



SJA e-NEWSLETTER

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Contents

From Editor's Desk	1
Legal Jottings.....	2
Activities of the Academy	9
Judicial Officers' Column.....	12
Legislative Update.....	15

Editor
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From the Editor's Desk

On the last day of October, the Jammu and Kashmir Reorganisation Act, 2019 has become operational. It has changed the politico-legal landscape of the existing State of Jammu and Kashmir. Whereas the formation of two Union Territories has impacted the geo-political scenario, the extension of many Central laws and repeal of many State laws has impacted the legal scenario. Effective from the last day of this October, 106 Central laws have become applicable to the two Union Territories and 164 erstwhile State laws have ceased to apply. It would require the legal fraternity, both bar and bench, to carefully study the impact of extension of Central laws and repeal of State laws. Generally, from the point of view of interpretation of statutes it is understood that, with few exceptions, substantial laws apply prospectively and procedural laws apply retrospectively. This general rule has to be applied in the backdrop of the peculiarity of individual legislation. So far as the Civil Procedure is concerned, it hardly poses any difficulty as there had been no marked distinction in the Central or State laws. When it comes to the application of Criminal Procedure, the distinction between the Central and State laws being marked, difficult situations would emerge. Similar is the case when one has to apply the law of limitation. Period of limitation in many situations in the Central and State legislations is quite different. It would impact a litigant's right to have a legal remedy before the court. Such difficulties seem to have been addressed by the Jammu and Kashmir Reorganisation (Removal of Difficulties) Order, 2019, issued by the President of India, in exercise of power under Section 103 of the Jammu and Kashmir Reorganisation Act, 2019. It stands published in the Gazette of India on 30th October 2019. The Presidential Order is published in this issue under the heading 'Legislative Update'. Major difficulties in implementation of Central laws have been removed. One needs to look at every Central law extended to the two Union Territories through the prism of Presidential Order dated 30th October. Correct understanding of Section 13 of the Presidential Order is imperative for correct appreciation of the context in which Central laws have to be applied. Correct understanding shall greatly facilitate smooth transition from State to Central laws.

LEGAL JOTTINGS

“Fluctuating facts and kaleidoscopic circumstances, bewildering novelties and unexpected factors, personal vicissitudes and societal variables may defy standard-setting for all situations: but that does not mean that humane principles should be abandoned and blanket discretion endowed, making life and liberty the plaything of the mentality of human judges.”

V.R. Krishna Iyer, J. in Rajendra Prasad v. State of U.P., (1979) 3 SCC 646, para 12

Criminal

Criminal Appeal No. 1613/2019

P. Rajkumar & Anr. v. Yoga @ Yogalakshmi

Date of decision: October 23, 2019

Hon'ble Supreme Court held 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. The two being independent proceedings, the learned Magistrate wrongly assumed jurisdiction under Section 125 Cr.P.C in a proceeding under the Act. In effect, what the magistrate directly declined to the respondent, he granted indirectly by observing that till the proceedings under section 125 of Cr.P.C. is not decided, the appellants shall pay maintenance at a rate of Rs.2,000/- per month to the respondent. The order is without jurisdiction and therefore wholly unjustified and unsustainable.

C.A. No. 6312/2014

Praveen Kumar Prakash & Ors. v. The State Of Jharkhand & Ors.

Date of decision: October 17, 2019

Hon'ble Supreme Court held that there is no requirement that for every facet of investigation, order from the Magistrate would be required. It is observed - We are of the view that the manner in which investigation is to be carried out must be decided by the Investigating Agency. Further it is for the Magistrate exercising power under Section 156, CrPC to see

whether the investigation is properly conducted or not. It is for the Investigating Agency to investigate a crime in the manner which it feels is the best. It can approach the Magistrate for assistance or specific orders when there is something beyond the scope of investigating agency for which orders of the Magistrate are required but the investigating agency can carry out the investigation, without orders of the Magistrate. It is not necessary that for every facet of investigation, orders from the Magistrate are required. That is not the purpose of the CrPC.

Criminal Appeal No. S.1565-66/2019

State of Punjab v. Baljinder Singh & anr.

Decided on: October 15, 2019

Hon'ble Supreme Court has reiterated that Section 50 of the NDPS Act affords Protection to a person in matters concerning “personal search” and stipulates various safeguards. It is only upon fulfilment of and strict adherence to said requirements that the contraband recovered pursuant to personal search of a person can be relied upon as a circumstance against the person. An illicit article seized from the person during personal search conducted in violation of the safeguards provided in Section 50 of the Act can't buy itself be used as admissible evidence of proof of unlawful possession of contraband. The mandate of Section 50 of the Act is confined only to personal search and not to search of a vehicle or a container or premises. The search of the vehicle and recovery of contraband pursuant thereto having stood proved, merely because there was non-compliance of Section 50 of the Act

as far as “personal search” was concerned, no benefit can be extended so as to invalidate the effect of recovery from the search of the vehicle.

**Criminal Appeal No. 1545/2019
Uttam Ram v. Devinder Singh Hudan & anr.**

Decided on: October 17, 2019

Hon’ble Supreme Court has held that a negotiable instrument including a cheque carries presumption of consideration in terms of Section 118(a) and under Section 139 of the Negotiable Instruments Act. A dishonour of cheque carries a statutory presumption of consideration. The holder of cheque in due course is required to prove that the cheque was issued by the accused and that the same was presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability. The onus shifts to the accused on proof of issuance of cheque.

**Criminal Appeal Nos. 1573-1575/2019
Dr. Lakshman v. The State of Karnataka & Ors. Etc.**

Decided on: October 17, 2019

Hon’ble Supreme Court has reiterated that existence of civil liability is not sufficient to efface the criminal liability. Though the contract is of civil nature, if there is an element of cheating and fraud, it is always open for a party in a contract, to prosecute the other side for the offences alleged. Equally, mere filing of a suit or complaint filed under Section 138 of the NI Act by itself is no ground to quash the proceedings.

**Criminal Appeal No. 2181/2009
State of West Bengal v. Indrajit Kundu & Ors.**

Decided on: October 18, 2019

In the case before the Hon’ble Supreme Court, challenge was against the order of discharge recorded by the trial court and confirmed by the High Court. In a suicidal death, the lover of the deceased and his family were alleged to have instigated the

abetment of suicide. The deceased had visited the family of her lover to persuade them for their marriage. It was alleged that she was abused and was repeatedly termed as a ‘Call Girl’ by the family of her lover, feeling humiliated by which she committed suicide. Held that:- terming the deceased as a ‘Call Girl’, there was no utterance which can be interpreted to be an act of instigating, goading or solicitation or insinuation. Such act leading to suicide by the person, doesn’t amount to abetment of suicide in terms of Section 306 IPC. Order of discharge upheld.

**Criminal Appeal No. 186 OF 2019
Savita v. State of Delhi**

Decided on: October 14, 2019

Hon’ble Supreme Court has held that it is mandated to the appellate court to call the record of trial court to consider the appeal on merits. Disposal of appeal without calling record of the trial court is not sustainable.

**Criminal Appeal No. 1399/ 2019
Pratima devi & anr. V. Anand Prakash**

Decided on: September 16, 2019

Hon’ble Supreme Court has held that order of maintenance passed by the trial court in terms of Section 125 CrPC should not normally be stayed by the higher court unless there are very special reasons. Merely on the order on maintenance being challenged, the higher court should not stay the grant of maintenance.

**Criminal Appeal No. 1489-1490/2019
CBI v. Mrs. Pramila Virendra Kumar Agrwal & anr.**

Decided on: September 26, 2019

Hon’ble Supreme Court has held that the validity of the sanction for prosecution, especially on the ground of defective sanction can only be considered during trial. There is distinction between the absence of sanction and the alleged invalidity of sanction on account of non-application of mind. The absence of sanction no doubt can be agitated at the threshold but the invalidity of the sanction

is to be raised during the trial. The sanction being defective is a matter to be considered in the trial.

Criminal Appeal No. 1893/2010
Guru@Gurubaran &ors. v. State rep. by
insp. Of Police
Decided on: September 27, 2019

Hon'ble Supreme Court has held that the accused cannot take benefit of Exception 4 of section 300 IPC when all the accused persons came armed with sticks, iron pipe and wooden staffs. Even if it is assumed that they may not have come with intention of killing, the fact that they were armed, clearly indicates that occurrence did not take place in the heat of passion upon a sudden quarrel. The manner in which the occurrence take place, the nature of injury and the weapon used also indicate imminent danger to life and the person knowing such imminent danger, is to be considered to have caused murder.

CRM (M) 566/2019
Tamandeep Singh and others v. State of
J&K and another
Decided on: October 25, 2019

Judicial Magistrate 1st Class discharging the petitioner in commission of offences under section 498-A, 323, 504, 506 & 109/ RPC. Order of discharge Challenged by the state. The revisional court reversed the order holding that the trial court had without recording reasons discharged the accused despite the fact that prima-facie offenses are made out. Order of revisional court challenged-Held that:- At the time of framing charge, the court has to consider the final investigation report, statement of witnesses under Section 161 Cr.P.C, documents and other evidence adduced by the prosecution and if he sees that allegations are groundless and no case has been made out against the accused, that is, if unrebutted it would not warrant a conviction, he will discharge the accused, however, if he finds there are even probable chances of commission of offence by accused persons he would frame the charge. All this has to be done by prima face appreciation of material on record and not by roving enquiry by scanning and evaluating the

evidence as if court has to find whether the accused has committed the offence or not. For framing the charge, evidence beyond reasonable doubt is not required but only prima facie evidence. For this limited purposes of *prima facie* satisfaction the court may sift the evidence produced by prosecution to find out whether the ingredients of offences satisfied or not. In such proceedings the Court is not supposed to hold a mini trial by marshalling the evidence on record. (See:- *Union of India v. Prafulla Kumar Samal & Ors. 1979 (3) SCC4, Sajjan Kumar v. CBI 2010 (9) SCC 368 and Vikram Johar v. State of Uttar Pradesh 2019 (6) SCALE 794*).

SLA No. 97/2018
State of J&K v. Mohd. Nazir
Decided on: October 21, 2019

Accused acquitted by the trial Court in offences under section 8/20 of NDPS Act, finding grave contradictions and discrepancies in the evidence of the prosecution. Order of the acquittal challenged-Held that:-It was admitted case even of the prosecution that the accused were not known to them prior of the occurrence. It was alleged that the respondent escaped from a distance of 5-6 feet from the Naka which had a team of 8 police personals headed by SHO. There was contradiction even regarding the arrest of the respondent as PW 4- Ct. Paljeet Singh stated that both the accused were arrested on the spot, whereas the stand taken by the others was that respondent had run away from the spot. Though it was claimed that deceased-Rohit Singh was apprehended on the spot, but no independent witness was joined. Further it was claimed that the respondent –Mohd. Nazir who had run away from the spot was not known to the police officials and his name was disclosed by the deceased Rohit Singh, but no test identification parade was conducted.

The search was not conducted in the presence of a Gazetted Officer. There is nothing pointed out to show that any offer was made to the respondents regarding that. The safety of samples is also seriously

in doubt. The seizure is stated to have been made on 18.10.2011, however, it was claimed that it was re-sealed by PW-9 Executive Magistrate on 19.10.2011. Link of evidence regarding chain of the custody of the samples is totally missing.

**CRR No. 27/2018,
State of J&K and others v. Shubam Sangra
Decided on: October 11, 2019**

The Chief Judicial Magistrate, Kathua exercising the power of Juvenile Justice Board, determined the age of the respondent, holding him to be below 18 years of age, thereby declaring him to be tried in terms of provisions of the Juvenile Justice (Care & Protection of Children) Act, 2013-Order Challenged in terms of section 52 of the Act- contended that the Chief Judicial Magistrate should have relied upon the opinion of the Medical Board, wherein the respondent was held to be more than 19 years of age-Held that the enquiry conducted by the Chief Judicial Magistrate is perfectly in accordance with Rule 74 of the Juvenile Justice (Care & Protection of Children) Rules, 2014. The Chief Judicial Magistrate has rightly given weightage to the Date of Birth Certificate issued by the local Municipal Committee & Date of Birth recorded in the school where the respondent has received education-Further Held that-Date of Birth recorded by the Municipal authorities and that recorded by the School has to be given precedence over the opinion given by the Medical Board. Opinion of the Medical Board can be sought only where there is no certificate available as issued by Municipal Authority or School , more so when the authenticity of the Date of Birth Certificate issued by the Municipal Authority or the School is not seriously in dispute-Order of the Chief Judicial Magistrate upheld.

**CrIA(D) No. 4/2019
Mushtaq Ahmad Shah v. State of J&K
through Police Station Srigufwara
Decided on: October 23, 2019**

Appellant detained for commission of offence under section 13 of Unlawful Activities (Prevention) Act, 1967 moving

application before the sessions judge, granted interim bail. However, further detained under Public Safety Act and his earlier application getting dismissed in default. After revocation of detention under Public Safety Act, the appellant again moved application before designated Special Court-Application rejected-Appeal in terms of section 21(3) of National Investigation Agency Act-Held: Section 43(D)(5) of the Unlawful Activities (Prevention) Act, 1967 is not attracted in the instant case as the appellant herein and the other persons were alleged to have committed the offences under Section 13 of the said Act, which falls under Chapter-III of the ULA(P) Act. Same does not come within the purview of mischief created by the said Section. It may be proper to have reference of Section 43(D)(5) of the ULA(P) Act..

We also find merit in the contentions of the learned counsel for the appellant that on the applicability of the principle of parity the appellant was entitled to the concession of bail. It is the case of the Investigating Agency that seven persons have been found involved in the offence under Section 13 of ULA(P) Act on the information from reliable sources, which is stated to have resulted in registration of the case against the accused persons who initially have been quoted seven in number. The appellant herein alongwith Abdul Hadi Reshi have been arrested only in view of the disclosure statement of one of the accused persons namely Bilal Ahmad Lone.

**CRA No. 34/2018
Mushtaq Ahmad Peer v. State of J&K and
others
Decided on October 15, 2019**

Convict in the offences under section 420, 406, 201 & 120-B RPC read with section 5(1)(d),5(2) of the Prevention of Corruption Act, having filed appeal against the judgement and order of sentence of the trial court, moved application seeking his release on bail in terms of section 497-D of the Code of Criminal Procedure-Held:-From bare reading of Section 497-D of the Code of Criminal procedure, it is clear that the Section has been enacted for the benefit of

the 'under trial prisoner' who remains in detention during investigation, inquiry or trial for a period exceeding up to one-half of the maximum period of punishment specified for that Section under law. A holistic reading of Section 497-D of the Code of Criminal procedure would clearly indicate that this benefit is intended to be conferred only on the 'under trial prisoners' and not on those who have been convicted in a trial and are undergoing sentence. It is true that a criminal appeal is a continuation of a trial, but the person undergoing sentence, in my humble opinion, cannot be treated as an 'under trial prisoner', more so, when the Court has not suspended the sentence or the conviction. It is, because of this reason, Section 497-D of the Code of Criminal procedure has been couched in a language which speaks of an 'under trial prisoner' having undergone detention for a PERIOD EXCEEDING UP TO ONE HALF OF THE MAXIMUM PERIOD OF IMPRISONMENT PRESCRIBED FOR THAT OFFENCE UNDER LAW, and does not refer to a maximum period of imprisonment for which a convict has been sentenced. The learned counsel for the appellant may be technically correct that an appeal is continuation of a trial, but that would not make the appellant an 'under trial prisoner' for the purposes of deriving benefit under Section 497-D of the Code of Criminal Procedure. That apart, in terms of Section 35 of the Code of Criminal procedure, the Court in a case where a person is convicted at one trial for two or more offences, may sentence such person for such offences to the several punishments prescribed therefore and such punishments when consisting of imprisonment, to commence one after the expiry of the other, in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

WP(C) No.2780/2019

Ahsan Ahmad Mirza and others v. Enforcement Directorate & another

Decided on: October 15, 2019

The petitioners challenged summons issued to them by the Directorate of Enforcement, Government of India in exercise of powers conferred under sub-sections (2) & (3) of section 50 of Prevention of Money Laundering Act, 2002 on the ground that offence under section 120-B RPC is not a scheduled offence and that it is not a standalone offence and must have correlation with any other scheduled offence-Held:-From the perusal of different provisions of PMLA including those introduced by the Amendment Act 2 of 2013, it is abundantly clear that the reference to the corresponding law as used in Sub-section (2) of Section 2 of PMLA has nothing to do with the definition of 'corresponding law' given in clause (ia) of Sub-Section (1) of Section 2 which came to be inserted by Act of 2 of 2013 w.e.f 15.02.2013. This distinction is required to be borne in mind while interpreting the provisions of Sub-section 2 of Section 2 of PMLA which has been relied upon by the respondents strongly to make a point that Section 120-B RPC corresponds to Section 120-B IPC as the same is a corresponding law in operation in the State of J&K to which the Indian Penal Code does not extend. It is not in dispute and is otherwise borne out from the provisions of PMLA and the Schedule appended thereto that offence of criminal conspiracy punishable under Section 120-B IPC is a scheduled offence and the offence of criminal conspiracy punishable under Section 120-B of the RPC does not specifically find mention in the Schedule of PMLA, but by operation of Sub-section (2) of Section 2 of PMLA, any reference in the Schedule to any enactment or any provision thereof (120-B IPC) shall in relation to area (State of J&K) in which such enactment or such provision is not in-force shall be construed as a reference to the corresponding law or relevant provisions of the corresponding law (120-B RPC), if any, in-force in that area. The expression or term 'area', however, has not been defined anywhere in PMLA, but it needs to be noticed that expression '**corresponding law**' or the **relevant provisions of the corresponding law**' existed in the enactment as it stood on

the date of its promulgation i.e. 01.07.2005 when the expression '**corresponding law**' had not been defined under Section 2 of PMLA.

It is well accepted that a statute must be construed according to the intention of the Legislature and the Courts should act

upon the true intention of the legislation while applying law and while interpreting law,...



"Absolute or unrestricted individual rights do not and cannot exist in any modern State. There is no protection of the rights themselves unless there is a measure of control and regulation of the rights of each individual in the interests of all."

A.P. Sen, J. in Sreenivasa General Traders v. State of A.P., (1983) 4 SCC 353, para 17

CIVIL

Civil Appeal No. 6706/2013

Mohinder Singh v. Jaswant Kaur (D) Thr. Lrs.

Date of decision: September 11, 2019

Hon'ble 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. It is observed that - The High Court held that a carbon copy of a document which carbon copy is signed by both the parties cannot be termed as an original document under Section 62 of the Evidence Act. This finding of the High Court is absolutely incorrect and against the provision of Section 62 of the Evidence Act. This carbon copy was prepared in the same process as the original document and once it is signed by both the parties, it assumes the character of the original document.

was an element of deception and fraud which was practised upon him as a result of which the concerned document got entered into. It is also a matter of record that the consideration in respect of the transfer of the property in question was stated to have been paid in cash. Again going by the averments made in the plaint, the information in respect of the transaction came to the knowledge only in the year 2013-2014. According to the assertions in the plaint, the plaintiff-appellant was always in possession of the property. In the entirety of the circumstances, as pleaded in the plaint, the issues raised in the matter were certainly required to be considered on merits.

Civil Appeal No. 8197/2019

Shaukathussain Mohammed Patel v. Khatunben Mohmmmedbhai Polara

Date of decision: October 22, 2019

Hon'ble Supreme Court reiterated that the entirety of the averments in the plaint have to be taken into account while considering a plea seeking rejection of plaint. Held that - It is well settled that for the purposes of the provisions of Order VII Rule 11 of the Code, the entirety of the averments in the plaint have to be taken into account. Going by the version of the appellant as detailed in the plaint, there

Special Leave to Appeal (C) No.24862/2019

Mukesh Ramdevji Agarwal & Anr. v. Balmukund Dhruvanarayan Lohiya (Huf) & Ors.

Date of decision: October 25, 2019

Hon'ble Supreme Court held that - The Courts are obliged to compute the limitation on the basis of the endorsement as contained in the certified copy. If there is any suspicion of unfair and/or improper practice, the remedy lies in initiating a domestic inquiry or may be criminal

investigation against the concerned staff of the Court responsible for supply of certified copies.

Civil Appeal No. 8069/2019

M. Hariharasudhan v. R. Karmegam & Ors.

Date of decision: October 17, 2019

Hon'ble Supreme Court reiterated the proposition of law that exclusion of the jurisdiction of the Civil Court is not to be readily to be inferred. Held - It has not been disputed that there is no express bar under the Act on the jurisdiction of the civil court to entertain a suit for damages. As set out above, all we need to determine is whether the jurisdiction of the civil court is barred by necessary implication. The principles laid down in Dhulabhai (supra) are pertinent in this regard. While dealing with the question of ouster of the jurisdiction of the civil court by specially constituted tribunals, this Court concluded that such ouster was not to be readily inferred unless the conditions set out by the Court were satisfied. For the purposes of determining the question before us, we need only refer to the following conditions laid down by this Court in Dhulabhai (supra):... (1) Where the statute gives a finality to the orders of the special Tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the

latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

Civil Appeal No. 5919/2011

Prahlad Pradhan & Ors v.

Sonu Kumhar & Ors

Decided on: October 16, 2019

Hon'ble Supreme Court has reiterated that entries in the revenue record do not confer title to a property, nor do they have any presumptive value on the title. They only enable the person in whose favour mutation is recorded, to pay the Land Revenue in respect of the land in question.

Civil Appeal No. 6111/2009

Krishnamurthy S. Setlur(D) by LRs. v. O.V.

Narasimha Setty(D) by LRs.

Decided on: September 26, 2019

Hon'ble Supreme Court has reiterated that plea of adverse possession can be used both as an offence and as a defence, i.e. both as sword and as a shield. A Plaintiff can claim title to the property based on adverse position.

OWP No. 889/2012

Vijay Sharma v. State of J&K and others

Decided on: October 16, 2019

At the instance of the Petitioner, authorities under the Control of Building Operation Act, initiated action by issuing notice to show cause as to why the offending structures of the building may not be demolished. Notice issued by the authorities challenged by the occupier of the building, before the Special Tribunal. The Petitioner not impeded as party- Application filed by the petitioner for his impleadment rejected by the Tribunal-Order challenged-Held that the approach of the Tribunal in rejecting application merely on the ground that the

petitioner should have approached to the civil court, is not correct. The authorities had acted upon the complaint filed by the petitioner, as such he ought to have been impeded as party, even though there is no provision in the Control of Building Operation Act for arraying complainant as a party in the appeal before the Tribunal- Petitioner directed to be impeded as party.

MA No. 209/2008 (O&M)
Union of India v. Abdul Jabar
Decided on: September 26, 2019

Award issued by the collector under the Land Acquisition Act, 1990 having not satisfied the land holders, reference in terms of section 18 made to the District Judge. The District Judge enhanced the amount of compensation from Rs 10,000 per Kanal to Rs 20,000 per Kanal-Order of the District Judge Challenged-Held that: "For the purpose of assessment of compensation for the land in the acquisition cases, it is not possible to carry

out exercise with mathematical precision. Thumb rule has to be applied many a times. Sale deeds which are pertaining to the land close to the acquired land or in close proximity are the best evidence. In this area there are not much sales transactions. In totality of the circumstances and the material on record especially in the form of admission made by the witness of the appellant and also considering the prime location and future potential of land the Collector had assessed the compensation @ ₹ 10,000/- per kanal. It was enhanced to ₹ 20,000/- per kanal by the learned court below. In my opinion by applying thumb rule keeping in view the above factors, the amount of compensation as assessed by the learned court below, deserves to be reduced from ₹ 20,000/- to ₹ 15,000/- per kanal."



ACTIVITIES OF THE ACADEMY

One Day Workshop for the Session Judges serving in Kashmir Province, on the topic "Trial of Special Offences under Ranbir Penal Code: Special Procedural requirements"

J&K State Judicial Academy organized a workshop for the Sessions Judges serving in Kashmir Province, on the topic "Trial of Special Offences under Ranbir Penal Code: Special Procedural requirements" on 6th October 2019 at Srinagar. In the interactive discussions the Session Judges dwelt on the nature and special features of various offences under Ranbir Penal Code, categorised as special offences in view of specific procedural requirements or designation of Special Courts and Special Judges for trial of such offences.

The participating Officers discussed the Special Procedural requirements in respect of such offences for enquiry, investigation, remand, bail and trial. They also discussed specific requirement of filing of complaint by the designated government officers in certain

offences. It was also discussed that as per the procedural requirements the cases



pertaining to sexual offences have to be disposed of in a time bound manner and during trial of such cases, all care has to be taken not to disclose the identity of the victim and that the victim is examined in conducive atmosphere keeping in view vulnerability of such witnesses.

During the discussions in workshop the issue pertaining to repeal of State Code of Criminal Procedure and extension of Central Code of Criminal Procedure to the proposed Union Territories of J&K and

Ladakh was also highlighted. Effect of Central law on the pending proceedings pertaining to Special Offences was also discussed. The participating Judicial Officers made their presentations based on the provisions of law and the case precedents from the superior Courts.

One Day Orientation Programme on “Admissions and Confessions: Practice & Procedure” for the Judicial Magistrates serving in the Kashmir Province

J&K State Judicial Academy organized an orientation programme on “Admissions and Confessions: Practice & Procedure” for the Judicial Magistrates serving in the Kashmir Province on 13th October 2019 at Srinagar. In the interactive sessions of the programme, the participating Judicial Officers discussed the statutory framework dealing with admissions & confessions in the criminal trial proceedings. Interactions in the sessions were initiated and moderated by the Director, J&K State Judicial Academy. The participating Judicial Officers discussed the provisions of Evidence Act and the Code of Criminal Procedure concerned with the subject under discussion. The issues cropped up during discussion were resolved in the backdrop of the relevant provisions of law and judicial precedents from the superior Courts.

Director, J&K State Judicial Academy also made a presentation of the impact of The Jammu & Kashmir Reorganisation Act on the legal framework of the State. Special emphasis was laid on the impact of extension of Central laws pertaining to criminal trials before the Courts, especially dealing with the topic under discussion.

Oath Ceremony

Jammu and Kashmir State Judicial Academy organized Oath ceremony for



newly enrolled Advocates of Kashmir and Ladakh Provinces on October 19 at J&K State Judicial Academy complex, Mominabad, Srinagar. The oath was administered by Hon'ble Mr Justice Sanjeev Kumar, who also distributed absolute enrolment certificates among 123 newly enrolled advocates hailing from different districts of Kashmir province. This was followed by lecture on the “Professional Ethics, Behaviour and Conduct” delivered by Justice Sanjeev Kumar.

Justice Kumar, Member, J&K State Judicial Academy Governing Committee welcomed newly enrolled advocates to the profession of law and in his address to the advocates Justice Kumar deliberated on the sanctity of the oath and of professional ethics and conduct for the Advocates. Addressing the Advocates, Justice Kumar termed patience and perseverance coupled with courtesy and respect for the courts and fellow colleagues as key towards success for every good lawyer. He stressed upon the advocates to work hard



and develop a constant urge for updating knowledge of law to achieve higher levels in the legal professions.

Justice Kumar stressed upon the newly enrolled Advocates that character is vital in all professions and all walks of life, and in the legal profession particularly, observing honesty by the lawyer is a matter of the first importance. It was highlighted that lawyers should conduct in Courts with assertion rather than aggression, and build professional capacity and fidelity to trust. The term ethics is an attribute, which all of us inherently possess but it is of utmost importance so far as legal profession is concerned. The standards of professional ethics as are applicable to members of the legal profession, we call that Legal Ethics. In the dealings in and outside the Court, Advocate should always bear in mind that every member of the Bar is a trustee of the honour and prestige of the profession which he is duty bound to uphold in letter and spirit.

One Day Workshop on "Forensic Science & Collection of Evidence"

On 23rd October, 2019, a workshop on "Forensic Science and Collection of Evidence" was organized in collaboration by the Directorate of Forensic Science and the J&K State Judicial Academy. In this workshop, about 80 Officers from Forensic Science Laboratory, Investigating Officers and Public Prosecutors participated. The workshop was designed to give insight to the participants into the need to have Forensic Analysis in the course of investigation of Criminal Cases and in aid of trials before the Civil Courts, as also to the requirements of collection of evidence for facilitating Forensic Analysis.

Director, Forensic Science Laboratory, Ms. Shubhra Sharma spoke about the manpower and physical infrastructure available with the Forensic Science Laboratories in Jammu and Srinagar, and she highlighted the achievements of the scientific officers and other technical persons working in the two laboratories. She also spoke about the steps being taken for reorganization of the Forensic Science Laboratories structure. Participants were informed that the Directorate in the near future shall be equipped with Mobile Forensic Units that shall facilitate the collection of Evidence from the spot itself.

Other resource persons from the Forensic Science Laboratories spoke about the technological aspects involved in the process of analyzing the samples sent to Forensic Science Laboratories and the latest technical developments which have facilitated the smooth and objective analysis of the samples.

Director, J&K State Judicial Academy gave a presentation on the legal aspects of the Evidence Act and the safeguards that are required to be put in place while collecting evidence. Importance of preserving the chain of custody was also highlighted. The participants were also told about the legal requirements of proof of the reports and opinion rendered by the scientific officers and appearance of such officers in the courts to prove the reports and opinions.



Environmental Rights of A Women

Globally women's right to water, food and a healthy environment has been acknowledged however, women still suffer disproportionately from the negative impacts of large-scale development projects. Generally women are expected to feed and take care of their families. The decision making bodies that govern the use and control of natural resources, water-boards, unions and land use for a women are not often found at the table and power is vested in the hands of the men. This limits women's ability to effectively defend and promote their rights and interests.

Resettlement to less productive lands forces women to work larger tracks of marginal land to grow the same amount of food, and causes women and girls to walk further for fetching water and fuel and even compensation for lost land is often negotiated only with the male head of the household and not with the female of the house. Sadly, on industrial and mining sites, sexual intimidation and harassment of women and girls is rampant. Though the human right to water, food and a healthy environment has been incorporated into many international legal instruments, for instance Universal Declaration of Human Rights, the Convention on the Rights of the Child, the convention on the Elimination of all forms of Discrimination Against Women and in resolutions by the United Nations General Assembly and the Human Rights Council, which many states have ratified worldwide. Unfortunately, these instruments are rarely implemented. This lack of implementation and adherence to laws appears especially in countries which have weak governance structures and depend on the exploitation and exports of their natural resources as main revenue of the state.

Part of the failure to enact and implement the right to water, food and a healthy environment is the huge barrier for affected communities to seek redress, via judicial or non-judicial systems. For those who are affected – particularly women – it is

often unclear what their rights are or how to claim them. Those who are able and brave enough to defend their rights, both in the private and public sphere, are faced with many hurdles and risk of becoming embroiled in protracted and financially burdensome struggles.

The obstacles that women face trying to access justice, vary from repeated inadmissibility rulings to – when seeking redress extraterritorially – being confronted with multiple corporate lawyers presenting a staunch defence. Another great concern is the shrinking space for human rights activists: indeed, speaking out has never been more dangerous. Harassment, violent attacks and assassinations of activists fighting for their cause are rapidly increasing. Supporting human rights activists and defending the space through national and international solidarity and diplomacy is more urgent than ever.

Securing women's land rights and access to natural resources is essential to improve gender equality. Creating the appropriate frameworks, such as equal land tenure rights, will put women in a better position to prevent human rights infringements that affect them disproportionately.

While many governments around the world have recognized International Human Right to Food, Water and a Healthy Environment, one can still note a clear gap in the translation into binding and applicability of national laws and regulations. Governments need to do much more to work towards making these rights a reality.

Women are confronted with issues that require an integrated governmental approach. It is important that a woman's possibility to claim her right is not thwarted just because the responsibilities for gender, human rights and environmental aspects are divided among ministries. Government programmes addressing issues that affect women should take into account gender inequality and the different needs and interests that women have, and involve

them in developing these programmes. Therefore, women's rights related to food, natural resources and environmental policies must be anchored and also reflected in gender policies. Environmental, natural resource and investment policies, on the other hand, must also ensure that women's rights are protected.

In India, with support of the Human Rights Fund project, several field level trainings and capacity building programmes were organized. The support helped to empower women and address illegal mining, eviction threats by wildlife authorities, non-implementation of the Indian Forest Right Act and in overcoming local obstacles to women's participation in **decision making processes**. It has led to the submission and partly settling of over a thousand Forest Rights Act claims. In 2017, 120 single women got land titles. In Umrahan in Panna district planned evictions in a Tiger Reserve area were halted as a result of a **legal case** filed by a Adivasi women. The relief from the legal action helped gain some time to submit forest rights claims by the community.

Women should also directly be supported at the international level in their quest for legal remedy. It is important that they have recourse to enforceable remedies abroad, in the event that these do not exist in their home country. If national or international companies are proven to infringe upon human rights or destroy natural habitat, governments should not shy away from holding them to account. This includes a stringent enforcement of applicable laws, due diligence when it comes to planning, and transparent implementation of Social and Environmental Assessments. Corruption and collusion which are obvious hurdles need to be addressed and dealt with. It is worthwhile to mention that all of these measures need to be addressed not only by governments of countries who export natural resources but equally by those who benefit by importing goods and those who invest in any part of the supply chain.

For women to claim their rights, they need support so they can organize, jointly

strategize in, campaign, lobby and initiate legal actions. Empowering women to have their **voices heard** is the first step towards realising the goal. Raising awareness among men and the wider community is crucial to address unequal gender relations and change people's mindset.

It should be noted, however, that raising awareness and training communities and women in order for them to be able to start claiming their rights takes time, expertise, resources, and an environment which is safe enough to carry out this work.

Civil society organisations can support communities, women and women's networks by introducing them to these tools and providing training and networking support. Close collaboration between different women's, human rights, development, environmental and judicial organisations is a key aspect of successfully enforcing human rights.

Gender sensitive grievance mechanisms should be created in order to redress violations, and they should be made easily accessible to victims of human rights violations at all government and corporate levels.

Prejudicing the general environmental setup to achieve recognition and effective protection of Women's Human Rights to water, food and a healthy environment in India and in other South-Asian Countries too. Though in India many capacity building programmes are organized in five states and the support given to empower women and address illegal mining eviction threats by authorities non-implementation of Indian Forest Rights Act and in overcoming local obstacles to women's participation in decision making process.

Programmes addressing issues which affect women should take note of gender inequality and the different needs and interests that women have, and involve them in developing these programmes, therefore, women's rights related to **food**, natural **resources** and **environmental policies** must be **anchored** and be reflected in **general policies**, environmental natural resources and environmental policies must ensure that women's rights are protected and procedural

human rights such as right to **access information, community consultation, public participation and decision making process, fair administrative actions** and access to justice are pre-requisites for the protection to human rights.

It is prime duty of the Courts and of other responsible agencies to ensure that these rights are respected and reflected in their policies and practices. Women should directly be supported at the national as well as international level in their quest for legal remedy and in order to enable communities and women to claim their rights we must raise awareness programmes building capacity and strengthen networks allowing women to develop an in depth instance of large scale projects such as how mining affects their right to claim food and clean environment and further how it leads to general inequality which is essential if they are to successfully advocate policy change for women.

The water and food equality that women strive to protect depends on access to land and natural resources, therefore, securing women's land rights and access to natural resources is essential to improve gender equality, hence creating the appropriate frameworks. Equal land tenure rights will put women in a power position to curb Human Rights infringements that affect them disproportionately.

It is difficult to imagine that a woman can own, can access, can control. Hence, it can be safely said that still women are poorly informed of their community entitlements and environmental rights, which has a big impact on the wider community. Be it may be infrastructure and facilities or development projects often bring competition and conflict within the community. Hence, there is a need to lay focus on women and environmental governance.

Presently, in the changing scenario the women folk (Samburu Women Tribe) are defending their community so to fulfill **environmental rights**. The Samburu tribe is currently advocating for environmental rights such as rights of access to information, natural resources, public participation as well as of community rights. Women are

professionally, closely connected with natural resources and women have gained ownership over land and livelihoods and there is more female influence in Samburu natural resource management.

If females from the Samburu community (tribe) has been enabled to participate in decision making and influence policies that affect the Samburu further training enables them to better understand and defend their rights and to protect the community's economic, social, and cultural interest.

Across India, women are, traditionally, closely connected with natural resources and their informal management. This stems from women being principally responsible for the subsistence of their families and communities, and the need to secure resources to fulfill this responsibility.

Women set and implement rules on wood and biomass (such as fodder, grass, and dry leaves) collection, ensuring forest reserves are used sustainably and equitably.

Women prefer, if given the opportunity to decide - to nurture diverse forest species that can be used for **compost, fodder, fuel wood, water recharge and herb-based medicines**. They grow traditional crops that have high nutritive value and ensure food and nutrition security - not just for human beings but for animals too. Women have played their role and proved to be **incredible conservers of bio-diversity** which is to be appreciated a lot but the Irony is that the voices of women are yet to be heard in policies at **local, national and international level**.

Hence there is a need to protect women's environmental rights and to remove the gender disparity.

**Ms. Bala Jyoti,
Registrar Rules
High Court of J&K**



LEGISLATIVE UPDATE

MINISTRY OF HOME AFFAIRS
(Department of Jammu and Kashmir Affairs)
ORDER

New Delhi, the 30th October, 2019

S.O. 3912(E).—WHEREAS, the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019) (hereinafter referred to as the principal Act) received the assent of the President on the 9th day of August, 2019 and notified in the Official Gazette on the same day;

AND WHEREAS, the 31st day of October, 2019 has been notified as the appointed day for all purposes of the principal Act;

AND WHEREAS, the principal Act was enacted to provide for reorganisation of the existing State of Jammu and Kashmir into the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh;

AND WHEREAS, there are certain Central laws and rules made thereunder which are applicable to the existing State of Jammu and Kashmir are continued to be made applicable to the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh;

AND WHEREAS, those Central laws, Ordinance and rules which are applicable to the whole of India except the existing State of Jammu and Kashmir are to be made applicable to the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh in addition to the Central laws specified in TABLE -1 of the of Fifth Schedule to the principal Act;

AND WHEREAS, the Jammu and Kashmir Bovine Breeding (Regulation of Production, Sale of Bovine Semen and Artificial Insemination) Act, 2018 (Governor's Act No. LV of 2018), the Jammu and Kashmir Single Window (Industrial Investment and Business Facilitation) Act, 2018 (Governor's Act No. X of 2018), the Jammu and Kashmir Metropolitan Region Development Authorities Act, 2018 (Governor's Act No. XLIX of 2018) and the Jammu and Kashmir National Law University Act, 2018 (Act No. II of 2019) which are applicable to the existing State of

Jammu and Kashmir are continued to be made applicable to the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh;

AND WHEREAS, after application of all the Central laws and relevant State laws to the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh, the adaptation of laws to the successor Union territories with required modifications cannot be restricted to laws specified in the Fifth Schedule to the principal Act but required to be extended to any law made applicable before the appointed day;

AND WHEREAS, the references to the "State of Jammu and Kashmir" with respect to the laws specified in the Fifth Schedule to the principal Act and other State laws and Central laws and rules made thereunder, shall be construed as references to the Union Territory of Jammu and Kashmir or the Union Territory of Ladakh, as the case may be;

AND WHEREAS, the references to the "State Legislature including Legislative Council of the State" which has been abolished by the principal Act shall be construed as "Legislative Assembly of the Union Territory of Jammu and Kashmir";

AND WHEREAS, the Judges of the High Court of Jammu and Kashmir for the existing State of Jammu and Kashmir have been appointed under the Constitution of Jammu and Kashmir and have taken oath or affirmation under the said Constitution. However, section 75 of the principal Act provides that the Judges of the High Court of Jammu and Kashmir of the existing State of Jammu and Kashmir holding office immediately before the appointed day of the principal Act shall become on that day the Judges of the common High Court for the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh and all the provisions of the Constitution of India, including the provisions relating to appointment of Judges of High Court are to be applicable to the Judges of the common High Court for the Union Territory of Jammu and Kashmir and the Union Territory of

Ladakh;

AND WHEREAS, there are other persons or authorities who have taken oath under the Constitution of Jammu and Kashmir or any other law and their actions and proceedings are required to be validated till the appointed day of the principal Act;

AND WHEREAS, sections 84 and 85 of the principal Act provides that the Central Government may, by order, establish one or more Committee or Advisory Committees for the purposes of those sections. However, for smooth transition of the State to successor Union Territories, the Central Government had already appointed the Advisory Committee before the appointed day of the said Act and therefore there is a need to validate the proceedings and actions taken by such Advisory Committee;

AND WHEREAS, sub-section (2) of section 93 of the principal Act provides that the Union Public Service Commission, with the approval of President, shall serve the needs of the Union Territory of Ladakh, however, the Union Public Service Commission makes recruitment only for the Group 'A' and Group 'B' (Gazetted) posts;

AND WHEREAS, the authority constituted under the State laws which are repealed or adopted by the principal Act shall be deemed to be constituted by or under the corresponding Central laws;

AND WHEREAS, all the provisions of the Constitution as amended from time to time have become applicable to the existing State of Jammu and Kashmir with effect from the 5th day of August 2019, and any notification issued or order, rule or appointment made during the period between the 5th day of August, 2019 and the appointed day under the principal Act are required to be protected, as if such actions have been taken in accordance with law;

AND WHEREAS, entry 1 of TABLE - 2 of the Fifth Schedule to the principal Act applies the Transfer of Property Act, Svt. 1977 (1920 AD) in a modified manner. However, the Jammu and Kashmir Transfer of Property Act, Svt.1977 has been repealed by TABLE-3 of that Schedule;

AND WHEREAS, the laws specified in TABLE - 3 of the Fifth Schedule to the principal Act which were applicable to the existing State of Jammu and Kashmir have been repealed and the proceedings and actions taken under those laws are required to be protected;

AND WHEREAS, the Jammu and Kashmir State Goods and Services Tax Act, 2017 has been made applicable to the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh as specified in the Fifth Schedule to the principal Act. However, the Union Territory of Jammu and Kashmir, being a Union Territory with Legislature shall have its own Goods and Services Tax, Act, 2017 whereas the Union Territory of Ladakh, being a Union Territory without Legislature shall be governed by the Union Territory Goods and Services Tax Act, 2017;¹

AND WHEREAS, there are references in the State laws that have been applied to the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh to the expressions 'permanent residents' or 'hereditary state subjects' and after application of all the provisions of the Constitution to the existing State of Jammu and Kashmir, these references are required to be omitted;

AND WHEREAS, the matter regarding implementation of the principal Act has been taken up with the Central Government Ministries, Departments and the Government of Jammu and Kashmir and they have pointed out the aforementioned difficulties in proper implementation of various provisions of the principal Act;

AND WHEREAS, the aforementioned difficulties have arisen in giving effect to various provisions of the principal Act;

NOW, THEREFORE, in exercise of the powers conferred by section 103 of the Jammu and Kashmir Reorganisation Act, 2019, the President, hereby makes the following Order, namely: -

1. Short title and commencement.—(1) This Order may be called the Jammu and Kashmir Reorganisation (Removal of

Difficulties) Order, 2019. (2) It shall come into force on the date of its publication in the Official Gazette.

2. Removal of difficulties.—The difficulties arising in giving effect to the provisions of the principal Act have been removed in the following manner, namely:

(1) The Judges of the High Court of Jammu and Kashmir for the existing State of Jammu and Kashmir holding office immediately before the appointed day shall be deemed to have been appointed under article 217 of the Constitution and they shall be deemed to have taken oath or affirmation under article 219 of the Constitution and shall continue to function as Judges of common High Court of the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh from the appointed day.

(2) Anything done or any action taken by the Advisory Committee established before the appointed day, shall for all purposes, be deemed to be valid and operative, as if such things had been done or such actions had been taken after the appointed day under the principal Act.

(3) The Union Public Service Commission shall make recruitment for the Group 'A' and Group 'B' (Gazetted) posts only in respect of the Union Territory of Ladakh.

(4) All Central laws which were applicable to the existing State of Jammu and Kashmir immediately before the appointed day shall continue to apply to the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh in addition to the laws mentioned in Table-I of the Fifth Schedule.

(5) All those Central laws, Ordinance and rules which are applicable to the whole of India except the existing State of Jammu and Kashmir immediately before the appointed day, shall now be applicable to the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh in addition to the Central laws specified in TABLE -1 of the of Fifth Schedule to the principal Act;

(6) The Jammu and Kashmir Bovine Breeding (Regulation of Production, Sale of Bovine Semen and Artificial Insemination)

Act, 2018 (Governor's Act No. LV of 2018), the Jammu and Kashmir Single Window (Industrial Investment and Business Facilitation) Act, 2018 (Governor's Act No. X of 2018), the Jammu and Kashmir Metropolitan Region Development Authorities Act, 2018 (Governor's Act No. XLIX of 2018) and the Jammu and Kashmir National Law University Act, 2018 (Act No. II of 2019) shall continue to apply to the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh until altered, repealed or amended by a competent Legislature or other competent authority.

(7) The Jammu and Kashmir Goods and Services Tax Act, 2017 shall be applicable to the Union Territory of Jammu and Kashmir and the Union Territory Goods and Services Tax Act, 2017 shall be applicable to the Union Territory of Ladakh.

(8) With respect to any law in force or rules made thereunder immediately before the appointed day in the State of Jammu and Kashmir, -

(a) the references, by whatever form, of words to the "State of Jammu and Kashmir" or "Jammu and Kashmir" or "State" thereof shall, as from the appointed day, except where it is unless otherwise provided, be construed as "Union Territory of Jammu and Kashmir" or "Union Territory of Ladakh, as the case may be";

(b) the references, by whatever form, of words to the "Government of Jammu and Kashmir", except where it is otherwise expressly provided, in such law or rules, shall be construed as references to "the Government of Union Territory of Jammu and Kashmir" or "the Administration of Union Territory of Ladakh, as the case may be".

(9) Any reference in any existing law to the "Legislature of the State (or any House or Houses thereof)" shall be construed as references to the Legislative Assembly or Legislature of the Union Territory of Jammu and Kashmir.

(10) The Central Government may before the expiration of one year from the appointed day by order may adapt or

modify any law made applicable to the successor Union Territories before the appointed day.

(11) If any Act made after the commencement of this Act, repeals or re-enacts, with or without modification, any provision of a previous Act, references to such modifications in any other enactment or instrument, shall be construed as references to the provision so modified.

(12) In the Acts including Governor's Acts contained in TABLE - 4 of the Fifth Schedule to this Act or notifications issued or rules, orders, made thereunder, any reference, by whatever form to the "permanent residents of the State or hereditary State subject", wherever they occur, shall be omitted with necessary grammatical variations.

(13) The Acts repealed in the manner provided in TABLE -3 of the Fifth Schedule, shall not affect— (a) the previous operation of any law so repealed or anything duly done or suffered there under; (b) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.

(14) Anything done or any action taken including any appointment or delegation made, notification, instruction or direction issued, form, bye-law or Scheme framed, certificate obtained, permit or licence granted or registration effected or agreement executed under any law shall be deemed to have been done or taken under the corresponding provisions of the Central laws now extended and applicable to the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh and shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under the Central laws

now extended.

(15) Anything done or any action taken including any notification issued or order, rule or appointment made during the period between the 5th of August, 2019 and the appointed day shall, for all purposes, be deemed to be valid and operative as if such things had been done or actions had been taken in accordance with law, and no suit or other legal proceeding shall be instituted or maintained against any person or authority whatsoever, on the ground that such things or actions were not done or taken in accordance with law.

(16) Any person who has taken an oath or made an affirmation before holding office or position as such under the Constitution of Jammu and Kashmir or any other law in force in the existing State of Jammu and Kashmir immediately before the appointed day shall be deemed to have taken such oath or affirmation under the Constitution of India or any other law applicable to the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh, and shall continue to hold office or position as such till the appointed day.

(17) Any authority constituted under any law in the existing State of Jammu and Kashmir immediately in force before the appointed day shall be deemed to have been constituted under the corresponding provisions of the Central laws applicable to the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh, until a new authority is constituted under the law applicable to the Union Territory of Jammu and Kashmir or the Union Territory of Ladakh, as the case may be, and any proceedings initiated or action taken by such authority, shall for all purposes be deemed to be valid and operative.

(18) In TABLE - 1 of the Fifth Schedule, in serial number 40, for "The Indian Boilers Act, 1923" shall be read as "The Boilers Act, 1923. (19) In TABLE -2 of the Fifth Schedule, serial number 1 and the entries relating thereto shall be omitted.

