country depends upon the character and the destiny of the child and State had great role in that regard. (ii) It was necessary to have comprehensive view of entire country pertaining to running of orphanages, the mode and method of adoption, the care given and the treatment meted out to the children. It was necessary that all the States should be added as Respondents. (iii) A child could not be bartered away at whim and fancy or selfishness of person In-charge of orphanages. It was the mandate of the statute to establish Human Rights Courts and to appoint Special Public Prosecutors.

**In Re:Prajwala Letter Dated 18.2.2015 Videos of Sexual Violence and Recommendations: 2018 (1) SCALE 545 – Held** – The Supreme Court imposed costs of Rs. 1 lakh each on Yahoo, Facebook Ireland, Facebook India, Google India, Google Inc., Microsoft and Whats App for failing to abide by the directions given by it in the matter of videos of sexual violence and child pornography. A bench headed by Justice Madan B. Lokur had, in an earlier order, required the social media giants and Microsoft to brief it about the status of progress made pursuant to the recommendations accepted by them.

Further the court observed that, **“None of these entities has filed anything to show us the progress nor any of these entities is ready with any response pursuant to our aforesaid order. We direct these entities to file an affidavit on or before 15<sup>th</sup> June, 2018 giving us the status of progress made, the bench observed while directing the Registry to accept the affidavit filed by these entities along with costs of Rs.1 lakh each.”**

The Central government submitted that the Online Cyber Crime reporting portal in its final form will be launched on or before 15th July, 2018. It also stated that Portal Integration with CCTNS is likely to take about two months' time and the Ministry of Home Affairs is coordinating with the States and the Union Territories in this regard. We find that a substantial amount of work still remains to be done. In our opinion, more than sufficient time has been taken by the Ministry of Home Affairs to complete these tasks and to complete other tasks. The bench observed granting further time to the Ministry of Home Affairs to complete the tasks on or before 30th June, 2018.

**Neha vs. State of Punjab : 2018 (2) RCR (Criminal) 226 : Parameters for granting Bail to the Juvenile** - The petitioner Neha who had earlier approached the Juvenile Justice Board for her bail application under Section 12 of the Act challenged the order before the Hon'ble High Court. The Hon'ble High Court has granted her bail u/s 302, 201, 120-B r/w 34 IPC. Further the parameters of the Section 12 are also discussed and the interpretation of word 'association' used in Section 12 has also been elaborated. **In order to prove 'association' it must be shown that the persons so joined, have a common purpose and that there is a**

mental connection between their related ideas. In such view of the matter, if a person has joined a known criminal or criminals only in a single case, by that, it cannot be inferred that this single act would bring that person in association with known criminal(s). There can be apprehension of his associating with known criminal only when there is sufficient evidence to show that he has been joining them regularly so as to give an impression that he would continue to join them in future also.

**Ranjit Singh vs. State of Punjab : 2018 (1) RCR (Criminal) 672 (P&H): Evidence of Juvenility** – Held – While considering the plea of juvenility it has been observed that the photocopy of school certificate of fifth standard though not an evidence of juvenility, but sufficient enough to conduct an inquiry by court in terms of Rule 12.

**Mahesh vs. The State of Rajasthan and Ors.: Petition for Special Leave to Appeal (Crl.) No.2934/2015 : DoD 19.01.2018 – Conviction not to be interfered with merely because accused were juveniles on the date of commission of alleged crime** – Held – Upholding the conviction of two accused who raised their plea of juvenility before the Supreme Court for the first time, the apex court decided that the validity of the conviction in respect of the incident which occurred almost two decades back ought to be decided in appeals and the entire of the proceedings including the punishment/sentence awarded should not be interfered with on the mere ground that the accused were juveniles on the date of commission of the alleged crime.

With regard to the approach to be adopted for sentencing, the bench said: “Having regard to the long efflux of time we are of the view that it will not be necessary, in the facts of the present cases, to cause a remand of the matter to the Juvenile Justice Board for a decision on the quantum of sentence for the reason even if such a remand is made and the Juvenile Justice Board comes to a decision that in addition to the period of custody suffered by the accused appellants they need to suffer a further period of custody, such custody can only be in a remand home or a protection home to which places the accused appellants, because of their age as on today, cannot be sent.”

## EVENTS OF THE MONTH

1. **Refresher-cum-Orientation Course for Civil Judges-cum-Judicial Magistrates** from the States of Punjab and Haryana was organized on 05.05.2018 to sensitize them with regard to ADR Mechanism and Important Civil Matters. The Programme covered : Suits by and against the Government – Legal Issues, Alternative Disputes Resolution-Challenges, Role of Referral Judges in ADR, Dragon Dictation Software, Training on Practical use of Computers in Courts. 51 participants attended the programme. Ms. Ranjana Aggarwal and Dr. Gopal Arora, Faculty, CJA took different sessions.

2. **A panel Discussion regarding the Rights of Specially Abled Children with special emphasis on the Provisions of Right to Person with Disability Act, 2016** was organized on 05.05.2018 by Punjab State Legal Services Authority in association with NGO – SIOLI at the Chandigarh Judicial Academy. The function was graced by Hon'ble Mr. Justice T.P.S. Mann, Judge, Punjab and Haryana High Court and Executive Chairman, Punjab State Legal Services Authority, Dr. Balram K. Gupta, Director (Academics), CJA and Ms. Harpreet Kaur Jeewan, Member Secretary, Punjab Legal Services Authority. Sh. Brahm Mahindra, Hon'ble Health Minister, Punjab was the Chief Guest. The programme was attended by specially abled children, their parents, NGOs working for the needs of such children, Secretaries of District Legal Services Authority.

3. **First Batch of 30 Public Prosecutors (DAs, DDAs & ADAs) from the State of Punjab under 14<sup>th</sup> Finance Commission** undergone 10 days training from May 9 to 19, 2018 at Chandigarh Judicial Academy. The training included four sessions of 1.15 hours each per day. Total 39 different sessions dealt with different aspects relevant for Public Prosecutors regarding Criminal and Civil Matters in order to enhance their capacity to perform their duties effectively and efficiently. The Inaugural session was taken by Dr. Balram K. Gupta, Director (Academics) along with Sh. Inderjit Mehta, Director (Administration) and Sh. Pradeep Mehta, Faculty, CJA. The Public Prosecutors were sensitized on topics: Prosecution Sanction for Public Servants, Law on Bails – Regular and Anticipatory, Law on Constructive & Joint Criminal Liability, Mens-Rea Presumptions under NDPS Act & its constitutionality, Sentencing Policy & Restitutive Justice–Legal and Procedural Aspects I&II, Suits against and by the Government – Legal implications, Criminal Appeals & Revisions – Law and Procedure, Important Aspects in Checking of Challans by the Prosecutor-I, General Aspect of Service Law, Role of

Post-mortem in Aid of Justice, Delays in Criminal Trials-Causes & Remedial Measures, Law of Custody during Investigation and Special Legislations, Child in Conflict with Law – Legal Rights and Protection, Examination of Witnesses–Principles & Procedures, Jurisprudence of Circumstantial Evidence, Cyber Crime Parameters of Investigation–Challenge, Electronic Evidence Admissibility & Appreciation, Ramifications of Personal Search under NDPS Act, Relevancy of Constitution in District Judiciary, Protection against self Incrimination- Dimensions and Applicability, Law on Amendments of Pleadings, Executions-Speedy & Expeditious Disposals, Process of Trial in Civil Cases-Best Practices, Interpretation of Revenue Records & their Applicability in Cases-I&II, Ballistics Examination and Fire Ammunition, Law of Admissions and Confessions, Compensation under MACT Act, Determination of Compensation under Land Acquisition Act, E-Courts-Step Towards Modernization, Law Relating to Under Trials, Parole, Furlough & Pre Mature Release of Prisoners, Cordiality amongst Prosecutors, Police, Judiciary & District Administration, Comparison of Handwriting and Expert Evidence, DNA Profiling & Evidence, Miscellaneous Applications under Civil Procedure Code, Awards under Arbitration & Reconciliation Act–Legal Issues, Summoning of Additional Accused and Evidence – Legal Parameters. The different sessions were taken by the Faculty, CJA, CFSL, Chandigarh and Mr. Anil Malhotra, Advocate, Dr. K.P. Singh, DGP, Human Rights, Haryana and Dr. J.S. Dalal, Professor & Head, Department of Forensic Medicine, CMC, Ludhiana. In the valedictory function on 19.05.2018, Dr. Balram K. Gupta awarded the certificates.

4. **Refresher-cum-Orientation Course for ADJs** from the States of Punjab, Haryana and U.T. Chandigarh was organized on 19.05.2018 to sensitize them with regard to ADR Mechanism and Important Civil Matters. The Programme covered : Law of Adoption in India-Implications, East Punjab Holdings (Consolidation & Prevention of Fragmentation Act) etc.-vis a vis Municipal Laws w.r.t. Common Land–I&II, Session on Dragon Dictation Software, Training on Practical Use of Computers in Courts. 66 participants attended the programme. Justice S.S. Saron, Acting Chief Justice (Retd.) and Mr. Anil Malhotra, Advocate.

5. **Sh. Davinder Singh, PCS (JB), Trainee Judicial Officer, was deputed to undergo police training** (from May 25 to June 9, 2018) with the group of Delhi Judicial Officers at the Police Academy, Madhuban, Haryana.

## FORTHCOMING EVENTS

1. **Second Batch of 30 Public Prosecutors (DA & DDA) from the State of Punjab** under 14th Finance

Commission is scheduled for 10 days training from June 4 to 14, 2018 at Chandigarh Judicial Academy.