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In this Issue:

From the Desk of Chief Editor
Important Cases: CONSTITUTION
Latest Cases: CIVIL
Latest Cases : CRIMINAL
Notification
Events of the Month &
Forthcoming Events

Editorial Board

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FROM THE DESK OF CHIEF EDITOR

Constitution Day was celebrated on Nov.26 throughout the country. The Constitution of India was adopted on Nov. 26, 1949. It has completed 70 years of its journey. My romance with the Indian Constitution started in 1964. The Constitution was still in its teens (14 years). I was twenty. We have grown together. We are maturing together. What a wonderful journey.

The Constitution has undergone different changes. It is not the same what it was in 1949. During this period, 103 corrective surgeries have been performed. The Basic Structure has remained the same. It has grown to keep pace with the changing times. This has been possible because of the role of the top court. If the balance sheet is prepared, it would clearly demonstrate that the summit court has been able to connect the people with the Constitution. The tool of Public Interest Litigation (PIL) created through judicial interpretation has been the most potent medium to connect the people with the Constitution.

The coparcenary of Fundamental Rights, Directive Principles and Fundamental Duties : FRs, DPs and FDs connects the people with the State. The State is under the Constitutional mandate that FRs are not to be violated. Equally, the State is to endeavor to govern in the manner that the DPs are translated-in-action. The people are also under the Constitutional obligation to follow FDs. In actual functioning, each one must follow the discipline of the Constitution. The Constitution Day is observed to remind one and all that the Constitution is binding on all. The Constitution is the Dharma. It is the holy book. If it is followed, the Right to Good Governance would become a practical reality, not merely a formality. People talk of FRs. It is understandable. Let people also not forget or ignore FDs. They go hand in hand. If the people do not follow FDs, they would have no legitimate claim to FRs. Like FRs and DPs have been harmonized, similarly FRs and FDs are to be co-related. If a citizen acts contrary to a FD, he / she would have no legitimacy to claim FR. In any case, the violation of FD, must be read as a limitation on the enforcement of FR. Jurisprudentially, one cannot be divorced from the other. Both are interwoven. Moreover, Rights and Duties are fundamental. Principles are directives. Yet, the Constitution ordains in Art. 37 that the Principles are 'fundamental in the governance of the country'. If DPs could be harmonized with FRs, why FDs cannot be read or treated as reasonable limitations on FRs. This trinity is the best recipe of the Constitution. They must be read together. Ultimately, it would lead to wholesome justice.

The Constitution is a living character. Judicial Review helps to keep the Constitution in shape. Judicial review does not let the Constitution grow old. No ageing of the Constitution. The Parliament can repair the Constitution. In the process, it cannot injure, damage or destroy its Basics. Kidney transplant

is a good example. Kidney is one of the basic organs of human body. It cannot be replaced just with 'any' other kidney. 'Matching' process is vital. To be followed with utmost care and caution. Otherwise, the human body would reject the same. Similarly, while amending the Constitution, the 'Basics' cannot be replaced or supplanted by new provisions. The change must not tinker the Basic structure. 'Matching' must be perfect. In the sense, it must not dilute the 'Basic'. It may only identify and clarify the gray spots. Nothing must be left to doubt. 'Basic' must speak for itself. No new provision can be introduced which may change the 'Basic' provision itself. It is corrective surgery. So that the 'health' of the Basic structure is maintained and retained. The aging process may not affect the 'Basics' of the Constitution.

There are hidden constitutional values. The bare reading of the provision may not speak of the hidden constitutional value. Art.14 speaks of equality before law and the equal protection of laws. Equals to be treated equally. Reasonable classification is of course permissible. Judicial Review has helped in firmly laying down that any action which is arbitrary is also discriminatory. This, in fact, is the hidden value of the Constitution. Art. 21 is a piece of beauty and joy forever. Many rights flow from it. Right to live with dignity. Right to die with dignity. Even the right to a living will has been recognized. I recall my student days. I went for a debate at Banaras Hindu University, Varanasi. What I saw, was an appalling situation. A dead body was being carried on the carrier of a bicycle. On both sides, the body was hanging down. It was touching site. Now I realise, what this right to die with dignity means.

During my reasonably long journey, I have often wondered, why judicial review has played such a significant role in a parliamentary democracy. I ask myself, why judicial activism! Why not parliamentary activism! Why the Institution of Lokpal or Ombudsman took so long ! Its gestation period was almost close to 60 years. Ultimately, judicial push had to be given to it. I had wished it to be a constitutional body. Only a dream! By parliamentary activism, I mean, strengthening rule of law through legislative process. Enact laws to curb arbitrariness. To eliminate abuse of power. To strengthen constitutional values. Its morality. We all are under the Constitution. The constitutional bodies must function as independent bodies. To serve the constitutional object and purpose. My message on this Constitution Day is : Let the Parliament, the Executive and the Judiciary play active and positive role to strengthen the constitution. To translate the constitution-into-action. This would help in balancing judicial activism. The three organs are bound by the constitution. The people are also to follow the constitution. Therefore, let us pledge ourselves to follow the constitution.

Balram K. Gupta

IMPORTANT CASES: CONSTITUTION

“The Constitution is the fundamental document that provides for constitutionalism, constitutional governance and also sets out morality, norms and values which are inhered in various articles and sometimes are decipherable from the constitutional silence. Its inherent dynamism makes it organic and, therefore, the concept of ‘constitutional sovereignty’ is sacrosanct. It is extremely sacred and, as stated earlier, the authorities get their powers from the Constitution. It is ‘the source’. Sometimes, the constitutional sovereignty is described as the supremacy of the Constitution.”

Dipak Mishra, C.J. in *Kalpna Mehta v. Union of India*, (2018) 7 SCC 1

M. Siddiq v. Mahant Suresh Das : 2019 SCC OnLine SC 1309 – SC allows temple construction in disputed land; alternate plot of 5 acres for mosque – Held – In an unanimous verdict, the Supreme Court held that the entire disputed land of 2.77 acres in Ayodhya must be handed over for the construction of Ram Mandir. At the same time, the Court held that an alternate plot of 5 acres must be allotted to the Sunni Waqf Board for construction of mosque. This direction was passed invoking powers under Article 142 of the Constitution. The Court observed that the destruction of Babri mosque in 1992 was a violation of law. The act of placing idols beneath the central dome of the mosque in 1949 was an act of "desecration", observed the Court.

Ritesh Sinha v. State of Uttar Pradesh and Ors.: (2019) 8 SCC 1 – Whether Judicial order compelling person to give sample of voice violates his fundamental right to privacy? – Held – The issue was dealt with by the Supreme Court by observing that in view of the opinion rendered in *Modern Dental College and Research Centre and Ors. v. State of Madhya Pradesh and Ors.* (2016) 7 SCC 353, *Gobind v. State of Madhya Pradesh and Anr.:* (1975) 2 SCC 148 and the *Nine Judge's Bench in K.S. Puttaswamy and Anr. v. Union of India and Ors.* (2017) 10 SCC 1, the fundamental right to privacy cannot be construed as absolute, but must bow down to compelling public interest. **Further Held** – The exercise of jurisdiction by Constitutional Courts must be guided by contemporaneous realities/existing realities on the ground. Judicial power should not be allowed to be entrapped within inflexible

parameters or guided by rigid principles. True, the judicial function is not to legislate but in a situation where the call of justice and that too of a large number who are not parties to the lis before the Court, demands expression of an opinion on a silent aspect of the Statute, such void must be filled up not only on the principle of *eiusdem generis* but on the principle of imminent necessity with a call to the Legislature to act promptly in the matter.

Re: Alarming Rise in the Number of Reported Child Rape Incidents : (2019) 8 SCC 300 – Article 32 and 21 – Suo Moto writ petition in Child Rape cases – Held – The court clarified that the purpose of this suo-moto action be extended to frontiers / areas covering questions of victim compensation, victim protection, witness protection and other connected issues.

1. Investigation and trial to be completed in a time-bound manner, as mentioned under Section 406, Cr.P.C.
2. As an interim measure State of Uttar Pradesh to pay an interim compensation of Rs 25,00,000 to victim.
3. Registry to take prompt action on the letter of the family of the victim and an inquiry to be held by the Secretary General of this Court to find out whether there were any lapses or negligence on the part of any member of the Registry in processing the letter petition in question and placing the same before the Chief Justice.

State of Meghalaya and Ors. v. All Dimas Students Union, Dima – Hasao District Committee and Ors. : (2019) 8 SCC 177 – Article 244(2) r/w Sch. VI Para 12- A(b) and Sch. VII List II Entry 23, List I Entry 54- Held- Nothing in VIth Schedule of Constitution indicate about inapplicability of Act, 1957 with

regard to Hills Districts of State of Meghalaya. Report of Comptroller and Auditor General of India for the year ended 31st March, 2013 clearly stated that Act, 1957 is fully applicable for regulation of mines and regulation of minerals in State of Meghalaya. The request of Government of Meghalaya to Government of India in year 2015 for issuance of Presidential notification under Para 12A(b) of Sixth Schedule exempting State from certain provisions of MMDR Act, 1957 has not also been acceded, therefore, the said Act is applicable to Tribal areas of Meghalaya.

Accused 'X' v. State of Maharashtra : (2019) 7 SCC 1 – Article 21-Prisoners Right – Held – Prisoner's right to human dignity where Dignity inheres capacity of understanding, rational choice and free will. These rights remain available to prisoners till death.

S. Luthra Academy v. State of J&K : (2018) 18 SCC 65 – Determination of Arbitrariness- Held – An action was arbitrary or not depends upon facts of each case. Test to determine it are (i) whether there is any discernible principle emerging from impugned act; and(ii) if yes, does it satisfy test of reasonableness. While referring to *Shrilekha Vidyarthi v. State of U.P.*, (1991) 1 SCC 212 : *“The meaning and true import of arbitrariness is more easily visualised than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness.”*

Inhuman Conditions In 1382 Prisons, In re: (2018) 18 SCC 777 – Meaning and scope of

'Life' broadly construed – Held – PIL has compelled Court to consider issues relating to environment, social justice, violation of human rights and disregard for Article 21 of Constitution; either because of absence of governance due to failure of State to faithfully and sincerely implement laws enacted by Parliament or due to mis-governance by Central Government, State Governments and Union Territory Administrations leading to rampant illegalities. Failure of State to take remedial steps to fill in gap when there is no operative law except that enshrined in Constitution. Keeping this in mind and dire necessity of reforms in prison administration and prison management despite earlier efforts, Ministry of Home Affairs in Government of India directed issue notification constituting Supreme Court Committee on Prison.

Sarika v. Shri Mahakaleshwar Mandir Committee : (2018) 17 SCC 112 : Article 25, 26, 49, 51A Constitution – Held – The government has constitutional obligation to invest funds for protection and preservation of not only ancient monuments and structures including temples of archaeological and historical importance but also of sanctum sanctorum as well as deity of spiritual importance. Government has also to sanction funds for providing basic amenities to pilgrims and proper arrangements for shelter places, maintenance of law and order, etc. at the time of Melas and other festivals.

Kantaru Rajeevaru v. Indian Young Lawyers Association : 2019 SCC Online 1461 : SC to keep Sabarimala Review pending till larger bench decides issues of essential religious practices – Held – The Supreme Court by 3:2 majority, decided to keep the review petitions in Sabarimala matter pending until a larger bench determines questions related to essential religious practices. The majority expressed that the issue whether Court can interfere in essential practices of religion needed examination by larger bench.

LATEST CASES : CIVIL

“Contracts of insurance are governed by the principle of utmost good faith. The duty of mutual fair dealing requires all parties to a contract to be fair and open with each other to create and maintain trust between them. In a contract of insurance, the insured can be expected to have information of which she/he has knowledge. This justifies a duty of good faith, leading to a positive duty of disclosure”

Dr. D.Y. Chandrachud, J. in *Reliance Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod*, (2019) 6 SCC 175

Hari Niwas Gupta v. State of Bihar : 2019 SCC OnLine SC 1446 – HCs have power to dispense with disciplinary proceedings for dismissing judicial officers by recording reasons – Held – The Supreme Court observed that the High Courts have power to dispense with the disciplinary proceedings by invoking clause (b) of the second proviso to Article 311(2) of the Constitution of India, by recording reasons.

Dr. Syed Afzal (Dead) v. Rubina Syed Faizuddin : Law Finder ID # 1619307 – Interim mandatory injunctions can be granted after giving opportunity of hearing to opposite side – Held– The Supreme Court observed that, the Civil Courts, while considering the application seeking interim mandatory injunction in long pending cases, should grant opportunity of hearing to the opposite side. In this case the appellant's contention was that the High Court, without granting an opportunity of hearing, granted an interim mandatory injunction and police aid.

Bansidhar Sharma (Since Deceased) v. The State Of Rajasthan: 2019 SCC OnLine SC 1420 – Section 144 CPC [Restitution] not attracted when there is no variation or reversal of a decree or order – Held – The Supreme Court has observed that the provisions of Section 144 of the Code of Civil Procedure will not be attracted when there is no variation or reversal of a decree or order.

Renu Rani Shrivastava v. New India Assurance Company Ltd.: Civil Appeal No(s).8246-8247/2019 (arising out of Special Leave Petition No(s). 32542 – 32543 / 2017) ; DoD 23.10.2019 – Relinquishment of shares

by a dependent doesn't disentitle her from claiming compensation – Held – The Supreme Court observed that relinquishment of share by a claimant (dependent of the deceased) does not disentitle her from claiming compensation. One of the contentions adopted by the Insurance Company was that the wife of the deceased has relinquished her share in favour of her in-laws and got certain properties in lieu thereof and, therefore, the wife of the deceased is not entitled to any compensation.

Taj Mahal Hotel v. United India Insurance Company Ltd.:2019 SCC OnLine SC 1465- Owner's risk clause will not exempt hotel from liability for theft of a vehicle given for valet parking– Held – In an important judgment in the realm of Contract laws, the Supreme Court observed that, in a case of theft of a vehicle given for valet parking, the hotel cannot claim exemption from liability by contending that it was due to acts of third parties beyond their control, or that they are protected by an 'owner's risk' clause.

Mohinder Singh v. Jaswanth Kaur : Civil Appeal No(s). 6706/2013: DoD 11.09.2019 : Signed carbon copy prepared in same process as original document is primary evidence under Sec.62 Evidence Act– Held – The Supreme Court held that signed carbon copy prepared in the same process as the original document is admissible in evidence as the original document as per Section 62 of the Indian Evidence Act. On this ground, the bench set aside a judgment passed by the High Court which had refused to accept the signed carbon copy as original document.

Ministry of Water Resources v. Shreepat Rao Kamde : Civil Appeal No.8472 of 2019 (arising out of SLP (Civil) No.26538 of 2019 arising out of Diary No.21745 of 2019) : DoD 06.11.2019 – Govt. servant cannot file complaint about service conditions or retiral benefits before consumer forums – Held – The Supreme Court reiterated that a government servant is not a 'consumer' for the purpose of Consumer Protection Act and cannot raise any dispute regarding his service conditions or for payment of gratuity or GPF or any of his retiral benefits before any of the forum under the Act.

Union of India v. VR Nanukuttan Nair : 2019 SCC OnLine SC 1435 – Lacuna left by legislature cannot be filled by judicial interpretation – Held – The Supreme Court observed that if the legislature has left a lacuna, it is not open for the Courts to fill it on some presumed intention of the legislature. The bench was considering an appeal against Armed Forces Tribunal's interpretation of a regulation in Navy (Pension) Regulations, 1964. The bench observed that the reading of the Regulations does not lead to an inference that the service element should be limited to an individual who has completed minimum 15 years of engagement.

Jabbar v. The Maharashtra State Road Transport Corporation : Law Finder ID # 1624720 – After reiterating a recent judgment in Ramla & Ors. v. National Insurance Company Limited & Ors. [(2019) 2 SCC 192], on the point whether more than claimed compensation can be granted, the bench observed in para 5 that: "Though the claimants had claimed a total compensation of Rs.25,00,000/- in their claim petition filed before the Tribunal, we feel that the compensation which the claimants are entitled to is higher than the same as mentioned supra. There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or court under Section 168 of the Motor Vehicles Act, 1988 is to award "just compensation". The Motor Vehicles Act is a beneficial and welfare legislation. A "just compensation" is one which is

reasonable on the basis of evidence produced on record. It cannot be said to have become time barred. Further, there is no need for a new cause of action to claim an enhanced amount. The courts are duty bound toward just compensation."

N. Mohan v. R. Madhu : 2019 SCC Online SC 1497 : The Apex Court while discussing the scope of simultaneous and concurrent remedies of appeal and for filing application for setting aside decree now the consecutive right has been given to the defendant. This is because after the appeal filed under Section 96(2) of the Code has been dismissed, the original decree passed in the suit merges with the decree of the appellate court. Hence, after dismissal of the appeal filed under Section 96(2) CPC, the appellant cannot fall back upon the remedy under Order IX Rule 13 CPC. However, time spent in deciding the application under O9R13CPC can be excluded in filing appeal depending upon facts.

Ashok Kumar Kalra v. Wing Cdr. Surendra Agnihotri & Ors. : 2019 SCC Online SC 1493 : The Supreme Court has held that the counter claim can be filed after filing of written statement. The parameters to be taken care of are i. Period of delay. ii. Prescribed limitation period for the cause of action pleaded. iii. Reason for the delay. iv. Defendant's assertion of his right. v. Similarity of cause of action between the main suit and the counter-claim. vi. Cost of fresh litigation. vii. Injustice and abuse of process. viii. Prejudice to the opposite party. ix. and facts and circumstances of each case. x. In any case, not after framing of the issues. But minority view says that in exceptional circumstances, to prevent multiplicity of proceedings and a situation of effective re-trial, the Court may entertain a counterclaim if evidence has not been started.

Hardev Singh vs. Harpreet Kaur - Criminal Appeal No. 1331 of 2013 : DoD 22.11.19 (SC) – The Supreme Court has held that a male aged between 18 and 21 years, who contracts into a marriage with a female adult, cannot be punished under Section 9 of Prohibition of Child Marriage Act, 2006.

LATEST CASES : CRIMINAL

“All human beings possess the capacities inherent in their nature even though, because of infancy, disability, or senility, they may not yet, not now, or no longer have the ability to exercise them. When such disability occurs, a person may not be in a position to understand the implications of his actions and the consequence it entails. In this situation, the execution of such a person would lower the majesty of law.”

N.V. Ramana, J. in 'X' v. State of Maharashtra, (2019) 7 SCC 1

Rekha Murarka v. The State of West Bengal and Anr.: 2019 SCC Online SC 1495 : Private counsel engaged by victim to assist public prosecutor cannot make oral argument / cross examine witnesses – Held – The Supreme Court has observed that victim's counsel has a limited right of assisting the prosecution, which may extend to suggesting questions to the Court or the prosecution, but not putting them by himself.

State of MP v. Man Singh : 2019 SCC OnLine SC 1414 : Section 482 Cr.P.C – Inherent powers cannot be invoked to alter sentence imposed by the HC itself – Held – The inherent power under Section 482 Cr.P.C cannot be used by the High Court to reopen or alter an order disposing of a petition decided on merits, the Supreme Court observed. The bench observed that the High Court has no power to entertain the petition under Section 482 Cr.P.C and alter the sentence imposed by it.

Vinod @ Manoj v. State of Haryana : Law Finder Id # 1618492 : Accused cannot be convicted merely because extra judicial confession is proved – Held – The Supreme Court acquitted a young man who spent about thirteen years in jail after he was convicted in a rape and murder case. The bench set aside the concurrent conviction by the High Court and the Trial Court and observed that the prosecution has failed to prove other circumstances apart from an extra judicial confession relied upon by it beyond reasonable doubt.

Arun Kumar v. Anita Mishra: Criminal Appeal No.1580 of 2019(arising out of Special Leave Petition (Cr)No.8827/2016): DoD 18.10.2019 : Complaint u/s 138 NI act maintainable against dishonour of cheque issued pursuant to Lok Adalat award – Held – The

Supreme Court observed that a complaint under Section 138 of the Negotiable Instruments Act for dishonor of a cheque issued pursuant to the Lok Adalat award is maintainable. In this case as regards the first cheque issued by the accused, a criminal case was preferred u/s. 138 of the Negotiable Instruments Act and it resulted in conviction and a sentence of fine. An appeal was preferred against the judgment of conviction and both the parties in Lok Adalat to withdraw pending litigation. A cheque was also given in the light of the settlement and the same has been dishonoured. The second complaint has been preferred on account of dishonour of the second cheque.

Manoharan v. State : 2019 SCC OnLine SC 1433 : Section 164 Cr.P.C: Presence of advocate not mandatory when confession of accused before magistrate is not recorded by audio-video means – Held – The Supreme Court observed that it is not mandatory that a confession or statement under Section 164 of the Code of Criminal Procedure should necessarily be made in the presence of the advocate(s) except when such confessional statement is recorded with audio-video electronic means. The bench was dealing with the submission of counsel who had contended that the absence of a counsel during proceedings before the Magistrate under section 164, Cr.P.C has caused prejudice to the accused.

Harish Dahiya @ Harish v. State of Punjab:2019 SCC OnLine SC 1452 : Discharge plea cannot be discarded merely because HC had earlier refused to quash criminal proceedings – Held – The Supreme Court has observed that a Trial Court cannot decline to consider the application for discharge filed by an accused merely because his earlier application to quash the entire prosecution

under section 482 of the Code of Criminal Procedure was dismissed by the High Court.

Ranbir Singh v. State of Uttarakhand : Criminal Appeal No. 1631 of 2019 (@ out of SLP (Cri.) No. 5252/2019): DoD 04.11.2019 : Proceedings u/s 218 IPC against IO, witnesses cannot be initiated merely because prosecution failed to establish its case – Held – The Supreme Court observed that merely because the acquittal of the accused was premised on the assessment that the prosecution had failed to establish its case, it does not necessarily mean that the investigator and the concerned witnesses ought to be proceeded against for the offence under Section 218 of the Indian Penal Code.

Barun Chandra Thakur v. Ryan Augustine Pinto : Law Finder Id # 16136756 : Inconvenience of accused to approach court seeking permission to travel abroad not a reason to dilute such bail condition – Held : The Supreme Court has observed that mere inconvenience in the matter of approaching the court seeking permission to travel abroad cannot be a reason to dilute such condition imposed in an Anticipatory bail order. The bench observed thus in an appeal filed by a victim's father against the order of the High Court that diluted conditions in the anticipatory bail order by allowing an application filed by the accused.

Aruna v. Mukund : 2019 SCC OnLine SC 1269: Medical Negligence – Trial court should examine medical expert before framing charges – Held – The Supreme Court reiterated that examination of a report of an independent medical expert is crucial before proceeding against a doctor accused of medical negligence. Earlier, the Apex Court had in *Jacob Mathew v. State of Punjab &Anr., (2005) 6 SCC 1*, laid down guidelines governing the prosecution of doctors for the offence of criminal negligence, punishable under Section 304A of IPC.

Trilok Chand v. State of Himachal Pradesh: Criminal Appeal No. 1831 of 2010: DoD 01.10.2019 : Amendment in criminal laws beneficial to accused can be applied in

pending/earlier cases – Held – The Supreme Court reiterated that if the amendment in a criminal law is beneficial to the accused persons, it could be applied with respect to earlier cases as well which are pending in the Court. In this case, Trilok Chand was convicted under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954. He was sentenced to three months' imprisonment along with fine of Rs.500. His revision petition was dismissed by the High Court.

P. Rajkumar v. Yoga @ Yogalakshmi: Criminal Appeal No.1613 of 2019 (arising out of SLP (Cri.) No.6997 of 2015): DoD 23.10.2019 : Magistrate cannot assume jurisdiction u/s 125 Cr.P.C in a proceedings u/s 20 of Domestic Violence Act – Held – Can a Magistrate after rejecting a plea seeking maintenance under Domestic Violence Act assume jurisdiction under Section 125 of the Criminal Procedure Code and grant maintenance? This was the issue before the Apex Court in the instant case in which it answered in the negative. The bench observed that once the learned Magistrate declined to grant maintenance for reasons specified, it was not open for him to assume jurisdiction in a proceeding under Section 125 of the Cr.P.C. which was not pending before him and was a completely independent proceeding to direct grant of maintenance under the same.

Manoharan v. State:2019 SCC OnLine SC 1433 : Dissent by one judge not a bar for upholding death penalty: SC rejects review petition of death convict – Held – The Supreme Court dismissed the review petition filed by Manoharan whose death penalty was upheld a few months ago. The Supreme Court (2:1) had, in August 2019, upheld the death sentence awarded to Manoharan involved in gang rape of a ten year old girl and thereafter murdering her and her brother. The Apex Court had upheld the death penalty and one judge of Supreme Court had expressed his dissent against upholding death sentence.

NOTIFICATION

Cabinet approves Taxation Laws (Amendment) Bill, 2019 : The Union Cabinet has approved the proposal for introducing the Taxation Laws (Amendment) Bill, 2019 in order to replace the Ordinance.

Economic developments after the enactment of the Finance (No. 2) Act, 2019 (Finance Act) along with the reduction of the rate of corporate income tax by many countries world over necessitated the provision of additional fiscal stimulus to attract investment, generate employment and boost the economy. As these could have been achieved through an amendment to the Income-tax Act, 1961 (IT Act) or to the Finance Act and the Parliament was not in session, it was done through the promulgation of The Taxation Laws (Amendment) Ordinance 2019 (the Ordinance) in September, 2019. Salient features of the amendments made by the Ordinance are provided in the following paras.

In order to promote growth and investment, a new provision was inserted in the IT Act to provide that with effect from the current financial year 2019-20, an existing domestic company may opt to pay tax at 22% plus surcharge at 10% and cess at 4%, if it does not claim any incentive/deduction. The effective tax rate for these companies comes to 25.17% for these companies. They would also not be subjected to **Minimum Alternate Tax (MAT)**.

In order to attract fresh investment in manufacturing and provide boost to 'Make in India' initiative of the Government, another provision was inserted to the IT Act, to provide that a domestic manufacturing company set up on or after 1st October, 2019 and which commences manufacturing by 31st March, 2023, may opt to pay tax at 15% plus surcharge at 10% and cess at 4% if it does not claim any incentive/deduction. The effective rate of tax comes to 17.16% for these companies. They would also not be subjected to MAT.

A company that does not opt for the concessional tax regime and avails the tax exemption/incentive shall continue to pay tax at the pre-amended rate. However, these companies can opt for the concessional tax regime after the expiry of their tax holiday/exemption period. After the exercise of the option, they shall be liable to pay tax at the rate of 22%. Further, in order to provide relief to companies which continue to avail exemptions/incentive, the rate of MAT was reduced from existing 18.5% to 15%.

In order to provide relief to listed companies, the buy-back tax on shares of listed companies introduced through the Finance Act will not apply to buy-backs in respect of which public announcement were made before 5th July, 2019.

In order to stabilize the flow of funds into the capital market, it was provided that the enhanced surcharge introduced through the Finance Act on capital gains arising on account of transfer of listed equity share or certain units that are liable to securities transaction tax will not apply. Further, it was also provided that the enhanced surcharge will not apply to capital gains income of FPIs arising out of the transfer of any security including derivatives, having a concessional tax regime.¹

¹<https://pib.gov.in/Pressreleaseshare.aspx?PRID=1592560>

EVENTS OF THE MONTH

1. A group of **14 newly selected Judicial Officers, Grade-III of Assam Judicial Academy Service visited for an exposure tour** to Chandigarh Judicial Academy. The judicial officers arrived in CJA in the evening of Nov.03, 2019. The judicial officers visited Government Hospital (Sec.16) for live post mortem examination, District Court (Sec.43) & Juvenile Justice Board (Sec.25) for vulnerable witness rooms and High Court of Punjab and Haryana. They were taken for a visit to Golden Temple (Amritsar) and Wagah Border. Two lectures were taken at CJA by CFSL scientists and thereafter, the judicial officers were taken for a visit to CFSL laboratory. Four class room sessions were taken by the faculty members on Nov.09. The judicial officers departed for Guwahati on Nov.10, 2019.

2. A group of **newly promoted ADJs from State of Haryana (12) and from State of Punjab (6) are undergoing one month orientation course**. The course commenced on Nov.04. The valedictory session will be on Dec.03, 2019.

3. **Refresher–cum–Orientation Course for Civil Judges from Punjab and Haryana** was organized on Nov. 09, 2019 at CJA. The Civil Judges were sensitized on the topics : (1)The Specific Relief Act, 1963 and (Amendment) Act, 2018, (2) Child in Conflict with Law – Legal Rights and Protection, (3) Sensitizing the Judicial Officers regarding the Acid Attack cases ensuring dignified treatment of Victims during the Trial and Quick and adequate award of compensation including interim compensation, (4) Rights of Females in the Coparcenary Property under the Hindu Succession Act, 1956 (Amendment Act, 2005) and Training on

Practical Use of Computers in Courts. HMJ Anil Kshetarpal, Judge, Punjab and Haryana High Court, Mr. Anil Malhotra, Advocate, Ms. Ranjana Aggarwal, ADJ, Sh. B.M. Lal, Faculty, CJA and Resource Person from High Court of Punjab & Haryana respectively. 39 judicial officers participated in the course.

4. **Ten Days Training Programme for the Public Prosecutors from the State of Haryana (21) was organized from Nov. 18 to 28, 2019**. The training included four sessions of 1.15 minutes per day. Total 39 sessions and the valedictory session were structured covering 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 topics are : The Role of Prosecutor and the Constitution, Law of Custody during Investigation and special legislations, Interpretation of Revenue Records and their Applicability in Cases-I&II, Protection against self Incrimination- Dimensions and Applicability, Law on Bails-Regular and Anticipatory, Mens Rea Presumptions under NDPS Act & its constitutionality, Important provision of SC-ST Act, Examination of witnesses – Principles and Procedures, General Aspect of Service Law, Recent Changes in Criminal law-Substantive and Procedural, Role of Post-mortem in Aid of Justice, Sentencing Policy & Restitutive Justice- Legal and Procedural Aspects-I&II, Child in Conflict with Law-Legal Rights and Protection, Suits against and by the Government–Legal implications, Compensation under MACT Act, Ramifications of Personal Search under NDPS Act, DNA Profiling & Evidence, Salient Feature of POCSO, Prosecution Sanction for Public

Servants, Legal Facets of Human Trafficking, Electronic Evidence Admissibility & Appreciation, Determination of Compensation under Land Acquisition Act, Awards under Arbitration & Reconciliation Act-Legal Issues, Miscellaneous Applications under Civil Procedure Code, Criminal Appeals & Revisions—Law and Procedure, Law on Constructive & Joint Criminal Liability, Process of Trial in Civil Cases-Best Practices & Law on Amendments of Pleadings, 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, Delays in Criminal Trials-Causes & Remedial Measures, Executions-Speedy & Expeditious Disposals, Important Aspects in Checking of Challans by the Prosecutor, Cyber Crime Parameters of Investigation – Challenge, Access to Justice- Legal Aid Special Ref to Kasab Case, Law of Admissions and Confessions, Jurisprudence of Circumstantial Evidence. 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, Mr. Anil Malhotra, Advocate, P&H High Court, Dr.J.S.Dalal, Prof. & Head, Forensic Medicine, CMC, Ludhiana, Dr. Shivani

and Dr. I. Haque, Faculty, CFSL, Sh. Gurchran Singh, Cyber Faculty, CDTI and Faculty from CJA.

5. On Nov.26, 2019, **function was organized in CJA to celebrate Constitution Day**. HMJ Jitendra Chauhan, President, BoG, CJA chaired the function. He observed that the Constitution of India is the voice of the voiceless and its ideals should be imbibed and practiced so as to provide justice to one and all. HMJ A.G. Masih described that the Constitution of India is the soul of the nation. It permeates every aspect of each one of our life. We need to understand our responsibility towards duties to realise the goals of the Constitution. HMJ Arun Palli & HMsJLiza Gill, Members, BoG, CJA adorned the dias during the function. Dr. Balram K. Gupta advocated that Rights and Duties are Fundamental under the Constitution. Therefore, the duties must be read as limitations on Fundamental Rights. The welcome address and expression of gratitude were delivered by Ms. Shalini Singh Nagpal, Director (Administration). Ms. Pallavi Chalkar represented the group of 54 Judicial Officers from Maharashtra Judicial Academy (MJA), Ms. Harsimrandeep Kaur, TJO spoke on behalf of trainee judicial officers of CJA, Mr. Lokesh Gupta, ADJ, Mr. Pankaj Garg, DA and Ms. Mahima Sikka, RF covered different aspects of the Constitution. Ms. Jasmine read the Preamble of the Constitution and anchored the entire programme.

FORTHCOMING EVENTS

1. Refresher-cum-Orientation Course for Additional District & Sessions Judges is scheduled to be organized on Dec.14, 2019 at CJA.
2. Chandigarh Judicial Academy has organized Mock Trial on Trafficking in Persons in collaboration with United Nations Office on Drugs and Crime on December 6-7-8, 2019.