MARCH 2021

CJA e-NEWSLETTER

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

VOLUME : 06
ISSUE : 03

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FROM THE DESK OF CHIEF EDITOR

The Madhya Pradesh State Judicial Academy organized: "All India State Judicial Academies Director's Retreat" on 6-7 March, 2021 at Jabalpur. The objective of the Retreat was to provide a platform to all the state judicial academies (SJAs) across the country. This was to deliberate upon diverse themes of judicial education and training. The purpose was to share the best practices prevalent amongst SJAs. The goal was, how to achieve judicial excellence. The Retreat was inaugurated by Hon'ble the President of India Sh.Ram Nath Kovind. The Hon'ble Chief Justice of India, Justice S.A.Bobde also addressed. Hon'ble Justices, Justice N.V.Ramana, Justice Ashok Bhushan, Justice Hemant Gupta and Justice S.Ravindra Bhat of the Supreme Court attended and participated in the Retreat. Hon'ble Chief Justices of High Courts of Madhya Pradesh, Patna, Karnataka, Meghalaya, Bombay and Jammu & Kashmir also participated. The Chairmen/ Presidents/Judges In-charge and Directors of SJAs were part of the Retreat. Chandigarh Judicial Academy was represented by Hon'ble Mr.Justice T.S.Dhindsa, President, BOG, CJA, Director (Academics), Dr.Balram K Gupta and Director (Administration), Ms.Shalini Singh Nagpal.

The entire programme was structured in five plenary sessions besides the valediction. I was slated to speak in the third session on **Shaping the Judges: the Challenge of Continued Judicial Education**. Judges do what others avoid to do. Therefore, their shaping as judges requires specialized and skilful training. Many aspects were deliberated and discussed. I have been engaged in Judicial Education (JE) since early 2013. All possible efforts have been made to develop their adjudicatory skills. The change over from class-rooms to court-rooms is not easy. Therefore, PAN India one year foundation training has been structured. The class-rooms do not produce lawyers, judges, scientists and surgeons. It is the court-rooms, laboratories and the operation theatres which are the real nurseries to nurture the different skills.

The foundation training has two fundamental components. The training at the Judicial Academies (JAs). The other component is the attachment in courts. The JA class-rooms are to be converted into court-rooms. The JA court-rooms are to provide the basic exposure. What the Trainee Judicial Officers (TJOs) are expected to do. Also how to do and perform. The court-room attachments provide the opportunity to perform. It is the blending of the two together which is important. Both require the acquiring of the practical skills to ultimately perform in court. This one year period of training is very important.

It has been felt that there is need for **Mentors** and **Mentoring** of Judicial Officers. The faculty of JAs is also required to play the role of Mentors to TJOs during the training and even beyond. There is also need for Mentoring during the court attachments. As also during the two initial years of performing as judges. Why Mentoring! Why do the lawyers join the senior when they enter the legal profession! What is Mentoring! What is the role of a Mentor! Mentors are wise counselors. They are guardians. They are teachers. Mentoring is grooming. It is nurturing judicial minds. It is irrigating adjudicatory minds. It is inculcating objectivity and positivity of mind. It is confidence building. It is equipping the young judicial minds with the basic raw material required to be confident judges. Mentoring is kindling the spark within. Sometimes, the young judges find the task tough. Difficult. Not able to cope up with the work. It becomes a burden. Gradually, they get into depression. They even resign. The Mentor is most needed in such cases. They have to save the judicial officer. They have to salvage the situation. It is a challenge for the Mentor. It has to be surmounted by playing the balming role. The Mentors play the role of a coach. A seasoned judge has already faced the roughs and the toughs of the judicial life. Mentors have experience. The young judicial minds are to learn from their experiences. Mentoring is a double edged tool. When the Mentor shares his experiences, he is shaping the future judges. The Mentor may have also committed mistakes. Therefore, it is also at the same time ‘self building and shaping’ better. You feel that you have contributed in shaping the judge. Helping to be a good judge is a lifetime investment. Also, it is lifetime achievement. It is lifetime partnership as well. This is a continuous process. One after the other. This understanding. This realization can pave the way for the future. The future is assured.

Mentoring is important across different professions. It would be useful to draw on personal experiences. I taught law for more than two decades (1969-1990). Some of my students came to law teaching. I did their Mentoring. I shared some of the basics. Good communication. Good understanding of the subject. Clarity of mind. Eye contact. Body

language. Smooth flow of thought process. Teaching from your mind. No notes. No other aids. Good memory. If you have to lecture for one hour, be prepared for three hours material. A teacher should be able to quench the thirst of the students. In fact, the teachers need to make the students thirsty. Mere giving of the basics in the beginning is not the only role of a Mentor. Mentoring is regular monitoring. At each step. Observe and guide. Informal sittings. Free exchange. Freely pointing out what needs to be done. In different situations. How to handle them. Teaching is an art. A skill which one learns with experience. The in-puts of the Mentor make all the difference. The Mentor needs to understand his mentee. His plus points. Also the negative ones. How to meaningfully exploit the plus points. How to ensure that the negative ones are avoided. Totally. The Mentor will draw upon his own experiences. Once the Mentor understands the mentee. The shaping takes place. This recipe has produced some of the accomplished professors of law and vice chancellors of different law schools/universities.

I switched over to the legal profession in early 1991. It was a fulfilling experience to Mentor the young lawyers chambering with me. They are doing so well. I also had the opportunity of observing the struggling lawyers. It was good to guide and counsel them. I found that some of the young lawyers arguing well. I would often come out of the court-room and pat the young lawyers. A few words of encouragement. You are doing well. Continue with your full effort. You have the potential. Now they are senior advocates and judges. When they meet, they acknowledge thankfully the small gestures which helped in shaping them.

I took over as Director, National Judicial Academy in early 2013. Since 2015, I am looking after the Chandigarh Judicial Academy. This has been an enriching experience. I have found that Mentoring is an important and an integral part of judicial education. A serious thought needs to be given to it. The Mentoring scheme needs to be given a proper shape. It can go a long way in strengthening judicial education.

May I urge you to give your suggestions. I would keenly look forward to have them. The same would help in working out a wholesome Mentoring Scheme.

Balram K. Gupta

LATEST CASES: CIVIL

"Precision, transparency and seamless administration are key features of a system which adopts technology in pursuit of efficiency. Technology has enabled both administrators and citizens to know precisely when an electronic record is uploaded. The considerations which Parliament had in its view in providing for crucial amendments to the statutory scheme by moving from manual to electronic forms of governance in the assessment of duties must not be ignored. Tax administration must leave behind the culture of an age in which the assessment of duty was wrought with delays, discretion, doubt and sometimes, the dubious. The interpretation of the court must aid in establishing a system which ensures certainty for citizens, ease of application and efficiency of administration."

- Dr D.Y. Chandrachud, J. in Union of India v. G.S. Chatha Rice Mills, (2021) 2 SCC 209, para 57

Subodh Kumar Vs. Shamim Ahmed :2021 SCC OnLine SC 164: **Application Under Order IX Rule 13 CPC Can Be Allowed Only When Sufficient Cause Is Made Out To Set Aside Ex Parte Decree: Supreme Court–HELD-**An application under Order 9 Rule 13 of the Code of Civil Procedure can be allowed only when sufficient cause is made out to set aside the exparte decree. In this case, the tenant had filed an application to set aside an ex-parte decree against him which was dismissed by the Trial Court on the ground that no deposit was made by the tenant as required by Section 17 of the Provincial Small Cause Courts Act, 1887 along with the said application. The High Court remanded the matter back to the trial court for reconsideration of tenant's application under Order 9 Rule 13 CPC and Section 5 of the Limitation Act in accordance with law.

Bharat Sanchar Nigam Ltd. vs. Nortel Networks India Pvt. Ltd. :2021 SCC OnLine SC 207 : Limitation Period For Filing 'Section 11' Application Seeking Appointment Of Arbitrator Governed By Article 137 Limitation Act: Supreme Court-HELD-the period of limitation for filing an application under Section 11 of the Arbitration and Conciliation Act would be governed by Article 137 of the First Schedule of the Limitation Act, and will begin to run from the date when there is failure to appoint the arbitrator. The bench observed that in rare and exceptional cases, where the claims are ex facie time barred, and it is manifest that there is no subsisting dispute, the Court may refuse to make the reference. The court also suggested amendment of Section 11 of the Act to provide a period of limitation for filing an application under this provision, which is in consonance with the object of expeditious disposal of arbitration proceedings.

Sabita Shashank Singh Vs. Shashank Shekhar Singh :TRANSFER PETITION (C) NO. 908 OF 2019:Single Bench Hearing Transfer Petition Cannot Invoke Article 142 To Pass A Decree Dissolving Marriage By Mutual Consent: Supreme Court-HELD-The Supreme Court observed that its single bench while hearing a Transfer Petition cannot invoke power under Article 142 of the Constitution to pass a decree for dissolving a marriage by mutual consent. In this case, the parties (husband and wife) to a transfer petition before the Supreme Court filed a joint application for divorce by mutual consent of the parties. They requested the court to invoke jurisdiction under Article 142 of the Constitution of India, and to dispense with the compliance of some of the procedural formalities and timeline contemplated in Section 13B of the Hindu Marriage Act. The transfer petition was filed by the wife seeking transfer of the divorce petition filed by the husband from the Family Court, Pune, Maharashtra to the Principal Judge, Family Court, Gautam Budh Nagar, Uttar Pradesh.

Sesh Nath Singh & anr. Vs. Baidyabati Sheoraphuli Co-operative bank ltd and anr. Civil appeal no. 9198 of 2019, DOD-

22.3.21, 2021 SCC OnLine SC 244-HELD- The Supreme Court held that there is no bar to exercise by the Court/Tribunal of its discretion to condone delay under Section 5 of the Limitation Act. It is observed that in any case, Section 5 and Section 14 of the Limitation Act are not mutually exclusive. Even in a case where Section 14 does not strictly apply, the principles of Section 14 can be invoked to grant relief to an applicant under Section 5 of the Limitation Act by purposively construing 'sufficient cause. It is well settled that omission to refer to the correct section of a statute does not vitiate an order. At the cost of repetition it is reiterated that delay can be condoned irrespective of whether there is any formal application, if there are sufficient materials on record disclosing sufficient cause for the delay

Bajaj allianz general insurance company private ltd. Vs union of India &ors. Writ Petition(s)(Civil) No(s). 534/2020 (IA No. 132263/2020 DOD-16.3.2021-HELD-The following directions are issued by Apex Court to be followed in MACT cases:

A. Accident Information Report The jurisdictional police station shall report the accident under Section 158(6) of the Act(Section 159 post 2019 amendment) (hereinafter "the report") to the tribunal and insurer within first 48 hours either over email or a dedicated website.

B. Detailed Accident Report Police shall collect the documents relevant to the accident and for computation of compensation and shall verify the information and documents. These documents shall form part of the Report. It shall email the Report to the tribunal and the insurer within three months. Similarly the claimants may also be permitted to email the application for compensation with supporting documents, under Section 166 to the tribunal and the insurer within the same time.

C. The tribunal shall issue summons along with the Report or the application for compensation, as the case may be, to the insurer by email.

D. The insurer shall email their offer for settlement/response to the Report or the application for claim to the tribunal along with proof of service on the claimants.

E. After passing the award, the tribunal shall email an authenticated copy of the award to the insurer.

F. The insurer shall satisfy the award by depositing the awarded amount into a bank account maintained by the tribunal by RTGS or NEFT. For this purpose the tribunal shall maintain a bank account and record the relevant account details along with the directions for payment to the insurer in the award itself.

G. Each tribunal shall create an email ID peculiar to its jurisdiction for receiving the emails from the police and the insurer as mentioned above. Similarly, all insurer throughout India shall also create an email ID peculiar to the jurisdiction of each claim tribunal. These email IDs would be prominently displayed at tribunal, the police stations and the office of the insurers for the benefit of the claimants. Similarly, these email IDS shall also be prominently displayed on the website maintained by the tribunal and the insurer.

H. Insurers shall appoint nodal officers for each tribunal and provide their contact details, phone and mobile phone numbers, and email address to Director Generals of State Police and the tribunals.

Government of maharashtra (water resources department) represented by executive engineer vs. M/s borse brothers engineers & contractors pvt. Ltd. CIVIL APPEAL NO. 995 OF 2021 (@ SLP (CIVIL) No.665 of 2021)DOD-19.3.21, 2021 SCC OnLine SC 233: The Supreme Court held that the delay for filing appeals under Section 13 of the Commercial Courts Act can be condoned by showing sufficient cause as per Section 5 of the Limitation Act.

LATEST CASES: CRIMINAL

" The legislature does not always say everything on the subject. When it enacts a law, every conceivable eventuality which may arise in the future may not be present to the mind of the lawmaker. Legislative silences create spaces for creativity. Between interstices of legislative spaces and silences, the law is shaped by the robust application of common sense."

— Dr D.Y. Chandrachud, J. in Union of India v. G.S. Chatha Rice Mills, (2021) 2 SCC 209,Para 57

Fakhrey Alam vs. State of Uttar Pradesh : CrA 319 OF 2021: Default Bail : State Cannot Take Advantage Of Filing One Charge Sheet First And Seeking Time To File Supplementary Charge-sheets To Extend The Time Limit U/S 167(2)-HELD-The Supreme Court observed that the time period for investigation specified under Section 167 of the Code of Criminal Procedure cannot be extended by seeking to file supplementary charge sheet qua UAPA offences. While granting default bail to Fakhrey Alam, a person accused under Section 18 of the UAPA Act, reiterated that default bail under first proviso of Section 167(2) of the Cr.P.C. is a fundamental right and not merely a statutory right.

The court noted that in this case, even within the 180 days period, the charge sheet/supplementary charge sheet under the UAPA Act was not filed and it was after a lapse of 211 days that this charge sheet had been filed.

"We do not think that the State can take advantage of the fact that in one case there is one charge sheet and supplementary charge sheets are used to extend the time period in this manner by seeking to file the supplementary charge sheet qua the offences under the UAPA Act even beyond the period specified under Section 167 of the Cr.P.C beyond which default bail will be admissible, i.e., the period of 180 days. That period having expired and the charge sheet not having been filed qua those offences (albeit a supplementary charge sheet), we are of the view the appellant would be entitled to default bail in the aforesaid facts and circumstances." the court said.

Sartaj Singh vs State of Haryana :2021 SCC OnLine SC 217:Accused Can Be Summoned U/s 319 CrPC Even On The Basis Of Examination-In-Chief Of Witness: Supreme Court-HELD-An accused can be summoned under Section 319 of the Code of Criminal Procedure on the basis of even examination in chief of the witness and the Court need not wait till his cross examination, the Supreme Court observed.

The Supreme court bench observed that If on the basis of the examination in chief of the witness the Court is satisfied that there is a prima facie case against the proposed accused, the Court may in exercise of powers under Section 319 CrPC array such a person as accused and summon him to face the trial.

Bhima Razu Prasad vs. State : 2021 SCC OnLine SC 210:Section 195(1)(b)(i) CrPC Does Not Bar Prosecution By Investigating Agency For Offence U/s193 IPC Committed During Investigation Stage-HELD-The Supreme Court this week held that the prosecution by the investigating agency for offence punishable under Section 193 IPC [for fabricating false evidence] committed during the stage of investigation will not be barred under Section 195(1)(b)(i) CrPC if the investigating agency has lodged complaint or registered the case prior to commencement of proceedings and production of such evidence before the Trial Court.

In such circumstance, the said offences would not be considered an offence committed in, or in relation to, any proceeding in any Court for the purpose of Section 195(1)(b)(i), CrPC.

PritiSaraf Vs. State Of NCT Of Delhi :2021 SCC OnLine SC 206:Mere Existence Of Civil Remedies Not A Ground To Quash Criminal Proceedings: Reiterates Supreme

court-**HELD**-that existence of civil remedies by itself is not a ground to quash criminal proceedings.

The Court observed that simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the complainant, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under Section 482 CrPC for quashing such proceedings.

The bench said that to exercise powers under Section 482 CrPC, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint/FIR/charge-sheet and the High Court at that stage was not under an obligation to go into the matter or examine its correctness.

Ravuri Krishna Murthy vs. State of Telangana :Crl.A.274-275/2021:Blanket Order Of Protection From Arrest Cannot Be Passed By High Court While Dismissing A Petition U/s 482 CrPC: Supreme Court-HELD-The Supreme Court observed that a blanket order of protection from arrest cannot be passed by the High Court while dismissing a petition filed under Section 482 of Code of Criminal Procedure seeking quashing of FIR.

The issue raised in this appeal was whether the High Court of Andhra Pradesh was justified in passing a blanket direction restraining the police from arresting the accused while at the same time having come to the conclusion that there was no merit in the petition for quashing under Section 482.

The Apex court observed that such a direction by the High Court has the effect of impeding the course of the investigation and has no basis or justification in law.

Sumeti Vij Vs. Paramount Tech Fab Industries :2021 SCC OnLine SC 201:Section 313 CrPC Statement By Accused Is Not A Substantive Evidence To Rebut Presumption Under Section 139 NI Act: Supreme Court-HELD-that the statement of the accused recorded under Section 313 of the Code of Criminal Procedure is not a substantive evidence of defence to rebut the presumption under Section 139 of the Negotiable Instruments Act that the cheques were issued for consideration. The bench was considering an appeal against the judgment of the High Court of Himachal Pradesh holding the accused guilty of offence under Section 138 of the Negotiable Instruments Act.

The court noted that the accused has only recorded her statement under Section 313 of the Code, and has not adduced any evidence to rebut the presumption that the cheques were issued for consideration. On the other hand, the complaints were filed by placing all documentary evidence in support of the complaint duly exhibited, and three witnesses in support thereof were examined, and was able to establish and discharge the burden of proof.

Swaati Nirkhi Vs. State (NCT Of Delhi) :2018 SCC OnLine SC 3663:Criminal Case Ought To Be Inquired And Tried Ordinarily Where The Cause Of Action Has Accrued: Supreme Court-HELD-that a criminal case ought to be inquired and tried ordinarily where the cause of action has accrued. The bench observed thus while dismissing a transfer petition filed by accused seeking transfer of criminal case from the Court of Metropolitan Magistrate at New Delhi to the Court of Metropolitan Magistrate at Allahabad (Prayagraj), Uttar Pradesh.

In this case, FIR was filed under Section 389 read with 34 IPC against 4 accused. According to the complainant, he learnt from the newspaper reports and T.V. media report that the accused had falsely alleged that she was gang raped in his house. It was also stated that he had received messages to pay Rs. 5 Crore otherwise he would be arrested on the ground of gang rape. Putting person in fear of accusation of offence, in order to commit extortion, is an offence punishable under Section 389 IPC.

LATEST CASES: FAMILY LAW

"There is difference between “Government established by law” and “persons for the time being engaged in carrying on administration”. Comment or criticism of the government action in howsoever strong words must be protected and cannot be a ground to take penal action unless the words written or spoken, etc. have pernicious tendency or intention of creating public disorder. Without exciting those feelings which generate inclination to cause public disorder by acts of violence, political views and criticism cannot be made subject-matter of penal action."

— Sanjiv Khanna, J. in Amish Devgan v. Union of India, (2021) 1 SCC 1, para 79

KALINDI DAMODAR GARDE (D) vs. MANOHAR LAXMAN KULKARNI: 2020 SCC OnLine SC 147 - Children Born To Adoptee Before His Adoption Entitled To Inherit His Property In Adoptive Family-HELD- The Supreme Court has observed that children who were born to an adoptee before his adoption are entitled to inherit his property in the adoptive family.

The court observed that succession has to be in accordance with the Hindu Succession Act and not as per Hindu law as all text, rule or interpretation of Hindu law prior to commencement of the Act have ceased to have any effect unless expressly provided for in the said Act. It further noted that there is no provision of denying the rights of succession to the natural born son of an adoptee father. While dismissing the appeal, the bench took note of provisions of the Act and said: “In view of the provisions of the Act which do not make any distinction between the son born to a father prior or after adoption of his father and that there is no provision which bars the natural born son to inherit the property of his natural father, therefore, the High Court has rightly upheld the rights of the sons of Laxman. In fact, in the Full Bench judgment of Bombay High Court in Martand Jiwajee Patil, it has been held that the natural father retains the right to give in adoption his son born before his own adoption. Therefore, if he has a right to give his son in adoption, such son has a right to inherit property by virtue of being an agnate. There was a full blood relationship between the three sons and the daughter who was born after adoption. All the children of Laxman are entitled to inherit the property of their natural father and mother in accordance with the provisions of the Act as succession has opened after the death of Laxman in 1987 and subsequently the mother in the year 1992.”

M. Vanaja vs. M. Sarla Devi: 2020 SCC OnLine SC 311- Consent Of Wife, Actual Ceremony Of Adoption Essential For Valid Adoption: SC-HELD- The Supreme Court has observed that the consent of the wife of the adopter and actual ceremony of adoption is essential for a valid adoption as per Hindu Adoption and Maintenance Act.

While dismissing the appeal the court noted that the plaintiff had admitted in her evidence that she does not have the proof of the ceremony of giving and taking of her in adoption and there is no pleading in the plaint regarding the adoption being in accordance with the provisions of the Act. It was also noted that the 'mother' has categorically stated in her evidence that the plaintiff was never adopted though she was merely brought up by her and her husband. Referring to provisions of Hindu Adoptions and Maintenance Act, 1956, the bench said: “*A plain reading of the above provisions would make it clear that compliance of the conditions in Chapter I of the Act of 1956 is mandatory for an adoption to be treated as valid. The two important conditions as mentioned in Sections 7 and 11 of the Act of 1956 are the consent of the wife before a male Hindu adopts a child and proof of the ceremony of actual giving and taking in adoption.*

The mandate of the Act of 1956 is that no adoption shall be valid unless it has been made in compliance with the conditions mentioned in Chapter I of the Act of 1956. The two essential conditions i.e. the consent of the wife and the actual ceremony of adoption have not been established. This Court by its judgment in Ghisalal v. Dhapubai (Dead) by Lrs. & Ors. held that the consent of the wife is mandatory for proving adoption."

Safiya Sultana vs. - State Of U.P. 2021 SCC OnLine All 19-Mandatory Publication Of Notice Of Intended Marriage Under Special Marriage Act Violates Right To Privacy-HELD- In an important judgment, Allahabad High Court has held that requirement of publication of notice of intended marriage under Section 6 and inviting/entertaining objections under Section 7 of the Special Marriage Act is not mandatory. It was observed that making such publication mandatory would invade in the fundamental rights of liberty and privacy, including within its sphere freedom to choose for marriage without interference from state and non-state actors, of the persons concerned. While giving notice under Section 5 of the Act of 1954 it shall be optional for the parties to the intended marriage to make a request in writing to the Marriage Officer to publish or not to publish a notice under Section 6 and follow the procedure of objections as prescribed under the Act of 1954, the court observed. The court added that, in case they do not make such a request for publication of notice in writing, while giving notice under Section 5 of the Act, the Marriage Officer shall not publish any such notice or entertain objections to the intended marriage and proceed with the solemnization of the marriage. *"However, it shall be open for the Marriage Officer, while solemnizing any marriage under the Act of 1954, to verify the identification, age and valid consent of the parties or otherwise their competence to marry under the said Act. In case he has any doubt, it shall be open for him to ask for appropriate details/proof as per the facts of the case."*.

Sanjeev Kumar v. Sate of H.P. and others 2021 SCC OnLine HP 388- Inter-Caste Marriage- Girl Isn't A Cattle But A Living Independent Soul Having Rights; Can Exercise Her Discretion As Per Her Wishes-HELD- Underlining that opposition to marriage for the difference of caste is the result of spiritual as well as religious ignorance, the **Himachal Pradesh High Court** ruled that ***a girl is not a cattle or non-living thing but a living independent soul having rights, like others, and, on attaining the age of discretion, to exercise her discretion according to her wishes***. Underlining that *independence of thought to an individual is a fundamental feature of Indian culture*, the Court, at the outset, observed, "*We are living in a State governed by the Constitution and discrimination on the basis of caste by denying of right to choose spouse, is in violation of Fundamental Rights guaranteed under the Constitution of India.*"

The Court further continued by stating that discrimination on the basis of caste is not only in violation of constitutional mandate but also in opposition to real Dharma.

"Right To Marry a well-recognized right in Indian society" Further, noting that ***right to marry or, for valid reasons, not to marry, as well as the right to choose a spouse, is a well-recognized right in Indian society since the ancient* era**, the Court also observed that inter-caste marriages were also permissible in ancient Indian society and *that evils of Medieval period wrong perceptions have clouded the rich values and principles of our culture and civilization*.

To drive home the point, the Court cited the examples of marriage of *Shantunu* and *Satyavati*;

and *Dushyant* and *Shakuntla* which are said to be inter-caste marriages. Significantly, the Court also referred to the Marriages of **Sati and Lord Shiva**, **Rukmini and Lord Krishna** & **Subhadra and Arjun** as the

Court remarked, "*Oldest example of marrying a person of choice is marriage of Sati with Lord Shiva, which was solemnized in defiance and against wishes of her father King Daksha Prajapati. Another more than 5000 years old example of choosing the spouse according to the choice of the girl is of Rukamani and Lord Krishna, as Rukmani was having liking and wish to marry Lord Krishna, whereas her brother was intending to arrange her marriage with Shishupal, whereupon Rukmani had wrote a letter to Lord Krishna to take and accept her as his spouse and Lord Krishna did so by taking her from the Mandapa. Similar example is the marriage of Subhadra and Arjun, where family members were intending to marry Subhadra somewhere else, whereas Subhadra had chosen Arjun as her spouse*."

Sheela KK vs N G Suresh: 2020 SCC OnLine Ker 4240 - No Limitation Period For Divorced Wife To Claim Property Entrusted With Husband -HELD- A full bench of the Kerala High Court has held that even after the dissolution of the marriage, the husband will be deemed to hold in trust the properties entrusted with him by the wife before marriage in the form of dowry.

This means that Section 10 of the Limitation Act 1963, which exempts the application of limitation period to suit against trusts and trustees, will continue to apply to such property even after the dissolution of the marriage. Therefore, limitation period will not start running even after the dissolution of marriage with respect to the claim for return of property entrusted with husband or in-laws.

The bench further noted that Section 77 of the Indian Trusts Act, 1882, specifies the circumstances under which a trust is extinguished. Therefore, unless any of the eventualities mentioned u/s 77 takes place, the trust continues to operate, even though there is a dissolution of marriage.

"In the case of ornaments which are given in the form of dowry, definitely, a statutory trust is created. Even otherwise, if the ornaments owned by the wife do not form part of the dowry and if there is an entrustment of gold ornaments by the wife to the husband or his parents, a trust gets created, in which event,the trustee or trustees, as the case may be, are liable to return the same and there is no limitation for claiming the same by the wife/divorced wife", the bench observed.

Smriti Madan Kansagra v Perry Kansagra :2020 SCC OnLine SC 919 - Preferences & Inclinations Of Child Are Important In Determining Issue Of Parental Custody : Supreme Court-HELD- The Supreme Court, in a judgement pertaining to transnational custody of child, relied upon Section 17(3) of the Guardian and Wards Act, 1890 which states that the Court can consider the preferences of the minor if he/she is old enough to form an intelligent preference.

"As per Section 17(3), the preferences and inclinations of the child are of vital importance for determining the issue of custody of the minor child. Section 17(5) further provides that the court shall not appoint or declare any person to be a guardian against his will", the Court observed.

Noting that as per Section 17(3) the preferences of the child were of vital importance for determining the issue of custody of the minor, the Supreme Court arrived at the conclusion that it would be in the best interest of the child to transfer custody to his father as if the preferences were not given due regard, it could have an adverse psychological impact on the child.

"In view of the various personal interactions which the courts have had at different stages of the proceedings, from the age of 6 years, till the present when he is now almost 11 years old, we have arrived at the conclusion that it would be in his best interest to transfer the custody to his father. If his preferences are not given due regard to, it could have an adverse psychological impact on the child", the Court observed.

EVENTS

- The Madhya Pradesh State Judicial Academy organized: “All India State Judicial Academies Director’s Retreat” on 6-7 March, 2021 at Jabalpur. The objective of the Retreat was to provide a platform to all the state judicial academies (SJAs) across the country. This was to deliberate upon diverse themes of judicial education and training. The purpose was to share the best practices prevalent amongst SJAs. The goal was, how to achieve judicial excellence. The Retreat was inaugurated by Hon’ble the President of India Sh.Ram Nath Kovind. The Hon’ble Chief Justice of India, Justice S.A.Bobde also addressed. Hon’ble Justices, Justice N.V.Ramana, Justice Ashok Bhushan, Justice Hemant Gupta and Justice S.Ravindra Bhat of the Supreme Court attended and participated in the Retreat. Hon’ble Chief Justices of High Courts of Madhya Pradesh, Patna, Karnataka, Meghalaya, Bombay and Jammu & Kashmir also participated. The Chairmen/ Presidents/Judges In-charge and Directors of SJAs were part of the Retreat. **Chandigarh Judicial Academy** was represented by Hon’ble Mr.Justice T.S.Dhindsa, President, BOG, CJA, Director (Academics), Dr.Balram K Gupta and Director (Administration), Ms.Shalini Singh Nagpal.
- Hon’ble Mr. Justice Arvind Singh Sangwan, Judge, Punjab & Haryana High Court gave a Webinar on “The Negotiable Instrument Act, 1881 with Special focus on Section 138” on March 13, 2021 to the District Judiciary of Punjab, Haryana and UT Chandigarh including Trainee Judicial Officers.
- The e-Committee, Hon’ble Supreme Court of India in collaboration with Hon’ble Punjab & Haryana High Court and Chandigarh Judicial Academy conducted Advocate Master Trainers Programme on Electronic Case Management Tools (ECMT) for the Advocates in the third phase on March 6, 13 & 20, 2021.
- Dr.Krishan Vig, Former Head of Department Forensic Medicine, GMCH, Sector-32, Chandigarh on “Kinds of Injury and Medico Legal Considerations” on March 27, 2021 to the District Judiciary of Punjab, Haryana and UT Chandigarh including Trainee Judicial Officers.
- Maj. Gen. Raj Mehta (Retd.) gave me motivating talk to the Trainee Judicial Officers on “Managing Failures” on March 31, 2021.
- Chandigarh Judicial Academy conducted Master Trainers Programme on Ministerial Responsibility on March 31, 2021.

FORTHCOMING EVENT

- The promotee Additional District & Sessions Judges will be coming to the CJA for one month training during April, 2021.

NOTIFICATION

Arbitration and Conciliation (Amendment) Act, 2021: On March 10, 2021, the Arbitration and Conciliation (Amendment) Act, 2021 ("**Amendment Act**") gained Parliamentary assent and is deemed to have come into force on November 04, 2020, thereby replacing the Arbitration and Conciliation (Amendment) Ordinance, 2020 promulgated by the President of India on November 04, 2020. As elucidated upon in the statement of objects and reasons, the Amendment Act has sought to address the issue of corrupt practices in securing contracts or arbitral awards.

The Arbitration and Conciliation Act, 1996 ("**Act**"), by way of an explanation to Section 34(2)(b)(ii), provides that an award may be set aside if the Court is to find that the making of an arbitral award has been induced or affected by fraud or corruption i.e. is in conflict with the public policy of India. Prior to the enactment of the Amendment Act, the Act stipulated that the parties to the arbitration could approach the Court to file an application challenging such award on the grounds set forth in Section 34, which include, *inter alia*, proof of invalidity of the arbitration agreement by the applicant party, finding of the Court that the subject matter of dispute is not capable of settlement by arbitration, etc. Importantly however, Section 36(2) clarified that an application filed therein would not automatically render the award unenforceable, and the Court had the power to grant stay of the operation of the impugned award, subject to such conditions as it may deem fit.

The Amendment Act, in its turn, has departed from the earlier position and effected a material change in the manner that applications filed under Section 34, alleging fraud, are dealt with. It has inserted a proviso to Section 36(3), deemed effective from October 23, 2015, the same date as the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 ("**2015 Amendment**"), to ensure that in instances where the Court is *prima facie* satisfied that a case is made out that either (i) the arbitration agreement or contract which is the basis of the award; or (ii) the making of the award, was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge to the award under Section 34. There is a concern that the proviso may be misused by certain parties to delay the enforcement of an arbitral award to their advantage.

The Court further stated that the amendment to Section 36(3), as contained hereinabove, will have retrospective effect and apply to all cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings began prior to or after the commencement of the 2015 Amendment.

Furthermore, the Amendment Act has substituted Section 43J of the Act, which was introduced by way of an amendment to the Act in 2019 ("**2019 Amendment**"). Under the

2019 Amendment, the newly inserted Section 43J stated that the qualifications, experience and norms for accreditation of arbitrators will be as specified in the Eighth Schedule of the 2019 Amendment. The Eighth Schedule prescribed an exhaustive list of qualifications, which an arbitrator would need to possess, which included, *inter alia*, an advocate, a chartered accountant/cost accountant, company secretary, officer within engineering degree, person with educational qualification at degree level with 10 (ten) years of experience in scientific or technical streams, etc. Oher than setting forth the professional qualifications of an arbitrator, the Eighth Schedule also provided for general norms that would be applicable to an arbitrator for accreditation, such as:

(i) an arbitrator shall be a person of general reputation of fairness, integrity, and capable of applying objectivity in arriving at settlement of disputes;

(ii) an arbitrator must be impartial and neutral and avoid entering into any financial business or other relationship that is likely to affect impartiality or might reasonably create an appearance of partiality or bias amongst the parties;

(iii) an arbitrator should avoid any potential conflict; and

(iv) the arbitrator should be capable of suggesting, recommending or writing a reasoned and enforceable arbitral award in any dispute which comes before him for adjudication.

As may be evident, the Eight Schedule was extensive in its stipulation of standards for arbitrators. The 2019 Amendment was however critiqued precisely due to the introduction of such norms as they were deemed to be quite restrictive and contrary to the nature of arbitration itself, which has always been intrinsically associated with party autonomy. In addition, it was noted that the 2019 Amendment left no room for foreign qualified professionals to be appointed in India-seated arbitrations, which would heavily compromise the freedom of parties to opt for arbitrator(s) of their choice.

In view of the same, the Amendment Act has done away with the Eighth Schedule and replaced the erstwhile Section 43J with the following language: "*The qualifications, experience and norms for accreditation of arbitrators shall be such as may be specified by the regulations*". It is apparent that the Amendment Act has sought to rectify the over-prescription of the 2019 Amendment, as in its memorandum regarding such delegated legislation, it recognises that the matters in which the regulations may be made are matter of procedure and administrative details and it is not practical to provide for them in the Amendment Act itself.[1]

[1] http://egazette.nic.in/WriteReadData/2021/224958.pdf