



VOLUME : 04
ISSUE : 09

In this Issue:

From the Desk of Chief Editor

Inaugural Address by Justice
K. Priyantha Fernando, Judge,
Court of Appeal, Sri Lanka

Latest Cases: CIVIL

Latest Cases : CRIMINAL

Latest Cases:
Land Acquisition & Requisition

Notification

Events of the Month &
Forthcoming Events

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CJA e-NEWSLETTER

SEPTEMBER 2019

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 Central Detective Training Institute, Chandigarh organized a course on : INVESTIGATION OF RAPE CASES from September 11-13, 2019. Police Investigators, Prosecutors and Judges (32 in number) drawn from Chandigarh, Haryana, Himachal Pradesh, J&K and Punjab attended the programme. I delivered the valedictory address on September 13. I wish to share my serious concern.

The physical frame of a female is a temple. No encroachment. No violence. The offence of rape is a crime against the basic human right : right to life and to live it with human dignity. Assault on the physical frame is the invasion of the right to privacy. It is a blow to her honour, reputation and dignity. It is an act which is obnoxious. Reflective of perversity of mind. It reduces a man to an animal. Rape is not a mere physical injury. It is not treatable as such. It leaves a permanent physical and mental scar. A deep sense of shame. Life long. It is humiliation and emotional up-surge. The rape victim loses her face. As also value as a human being. Rape is not an ordinary crime.

Article 51-A (e) provides a fundamental duty to renounce practices derogatory to the dignity of women. In spite of this constitutional duty, yet throwing of acid on women and even raping them have become daily routine. Therefore, the coparcenary of investigators, prosecutors and judges need to be sensitized to play their respective roles so that the criminals are punished severely. The graph of such crimes is going up. This coparcenary needs to have a soul searching torch. Why all this is happening! What needs to be done! A road-map for the future needs to be drawn.

We have marched forward from the traditional and conservative investigation methods. The latest technological, forensic and medical science developments are playing a significant role. From two finger test to DNA test is a journey worth acknowledging. This coparcenary needs to be trained in the latest scientific methods of investigation. The forensic and medical science experts need to inter-act with the coparcenary. The coparcenary in turn needs to be equipped with the latest know-how in this domain. This inter-action should be a continuous process. Different institutions and academies need to undertake this task more seriously and on priority.

The mind-set of different stakeholders of coparcenary needs resetting and overhauling. Each case judgement must focus on the role of investigators and prosecutors. The whole machinery needs to be geared up. What needs to be plugged! What more needs to be done within the framework of law. To create serious deterrent against this crime. The goal is to free the society (to the extent possible) from this crime against human dignity. Let us pool our minds together. I invite suggestions from the judicial fraternity, medical and forensic science experts.

Suggestions may be mailed : academics.cja@gmail.com

Balram K. Gupta

Justice K. Priyantha Fernando, Judge, Court of Appeal, Sri Lanka delivered the Inaugural Address on August 14, 2019 at Chandigarh Judicial Academy.

Hon. Mr. Justice Jitendra Chauhan, President, Board of Governors, Chandigarh Judicial Academy, Dr. Balram Gupta, Director Academics, Mrs. Shalini Singh Nagpal, Director Administration, Judicial Officers from Sri Lanka, Ladies and Gentlemen.

At the outset, permit me to thank the Chandigarh Judicial Academy (C.J.A.) for accepting the request made by the Judge's Training Institute of Sri Lanka and agreeing to arrange a training program for the judicial officers from Sri Lanka. The relation between the C.J.A. and the J.T.I. of Sri Lanka runs back several years now. I am happy to say that I myself was a beneficiary of such a program, when I came here with a group of judges in the year 2018, I still cherish fond memories of my visit and must say the knowledge I gained in that program is invaluable.

Coming from two jurisdictions that share the Common Law systems, both India and Sri Lanka have a lot to share in the sphere of legal education. Although our countries have enacted laws in fulfilling the specific socio- economic needs of the respective societies, the core principles on which the laws are developed both in India and Sri Lanka still remain the same. Thus, we are in a position to take advantage of this unique situation.

Coming back to judicial training what comes to my mind is an incident that took place in court very recently. Over this incident, proceedings were initiated to dismiss the judge.

I am sure many, if not, all of you are familiar with this incident. But for those who may not be, I will share this incident with you-

A judge handling a case of rape of a teenager commented that the accused must be treated leniently for the reason that the Accused comes from a "good family".

There cannot be any disagreement among us that the family background of the accused referred to by the judge ought not to be the correct criteria to assess the case. I heard the judge has since resigned. This incident happened in the District Court of New Jersey USA.

You may wonder as to why I chose an incident that happened continents away. Quite apart from the fact that distance has nothing to do with reproachable human conduct, the point I wish to emphasize is the fallout from this case; consequent to this incident an announcement was made by the New Jersey judges, of the need to focus on an enhancement of existing training for judges in the areas of sexual assault, domestic violence, implicit bias, and diversity. Accordingly, a directive was issued by the Administrative Director of the Courts to have a three-day training conference and an annual refresher course, as well as other measures.

The point I wish to make is that judicial training should be an ongoing exercise and further when it comes to judicial education, we cannot confine ourselves to legal content, ours is simply not a case of adjudication of cases, it goes far beyond that, there are so many other aspects on which we as judicial officers have to equip ourselves with, if we are to deliver justice to the society - effectively.

New Jersey became acutely aware of this necessity perhaps only too late. But there are a great number of countries in the world, which have pertinently considered 'judicial education' to be an integral part of a healthy judicial system.

Judicial education must be purposeful, and continuous. It should be refined based on legislative changes and the evolving needs of the bench and the society.

All our judicial officers were not only required to participate in mandatory training from initial appointment but while serving in their careers as well.

Having touched on the importance of training, it is opportune to have a glimpse of what's in store for us in the coming days.

Two of the topics that are to be covered during the course of this training attracted my attention. The topics are "Strengthening the Judicial Human Fabric" and "Building up Trust and Confidence in Judicial System". Judges serve as independent arbiters of disputes while balancing the rights and protections of all parties involved in the legal processes. That does not mean that we should not continue to improve ourselves. We also must engage in critical self analysis that suggests the need to do more to instill the Judiciary's longstanding guiding policies and principles into our daily practices. As judges, we are generally revered for our role; and there may be a tendency among us to take this reverence for granted. But we must remember that our duty is primarily towards the litigants. Our office is a public one. If I may liberally use the words of Abraham Lincoln, we are paid by the people to serve the people. We spend mostly isolated lives, quietly in our chambers, burying ourselves in piles of files. All too naturally, this removes us from the realities of the society, and we begin to find comfort in a legal cycle. But law is only one cog in the machine. The machine is much more than a legal argument in the court. It involves solving problems; real life problems of people out there. To that extent, we must always strive to synchronize our thought process with the workings of the human world. Trainings of this nature which expose us to other contexts are illuminating because it puts our role in proper perspective. I hope that at the end of this training, we will go back to our respective chambers not only with expanded knowledge but expanded sensitivity.

Writing of Judgments is another important topic that this program will cover. Training judges in effective communication skills that will aid them in delivering clear decisions that are rooted in the law, respectful of victims, and understandable to the public while protecting the rights of the accused are of utmost importance. It is very much heartening to see this segment being included in the program.

One other very timely topic that is to be discussed is "Law on Victim Protection with special reference to Children and Women". In my opinion, the discussion under this heading would be very useful for all of us, in view of our own legislation on victim and witness protection introduced only 4 years ago. Legislation of such nature is introduced to cater to specific needs that have been long felt by the society. We have seen, and experienced from time to time, how the criminal justice system tends to focus too heavily on penalties to the complete exclusion of taking the interests of victims into account. Many offenders wriggle through the claws of law, due to lack of evidence. And too often, the evidence is not forthcoming because victims of crimes are confronted with innumerable security and social concerns that are unique to our cultures. It is our role, as judges, to identify these insidious, creeping

forms of debilities, overcome them and help make the justice process a more inclusive one. I therefore encourage all my colleagues to show a keen interest in the topic of victim protection and make the best out of that discussion.

I also observe with great enthusiasm that the training has dedicated a segment to environmental law with a specific focus on modern concerns. It's no secret that the world as we know, is slowly changing. Calamities and catastrophes that were so sparsely heard when we were children, have become daily realities for the younger generations today. As judges, we might not be at the forefront in the effort to revolutionize the human behavior viz a viz the environment. However, I do not for a moment think that, being unable to be a forerunner reduces the judiciary to a miniscule role in that endeavor. The judiciary could, and should, strive to be a sentinel of the resources of a country, and guard against unscrupulous patterns of consumption that place the future generations at peril. We have the mandate and the power to ensure that investments are made sustainably with an eye to the future – rather than for ephemeral benefit. Environmental law had humble beginnings, but currently, it has become a force to reckon with. And that is precisely why we must zealously embrace every opportunity given to us to learn and expand our knowledge in that specialized branch of law.

In addition to what I referred to, the training offers a host of other discussions on;

- Law of Evidence – Hearsay Rule, Corroborative Evidence, Evaluation of Evidence and different test there of
- Case Management and Court Management
- Modern Sentencing approaches in Criminal Cases
- Writ Jurisdiction and Injunctions against Government and Public Servants
- Cyber Crimes: A Challenge
- Appreciation of Electronic Evidence
- Role of Mediation as an Alternative Dispute Resolution Initiative
- Fair Trial Rights
- Role of Courts in Upholding the Rule of Law
- Civil Disputes: Interlocutory Applications
- e-Judiciary: Indian Perspective

As you can see, this training covers an entire spectrum –starting from the fundamental concepts of law such as rule of law, justice and governmental power, to those technical topics that matter to us on a daily basis such as the management of cases. It is also imbued with modernism in that, there are discussions that touch on utilizing technology for effective delivery of justice. Quite interestingly, the training also underscores the importance of mediation. If nothing else, the inclusion of that topic illustrates the point I made very early on in this speech - that this training will help us to perceive our role in proper perspective. Realizing that judges are not the quintessential locus of dispute resolution would, no doubt, prove to be a grounding experience. Overall, each of the topics listed for the program feed into each other, making it a composite whole. And I personally don't think there is a single topic that can be considered as superficial. I am confident that this program will be an extremely rich learning experience for all parties concerned and that the training will be well received and appreciated. Once again, I thank the C.J.A. and all our Indian colleagues for accommodating our request and wish you all a very fruitful five days ahead.

LATEST CASES : CIVIL

“The High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the first appellate court, either without formulating the substantial question(s) of law or on framing erroneous substantial question of law. The High Courts should keep in mind the limitations under Section 100 CPC and the legal position before interfering in second appeal under Section 100 CPC.”

M.R. Shah, J. in *Gurnam Singh v. Lehna Singh*, (2019) 7 SCC 641

Prakash Sahu v. Saulal : 2019 (5) RCR (Civil) 836 – Unregistered agreement of sale can be used as an evidence for collateral purpose – Held – The Supreme Court upheld a Trial Court order allowing the plaintiff to lead evidence on insufficiently stamped unregistered agreement of sale in his suit for recovery of earnest money said to be paid by him at the time executing the agreement for sale.

Colonel Shrawan Kumar Jaipuriyar @ Sarwan Kumar Jaipuriyar v. Krishna Nandan Singh : Civil Appeal No. 6760 of 2019 (arising out of Special Leave Petition (Civil) No. 9233 of 2017): DoD 02.09.2019 – Order VII Rule 11 CPC : Complaint can be rejected when it does not disclose clear right to sue – Held – The Supreme Court observed that a complaint can be rejected Order VII Rule 11 of the Code of Civil Procedure, when it is manifestly vexatious, meritless and groundless, in the sense that it does not disclose a clear right to sue. The Apex Court also observed that a mere contemplation or possibility that a right may be infringed without any legitimate basis for that right, would not be sufficient to hold that the complaint discloses a cause of action.

NHAI v. Subhash Bindlish : 2019 (5) RCR (Civil) 762 – Outer limit of 120 days to file 'Section 34' application to set aside arbitral award not diluted by 2015 amendment – Held – The Supreme Court observed that the mandate under Section 34(3) of the Arbitration and Conciliation Act providing outer limit of 120 days to file an application to set aside Arbitral Award remains unchanged even after 2015 amendment of the Act.

Chennadi Jalapathi Reddy v. Baddam Pratapa Reddy (Dead) : 2019 SCC OnLine SC 1098 – Expert evidence should not be given

precedence over substantive evidence – Held – The Supreme Court reiterated that expert evidence should not be given precedence over substantive evidence. In this case the disputed signature of the first defendant was identified by his brother as those of the first defendant himself.

Daya Rani v. Shabbir Ahmed : Law Finder Doc ID # 1574566 – Rent Control Revision – HC can't re-appreciate oral or documentary evidence on record – Held – In the context of Haryana Urban (Control of Rent & Eviction) Act, 1973, the Supreme Court reiterated that while exercising revisional power, the High Court cannot reappreciate oral or documentary evidence on record. The court was considering an appeal against Punjab and Haryana High Court order in a revision petition that set aside concurrent orders of the courts below.

NHAI v. Sayedabad Tea Company Ltd. : 2019 SCC Online SC 1102 – NHAI – Application under Section 11 Arbitration & Conciliation Act to appoint arbitrator not maintainable – Held – The Supreme Court held that an application under Section 11 of the Arbitration and Conciliation Act for appointment of an Arbitrator in relation to disputes with National Highways Authority of India is not maintainable in view of Section 3G(5) of the National Highways Act, 1956 which provides for such appointment by the Central Government. The Court set aside an order passed by the High Court appointing an Arbitrator invoking Section 11 of the Arbitration and Conciliation Act.

Rajasthan HC v. Neetu Harsh : 2019 SCC OnLine SC 1119 – Judicial Service – A candidate applied for general category cannot subsequently claim seat reserved for disabled candidate – Held – The Supreme

Court held that a Candidate Applied for General Category cannot claim the seat reserved for disabled candidates at a later stage. The court dismissed the claim of a visually impaired candidate who had filled the application form under General category, and later claimed a seat reserved for Persons with Disabilities (PWD) category in Rajasthan Judicial Service Examination, 2016.

UPSC v. Mayank Rai : Law Finder Doc Id # 1569643 – Unfair means during examination : Discovery of material with candidate sufficient to take action – Held – The Supreme Court has observed that the discovery of material with a candidate which was meant to use for 'unfair means' during examination would suffice to take action against him/her. It is not as if only on actual use being made of the material detected by the examiner that action can be taken.

Bajarang Shyamsunder Agarwal v. Central Bank of India & Anr.: 2019 SCC OnLine SC 1173 – Protection from SARFAESI Act not available to 'Tenant-In-Sufferance' : SC clarifies interplay between SARFAESI and tenancy laws – Held – Clarifying the interplay between laws of tenancy and debt recovery, the Supreme Court has held that protection from recovery proceedings under the SARFAESI Act is not available to a 'tenant-in-sufferance', i.e. a tenant who continues to be in possession even after the expiry of the lease period. It has been observed that ***"The operation of the Rent Act cannot be extended to a 'tenant in sufferance' vis-a-vis the SARFAESI Act, due to the operation of Section 13(2) read with Section 13(13) of the SARFAESI Act. A contrary interpretation would violate the intention of the legislature to provide for Section 13(13), which has a valuable role in making the SARFAESI Act a self executory instrument for debt recovery. Moreover, such an interpretation would also violate the mandate of Section 35, SARFAESI Act which is couched in broad terms."***, held the Court.

Dina Nath (D) by LRs & Anr. v. Subhash Chand Saini & Ors. : 2019 SCC OnLine SC 1248 – While dealing with the provisions of Delhi Rent Control Act the Apex Court held that mere failure to pay rent on the part of the tenant is not enough to justify an order striking out the defence and it is only a wilful failure or deliberate default or volitional of non-performance that can call for the exercise of the extraordinary power vested in the Court.

Govindbhai Chhotabhai Patel & Ors. v. Patel Ramanbhai Mathurbhai : 2019 SCC OnLine SC 1245 – Held – The Supreme Court has held that as per Mitakshara Law of Succession, father's self-acquired property given to son by way of will/gift will possess the character of self acquired property and will not become ancestral property, unless a contrary intention is expressed in the testament.

D. Sasi Kumar v. Soundararajan : 2019 SCC OnLine SC 1243 – Held – The Supreme Court, in this case has held that the bonafide requirement of landlord is to be seen at the time of filing of rent application. It has been further observed that it would continue till the final decision of rent application.

M/s. Canara Nidhi Ltd. v. M. Shashikala and Ors. : 2019 SCC OnLine SC 1244 – Held – The Apex court observed that the proceedings under Section 34 of Arbitration and Conciliation Act are summary in nature and not regular suit. Also, it will not ordinarily require anything beyond the record that was before the arbitrator and only in exceptional cases, additional evidence can be permitted to be adduced.

Union of India & Anr. v. Tarsem Singh & Ors.: 2019 SCC OnLine SC 1230 – Held – The Supreme Court while dealing with bunch of matter pertaining to acquisition of land of Pathankot – Jammu highway has held Section 3J of the National Highways Act 1956, to the extent it excludes solatium and interest as per Land Acquisition Act 1894 to acquisitions done under the NH Act to be unconstitutional. The statutory benefits permissible under 1894 Act would be given to the beneficiaries under NH Act.

LATEST CASES : CRIMINAL

“If the Court were not to stand by the principles which we have formulated, we may witness a soulful requiem to liberty.”

Dr. D.Y. Chandrachud, J. in *Romila Thapar v. Union of India*, (2018) 10 SCC 753

State of UP v. Aman Mittal : 2019 SCC OnLine SC 1147: HC can't interfere in the manner of investigation in exercise of powers under Section 482 Cr.P.C – Legal Metrology Act excludes only those offence with regard to weight or measure under IPC – Held – The High Court, while disposing a petition filed by accused under Section 482 Cr.P.C had issued a slew of directions, including the direction to change the investigating officer and also to subject the erring officers/officials named in the supplementary report to disciplinary action. The Supreme Court reiterated that the High Court, while exercising jurisdiction under Section 482 of the Code, cannot interfere in the manner of investigation. **Further held** that though Section 3 of the Legal Metrology Act completely overrides the provisions of Chapter XIII of Indian Penal in respect of the offences and penalties with regard to weight or measure, but the prosecution for other offences under of IPC could be maintained.

State of Odisha (Vigilance) v. Purna Chandra Kandi : SLP (Crl.) Diary No(s). 29657/2019 (arising out of impugned final judgment and order dated 27.08.2018 in Crl. Rev No. 98/2017 passed by the High court of Orissa at Cuttack) : DoD 03.09.2019 : Mere government inefficiency not a ground for delay condonation – Held – The Supreme Court reiterated that mere government inefficiency cannot be a ground for condoning the delay. While dismissing the Special Leave Petition filed by the State of Odisha on the ground of delay, the bench observed that it is for the state to 'put its own house in order'.

Kishore Sharma v. Sachin Dubey: Criminal Appeal No.1325 of 2019 (arising out of SLP(Crl.) No(s). 137/2019): 138 NI Act – Proceedings cannot be quashed on the ground that notice not served within statutory period – Held – The Supreme

Court recently held that the proceedings under Section 138 of the Negotiable Instruments Act cannot be quashed on the ground that the demand notice not duly served within the statutory period.

Jagbir Singh v. State NCT of Delhi: 2019 SCC OnLine SC 1148: The real point is to ascertain which contains the truth: SC on divergent dying declarations – Held – The Supreme Court recently came across an appeal filed by a man who was convicted for murder of his wife mainly relying on one of the dying declaration made by the deceased implicating him. In the Judgment disposing the appeal the bench summarized the principles to be followed in cases where dying declaration is the sole evidence available.

Samsul Haque v. State of Assam :2019 SCC OnLine SC 1093 : Section 313 Cr.P.C: Inculpatory material as not put to the accused must be eschewed – Held – The Supreme Court has reiterated that the incriminating material that came in evidence is to be put to the accused during his examination under Section 313 of the Criminal Procedure Code. The bench observed that this is in recognition of the principles of audi alteram partem so that the accused gets a fair chance to defend himself.

Hanif Khan @ Annu Khan v. Central Bureau of Narcotics : 2019 (4) RCR (Criminal) 250 – NDPS : Reverse burden of proof does not absolve prosecution from establishing prima facie case against accused – Held – The Supreme Court observed that, though Narcotic Drugs and Psychotropic Substances Act carries reverse burden of proof, it does not absolve the prosecution from establishing a prima facie case against the accused. The bench was considering an appeal challenging conviction of an accused under Sections 8 and 18(b) of the NDPS Act sentencing him to 10 years rigorous

imprisonment, along with fine of Rs.1 lakh, with a default stipulation.

Khuman Singh v. State of MP : 2019 SCC OnLine SC 1104 : Proof that offence was committed only because victim was SC-ST member necessary to sustain conviction u/s3(2)(v) SC-ST (Prevention of Atrocities) Act – Held – In order to sustain a conviction under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, it must be proved that the offence was committed only on the ground that the victim was a member of the Scheduled Caste, the set aside the conviction of the accused under the SC-ST Act on the ground that there is nothing to suggest that the offence was committed by the accused only because the deceased belonged to a Scheduled Caste.

Sharad v. State of Maharashtra : 2019 (4) RCR (Criminal) 249 : Subsequent bail application maintainable before Sessions Court after withdrawal of first one filed before HC – Held – An accused after withdrawing his bail application before the High Court can file a subsequent bail application before the Sessions Court, the Supreme Court held. The bench was considering appeal filed against a High Court order that revoked the bail granted to accused by the Sessions Court on the ground that the application was not maintainable before it as he previously approached the High Court for bail and subsequently withdrew the bail application.

Vijay Pandey v. State of Uttar Pradesh: 2019 (3) RCR (Criminal) 926 – Mere production of a laboratory report that sample tested was narcotics cannot be conclusive proof by itself –The appellant had contended that the sample produced in court had not been established as seized from him. **Held** – The Apex Court held that though Laboratory Report was obtained, but identity of sample stated to have been seized from accused was not conclusively established by prosecution. The Trial Court opined that since the allegations against the appellant had been proved by the witnesses, the failure to conclusively identify the sample produced as having been seized from the appellant was inconsequential & the accused was convicted. The appeal against conviction was dismissed by the High Court. The Supreme Court allowed the appeal & observed that mere production of a laboratory report that sample tested was narcotics cannot be conclusive proof

by itself. Sample seized and that tested have to be co-related. The conviction was accordingly set aside.

Vijendra v. State of Uttar Pradesh : 2019 (3) RCR (Criminal) 964 – Sec. 13(2) of prevention of Food Adulteration Act & Prevention of Food Adulteration Rules Rule 9B – The report of analyst must be furnished to accused – Held – The Apex Court was considering an appeal from the judgment passed by the High Court by which the High Court dismissed the revision filed by the appellant thereby affirming the conviction of the appellant. The Apex Court observed that there is requirement to furnish report of Analyst to accused. The Food Clerk claimed to have dispatched report by registered post. However, no evidence was brought on record to indicate that report was actually served or delivered to accused. The Purpose of furnishing such report is to enable accused to seek for reference to Central Food Laboratory for analysis if he is dissatisfied with report. Such safeguard provided to accused is valuable right. In absence of there being proof of delivery of report to the accused the purpose of the provisions stands defeated & the offence against the accused cannot be said to be proved beyond reasonable doubt. The appeal was accordingly allowed & the accused was acquitted.

Sanjeev Kumar Gupta v. State of Uttar Pradesh (SC) : 2019 (3) RCR (Criminal) 918 – Juvenile Justice Act, 2000 – Accused not entitled to claim juvenility if date of birth recorded in matriculation certificate or in other certificate found to be incorrect – Held – The Apex Court held that there could be situation when date of birth recorded in matriculation certificate or in other certificate referred in Rule 12(3)(a) may not be correct. In the present case matriculation certificate indicated that the accused was juvenile on date of incident. Whereas other documentary evidences collected by IO such as driving licence, Aaddhar Card indicated that accused was 19 years as on date of incident. Date of Birth in Matriculation certificate was based on final list of students forwarded by School. Accused was admitted in school in 5th standard without any document. Date of birth entered on the basis of information given by parents - Record of earlier school attended indicated date of birth as reflected and declared by accused in Aaddhar Card and driving licence. The Court held that the accused was not entitled to claim juvenility.

LATEST CASES: LAND ACQUISITION AND REQUISITION

“When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of acquisition. It seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation.”

P.Sathasivam, J. in *Mehrawal Khewaji Trust vs. State of Punjab*, (2012) 5 SCC 432

Balwant Singh v. State of Harvana : (2019) 4 SCC 472 – S.23 – Compensation and Determination of market value – Held – Factors for increase in land price are; (i) situation of land; (ii) nature of development in surrounding areas; (iii) availability of land for development in the area; and (iv) demand for land in the area . The court **further held** that in rural areas increase in price would be slow, steady and gradual, without any sudden spurts or jumps unless there is any prospect of development in vicinity. In urban or semi-urban areas escalation in market price is at much higher rate due to faster development, high demand for land and construction activity all around.

Mahanti Devi v. Jaiprakash Associates Ltd. : (2019) 5 SCC 163 – Ss.23, 23(1-A), 28 proviso and 18 – Held – It is apparent from judgment of High Court in appeal by respondent and cross-objections filed by appellants, logic followed by Reference Court was adopted and compensation of Rs. 5 lakhs per bigha was maintained. There was no detailed discussion either by Reference Court or appellate court by taking into account relevant factors for making a deduction of 60% from market value of an exemplar sale deed. Reiterating, *Viluben Jhalejar Contractor*, (2005) 4 SCC 789, the court **further held** that keeping in mind suitable adjustment to be made having regard to positive and negative factors and large number of cases pending before High Court and Reference Court, matters remitted to High Court by setting aside judgment in *Jaiprakash Associates Ltd.*, RFA No.178 of 2013, order dated 8-1-2016 (HP), for a fresh consideration on justifiability of imposition of 60% deduction on market value, while computing compensation to be paid to appellants.

Karnataka Water Supply & Drainage Board v. Anjinappa : (2018) 17 SCC 803 – S.23 – Situation of land determination for compensation is not relevant when the value of land is determined by capitalization of profits method – Held – In the absence of evidence with respect to market value of the acquired land, the capitalization of profit method was resorted to by the High Court. **Further Held**

by the Supreme Court that since capitalization of profits method is based upon ten years' yield is according to the situation of the land i.e. whether abutting or away from the road, would not make any difference. Thus, decision of the High Court awarding compensation @ Rs 40,000 per acre, was upheld.

State of Telangana v. D. Mahesh Kumar : (2018) 15 SCC 703 : Ss. 11-A,12,6 and 18- Effective date of Award – Held – It should be taken as date on which it was made and not when it was communicated. It is a different issue that date of knowledge is material for the purpose of seeking the reference under S.18 but date of award remains static and final.

Darshan Singh v. State of Punjab : (2018) 14 SCC 648 : Ss.54, 18 and 23 – when may Enhancement of compensation be granted and what Factors to be considered under Punjab Town Improvement Act, 1922 – Held – By taking into consideration exemplars placed on record in cases, and recalculated compensation, prices worked out by High Court are found to be quite reasonable and right in coming to correct conclusion. Even if applying test of yearly increase, and also considering exemplars independently, and applying proper cuts, calculation made based on annual increase along with deduction made of 1/3rd, compensation determined is quite reasonable. Compensation determined for different lands is also found to be quite reasonable, and on a sound basis. No case for any interference in appeals either at instance of Trust or of landowners, is made out. However, amount deposited in Supreme Court directed to be transmitted forthwith to Reference Court, along with interest, if any, accrued thereupon. The Supreme Court directed the reference court to distribute amount as early as possible. Deficit amount, or in cases where no deposit has been made, amount to be paid within two months from the date of order, along with statutory benefits.

Raj Kumar v. State of Punjab : (2018) 16 SCC 503 : Ss.18, 28-A and 54: Delay in challenging acquisition – Held – Having regard to purpose of acquisition and several rounds of litigation, it is only in larger public interest and also for doing

complete justice between parties that litigations are given a quietus. They should get a just, fair and proper value for their lands at the earliest. Directions issued accordingly for the Reference Court to dispose of cases pending for enhancement, in respect of acquisition within three months. Claimants who have not gone to Reference Court, will be entitled to file application under S.28-A within three months after award of Reference Court for redetermination of compensation. The Collector is to take action on applications for redetermination within three months. Also, while passing final orders on application for redetermination, Collector to verify whether any appeals have been filed against awards passed by Reference Court and in case any appeals are pending, final orders under S.28-A to await outcome of such appeals under S.54 and that redetermination to be in terms of award as modified under S.54. Further, to avoid any difficulty in case of claimants who have not yet been paid award amount, Collector to disburse amount as fixed by LAC with interest and other benefits as on today to claimants, within two months, without prejudice to rights of claimants under S.18 or S. 28-A. It is also clarified that there is to be no further adjudication as to validity of acquisition on ground whether S.6 has been published within time or not.

DDA v. Simla Devi: (2018) 17 SCC 268 – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Ss. 24 (2) and 11 – Deemed lapse of proceedings under Land Acquisition Act, 1894 for failure to tender or pay compensation – Held – The appellants were given six months to exercise their liberty granted under S.24(2) of 2013 Act for initiation of acquisition proceedings afresh. The supreme court retreating *Kusham Jain, (2016) 16 SCC 254 and Sukhbir Singh, (2016) 16 SCC 258* and held that in case no fresh acquisition proceedings are initiated within time-frame by issuing a notification under S.11 of 2013 Act. Hence appellant, if in possession is to return the physical possession of land to owner.

Mohd. Yusuf v. State of Haryana : (2018) 16 SCC 105 – S.23 – Compensation-market value-deduction towards development charges-Adequacy of – Held – The Reference court determines 60% (55% as development charges and 5% for waiting period) in totality towards development charges reduced by High Court to 10% holding that all basic facilities such as water, electricity, sewer, telephone, etc. are, not enough to meet purpose of acquisition. To make such land suitable for acquisition purpose i.e. for construction of Mini Secretariat at Nuh, some further development is also essential. Further, for calculating percentage of development

charges, various factors need to be taken into consideration such as location of land, facilities available in nearby area, size of land, purpose of acquisition, etc. The present acquired land is located at some distance from town needs to be developed in proper manner like construction of better and wide roads, etc., to make it suitable for acquisition purposes. The facilities already available seem to have been taken into consideration properly while reducing development charges by High Court from 60% to 10%, cut @10% is very reasonable towards development of acquired land as some further development would obviously be required to make it fit for purpose for which it was acquired.

Ismail Hushen Ghanchi v. NHAI : (2018) 14 SCC 89 – Ss.23, 18 and 54 – Compensation – Land with fruit-bearing trees – Compensation can be based on income from fruit bearing trees or on market value of land plus value of crops of that particular year – Held – The case of appellants is that they are having small holding and they have been dependent on income from fruit-bearing trees they would go by calculation based on income from fruit-bearing trees. The compensation in respect of land acquired from appellants to be calculated based on return from fruit-bearing trees, as calculated by Court and to be entitled to additional compensation and solatium, and entitled to interest under S.28 to LA Act, 1894 on the entire compensation.

Hukum Singh v. Land Acquisition Collector and Others : (2018) 17 SCC 76 : Section 23 – Enhancement of Market value of adjacent lands by considering relevant factors by the Supreme Court – Held – Reference court raised the market value of the acquired large area from Rs 12,50,000 per acre to assessed by Land Acquisition Commissioner to Rs.20,00,000 per acre. The High Court while considering that sale deeds produced by claimants to adjacent lands pertained to small areas, fixed fair market value of acquired land at Rs.19,97,984 per acre. But having regard to fact that Reference Court had already awarded Rs.20,00,000 per acre and absence of State's appeal there against, High court upheld Reference court's award of Rs.20,00,000 per acre **Further Held** by the supreme court that compensation awarded by Reference court and confirmed by High Court appeared to be on lesser side. Keeping in view peculiar facts and circumstances of the case and other factors, compensation was enhanced by another Rs 1,00,000 per acre, which would be inclusive of all statutory benefits.

NOTIFICATION

MOTOR VEHICLES (AMENDMENT) ACT, 2019

The Motor Vehicles (Amendment) Act, 2019 received the President's assent on 09.08.2019. Some of the important areas of the amendment as notified are:

Road Safety: In the area of road safety, the act proposes to increase penalties to act as a deterrent against traffic violations. Stricter provisions are being proposed in respect of offences like juvenile driving, drunken driving, driving without licence, dangerous driving, over-speeding, overloading, etc. Penalty regarding motor vehicles is to be increased by 10 % every year.

Vehicle Fitness: Act mandates automated fitness testing for vehicles. The testing agencies issuing automobile approvals have been brought under the ambit of the Act and standards will be set for motor vehicle testing institutes.

Recall of Vehicles: The act allows the central government to order for recall of motor vehicles if a defect in the vehicle may cause damage to the environment, or the driver, or other road users. The manufacturer of the recalled vehicle will be required to: (i) reimburse the buyers for the full cost of the vehicle, or (ii) replace the defective vehicle with another vehicle with similar or better specifications.

Road Safety Board: Act provides for a National Road Safety Board, to be created by the central government through a notification. The Board will advise the central and state governments on all aspects of road safety and traffic management including standards of motor vehicles, registration and licensing of vehicles, standards for road safety, and promotion of new vehicle technology.

Protection of Good Samaritan : To help road accident victims, **Good Samaritan guidelines** have been incorporated in the act. The act defines a Good Samaritan as a person who renders emergency medical or non-medical assistance to a victim at the scene of an accident, and provides rules to prevent harassment of such a person.

Cashless Treatment during Golden Hour: The Act provides for a scheme for cashless treatment of road accident victims during golden hour.

Motor Vehicle Accident Fund : Act requires the central government to constitute a Motor Vehicle Accident Fund, to provide compulsory insurance cover to all road users in India. It will be utilised for: treatment of persons injured in road accidents as per the golden hour scheme, compensation to representatives of a person who died in a hit and run accident, compensation to a person grievously hurt in a hit and run accident, and compensation to any other persons as prescribed by the central government.

Improving Services using e-Governance : Improving the delivery of services to the stakeholders using e-Governance is one of the major focuses of this Act. This includes:

- Provision for online driving licenses
- Process of Vehicle Registration
- Drivers Training

Reforms in the Transportation System: Development of an integrated Transport System will be possible from the **National Transportation Policy**. This will also enhance the powers of the State Governments; provide better last-mile connectivity, rural transport, etc.

Taxi aggregators: Act defines aggregators as digital intermediaries or market places which can be used by passengers to connect with a driver for transportation purposes (taxi services). The Act provides guidelines for Aggregators. At present, there are no rules in many states for regulating aggregators, taxis, etc.

Reforms in Driving Licences: The vehicle owners may register their vehicle anywhere in the state and process of registration will be done by dealers. Differently abled persons will get facilities for registration of vehicles.¹

¹ <http://egazette.nic.in/WriteReadData/2019/210413.pdf>

Enhanced Penalties under Amended Motor Vehicles Act to become Applicable from 1st September, 2019

The Ministry of Road Transport and Highways has notified today, through S.O. No 3110(E), the provisions of the Motor Vehicles Amendment Act 2019 that will be applicable with effect from 1st of September 2019. These are provisions which require no further amendments in the Central Motor Vehicles Rules 1989. Important among the provisions notified today are the provisions for enhanced penalties.

For the remaining provisions the Ministry has initiated the process of formulating draft rules. As and when the process is completed, the relevant provisions would be notified for implementation.

The attached table gives a brief of the provisions that have been notified today, and would be applicable from the 1st of September.²

Amendments in Various Penalties under Motor Vehicles (Amendment) Act – 2019

Section		Old Provision / Penalty	New Proposed Provision / Minimum Penalties
177	General	Rs 100	Rs 500
New 177A	Rules of road regulation violation	Rs 100	Rs 500
178	Travel without ticket	Rs 200	Rs 500
179	Disobedience of orders of authorities	Rs 500	Rs 2000
180	Unauthorized use of vehicles without licence	Rs 1000	Rs 5000
181	Driving without licence	Rs 500	Rs 5000
182	Driving despite disqualification	Rs 500	Rs 10,000
182 B	Oversize vehicles	New	Rs 5000
183	Over speeding	Rs 400	Rs 1000 for LMVRs 2000 for Medium passenger vehicle
184	Dangerous driving penalty	Rs 1000	Upto Rs 5000
185	Drunken driving	Rs 2000	Rs 10,000

² <https://pib.gov.in/newsite/pmreleases.aspx?mincode=69>

189	Speeding / Racing	Rs 500	Rs 5,000
192 A	Vehicle without permit	upto Rs 5000	Upto Rs 10,000
193	Aggregators (violations of licencing conditions)	New	Rs 25,000 to Rs 1,00,000
194	Overloading	Rs 2000 and Rs 1000 per extra tonne	Rs 20,000 and Rs 2000 per extra tonne
194 A	Overloading of passengers		Rs 1000 per extra passenger
194 B	Seat belt	Rs 100	Rs 1000
194 C	Overloading of two wheelers	Rs 100	Rs 2000, Disqualification for 3 months for licence
194 D	Helmets	Rs 100	Rs 1000 Disqualification for 3 months for licence
194 E	Not providing way for emergency vehicles	New	Rs 10,000
196	Driving Without Insurance	RS 1000	Rs 2000
199	Offences by Juveniles	New	Guardian/owner shall be deemed to be guilty. Rs 25,000 with 3 yrs imprisonment. For Juvenile to be tried under JJ Act. Registration of Motor Vehicle to be cancelled
206	Power of Officers to impound documents		Suspension of driving licenses u/s 183, 184, 185, 189, 190, 194C, 194D, 194E
210 B	Offences committed by enforcing authorities		Twice the penalty under the relevant section

EVENTS OF THE MONTH

1. **Two Training Programmes of 10 days each for Public Prosecutors (PPs)** from the States of Punjab and Haryana were organized at CJA. The first programme for group of 32 PPs of Punjab State from September 02-13, 2019 and the other was organized for a group of 32 PPs of Haryana State from September 16-27, 2019. In both the training programmes, 39 sessions and the valedictory session in each programme were structured covering different topics / aspects relevant to Public Prosecutors regarding Criminal and Civil Matters in order to enhance their capacity to perform their duties effectively and efficiently. The topics are : The Role of Prosecutor and the Constitution, Law of Custody during Investigation and special legislations, Protection against self Incrimination- Dimensions and Applicability, Interpretation of Revenue Records and their Applicability in Cases-I&II, Law on Bails-Regular and Anticipatory, General Aspect of Service Law, Mens Rea Presumptions under NDPS Act & its constitutionality, Examination of witnesses – Principles and Procedures, Important provision of SC-ST Act, Recent Changes in Criminal law-Substantive and Procedural, Role of Post-mortem in Aid of Justice, Compensation under MACT Act, Sentencing Policy & Restitutive Justice- Legal and Procedural Aspects-I&II, Ramifications of Personal Search under NDPS Act, Suits against and by the Government – Legal implications, Salient Feature of POCSO, DNA Profiling & Evidence, Executions-Speedy & Expeditious Disposals, Prosecution Sanction for Public Servants, Determination of Compensation under Land Acquisition Act, Electronic Evidence Admissibility & Appreciation, Legal Facets of Human Trafficking, Law on Constructive & Joint Criminal Liability, Miscellaneous Applications

under Civil Procedure Code, Awards under Arbitration & Reconciliation Act-Legal Issues, Criminal Appeals & Revisions – Law and Procedure, Summoning of Additional Accused and Evidence-Legal Parameters, Law Relating to Under Trials, Parole, Furlough & Pre Mature Release of Prisoners, Cordiality amongst Prosecutors, Police, Judiciary & District Administration, Process of Trial in Civil Cases-Best Practices & Law on Amendments of Pleadings, Access to Justice- Legal Aid Special reference to Kasab Case, Important Aspects in Checking of Challans by the Prosecutor, Delays in Criminal Trials-Causes & Remedial Measures, Cyber Crime Parameters of Investigation – Challenge, Jurisprudence of Circumstantial Evidence, Law of Admissions and Confessions, Domestic Violence – Procedure thereof. Sh. Pradeep Mehta & Dr. Nandita Kaushik, Faculty, CJA co-ordinated the programme. The different sessions were taken by: Dr. Balram K. Gupta, Director (Academics), CJA, Dr. K.P. Singh, IPS, DG, State Vigilance Bureau, Haryana, Dr.D.V. Saharan, Dr. Krishan Viz, Dr. J.S. Dalal, Prof. & Head, Forensic Medicine, CMC, Ludhiana, Faculty from CJA & CFSL, Chandigarh.

2. On 09.09.2019, Trainee Judicial Officers returned from Punjab Police Academy, Phillaur to continue with their **Institutional Training** at CJA.

3. **Refresher-cum-Orientation Course for Civil Judges-cum-Judicial Magistrates** from the States of Punjab and Haryana was held on September 14, 2019 at CJA. The Civil Judges were sensitized on the topics: Living Will, Forensic Evidence–Legal Scenario, Protection of Women from Domestic Violence Act, 2005, Juvenile Justice Act, Training on Practical Use of Computers in Courts. Dr. Balram K. Gupta,

Director (Academics), CJA took the first session. Second to fourth sessions were taken by Sh. Baljinder Singh Sra and Ms. Nandita Kaushik Faculty, CJA and fifth session was taken by Resource Person from Punjab and Haryana High Court. 49 judicial officers participated in the course.

4. Hon'ble Juvenile Justice Monitoring Committee of Punjab and Haryana High Court with Hon'ble Mr. Justice Jaswant Singh as Chairman held **State Level Meet in collaboration with Chandigarh Judicial Academy on Foster Care under Juvenile Justice Act, 2015 on September 21, 2019**. HMsJ Jaishree Thakur and HMJ G.S. Gill, Judges were the other members of Juvenile Justice Committee. This meet was attended by more than 100 different participants involved in the implementation of Juvenile Justice Act. The welcome address was delivered by Dr. Balram K. Gupta, Director (Acad.), CJA. The keynote address was delivered by HMJ Jaswant Singh. The other speakers included Mr. Amod K. Kanth, General Secretary, Prayas, Dr. K.P. Singh, Director General, State Vigilance Bureau, Haryana & former DGP, Haryana, Ms. Vasundhra Sachdeva, MD, Centre of Excellence in Alternative Care, New Delhi, Dr. Vageshwari Deswal, Faculty of Law, Delhi University and Mr. Neil Robert, Co-Ordinator, Chandigarh Legal Services Authority. Different aspects of Foster

Care and need for Quality of Services were discussed. Ms. Shalini Singh Nagpal, Director, Admn., CJA gave the expression of gratitude to one and all. The programme was co-ordinated by Rajnish Kumar Sharma, ADJ-cum-OSD, Ish Kumar, Joint Registrar and Baljinder Singh Sra, Faculty Member, CJA.

5. **Refresher-cum-Orientation Course for ADJs from the States of Punjab and Haryana was organized on September 28, 2019** at CJA. The ADJs were sensitized on the topics : Setting Aside Arbitral Awards u/s 34 of the Arbitration and Conciliation Act, 1996 – Powers of the Court, Sensitizing the Judicial Officers regarding the Acid Attack cases ensuring dignified treatment of victims during the trial, Quick and adequate award of compensation including interim compensation, Interpreting Land Records – A Revisit-I&II and Training on Practical Use of Computers in Courts. The first session was taken by HMJ Anil Kshetarpal, Judge, Punjab and Haryana High Court. 2nd to 4th sessions were taken by Ms. Ranjana Aggarwal, Sh. B.M. Lal, Faculty, CJA and fifth session was taken by Resource Person from Punjab and Haryana High Court. 49 judicial officers participated in the course.

6. TJOs undergoing Induction Training at CJA were sent on **field visit** from September 30 to October 5, 2019 and thereafter **court placement** from October 7 to 25, 2019.

FORTHCOMING EVENTS

1. **Refresher-cum-Orientation Course for Civil Judges from Punjab and Haryana** is scheduled to be organized on October 12, 2019.
2. **Ten Days Training Programme for the Public Prosecutors from the State of Punjab and Chandigarh** is scheduled to be organized from October 09 to 22, 2019.
3. **Refresher-cum-Orientation Course (through Video Conference) for ADJs Haryana State** is scheduled to be organized on October 31, 2019.