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FROM THE DESK OF CHIEF EDITOR

The creation of All India Judicial Service (AIJS) was proposed in 1960. The Law Commission in its different reports also favoured the creation of AIJS. This could not be implemented due to the opposition from various state governments and High courts. The proposal was not considered practically viable. Therefore, the same was shelved. The State Governments and High Courts, on the other hand, have not been able to fill up the vacancies in the lower judiciary. Moreover, there have been allegations of favoritism in the selection process. The Central Government has written a letter to the summit Court of the country asking it to introduce single window test for selection of judges. Taking *suo motu* cognizance of the letter, the Bench presided by CJI said that it had held consultations. It was in favour of the common test. The Bench said that a Central Agency would be asked to conduct the examination and prepare the merit list. However, it was made clear that the appointment of judges would be made by the State Governments and High Courts. Merely, by holding the common test, it would not take away their right to make appointment of Judges. It was made clear that the common test would not tamper with the Federal Structure. Accordingly, the response was sought from the States and the Union Territories introducing one window test for selection of judges. The Hon'ble Bench noted that there was no uniformity in selection process which was being followed by different states. It would remove this defect. It would set a common minimum standard for judges across the country. After clearing the examination, it would be open to the candidates to opt for the states of their choice. The State Governments / High Courts would then make the appointments. The Bench asked the Solicitor General appearing for the Centre, whether it should go "whole hog" in implementing the common test or should it be implemented in a phased manner. The response of the Solicitor General was in favour of the summit court's initiative. Accordingly, the Bench was told that common test be applied in one go and not in different phases. The learned Solicitor General was of the view that common test would ensure that only meritorious candidates would be appointed in lower judiciary and that the country would get efficient judicial officers. The Bench adjourned the hearing to July 10 and said that it would pass judicial order for implementing common test for the selection of judges.

Thus, it is evident that the summit court is in favour of common test across the country. It is a step forward. If there can be All India Examination for difference services, the question is, why not for the Judicial Officers. Common examination means common standard. After holding the written examination, and the merit list is prepared, it be open to the State Governments / High Courts to conduct the interview of those candidates who opt for a particular state. If this process is followed, it would certainly inspire confidence. The selection would be based on merit alone. The concern of the Summit Court not to tamper the Federal Structure is understandable. We look forward keenly to this development. It is hoped that this would usher in a new trust and confidence in the selection process.

Balram K. Gupta

CASE COMMENT

Position of a Daughter as a coparcener after *Prakash & Ors. Vs. Phulavati & Ors*., (2016) 2 SCC 36

The Supreme Court in *Prakash & Ors.* vs. *Phulavati & Ors.*[1] (hereinafter *Prakash* case), has settled some of the important issues involving the interpretation of section 6 substituted by the amending Act of 2005. In this case, the plaintiff sister filed a suit for partition and possession of her share in 1992 against her brothers after the death of their father in 1988. During the pendency of the suit, the amending act, 2005 came into force and the plaintiff amended her plaint claiming share in the properties as she had become a coparcener by virtue of the amendment. The trial court only granted her the share which she was entitled by notional partition under the old section and her claim of share as a coparcener was rejected. On appeal, the High Court allowed the claim of the plaintiff /appellant holding that she was entitled as coparcener after the amendment of 2005.Following this decision an appeal in the Supreme Court was made which reversed the judgment of the High Court. The question before the Court was whether the Hindu Succession (Amendment) Act, 2005 will have retrospective effect. After review of the case law, the Supreme Court held that the amendment is prospective in nature and the rights under the amendment are applicable to "**living daughters of living coparceners**" as on September, 2005 irrespective of when such daughters are born. The following propositions can be culled out from the Judgment:

1. That under section 6(1), the right conferred on a daughter of a coparcener is "on and from the commencement of the Hindu Succession (Amendment) Act, 2005". Section 6 (3) talks of death after the amendment for its applicability. Therefore, the amended provisions are prospective in nature and not retrospective in application (para 17).
2. That the rights under the amendment are applicable to living daughters of living coparceners as on 9.9.2005 irrespective of when such daughters are born.
3. That the object of proviso to section 6(1) and of section 6(5) is to exclude the transactions referred to therein which have taken place prior to 20.12.2004.
4. That the explanation to section 6(1) cannot permit re-opening of partitions which were valid when effected. Also, the object of amended section is to give finality to transactions prior to 20.12.2004 is not to make main provision retrospective.
5. That the object of explanation to section 6 (5) is that by fake transactions, available property at the introduction of the Bill is not taken away and remains available as and when right conferred by the statute becomes available and is to be enforced.
6. That explanation to section 6(5) does not apply to notional partition under old section 6 which is by operation of law that is before 9.9.2005 under un-amended section 6(1).

Though, *Prakash* case has settled many issues involving interpretation of Section 6, some important questions still remain to be answered. Whereas the daughter 'by birth becomes a coparcener in her own right in the same manner as the son' and have the 'same rights' and 'subject to same liabilities' in respect of coparcenary property 'as that of a son', now the question arises; what is the nature of coparcenary property in the hands of the daughter? Does she get any property as a coparcener as her exclusive property[2]or as a son in which her children up-to three degrees have birth right? How the property received on partition would devolve in the absence of any children or grand-children of her deceased child? Which means whether provisions of section 16(2) (a) apply to such property.

Divya Khurana
Research Fellow, CJA

[1] *See,* (2016) 2 SCC 36 reversing Prakash Vs. Phulvati AIR 2011 Kar. 78 and Jayendra Awad Vs. Nivedita Sharma, 2011 SCC One line MP 898 (CA No. 13935 of 2015). The Madras and Karnataka Judgments to the contrary in Nagammal vs. N. Deriyappan, AIR 2006 Mad. 265; AlameluAmmal vs. TamizhChelui, 2004 (3) MLJ 620 (DB) and Pushpalatha vs. V. Padma, AIR 2010 Kant. 124 (DB) are impliedly overruled. The decision of Karnataka High Court in M.Prithviraj vs. Leelamma, ILR 2009 Kar. 3612 (DB) and Badrinarayan vs. Om Prakash, AIR 2014 Bom 151 were approved.

[2] *See*, for instance, P.B. Joshi, *The Hindu Succession (Amendment) Act, 2005; A Misnomer*, *available at* mja.gov.in/Site/Upload/GR/Succession_Act.pdf, last visited on 28.2.2017.

LATEST CASES: CIVIL

"Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes."

Justice D.Y. Chandrachud in Dnyandeo Sabaji Naik and Anr. vs. Mrs. Pradnya Prakash Khadekar and Ors.; MANU/SC/0233/2017

Venu vs. Ponnusamy Reddiar: MANU/SC/0569/2017 – Partition – Held – that there is no limitation period for the execution of preliminary decree for partition. **Further held –** that a preliminary decree for partition crystallizes the rights of parties for seeking partition to the extent declared, the equities remain to be worked out in final decree proceedings and till partition is carried out and final decree is passed, there is no question of any limitation running against right to claim partition as per preliminary decree.

Gaurav Kumar Bansal vs. UOI: MANU/SC/0583/2017 – National Disaster Management Authority – Held – that the National Disaster Management Authority to regularly publish its Annual Report, to review and update all plans, and to make its website multilingual, "so that all concerned may benefit". It is absolutely necessary for the NDMA constituted at the national level and the State Disaster Management Authority at the State level to be ever vigilant and ensure that if any unfortunate disaster strikes, there should be total preparedness and that minimum standards of relief are provided to all concerned.

Godrej & Boyce Manufacturing Company Limited vs. Dy. Commissioner of Income Tax: MANU/SC/0584/2017 – **The phrase "income which does not form part of total income under this Act" appearing in Section 14A includes within its scope dividend income on shares in respect of which tax is payable under Section 115-O of the Act and income on units of mutual funds on which tax is payable under Section 115-R – Held** – that as far as species of dividend income on which tax is payable under Section 115-O of the Act is concerned, the earning of the said dividend is tax-free in the hands of the assessee and not includible in the total income of the assessee. Hence, the operation of Section 14A of the Act to such dividend income cannot be foreclosed. **Further held**- Condonation of delay can take place only when the defaulting tenants so pleads with justifiable reasons which would show that he was prevented from compliance by circumstances beyond his control.

National Insurance Co. Ltd. vs. Rekhaben: MANU/SC/0604/2017 – Compensation – Held – that the income from compassionate employment granted to the claimant is not liable to be deducted from the compensation amount which is liable to be paid either by owner/the driver of the offending vehicle or the insurer. Further Held- while granting compensation to the claimants in respect of fatal accidents, the amount receivable by the claimants from compassionate appointment given to them by the employer, should not be deducted.

Pawan Kumar Gupta vs. B.R. Gupta: MANU/SC/0634/2017– Held – that condonation of delay in payment of rent can take place only when defaulting tenant so pleads with justifiable reasons which would show that he was prevented from compliance by circumstances beyond his control.

Dagadabai (dead) by L.Rs. vs. Abbas: 2017 (5) SCALE 22 – Adverse Possession – Held – Setting aside a judgment of Bombay High Court which had held that it is not necessary for a 'defendant' to first admit the ownership of the 'plaintiff' before raising a plea of adverse possession, it is observed by the apex court that It is a settled principle of law of adverse possession that the person, who claims title over the property on the strength of adverse possession and thereby wants the Court to divest the true owner of his ownership rights over such property, is required to prove his case only against the true owner of the property. The person claiming adverse possession must necessarily first admit the ownership of the true owner over the property to the knowledge of the true owner. It further observed that the true owner has to be made a party to the suit to enable the court to decide the plea of adverse possession between the two rival claimants.

Sri Srinivasaiah vs. H.R. Channabasappa (since dead) by his LRs.: 2017 (5) SCALE 306 – Test to Identify whether transaction is mortgage by conditional sale or a sale outright with a condition of repurchase – Held – Relying upon the Chunchun Jha's case, court held that though each case must be decided on its own facts, but certain broad

principles remain. The first is that the intention of the parties is the determining factor. If the words are express and clear, effect must be given to them and any extraneous enquiry into what was thought or intended is ruled out. The real question in such a case is not what the parties intended or meant but what is the legal effect of the words which they used. If, however, there is ambiguity in the language employed, then it is permissible to look to the surrounding circumstances to determine what was intended.

Gurnam Singh (D) thr. L.Rs vs. Gurbachan Kaur (D) by L.Rs.: 2017 (5) SCALE 348 – Specific Performance of Contract – Held – The legal effect of the non-compliance of Rules 3(2) and 4(3) of Order 22, came into operation resulting in dismissal of second appeal as abated on the expiry of 90 days. The appeal could be revived for hearing only when firstly, the proposed legal representatives of the deceased persons had filed an application for substitution of their names and secondly, they had applied for setting aside of the abatement under Order 22 Rule 9 of the Code and making out that there in a sufficient cause for setting aside of an abatement and lastly, had filed an application under Section 5 of the Limitation Act seeking condonation of delay in filing the substitution application under Order 22 Rules 3 and 4 of the Code beyond the statutory period of 90 days. **Further Held –** It is a fundamental principle of law that a decree passed by the Court, if it is a nullity, its validity can be questioned in any proceeding including in execution proceedings or even in collateral proceedings whenever such decree is sought to be enforced by the decree holder. The reason is that the defect of this nature affects the very authority of the Court in passing such decree and goes to the root of the case. This principle, in our considered opinion, squarely applies to this case because it is a settled principle of law that the decree passed by a Court for or against a dead person is a "nullity".

Chilamkurti Bala Subrahmanyam vs. Samanthapudi Vijaya Lakshmi:2017 (5) SCALE 495 – **Interpretation of Order 21 Rule 90 of the CPC** – **Held** – that before the sale can be set aside merely establishing a material irregularity or fraud will not do. The applicant must go further and establish to the satisfaction of the court that the material irregularity or fraud has resulted in substantial injury to the applicant. Conversely even if the applicant has suffered substantial injury by reason of the sale, this would not be sufficient to set the sale aside unless substantial injury has been occasioned by a material irregularity or fraud in publishing or conducting the sale. **Further held –** A charge of fraud or material irregularity under Order 21 Rule 90 must be specifically made with sufficient particulars. Bald allegations would not do. The facts must be established which could reasonably sustain such a charge.

Essar Steel India Ltd. vs. State of Gujarat: 2017 (5) SCALE 744 – Strict Interpretation of exempted Notifications–Held– It is well settled that taxing statute are to be strictly construed specifically the exemption notification. The statutory provisions of Section 3(2)vii(a) have to be strictly construed and in event the condition of generating energy jointly with any other industrial undertaking is not fulfilled, the claim has to be rejected.

Palam Gas Service vs. Commissioner of Income Tax: 2017 (5) SCALE 759–Income Tax Act–Held–that though the word used in section 40(a)(ia) of the Income Tax Act, is 'payable', it would also cover the situations where the amount is already paid, but no advance tax was deducted thereupon.

Rajasthan Wakf Board vs. Devki Nandan Pathak: 2017 (5) SCALE 769 – Wakf Property – Held – that matters falling under sections 51 and 52 of the Wakf Act are also required to be decided by the tribunal and not the civil court.

Govt. of NCT of Delhi vs. Manav Dharam Trust :2017 (5) SCALE 777– Land Acquisition–Held–that subsequent purchaser, assignee, successor in interest, power of attorney, etc., are all persons who are interested in compensation/land owners/ affected persons in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the act.

Alliance University vs. Sudhir: MANU/KA/1035/2017 – Order VIII Rule 6A CPC – Held – that the counter-claim can be filed only against the plaintiff and not the presenter of the suit. **Further Held** – that under Order VIII Rule 6A, the counter-claim has to be filed by the defendant against the plaintiff. The court also noted that the defendants could bring other independent cause of action by filing a counter claim. **Further Held–**that a temporary injunction can be granted only when there is a prima facie case in favour of the parties and the tests of balance of convenience and irreparable harm are satisfied.

LATEST CASES: CRIMINAL

"The jurisdiction exercisable by the Supreme Court under Article 142 cannot ever be invoked to salvage and legitimise acts of fraudulent character. Fraud cannot be allowed to trounce on the stratagem of public good."

Jagdish Singh Khehar, CJ, in Nidhi Kaim v. State of M.P.;(2017) 4 SCC 1

Seeni Nainar Mohammed and Ors. vs. State Rep. by Deputy Superintendent of Police: MANU/SC/0523/2017 – Non-Compliance of Provisions – Held – The Sanctioning Authority had not applied his mind to the records in its entirety and granted sanction only after considering certain documents which were in English. The Sanctioning Authority without perusing the relevant documents issued the order of sanction and the sanction was granted mechanically. The confessions of Accused-1 and 6 were not voluntary as had been evidenced from the materials since those confessions were not recorded in a free atmosphere thereby it violated the directions given by this Court. Further, the said confessions could not be relied upon as they contradicted with each other. The acts done by a person must fall within the ambit of terrorist activity and the Accused must be a terrorist as defined in Section 3(1) Terrorist and Disruptive Activities (Prevention) Act, 1987. **Further Held** – As a result of illegal sanction order, the criminal proceedings for prosecution under the TADA Act were vitiated entirely. Therefore, the order of conviction and sentence passed by the Designated Court was quashed and set-aside.

Arun Kumar vs. The State of Bihar and Ors.: MANU/SC/0546/2017 – Appreciation of evidence – Held – The High Court did not exercise its appellate powers while hearing the appeal in the manner it ought to have and dismissed the appeal finding no fault in the order impugned before it by observing in its conclusion that since the view taken by the Sessions Court was a plausible view, the same did not call for any interference by the High Court. The High Court should have called for the record of the case from the Trial Court as provided under Section 385(2) of the Code of Criminal Procedure, 1973 which it seems was not called for. Since the High Court decided the appeal without keeping in view the law laid down by the present Court, it committed an error. Hence, it was not possible to sustain the impugned order which was set aside.

Kumaran vs. State of Kerala and Ors.: MANU/SC/0580/2017 – Compensation – Held – A deeming fiction is enacted, viz., that any money other than a fine, which would include compensation payable under Section 357(3), Code of Criminal Procedure, the method of recovery of which is not expressly provided for, shall be recoverable as if it was a fine. One of the bones of contention in these appeals is the effect of the deeming fiction under Section 431. The object of the legal fiction created by Section 431 is to extend for the purpose of recovery of compensation until such recovery is completed- and this would necessarily take not only to Section 421 of the Code of Criminal Procedure but also to Section 70 of the Penal Code, a companion criminal statute.

State of Jharkhand through S.P., CBI vs. Lalu Prasad and Ors.: MANU/SC/0586/2017 – Law of Limitation – Held – that the law of limitation binds everybody equally, including the government, and defense by the government of impersonal machinery and inherited bureaucratic methodology cannot be accepted in view of the modern technology being used and available, though the court condoned the delay but **Further Held –** that the CBI ought to have acted with circumspection. It ought to have followed the CBI manual. It has failed to live up to its reputation. The lethargy on its part is intolerable. If CBI fails to act timely, peoples' faith will be shaken in its effectiveness. In important cases, Director, CBI should devise methodology which should not be cumbersome as reflected in these cases. Otherwise in future, Director; CBI cannot escape the responsibility for delay in such cases to be termed as deliberate one, which is intolerable. Being the head of the institution, it was the responsibility of the Director, CBI to ensure that appeals were filed within limitation. There should not have been delay in filing special leave petitions at all.

State of Madhya Pradesh vs. Kallo Bai: MANU/SC/0618/2017 – Indian Forest Act – Held – that confiscatory proceedings are independent of the main criminal proceedings, and it is meant to provide a deterrent mechanism and to stop further misuse of the vehicle. The bench, referring to various other decisions and also on provisions of the Madhya Pradesh in Van Upaj (Vyapar Viniyam) Adhiniyam, 1969, observed that criminal

prosecution is distinct from confiscation proceedings and parallel, each having a distinct purpose. “The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender”.

State (through) Central Bureau of Investigation vs. Kalyan Singh (former CM of UP) and Ors.: 2017 (5) SCALE 36 – Dropping of Proceedings – Held – In this case the power of transfer is being exercised to transfer a case from one Special Judge to another Special Judge, and not to the High Court. The fact that one Special Judge happens to be a Magistrate, whereas the other Special Judge has committed the case to a Court of Sessions would not make any difference as, as has been stated hereinabove, even a right of appeal from a Magistrate to the Sessions Court, and from the Sessions Court to the High Court could be taken away under the procedure established by law, i.e., by virtue of Section 407 (1) and (8) if the case is required to be transferred from the Magistrate to the High Court itself. Hence, Under Section 407, even if 2 tiers of appeal are done away with, there was no infraction of Article 21 as such taking away of the right of appeal is expressly contemplated by Section 407(1)(iv) read with Section 407(8). There was no substantive mandatory provision which was infracted by using Article 142. One other disturbing feature was the fact that the Special Judge designated by the notification to carry on the trial had been transferred a number of times, as a result of which the matter could not be taken up on the dates fixed. This being the case, while allowing the appeal of the CBI and setting aside the impugned judgment, the directions were issued. The proceedings in the Court of the Special Judicial would stand transferred to the Court of Additional Sessions Judge. The Court of Sessions would frame an additional charge Under Section 120B against few Accused. The Court of Sessions would frame additional charges Under Section 120B and the other provisions of the Penal Code mentioned in the joint charge sheet filed by the CBI against Accused.

Machindra vs. Sajjan Galpha Rankhamb and Ors.: 2017 (5) SCALE 70 – Expert Opinion – Held– Expert's opinion should be demonstrative and should be supported by convincing reasons. Court cannot be expected to surrender its own judgment and delegate its authority to a third person, however great. If the report of an expert is slipshod, inadequate or cryptic and information on similarities or dissimilarities is not available in the report of an expert then his opinion is of no value. Such opinions are often of no use to the court and often lead to the breaking of very important links of prosecution evidence which are led for the purpose of prosecution.

Asha Ranjan and Ors. vs. State of Bihar and Ors.:(2017) 4 SCC 397 – Fair Trial – Held – Analysis of the concept of fair trial as a facet of Article 21, it is noticeable that in its ambit and sweep it covers interest of the accused, prosecution and the victim. The victim, may be a singular person, who has suffered, but the injury suffered by singular is likely to affect the community interest. Therefore, the collective under certain circumstances and in certain cases, assume the position of the victim. They may not be entitled to compensation as conceived Under Section 357A of the Code of Criminal Procedure but their anxiety and concern of the crime and desire to prevent such occurrences and that the perpetrator, if guilty, should be punished, is a facet of Rule of Law. And that has to be accepted and ultimately protected. It is settled in law that the right under Article 21 is not absolute. It can be curtailed in accordance with law. The curtailment of the right is permissible by following due procedure which can withstand the test of reasonableness. The test that has to be applied while balancing the two fundamental rights or inter fundamental rights, the principles applied may be different than the principle to be applied in intra-conflict between the same fundamental right. The Accused has a fundamental right to have a fair trial under Article 21 of the Constitution. Similarly, the victims who are directly affected and also form a part of the constituent of the collective, have a fundamental right for a fair trial. Thus, there can be two individuals both having legitimacy to claim or assert the right. There may be a perception that if principle of primacy is to be followed, then the right of one gets totally extinguished. It has to be borne in mind that total extinction is not balancing. When balancing act is done, the right to fair trial is not totally crippled, but it is curtailed to some extent by which the Accused gets the right of fair trial and simultaneously, the victims feel that the fair trial is conducted and the court feels assured that there is a fair trial in respect of such cases. That apart, the faith of the collective is reposed in the criminal justice dispensation system and remains anchored.

JUVENILE JUSTICE

Our Children are our greatest treasure. They are our future. Those who abuse them tear at the fabric of our society and weaken our nation.

- Nelson Mandela

Re: Exploitation of Children in Orphanages in the State of Tamil Nadu vs. Union of India and Ors.: 2017 (5) SCALE 787 – In this landmark judgment, the summit court gave the following directions:

1. The definition of the expression "**child in need of care and protection**" under Section 2(14) of the JJ Act should not be interpreted as an exhaustive definition. The definition is illustrative and the benefits envisaged for children in need of care and protection should be extended to all such children requiring State care and protection.

2. The Union Government and the governments of the States and Union Territories must ensure that the process of registration of all child care Institutions is completed positively by 31st December, 2017 with the entire data being confirmed and validated. The information should be available with all the concerned officials. The registration process should also include a data base of all children in need of care and protection which should be updated every month. While maintaining the database, issues of confidentiality and privacy must be kept in mind by the concerned authorities.

3. The Union Government and the governments of the States and Union Territories are directed to enforce the minimum standards of care as required by and in terms of the JJ Act and the Model Rules positively on or before 31st December, 2017.

4. The governments of the States and Union Territories should draw up plans for full and proper utilization of grants (along with expenditure statements) given by the Union Government under the Integrated Child Protection Scheme. Returning the grants as unspent or casual utilization of the grants will not ensure anybody's benefit and is effectively wasteful expenditure.

5. It is imperative that the Union Government and the governments of the States and Union Territories must concentrate on rehabilitation and social re-integration of children in need of care and protection. There are several schemes of the Government of India including skill development, vocational training etc which must be taken advantage of keeping in mind the need to rehabilitate such children.

6. The governments of the States and Union Territories are directed to set up Inspection Committees as required by the JJ Act and the Model Rules to conduct regular inspections of child care institutions and to prepare reports of such inspections so that the living conditions of children in these institutions undergo positive changes. These Inspection Committees should be constituted on or before 31st July, 2017 and they should conduct the first inspection of the child care institutions in their jurisdiction and submit a report to the concerned government of the States and Union Territories on or before 31st December, 2017.

7. The preparation of individual child care plans is extremely important and all governments of the States and Union Territories must ensure that there is a child care plan in place for every child in each child care institution. While this process may appear to be long drawn and cumbersome, its necessity cannot be underestimated in any circumstances. The process of preparing individual child care plans is a continuing process and must be initiated immediately and an individual child care plan must be prepared for each child in each child care institutions on or before 31st December, 2017.

8. Wherever the State Commission for Protection of Child Rights has not been established or though established is not fully functional in the absence of a Chairperson or

any one or more Members, the governments of the States and Union Territories must ensure that all vacancies are filled up with dedicated persons on or before 31st December, 2017. The SCPCRs so constituted must publish an Annual Report so that everyone is aware of their activities and can contribute individually or collectively for the benefit of children in need of care and protection.

9. The training of personnel as required by the JJ Act and the Model Rules is essential. There are an adequate number of academies that can take up this task including police academies and judicial academies in the States. There are also national level bodies that can assist in this process of training including bodies like the Bureau of Police Research and Training, the National Judicial Academy and others including established NGOs. Where ever possible training modules should be prepared at the earliest.

10. It is time that the governments of the States and Union Territories consider de-institutionalization as a viable alternative. It is not necessary that every child in need of care and protection must be placed in a child care institutions. Alternatives such as adoption and foster care need to be seriously considered by the concerned authorities.

11. The importance of social audits cannot be over-emphasized. The necessity of having a social audit has been felt in some statutes which have been mentioned above and also by the Comptroller and Auditor General of India. That being the position, it is imperative that the process of conducting a social audit must be taken up in right earnestness by the National Commission for the Protection of Child Rights as well as by each State Commission for the Protection of Child Rights. This is perhaps the best possible method by which transparency and accountability in the management and functioning of child care institutions and other bodies under the JJ Act and Model Rules can be monitored and supervised.

12. While the Juvenile Justice Committee in each High Court is performing its role in ensuring the implementation of the JJ Act and Model Rules, there is no doubt that each Committee will require a small Secretariat by way of assistance. We request each Juvenile Justice Committee to seriously consider establishing a Secretariat for its assistance and we direct each State Government and Union Territory to render assistance to the Juvenile Justice Committee of each High Court and to cooperate and collaborate with the Juvenile Justice Committee in this regard.

13. We acknowledge the contribution made by Ms. Aparna Bhat (Amicus curiae) in taking keen interest in the issues raised in this PIL and for rendering effective assistance to this Court at all times. The Supreme Court Legal Services Committee will give an honorarium of Rs. 2 lakhs to Ms. Aparna Bhat out of the funds available for juvenile justice issues.

14. While there may be some other issues specifically concerning children in need of care and protection we leave these issues open for consideration and grant liberty to the learned Amicus to move an appropriate application in this regard including any application for modification or clarification of the directions given above.

15. The Union of India is directed to communicate our directions to the concerned Ministry or Department of each State and Union Territory for implementation and to collate necessary information regarding the implementation of these directions with the assistance of the National Commission for the Protection of Child Rights and the State Commission for the Protection of Child Rights. A status report in this regard should be filed in this Court on or before 15th January, 2018. The Registry will list this case immediately thereafter."

NOTIFICATION

Forensic Document Examiners Regulatory Rules, 2014 were notified and published in Punjab Government Gazette dated June 06, 2014. Accordingly, they came into force w.e.f. the date of publication (June 06, 2014). These rules apply to all Forensic Document Examiners working as private practitioners in the State of Punjab. Rule 4 provides Qualifications and Requirements for registration which read as under :

a) Be a person of good moral character, high integrity and good repute and must possess high ethical and professional standing.
b) Possess at least a degree or diploma in Forensic Science from the recognized university.
c) Have undergone full time training of at least two years duration in Forensic Science Laboratory or under practicing forensic document examiner.
d) Have published at least one research paper on the subject in a renowned journal.
e) Be actively engaged in practice of forensic document examination.
f) Submit as references the names and addresses of three Forensic document examiners attesting to his/her qualification for registration.

Annexure A to the Rules provides the **Code of Ethics and Conduct** :

a) To apply the principles of science and logic in the evaluation of all document examination problems;
b) To keep informed on latest developments in the field by constant study and research;
c) To keep information received from a client as confidential; and to refuse to perform similar services for any person whose interests are opposed to those of the original client;
d) To give an opinion or conclusion strictly in accordance with the physical evidence in the document, and only to the extent justified by the facts
e) To behave in and out of court in an absolutely impartial manner and to do nothing that would show bias or any interest in the case.
f) To report the findings of an examination and their proper interpretation;
g) To give the best possible services in all cases, irrespective of the importance of the matter;
h) To charge for services, in accordance with a mutually agreed contract for services rendered. Remuneration shall be fair and equitable considering all the elements in the case.
i) No engagement shall be undertaken on a contingent fee basis
j) To make technically correct statements in all written or oral reports and testimony;
k) To maintain a constant spirit of fairness combined with high ethical, education and technical standards.

No. 3/42/2013-5H2/1839 -The Governor of Punjab is pleased to constitute a Forensic Document Examiner Regulatory Authority comprising of following members:

1. Director, Forensic Science Laboratory, Chairman
2. Director Prosecution and Litigation, Member
3. Professor, Deptt. of Forensic Science, of a recognised University, Member
4. Professor, Deptt. of Forensic Science, of a recognised University, Member
5. Assistant Director (Documents) FSL, Member Secretary

The Director, Forensic Science Laboratory, Punjab will consult the University Authorities to determine names of two professors for nominating members of above constituted Authority.

2. The above said Authority will prescribe and issue an application form to invite applications from private forensic questioned documents examiners, finger print and hand writing experts for their registration. The requisite documents and suitable registration fee shall be mentioned in the application form by the authority.

3. The authority will hold its meeting in the first week of every month to adjudge the eligibility of the applicants by checking their qualifications, credentials and credibility, after satisfaction the authority will issue registration certificate having validity of 5 years.

4. The authority will have the right to reject the application on the valid grounds.

5. The authority will frame a list of registered private forensic questioned documents examiners, finger print and hand writing experts and upload & update from time to time on the website of Punjab Government.

6. The authority will have the powers to take disciplinary action against the registered documents examiners, finger print and hand writing experts if he/she violates ethical or professional rules of conduct or competency or strictures have been passed against him /her by Hon'ble high court.

7. The authority in the event of conflicting opinions of registered examiners/ experts would appoint a board of three experts under its supervision whose report would be binding on the contesting parties.

EVENTS OF THE MONTH

1. **One month Orientation Course** for seven Additional District and Sessions Judges on promotion from Punjab commenced on May 08, 2017. The course curriculum was prepared based upon PAN India Module. This Orientation Course would cover field training as well. It would conclude on June 12, 2017.

2. **Global Pound Conference** was held from May 12–14, 2017 on Shaping the Future of Dispute Resolution and Improving Access to Justice. It was organized by Punjab and Haryana High Court Mediation Cell and Chandigarh Judicial Academy at CJA auditorium. At the inaugural session, the Chief Guest was HMJ Dipak Misra, Judge, Supreme Court of India and the Guests of Honour were HMJ Madan B. Lokur and HMJ A.K. Sikri, Judges, Supreme Court of India. At the inaugural session, the conference was also addressed by HMJ S.J. Vazifdar, Chief Justice, Punjab and Haryana High Court. This Global Conference was spread over six different sessions besides the valedictory session. These sessions were devoted to : Status of Justice Delivery System in India – Issues and concerns; Access to Justice & Dispute Resolution Systems : Needs and Expectations of Stakeholders; How is the Market Currently Addressing these party user needs and expectations; Future of Alternative Dispute Resolution – Overcoming Obstacles and Challenges; Promoting Better Access to Justice and What actions should be considered and by whom; Innovation of Dispute Resolution Mechanisms. These sessions were chaired and co-chaired by Hon'ble Judges of Supreme Court and High Courts. The Panelists included different High Court Judges, Advocate Generals, Senior Advocates, Professors.

3. The **second Workshop on Sensitization on Family Court matters** was organized at Lovely Professional University Jalandhar, Punjab on May 20, 2017 covering different Districts of Punjab. The co-ordinator and co-coordinator were Ms. Ranjana Aggarwal and Mr. Tejinderbir Singh, ADJs-cum-Faculty Member, CJA. Different DJs of Family Courts as also District and Sessions Judges made presentations in different sessions specifically based upon their experiences covering different sessions of the Workshop. Prof. Virendra Kumar not only made the presentation in the first session but was also actively associated as panelist in all the different sessions of the Workshop. This Workshop became possible in view of the active support provided by Mr. Raj Shekhar Attri, DSJ, Jalandhar. 63 District Judges and other Judges holding charge of Family Courts or exercising Jurisdiction regarding Family Court Matters participated in the Workshop.

4. **Refresher-cum-Orientation Course** with regard to Criminal Matters was organized to sensitize ADJs of Punjab and Haryana on May 20, 2017. This Refresher Course covered four different aspects in four sessions: Ramifications of POCSO Act, Custody during Investigation under Special Legislations, Offences and Penalties under Electricity Act, Role and Responsibilities of Courts in Criminal Appeals. The sessions were taken by Ms. Mandeep Pannu, Mr. H.S. Bhangoo, Prof. S.K. Sharma and Mr. Pradeep Mehta. A guided tour and mock demonstration of working of paperless court was also organized. The course was attended by 41 ADJs from Punjab and Haryana.

5. The **Annual General Body Meeting** of CJA was held on May 24, 2017 which included the Annual Report of Activities of the Academy and other Agenda Items. It was chaired by Hon'ble Mr. Justice S.J. Vazifdar, Chief Justice of Punjab and Haryana High Court. On this occasion, Hon'ble the Chief Justice released the Book: **Handbook on Forensic Science and Criminal Justice System** prepared by Mr. Pradeep Mehta, Faculty, CJA for and on behalf of Chandigarh Judicial Academy.

FORTHCOMING EVENTS

1. **Revenue Training for HCS (EB) and Fresher IAS Officers** is scheduled to be conducted from June 02-04, 2017. The Resource Persons would include HMJ S.S. Saron, HMJ Rajesh Bindal, Justice Rajive Bhalla and Justice Paramjit Singh Dhaliwal, former High Court Judges, Dr. Balram K. Gupta, Director (Academics) and Mr. B.M. Lal, Faculty, CJA.

2. **Video-conference** for ADJs, Punjab will be held on June 03, 2017 to sensitize regarding: Sanction to Prosecute Public Servants.

3. **Refresher-cum-Orientation Course** for Civil Judges will be held on June 10, 2017. It would cover : Criminal Complaints, Substantive and Procedural Issues including Dishonouring of Cheques.