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# CJA e-NEWSLETTER

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Monthly Newsletter of  
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For circulation among the stakeholders in Judicial Education

## FROM THE DESK OF CHIEF EDITOR

Many start their career as a lawyer. Some after some time choose to join the District Judiciary. In due course of time, some get elevated to the High Court. Rarely, one goes to the summit court. It would not be wrong to say, only in the rarest of the rare cases. During the last 70 years, in this region, only three names come to my mind who reached the apex court of the country; JJ Ranjit Singh Sarkaria, H.R.Khanna and A.D.Koshal. Justice H.R.Khanna from the District Judiciary would have been in the normal circumstances the Chief Justice of India. He was superseded. He resigned as the senior most judge of the Supreme Court. A lot has been written about his long journey. JJ Sarkaria and Koshal retired as Judges of the Supreme Court. In this piece, I intend mapping up the hugely contributory journey of Justice R.S.Sarkaria. A journey multifaceted. Inspiring and motivating. Many lessons to be learned. The present generation of judges does not seem to know how much Justice Sarkaria contributed. He had retired from the Supreme Court almost four decades back. It is firmly believed that our Judges must be given a peep into the meaningful journey of Justice Sarkaria.

Justice R.S.Sarkaria was born on January 16, 1916. In a highly educated family. He graduated from Government College, Lahore in 1936. Graduated-in-Law from the University Law College, Lahore during 1937-39. He practiced at Patiala as Pleader and thereafter as Advocate of the Patiala High Court (1940-43). He joined Patiala Judicial Service as Sub-Judge in 1943. He came to PEPSU Judicial Service from 1948-1951. He was in the superior judicial service of PEPSU from 1951-1956 and that of Punjab from 1956-1962. He remained on deputation as Registrar, Punjab High Court during 1962-1967. Therefore, he remained with the District Judiciary at different levels for almost 24 years. He was elevated as a Judge of Punjab High Court on June 13, 1967. He was elevated as Judge of the Supreme Court of India on September 17, 1973. This means, he reached the Apex Court in a span of 6 years from being a Judge of the High Court. He did supersede his seniors in the High Court. He retired from the Supreme Court on January 15, 1981. He remained Judge of the Supreme Court for more than 7 years. The beauty of his journey is, he spent more time in the summit court than in the High Court.

Justice Sarkaria was very popular with the Bar both at Chandigarh and New Delhi. He enjoyed the most cordial relationship with the Bar. His courtesy and humility were exemplary both in and outside the court. He always kept his cool. He would even tolerate an irritating remark by the counsel with a smile. His smile would convey much more than a harsh word from him. Justice Sarkaria was a knowledgeable and a scholarly judge. In a meeting of judges and lawyers, a senior advocate of the Supreme Court remarked: "*Seldom has a judge of this caliber, particularly*

*in criminal law, adorned the bench*". His clarity of mind. His thought process and his grip over the language were unique. It would be highly educative to make reference to some of his quotable quotes from different judgments in the Supreme Court:

1. *"Human judgment is fallible and a judicial officer is no exception. Consequently, so long as a judicial officer in the discharge of his official duties, acts in good faith and without any motive to defeat, obstruct or interfere with the due course of justice, the courts will not, as a rule, punish him for a 'criminal contempt'"*.

*S.Abdul Karim v. M.K.Prakash (1976)*

2. *"The audi alteram partem rule,..... is a very flexible, malleable and adaptable concept of natural justice.*

*Swadeshi Cotton Mills v. Union of India (1981)*

3. *"A wooden equality as between all classes of employees regardless of qualifications, kind of jobs, nature of responsibility and performance of the employees is not intended, nor is it practicable if the administration is to run".*

*South Central Rly. v. A.V.R.Siddhantti (1974)*

4. *"Retreading of old tyres is just like resoling of old shoes. Just as resoling of old shoes does not produce a commercially different entity having a different identity, so from retreading no new or distinct article emerges. The old tyre retains its basic structure and identity".*

*P.C.Cheriyar v. Barfi Devi (1980)*

5. *"The prefix 'undue' indicates that there must be some abuse of influence. 'Undue influence' is used in contra-distinction to 'proper influence'"*.

*Bachan Singh v. Prithvi Singh (1975)*

6. *"Legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case".*

*Collector of Customs v. D.Bhoormull (1974)*

This reproduction is only to demonstrate how well each aspect is knitted in simple language in different judgments. Easy to understand. Easy to digest. It must be added that Justice Sarkaria during his sojourn with the Supreme Court delivered a plethora of judgments. Many landmark judgments.

Justice Sarkaria was a linguist. He was equally comfortable with English, Hindi and Punjabi. He was a member of two member committee set up by the PEPSU Government to translate the Constitution of India into Punjabi. He authored; *English – Hindi – Punjabi Dictionary of Legal and Administrative Terms (1950)* : *Ik Lapp Hussan Di "Handful of Beauty"*, a rendering of famous English poems into Punjabi verse (1969) : *Shakespeare's King Lear* translated into Punjabi, published by Punjabi University, (1973).

Justice Sarkaria after retirement was asked to head the Commission to study *Center State* relations in 1983. This Sarkaria Commission monumental report was submitted in 1988. This report was a colossal work. It dealt with various aspects of **Center – State relationship including the imposition of President’s Rule**. This Report is referred by all political parties. Most sought after Report throughout the world. It was debated in India. It was also debated in universities outside India. Reference to this Report is often made in Parliament and in State Legislatures on constitutional controversial issues. I had a copy of this Report. I had shifted from the Panjab University to the legal profession in the High Court. Professor S.Dayal, former Professor and Head, Department of Laws, Panjab University had to deliver lectures in Delhi. He came home to take the Report. Professor Dayal was also my guide for my doctoral work. We must have spent two to three hours discussing various aspects and the Report. I gave him the copy of the Report. The very next day, his son rang me up in the later part of the afternoon. He told me, Papa is no more. He was having a nap after lunch. He died in sleep. I have shared this episode because this happened to be my last meeting with my most revered teacher in law. He was my model of a teacher. I feel that this meeting would not have been possible but for the Report.

Justice Sarkaria also served as the Chairman of the Press Council of India from January 19, 1989 to July 24, 1995. He was a true guide to the Indian media. His contribution is deeply acknowledged.

He had settled in Chandigarh. His love for horticulture and for flowers was well known. The lawns in his house in Chandigarh as well as in Delhi were always a site to refresh yourself. He had a collection of exotic variety of flowers and fruit trees at his farm. After his retirement I had the opportunity of meeting and interacting with him. These meetings always left me with a special flavour of Justice Sarkaria.

He started his judicial career at the threshold as sub-judge. It would be appropriate to mention some special qualities which made him from being a good to a great judge. As sessions judge in Patiala, he had to try a corruption case of the richest landlord of the state. The landlord wielded great influence. K.M.Munshi was engaged to defend the accused. A.S.Sarkaria, the father of Sessions Judge Sarkaria happened to mention the name of the accused. The Sessions judge (Sarkaria) went inside. He wrote his resignation letter. It was handed over to his father. The father could see that his son was very upset. He tore the letter. He expressed his apology. Their relationship remained cold for a few months. This incident speaks of the sensitivity of Justice Sarkaria. The parents and the elders have to play a very positive role particularly during the initial years of judicial officers/judges. This is something what needs to be nurtured in their minds.

Justice Sarkaria was no more on October 12, 2007. He was close to 92. My object of sharing his journey particularly with the District Judiciary is to acquaint them with such hugely contributory innings. We have a lot to imbibe from his journey. Let his legacy be translated into action. He would continue to be remembered for times to come.

**Balram K. Gupta**

## LATEST CASES : CIVIL

*"The rights which the citizens cherish deeply, are fundamental — it is not the restrictions that are fundamental."*

— S. Ravindra Bhat, J. in *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1, para 86

**Nazir Mohamed Vs. J. Kamala: 2020 SCC OnLine SC 676: The Presumption 'Possession Follows Title' Arises Only Where There Is No Definite Proof Of Possession By Anyone Else: SC-HELD-** The Supreme Court observed that the presumption based on the maxim 'possession follows title' that possession must be deemed to follow title, arises only where there is no definite proof of possession by anyone else. A person claiming a decree of possession has to establish his entitlement to get such possession and also establish that his claim is not barred by the laws of limitation. Explaining the maxim 'Possession follows title', the bench observed that the same is limited in its application to property, which having regard to its nature, does not admit to actual and exclusive occupation. It was observed that *"A person claiming a decree of possession has to establish his entitlement to get such possession and also establish that his claim is not barred by the laws of limitation. He must show that he had possession before the alleged trespasser got possession. . The maxim "possession follows title" is limited in its application to property, which having regard to its nature, does not admit to actual and exclusive occupation, as in the case of open spaces accessible to all. The presumption that possession must be deemed to follow title, arises only where there is no definite proof of possession by anyone else. In this case it is admitted that the Appellant-Defendant is in possession and not the Respondent Plaintiff."*

**State Of Madhya Pradesh Vs. Centre For Environment Protection Research And Development: 2020 SCC OnLine SC 687: Suspend/Cancel Registration Certificate Of Vehicles Without Valid PUC Certificate, Penalize Owners: SC-HELD-** The Supreme Court has directed the State of Madhya Pradesh to suspend/cancel Registration Certificate of vehicles which do not possess a valid Pollution Under Control Certificate and also to initiate penal measures against the owner and/or the person(s) in possession and/or control of the offending vehicle, in accordance with law. The bench observed that the National Green Tribunal has the power, authority and/or jurisdiction to direct a State

Government to strictly implement the requirement of vehicles to possess and/or display a valid PUC Certificate.

**Narasamma Vs. A. Krishnappa (Dead): 2020 SCC OnLine SC 672: Pleas Of Title And Adverse Possession Cannot Be Advanced Simultaneously And From The Same Date: SC-HELD-** The Supreme Court has observed that plea of title and adverse possession cannot be advanced simultaneously and from the same date. The Supreme court observed that the claim of title from 1976 and the plea of adverse possession from 1976 cannot simultaneously hold. On the failure to establish the plea of title, it was necessary to prove as to from which date the possession of the wife of the defendant amount to a hostile possession in a peaceful, open and continuous manner.

**V. Sukumaran V. State of Kerala: 2020 SCC OnLine SC 671 : Pensionary Provisions Must Be Given Liberal Construction As A Social Welfare Measure: SC-HELD-** Pension is not a bounty payable at will, but a social welfare measure as a post-retirement entitlement to maintain the dignity of the employee, remarked the Supreme Court. The court while considering the appeal said that the pensionary provisions must be given a liberal construction as a social welfare measure and further observed that *"This does not imply that something can be given contrary to rules, but the very basis for grant of such pension must be kept in mind, i.e., to facilitate a retired Government employee to live with dignity in his winter of life and, thus, such benefit should not be unreasonably denied to an employee, more so on technicalities."*

**B. Santoshamma Vs. D. Sarala: Civil Appeal No.3574 Of 2009 Decided On 18.09.2020-Relief Of Specific Performance Of Contract Is No Longer Discretionary After 2018 Amendment: SC-HELD-** Relief of specific performance of a contract is no longer discretionary, after the 2018 amendment, observed the Supreme court. The bench further observed thus in an appeal arising out of a specific performance suit. Though the case involved interpretation of Specific Relief Act prior to 2018 amendment, the bench observed that: "After the amendment of Section 10 of the

S.R.A., the words "specific performance of any contract may, in the discretion of the Court, be enforced" have been substituted with the words "specific performance of a contract shall be enforced subject to ...". The Court is, now obliged to enforce the specific performance of a contract, subject to the provisions of sub-section (2) of Section 11, Section 14 and Section 16 of the S.R.A. Relief of specific performance of a contract is no longer discretionary, after the amendment."

**Raj Pal Singh Vs. Commissioner Of Income-Tax, Haryana, Rohtak: 2020 SCC OnLine SC 67: Capital Gains In Case Of Compulsory Land Acquisition Accrues On Arrival Of The Relevant Stage Of Taking Possession And Not Before: SC-HELD-** The Supreme Court has observed that capital gains in a case of compulsory acquisition of land [under Land Acquisition Act of 1894] shall be deemed to have accrued:

(a) upon making of the award, in the case of ordinary acquisition referable to Section 16; and  
(b) after expiration of fifteen days from the publication of the notice mentioned in Section 9 (1), in the case of urgency acquisition under Section 17. The bench observed that capital gains shall be deemed to have accrued upon arrival of the relevant stage of taking possession and not before.

**Punjab State Power Corporation Limited Versus Emta Coal Limited & Anr: Special Leave To Appeal (C) No. 8482/2020 Dt. 18.09.2020: [Article 227] Writ Petition Can Be Entertained Only If There Is Patent Lack Of Inherent Jurisdiction In Arbitrator's Order: SC-HELD-** The Supreme Court has observed that a petition under Article 227 of the Constitution of India against dismissal of a petition under Section 16 of the Arbitration and Conciliation Act can be entertained only when there is perversity in the order which leads to a patent lack of inherent jurisdiction.

**Pappu Deo Yadav Vs. Naresh Kumar: 2020 SCC OnLine SC 752: [Motor Accidents Claims] Compensation For Loss Of Future Prospects Can Be Awarded In Cases Of Permanent Disablement Also: SC-HELD-** The Supreme court has observed that compensation for loss of future prospects can be awarded in cases of permanent disablement incurred as a result of a motor accident. The court further observed that the Courts should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account

the realities of life, both in the assessment of the extent of disabilities, and compensation under various heads. In the present case, the loss of an arm, in the opinion of the court, resulted in severe income earning impairment upon the appellant. As a typist/data entry operator, full functioning of his hands was essential to his livelihood. The extent of his permanent disablement was assessed at 89%; however, the High Court halved it to 45% on an entirely wrong application of some 'proportionate' principle, which was illogical and is unsupportable in law. Nevertheless, the assessment of disability cannot be 45%; it is assessed at 65% in the circumstances of this case."

**Government Of India Vs. Vedanta Limited: 2020 SCC OnLine SC 749: Arbitration -Enforcement Court May Refuse Enforcement Of Foreign Award, But Cannot Set Aside Or Correct It: SC-HELD-** The Supreme Court, in Vedanta case, observed that though enforcement courts may "refuse" enforcement of a foreign award, if the conditions contained in Section 48 are made out, but it cannot set aside or correct a foreign award, even if such conditions are made out. The above observations were made by the bench headed by Justice S. Abdul Nazeer while disagreeing with the view expressed by the High Court that a foreign award is enforceable on its own strength, and is not necessarily dependent on whether or not it goes through the process of Section 48 proceedings. The bench observed that, it is only after the stages of Sections 47 and 48 are completed, the award becomes enforceable as a deemed decree, as provided by Section 49.

**- Limitation Period For Filing Petition For Enforcement Of Foreign Award Would Be Governed By Article 137 Of Limitation Act: SC-HELD-** The Supreme Court has held that the period of limitation for filing a petition for enforcement of a foreign award under Sections 47 and 49 of the Arbitration and Conciliation Act, would be governed by Article 137 of the Limitation Act, 1963 which prescribes a period of three years from when the right to apply accrues. The bench observed that a party may file an application under Section 5 for condonation of delay in filing the petition for enforcement of foreign award as the bar contained therein which excludes an application filed under any of the provisions of Order XXI of the Code of Civil Procedure, would not be applicable to a substantive petition filed under the Arbitration Act, 1996.

## LATEST CASES : CRIMINAL

*"A judgment must be read as a whole, so that conflicting parts may be harmonised to reveal the true ratio of the judgment. However, if this is not possible, and it is found that the internal conflicts within the judgment cannot be resolved, then the first endeavour that must be made is to see whether a ratio decidendi can be culled out without the conflicting portion. If not, then, the binding nature of the precedent on the point on which there is a conflict in a judgment, comes under a cloud."*

— Rohinton Fali Nariman, J. in *BGS SGS SOMA JV v. NHPC*, (2020) 4 SCC 234, para 43

**Union Of India Vs. Ashok Kumar Sharma: 2020 SCC OnLine SC 683: Police Officer Cannot Arrest/Register FIR/ Investigate In Regard To Cognizable Offences Under Chapter IV Of Drugs & Cosmetics Act: SC-HELD-** The Supreme Court has held that, the Police Officers cannot register FIR, arrest, prosecute or investigate in regard to Cognizable offence under Chapter IV of the Drugs and Cosmetics Act, 1940. The bench further held that an arrest can be made by the Drugs Inspector in regard to cognizable offences falling under Chapter IV of the Act without any warrant and otherwise treating it as a cognizable offence.

**Parvinder Kansal vs. State of NCT of Delhi: 2020 SCC OnLine SC 685: [Section 372 CrPC] Appeal Filed By Victim Seeking Enhancement Of Sentence Not Maintainable: SC -HELD-** The Supreme Court has held no appeal can be maintained by victim under Section 372 of the Code of Criminal Procedure on the ground of inadequate sentence. The SC while upholding the Delhi High Court judgment which dismissed the appeal filed by a victim under Section 372 CrPC seeking enhancement of sentence imposed on the convict by the Trial Court. The accused, in this case, was convicted for offence punishable under Sections 364A, 302 and 201 of the Indian Penal Code. The father of the deceased boy, filed appeal before the High Court challenging the order of sentence seeking enhancement of sentence to death penalty. Referring to proviso to Section 372 CrPC, the bench said that, so far as victim's right of appeal is concerned, same is restricted to three eventualities,

namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation. It observed: *While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377, Cr.PC gives the power to the State Government to prefer appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377, Cr.PC but similarly no appeal can be maintained by victim under Section 372, Cr.PC on the ground of inadequate sentence. It is fairly well settled that the remedy of appeal is creature of the Statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable."*

**Raghav Gupta V. State (NCT Delhi): 2020 SCC OnLine SC 713: Prevention Of Food Adulteration Act - No Violation Of Labelling Regulations If Relevant Information Traceable From Barcode: SC-HELD-** The Supreme Court has quashed a prosecution for alleged violation of Rule 32(e) of the Prevention of Food Adulteration Rules, 1955 after noting that the relevant information about the batch of the product was available in the barcode affixed to it. Rule 32 mandates that every package of food should carry a label giving out information about the manufacturer, batch of the product, description of the food and its ingredients etc. The Supreme Court

accepted the contention of the accused and further held that the prosecution will amount to an "abuse of process of law" and "unnecessary harassment" as the relevant information required under Rule 32(e) was traceable by scanning the barcode. It said that *"That the barcode was available on the sample is not in dispute. In view of the fact that the relevant information under Rule 32(e) with regard to the lot/code/batch identification to facilitate it being traced to the manufacturer are available in the barcode and which can be decoded by a barcode scanner, we are of the considered opinion that no useful purpose is going to be served by allowing the present prosecution to continue and it will be an abuse of the process of law, causing sheer waste of time, causing unnecessary harassment to the appellant, if the prosecution is allowed to continue"*.

**M/S Bandekar Brothers Pvt. Ltd. & Anr Vs. Prasad Vassudev Keni: 2020 SCC OnLine SC 707: [Giving & Fabricating False Evidence] Private Complaints Alleging Offences U/Sec 191 & 192 IPC Not Maintainable When It Is Committed In Relation To Court Proceedings: SC-HELD-** The Supreme Court has held that a private complaint under Section 190 of the Code of Criminal Procedure cannot be filed alleging offences under Section 191 and 192 of the Indian Penal Code, even if false evidence is created outside the Court premises. The bench observed that the offence punishable under these sections does not have to be committed only in any proceeding in any Court but can also be an offence alleged to have been committed in relation to any proceeding in any Court. The bench further noted the difference between the offences mentioned in Section 195(1)(b)(i) and Section 195(1)(b)(ii) of the CrPC and held that *"Where the facts mentioned in a complaint attracts the provisions of Section 191 to 193 of the IPC, Section 195(1)(b)(i) of the CrPC applies. What is important is that once these sections of the IPC are attracted, the offence should be alleged to have been committed in, or in relation to, any*

*proceeding in any Court. Thus, what is clear is that the offence punishable under these sections does not have to be committed only in any proceeding in any Court but can also be an offence alleged to have been committed in relation to any proceeding in any Court."*

**Stalin vs. State: 2020 SCC OnLine SC 723: Death Occurred Due To Single Stab Injury Can Also Attract Section 302 IPC (Murder): SC-HELD-**

The Supreme Court has observed that even in cases when death occurs due to single stab injury, Section 302 of the IPC can be attracted. It further said that there is no hard and fast rule that in a case of single injury Section 302 IPC would not be attracted.

Addressing this contention, the bench referred to some other judgments *Mahesh Balmiki v. State of M.P.*, (2000) 1 SCC 319, *Dhirajbhai Gorakhbhai Nayak v. State of Gujarat* (2003) 9 SCC 322, *Pulicherla Nagaraju v. State of A.P.* (2006) 11 SCC 444, *Singapagu Anjaiah v. State of A.P.* (2010) 9 SCC 799 and *State of Rajasthan v. Kanhaiya Lal* (2019) 5 SCC 639 and observed that *"From the above stated decisions, it emerges that there is no hard and fast rule that in a case of single injury Section 302 IPC would not be attracted. It depends upon the facts and circumstances of each case. The nature of injury, the part of the body where it is caused, the weapon used in causing such injury are the indicators of the fact whether the accused caused the death of the deceased with an intention of causing death or not. It cannot be laid down as a rule of universal application that whenever the death occurs on account of a single blow, Section 302 IPC is ruled out. The fact situation has to be considered in each case, more particularly, under the circumstances narrated hereinabove, the events which precede will also have a bearing on the issue whether the act by which the death was caused was done with an intention of causing death or knowledge that it is likely to cause death, but without intention to cause death. It is the totality of the circumstances which will decide the nature of offence."*

## LATEST CASES : FAMILY LAW

*"Law has to cater to wide variety of situations as appear in society. Law being dynamic, the certainty of the legislation appears rigid at times whenever a circumstance (set of facts) appears which is not catered for explicitly. Expediency then dictates that the higher judiciary, while interpreting the law, considers such exception(s) as are called for without disturbing the pith and substance and the original intention of the legislature. This is required primarily for the reason to help strike a balance between competing forces—justice being the end—and also because the process of fresh legislation could take a long time, which would mean failure of justice, and with it erosion of public confidence and trust in the justice delivery system."*

— Navin Sinha, J. in *Varinder Kumar v. State of H.P.*, (2020) 3 SCC 321, para 13

**Rana Nahid v. Sahisul Haq Chisti : 2020 SCC OnLine SC 522: Can Family Court convert petition for maintenance under Section 125 CrPC to one under Muslim Women's Protection Act? -HELD-** The Supreme Court bench has given a split verdict on the issue whether a Family Court can convert the petition for maintenance under Section 125 Cr.P.C. to one under Section 3 or Section 4 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. It was concluded that there can be no dispute that the Family Court alone has jurisdiction in respect of personal and family matters relating to women and men, irrespective of their religion. Family matters of Muslim women pertaining inter alia to marriage, divorce etc. are decided by Family Courts, as also claims of Muslim wives to maintenance under Section 125 of the Cr.P.C. it was further said that, *"There could be no reason to single out divorced Muslim wives to deny them access to the Family Courts, and that in my view, was never the legislative intent of the 1986 Act for Muslim Women."* Furthermore, the matter has, hence, been referred to a larger bench.

**Perry Kansagra v. Smriti Madan Kansagra :2019 SCC OnLine SC 211 : Principle of confidentiality in mediation does not apply to matters of child custody-HELD-** In the issue relating to custody of a child where the question was as to whether the Counsellor's report furnished in the course of mediation proceedings or the Mediator's report in case of mediation, when the process fails, can be used by either of the parties during trial, the bench held that *"Complete adherence to confidentiality would absolutely be correct in normal matters where the role of the court is purely of an adjudicator. But such an approach*

*may not essentially be conducive when the court is called upon and expected to discharge its role in the capacity as parens patriae and is concerned with the welfare of a child."* Stating that record of such interaction may afford valuable inputs to the Court in discharge of its duties in parens patriae jurisdiction, the Court further said that *"The intention is clear that the normal principle of confidentiality will not apply in matters concerning custody or guardianship issues and the Court, in the best interest of the child, must be equipped with all the material touching upon relevant issues in order to render complete justice."*

**Valsala Nisha v. Rajesh Soman Nair: 2020 SCC OnLine Ker 3184: Convenience of lady is of paramount concern while considering transfer petitions in matrimonial disputes-HELD-** The Kerala High Court allowed the transfer petition of the petitioner's matrimonial dispute cases to the Family Court most convenient for her to appear before. The Court while evaluating the facts and circumstances of the case took note of her hardships and the inconvenience she has to undergo while travelling up and down to the Family Court where her cases are pending. The Court further emphasised that such hardships were not uncommon especially amongst women who are aggrieved by such disputes. Therefore, the Court laid stress on taking a lady's convenience to travel while considering transfer petitions in the future too.

**Deepti Kapur v. Kunal Julka: 2020 SCC OnLine Del 672- [S. 14 of Family Courts Act] In a contest between right to privacy and**



**right to fair trial, both of which arise under expansive Art. 21, right to privacy may have to yield to right to fair trial-HELD-** While addressing a matrimonial dispute the Delhi High Court, observed that, *“the only criterion or test under Section 14 of Family Courts Act for a Family Court to admit, evidence is its subjective satisfaction that the evidence would assist it to deal effectually with the dispute.”* In context of the present matter, Court stated that conversation between the wife and her friend, which is the subject matter of recording on the CD, in which she is alleged to have spoken about the husband and his parents, would be a ‘relevant fact’ as understood in law, upon a combined reading of Sections 5, 7 and 8 of the Evidence Act. To that extent therefore, the contents on the CD are relevant for purposes of the divorce proceedings. Though Court added to its conclusion that, if the right to adduce evidence collected by surreptitious means in a marital or family relationship is available without any qualification or consequences, it could potentially create havoc in people’s personal and family lives and thereby in the society at large. Affirming the order of family Court it is observed that *“While law must trump sentiment, a salutary rule of evidence or a beneficent statutory provision, must not be taken as a license for illegal collection of evidence.”*

**Dharmesh Vasantrai Shah v. Renuka Prakash Tiwari: 2020 SCC OnLine Bom 697: Mother has an indefeasible legal right to natural guardianship vis-à-vis an illegitimate child-HELD-** While deciding the instant custody matter, the Bombay High Court, held that as per the provisions of Section 6 of Hindu Minority and Guardianship Act, 1956, it is a mother who is the natural guardian of an illegitimate child (whether boy or girl) and a father’s claim only comes in second to mother’s. Considering the contentions of the parties and the Order given by the Family Court, the Court observed that the petitioner could not sufficiently establish the mental instability of the respondent, as the materials presented by him does not establish the respondent’s unsoundness of mind, *prima facie*. Deliberating upon the validity of the

Order passed by the Family Court, the Bench noted that the Family Court had correctly taken into account all the relevant circumstances and materials on record; its view is certainly a possible view, which a Court of law might well take. The impugned Order has fairly and adequately addressed *prima facie* merits of the case as also the question of balance of convenience. Regarding the petitioner’s claims, the Court noted that he denied any matrimonial relationship between himself and the respondent, and thereby, legitimacy to the minor child. The child, who is a special child, has been taken care of and looked after by the respondent mother ever since his birth. It is therefore the mother who has an indefeasible legal right to his natural guardianship over the petitioner.

**Ranjith P.C. v. Asha Nair. P: 2020 SCC OnLine Ker 1751: Wife’s persistent effort to separate husband from family amounts to cruelty: Divorce granted in favour of husband-HELD-** The Kerala High Court found that respondent has no case that petitioner was a drunkard when he married her. Evidence indicates that the respondent and the petitioner’s mother were not cordial and clashes were frequent. It is natural for a wife in that scenario to make persistent effort to constrain her husband to be separated from the family life and that would undoubtedly be tortuous for him. In the case on hand the petitioner’s turning to be a drunkard can only be taken as the natural outcome of the pressure exerted on him by the respondent to have a separate residence to the exclusion of petitioner’s mother. No family is totally devoid of clashes among members constituting it. It is common for elders to scold and sometimes abuse youngsters. Making a daughter in law to do the house hold/domestic work is also not something unusual. Thus in Court’s opinion, Family Court’s decision was highly unjustified it took role of a councilor rather than an adjudicator. Hence in the opinion of the present bench, evidence as discussed above is satisfactory to take a view that the respondent has treated the petitioner with cruelty sufficient enough to grant a decree for dissolution of marriage in his favour.

## EVENTS OF THE MONTH

Regular Induction Training of the newly selected judicial officers from the states of Punjab and Haryana has been going on online since August 10, 2020. The Faculty of CJA has been regularly taking sessions. Besides this, for the entire judiciary of both the states, the following webinars were organized:

S. No.	Date	Topic	Speaker
1	September 12, 2020	“Succession by and from Women under the Hindu Succession Act, 1956”	HMJ Anil Kshetarpal, Judge, Punjab & Haryana High Court
2	September 26, 2020	“Wills: Execution and Proof”	Justice Rajive Bhalla (Retd.) Punjab & Haryana High Court

## NOTIFICATIONS

- IBBI NOTIFIES: INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (USE OF CAVEATS, LIMITATIONS, AND DISCLAIMERS IN VALUATION REPORTS) GUIDELINES, 2020** : These Guidelines provide guidance to the Registered Valuers in the use of Caveats, Limitations, and Disclaimers in the interest of credibility of the valuation reports. These also provide an illustrative list of the Caveats, Limitations, and Disclaimers which shall not be used in a valuation report.

These Guidelines shall come into force in respect of valuation reports in respect of valuations completed by Registered Valuers (RVs) on or after 1st October, 2020.

These Guidelines are divided into three sections. The first section elaborates on the need for Caveats, Limitations, and Disclaimers in a valuation report. The second section provides a guidance note on the use of Caveats, Limitations, and Disclaimers, while the third section provides an illustrative list of Caveats, Limitations, and Disclaimers for each asset class provided in the Rules.<sup>1</sup>

- GOVERNMENT NOTIFIES CENTRAL CONSUMER PROTECTION AUTHORITY (ALLOCATION AND TRANSACTION OF BUSINESS) REGULATIONS, 2020** : In exercise of the powers conferred by sub-section (1) and clause (b) of sub-section (2) of Section 104 read with sub-section (1) of Section 14 of the Consumer Protection Act, 2019 (35 of 2019), the Central Consumer Protection Authority, with the previous approval of the Central Government, hereby makes the following regulations, namely:–

Central Consumer Protection Authority (Allocation and Transaction of Business) Regulations, 2020. The said regulations shall lay down the regulations under the following heads:

Definitions

Procedure for transaction and allocation of business

Manner and form in which contracts may be executed

Affixation of Common Seal

Reimbursement

Effect of any irregularity of procedure.<sup>2</sup>

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<sup>1</sup> <https://www.ibbi.gov.in/uploads/legalframework/e5e1300db2dd6a8bebe289ba579a7c14.pdf>

<sup>2</sup> <http://egazette.nic.in/WriteReadData/2020/221299.pdf>