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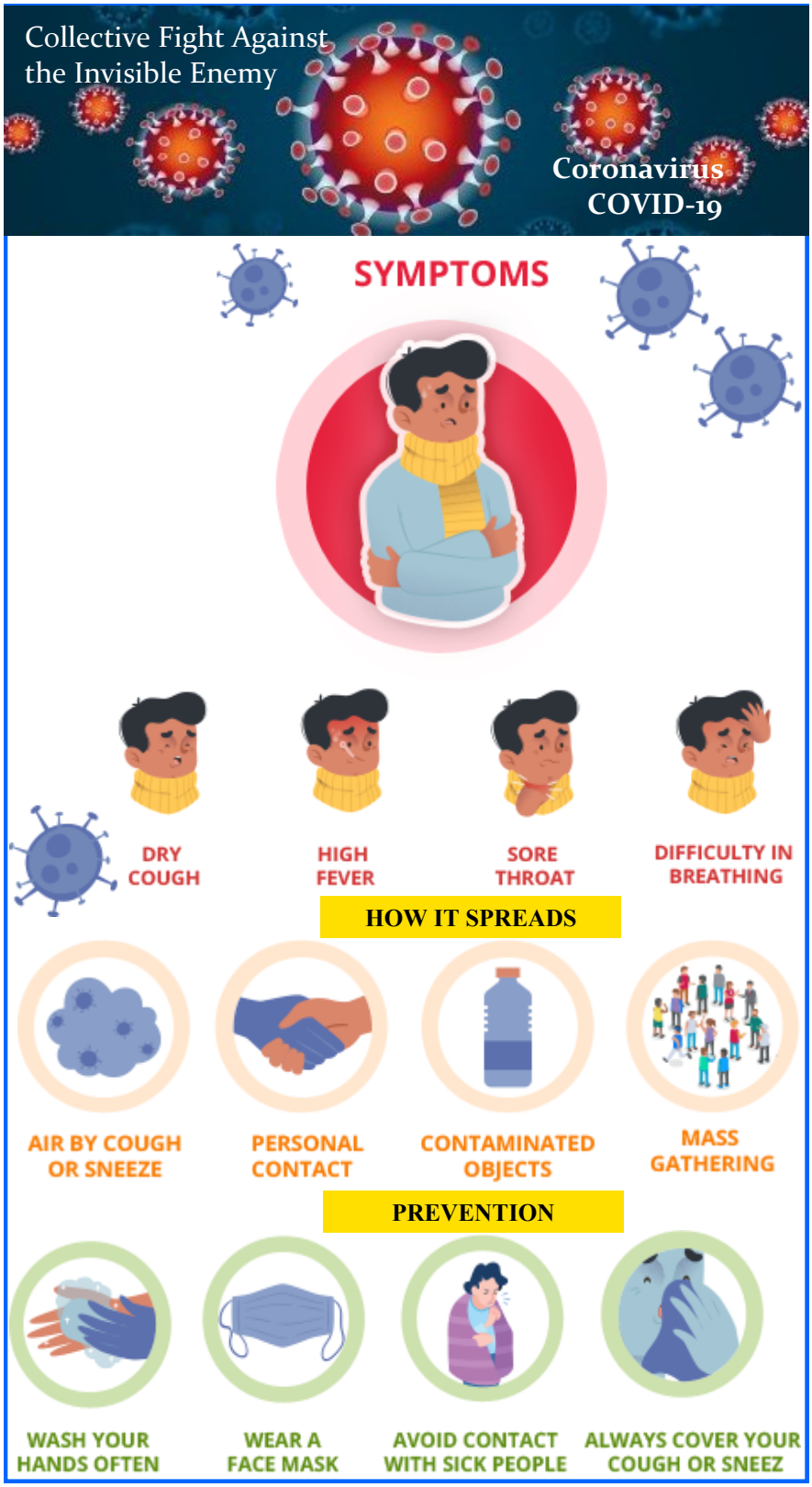


From the Editor's Desk

When these lines are being written, half of the world i.e. about 3 billion of the human beings, is under lockdown in view of unprecedented spread of a pandemic "Noval Corona Virus". The disease named as 'COVID-19' has already spread its tentacles in every country on the world map. By and large, all the countries in the world are facing an uphill task of arresting the spread of 'COVID-19'. This has caused unimaginable financial losses, putting the world economy in a state of great shock. The difficult situation that was faced by the world economy in the year 2008, is again staring at its face. About 1.3 billion population in India is also facing a severe crisis and has been put to lockdown. It is a situation of gravest medical emergency where every single individual is required to follow the advisories issued by the Government from time to time and take requisite precautions. Already a few European countries are severely affected by the spread of Corona Virus and a large number of population is already tested positive for 'COVID-19'. There have been thousands of fatalities across the countries so far.

Fortunately, we in India have taken early precautions so that ill effects of the disease are minimised. India, faced with not so robust healthcare system, is at high risk and any uncontrolled spread of the 'COVID-19' disease is sure to bring havoc, thereby risking the lives of millions of people. Citizens have so far cooperated in the efforts made by the Central and State governments and it is hoped that the situation would soon be brought under control and healthcare system in India is saved from crumbling.

Judicial institutions in India are also facing unprecedented and unimaginable problems because of the impending spread of the pandemic. Every court in the country is otherwise also flooded with litigation and thereby the courts see a large amount of footfall. In the current situation, it is essential to minimise the gathering of the people in all the public places. In that view, it is requisite that flow of litigants to the courts is also minimised. Already burdened judicial system would see the problems further multiplied. The Supreme Court of India and all the High Courts in the country have taken various measures to minimise the gathering of public, including the lawyers fraternity in the courts so that spread of pandemic in the courts is avoided. Hearing in the matters is restricted only to extremely urgent and serious matters, and that too by employing all the methods to avoid human gathering in the courts. Hearing in such matters is being conducted through various tele-conferencing modes, wherever it is practicable. This has recognised the potential and necessity of strengthening the ICT infrastructure in all the judicial institutions. Not only in the times of the present difficulty but in the normal course also it would be required to facilitate the lawyers community and the litigants by providing the robust ICT infrastructure.

The lawyers' community has been demanding the creation of requisite framework and infrastructure to allow them to work from home. As of now, no solution seems to be good enough to depart from the practices already in place. In various global organisations work from home has become a norm. This has allowed the flexible schedules of the staff working in these organisations and has resulted in effective dispensation. The present difficult situation not only has posed a great challenge but it also presents an opportunity to think out of box. It is hoped that in the judicial institutions also the ICT infrastructure would be further developed and strengthened to bring ease of access, efficiency, transparency and stakeholders friendly processes.

LEGAL JOTTINGS

"Any treatment meted out to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the welfare State is governed by the rule of law which has paramountcy."

Dr. D.Y. Chandrachud, J. in K.S. Puttaswami v. Union of India, (2017) 10 SCC 1, para 41

CRIMINAL

Criminal Appeal No. 353 of 2020
Satishkumar Nyalchand Shah v. State of Gujarat & Ors.
Decided on: March 02, 2020

Hon'ble Supreme Court reiterated the law laid in the case of Dinubhai Baghabhai Solanki v. State of Gujarat (2014) 4 SCC 626 after considering another decision the case of Sri Bhagwan Samardha v. State of A.P. (1999) 5 SCC 740, that there is nothing in Section 173(8) CrPC to suggest that the court is obliged to hear the accused before any direction for further investigation is made.

While considering the question whether one of the co-accused against whom the charge-sheet is already filed and against whom the trial is in progress, is required to be heard and/or has any locus in the proceedings under Section 173(8) CrPC – further investigation qua another accused namely against whom no charge-sheet has been filed, Hon'ble Court held that no error had been committed by the High Court dismissing the application submitted by the appellant to implead him in the Special Criminal Application challenging the order passed by the Chief Judicial Magistrate rejecting his application for further investigation under Section 173(8) CrPC with respect to one another accused against whom no charge-sheet had been filed. It is not appreciable how the appellant against whom no relief is sought for further investigation has any locus and/or any say in the application for further investigation under Section 173(8) CrPC, and how he can be said to be a necessary and a proper party.

Criminal Appeal Nos. 367-368 of 2020
Samta Naidu & Anr. v. State of Madhya Pradesh & Anr.
Decided on: March 02, 2020

Hon'ble Supreme Court held as under:

"14. The application of the principles laid down in Taluqdar in Jatinder Singh shows that "a second complaint is permissible depending upon how the complaint happened to be dismissed at the first instance". It was further laid down that "if the dismissal of the complaint was not on merit but on default of the complainant to be present there is no bar in the complainant moving the Magistrate again with a second complaint on the same facts. But if the dismissal of the complaint under Section 203 of the Code was on merits the position could be different".

To similar effect are the conclusions in Ranvir Singh and Poonam Chand Jain. Para 16 of the Poonam Chand Jain also considered the effect of para 50 of the majority judgment in Talukdar. These cases, therefore, show that if the earlier disposal of the complaint was on merits and in a manner known to law, the second complaint on "almost identical facts" which were raised in the first complaint would not be

maintainable. What has been laid down is that "if the core of both the complaints is same", the second complaint ought not to be entertained."

Hon'ble Supreme Court reproduced inter alia the following from the judgment in the case of Poonam Chand Jain and Another vs. Fazru 14 (2010) 2 SCC 631:-

"15. Almost similar questions came up for consideration before this Court in Pramatha Nath Talukdar v. Saroj Ranjan Sarkar. …. His Lordship held that an order of dismissal under Section 203 of the Criminal Procedure Code (for short "the Code") is, however, no bar to the entertainment of a second complaint on the same facts but it can be entertained only in exceptional circumstances. This Court explained the exceptional circumstances as:

(a) where the previous order was passed on incomplete record, or
(b) on a misunderstanding of the nature of the complaint, or
(c) the order which was passed was manifestly absurd, unjust or foolish, or
(d) where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings.

16. This Court in Pramatha Nath made it very clear that interest of justice cannot permit that after a decision has been given on a complaint upon full consideration of the case, the complainant should be given another opportunity to have the complaint enquired into again. In para 50 of the judgment the majority judgment of this Court opined that fresh evidence or fresh facts must be such which could not with reasonable diligence have been brought on record. This Court very clearly held that it cannot be settled law which permits the complainant to place some evidence before the Magistrate which are in his possession and then if the complaint is dismissed adduce some more evidence. According to this Court, such a course is not permitted on a correct view of the law. (para 50, p. 899) ……."

Criminal Appeal No. 340 of 2020
Downtown Temptations Pvt. Ltd. v. The State of west Bengal
Decided on: February 24, 2020

Hon'ble Supreme Court held that the reasoning that immovable property can be seized under Section 102 Criminal Procedure Code, is contrary to the law declared in Nevada Properties Pvt. Ltd. vs. State of Maharashtra, 2019 SCC OnLine (SC) 1247.

Criminal Appeal No. 374 of 2020
Parvat Singh & Ors. v. State of Madhya Pradesh
Decided on March: 02, 2020

Hon'ble Supreme Court reiterated that it is not disputed that there can be a conviction relying upon the evidence of the sole witness. However, at the same time, the deposition of sole witness can be relied upon, provided it is found to be trustworthy and reliable, and there are no material contradictions and/or omissions and/or improvements in the case of the prosecution.

Hon'ble Court also reiterated that, as per the settled preposition of law, a statement recorded u/Section 161 Cr.p.c is inadmissible in evidence and cannot be relied upon or used to convict the accused. The statement recorded under Section 161 Cr.P.C. can be used only to prove the contradictions and/or omissions.

Hon'ble Court held that, in the facts and circumstances of the case, there were material contradictions, omissions and/or improvements so far as the appellants herein -original accused no. 2 to 5 were concerned, and it was not safe to convict the appellants on the evidence of the sole witness, and that the benefit of material contradictions,

omissions and improvements must go in favour of the appellants herein.

Criminal Appeal No. 388 of 2020
Manoj Suryavanshi v. State of Chhattisgarh
Decided on: March 05, 2020

While considering the submission of the accused that incriminating material on the basis of the deposition of P.W.1 that he saw the accused with the deceased minors at around 1 pm on the afternoon of 11-02-2011, was not put to him while recording his statement under Section 313 Cr.P.C., and therefore the deposition of P.W.1 could not be relied upon, to that extent, Hon'ble Supreme Court held that that while recording the statement of the accused under Section 313 Cr.P.C., the deposition of P.W.1 was specifically referred to, and not asking a specific question arising out of the deposition of P.W.1, in the facts and circumstances of the case, could not be said to be fatal to the case of the prosecution, especially when the fact of accused last seen together with the deceased minors had been established and proved by the prosecution by examining another witness.

In this case, Hon'ble Court also held that non-examination of the officer of the mobile company could not be said to be fatal to the case of prosecution, more particularly, when the CDR had been got exhibited, through the deposition of the Investigating Officer and no objection was raised on behalf of the defence, when the same was exhibited, and that, even otherwise, the mobile SIM was seized from the accused at the time of his arrest, and which is proved as per the seizure memo, and therefore, the prosecution had proved that the mobile belonged to the accused.

Hon'ble Court also reiterated that, as per the settled proposition of law, even the deposition of a hostile witness to the extent it supports the case of prosecution, can be relied upon.

Hon'ble Court further reiterated that the minor discrepancies and inconsistencies in the statements of prosecution witnesses and the minor lacuna in the investigation led by the police cannot be a reason for discarding the entire prosecution case, if the evidence is otherwise sufficient and inspiring to bring home the guilt of the accused.

Hon'ble Court also held that there is no absolute proposition of law that in no case there can be conviction and sentence on the same day. There is no absolute proposition of law laid down by this Court in any of the decisions that if the sentence is awarded on the very same day on which the conviction was recorded, the sentencing would be vitiated.

While imposing the rarest of rare punishment, i.e. death penalty, the Court must balance the mitigating and aggravating circumstances of the crime and it would depend upon particular and peculiar facts and circumstances of each case.

Hon'ble Court noted the mitigating circumstances, on the issue of death sentence, from the case of Bachan Singh v. State of Punjab (1980) 2 SCC 684, as under:

"(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated.

The State shall by evidence prove that the accused does not satisfy Conditions (3) & (4) above.

(5)That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence

(6)That the accused acted under the duress or domination of another person.

(7)That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."

Criminal Appeal No. 407 of 2020
Bhagwan Singh v. State of Uttarakhand
Date of Decision: March 18, 2020

In a case of celebratory gun shots, few persons suffered injuries caused by pellets, two of them died and others suffered serious injuries. Appellant tried for offences under section 302 and 307 IPC and convicted for the said offences. Sentenced to imprisonment for life and imprisonment for five years in respective offences. Appeal confirmed by the High Court. Conviction and sentence further challenged before the Supreme Court. Held as under:

"15. The trial court as well as the High Court have proceeded on the premise that the appellant's act by firing from the gun which was pointed towards the roof, was as bad as firing into a crowd of persons
so he ought to have known that his act of gunshot firing was so imminently dangerous that it would, in all probability, cause death or such bodily injury as was likely to cause death.

16. The facts and circumstances of the instant case, however, do not permit to draw such a conclusion. We have already rejected the prosecution version to the extent that the appellant aimed at Smt. Anita and then fired the shot(s). The evidence on record contrarily shows that the appellant aimed the gun towards the roof and then fired. It was an unfortunate case of misfiring. The appellant of course cannot absolve himself of the conclusion that he carried a loaded gun at a crowded place where his own guests had gathered to attend the marriage ceremony. He did not take any reasonable safety measure like to fire the shot in the air or towards the sky, rather he invited full risk and aimed the gun towards the roof and fired the shot. He was expected to know that pellets could cause multiple gunshot injuries to the nearby persons even if a single shot was fired. The appellant is, thus, guilty of an act, the likely consequences of which including causing fatal injuries to the persons being in a close circuit, are attributable to him. The offence committed by the appellant, thus, would amount to 'culpable homicide' within the meaning of Section 299, though punishable under Section 304 Part 2 of the IPC.

17. Incidents of celebratory firing are regretfully rising, for they are seen as a status symbol. A gun licensed for self protection or safety and security of crops and cattle cannot be fired in celebratory events, it being a potential cause of fatal accidents. Such like misuse of fire arms convert a happy event to a pall of gloom. Appellant cannot escape the consequences of carrying the gun with live cartridges with the knowledge that firing at a marriage ceremony with people present there was imminently dangerous and was likely to cause death."

CRAA No. 112/2014
State of J&K v. Rattan Lal
Date of Decision: February 28, 2020

The respondent tried for the offence of murder on the allegation that the he had murdered his father-in-law. The motive shown was that the deceased was not happy with the treatment of his daughter married to the respondent. The dead body of the deceased was found in forest area. The inquest proceedings were held. On PW-2 was informed by son of the deceased that his father has been killed by the accused-respondent. It was on the basis thereof that the investigation started. However, the fact remains that the prosecution has miserably

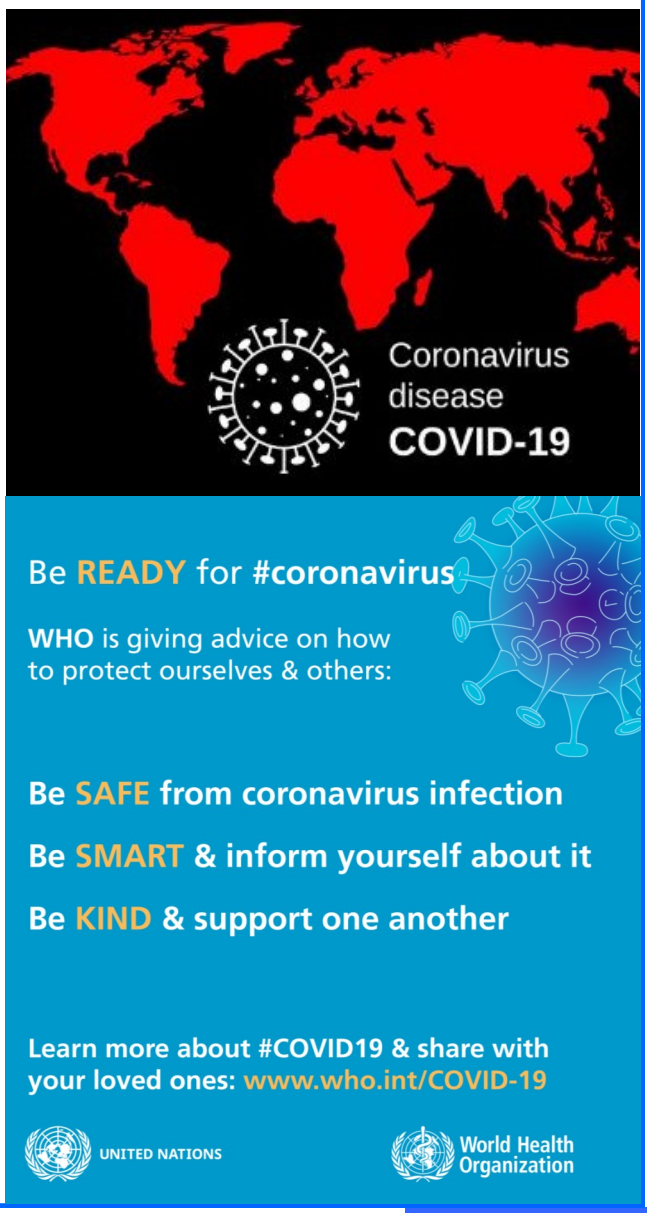
failed to prove the case in Court. What to talk of other evidence, even the cause of death of the deceased was not proved in Court. Son of the deceased who had initially said that respondent had killed the deceased and concealed the dead body in a stack of hay near his house and shifted the same in the forest area when it started emitting smell, also resiled from part of his statement. PW-2, resiled from his earlier statement while stating that he was informed by son of the deceased that the dead body of the deceased was lying in the forest. Majority of witnesses produced by the prosecution turned hostile. As the body had decomposed, the doctor could not give any definite opinion about the cause of death as there was no internal or external injury found on the body of the deceased. The disclosure statement of the respondent was sought to be relied upon stating that the deceased was hit with a stone which has been kept in a pit. However, when he was taken to recover the stone, the place was where number of stones were lying. The extra judicial confession was sought to relied upon. However, it was during the period, when the respondent was in custody. Two of the witnesses who were declared approvers, when examined in Court, also resiled from their statement. - Judgment of acquittal recorded by the trial court upheld.

CRR No. 49/2008
Vinod Bhat and another v. State of J&K and Anr.
Decided on: February 28, 2020

While considering framing of charge, the trial court found infirmities in the investigation and directed further investigation to be carried out-Order Challenged in revision-Hon'ble High Court taking note of case law reported as Vinubhai Haribhai Malaviya vs The State Of Gujarat decided on 16 October, 2019 Criminal Appeal Nos. 478-479 OF 2017 and Minu Kumari v. State of Bihar (2006) 4 SCC 359, made the following observations:

"Further, courts are meant to do substantial justice to both complainant and accused. If prosecution agency deliberately leaves certain lacuna in final report and does not comply with the provisions of section 173 (2) Cr.P.C., the Magistrate has to interfere and pass appropriate orders.

In view of the settled position of law as cited above, the magistrate may direct for further investigation; and for that purpose the magistrate can also return the challan. Therefore, this petition is found to be devoid of merit and is, accordingly, dismissed."



"Historical evidence shows that our Constitution did not make a break with the past but was the result of a process of evolution. Politically, India achieved her town independence, but legally and constitutionally the independence of India was an act of the British Parliament. "

D.P. Madon, J. in Umaji Keshao Meshram v. Radhikabai, 1986 (Supp) SCC 401, para 75

CIVIL

Civil Appeal No. 8814 of 2010
M. Vanaja v. M. Sarla Devi (Dead)
Decided on: March 06, 2020

Hon'ble Supreme Court reiterated that the compliance of the conditions in Chapter I of the Hindu Adoptions and Maintenance Act 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.

Hon'ble Court also held that though the facts were similar, the law laid down in L. Debi Prasad (Dead) by Lrs. v. Smt. Tribeni Devi & Others (1970) 1 SCC 677 could not be applied to the instant case. L. Debi Prasad case pertained to adoption that took place in the year 1892, and the present case involved an adoption that had taken place after the Act of 1956 came into force, and that 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.

Civil Appeal Nos. 1999-2000 of 2020
Nirmala Kothari v. United Insurance Co. Ltd.
Decided on: March 04, 2020

Hon'ble Supreme Court held that while the insurer can certainly take the defence that the licence of the driver of the car at the time of accident was invalid/fake, the onus of proving that the insured did not take adequate care and caution to verify the genuineness of the licence or was guilty of willful breach of the conditions of the insurance policy or the contract of insurance lies on the insurer.

Hon'ble Court also held that the employer is expected to verify if the driver has a driving licence, while hiring a driver. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the Insurance Company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable.

Civil Appeal No.10941-10942 of 2013
New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd.
Decided on March 4, 2020

Hon'ble Supreme Court held that the Consumer Protection Act has been enacted to provide for expeditious disposal of consumer disputes and that, it is for the protection and benefit of the consumer. The time provided under Section 13(2)(a) of the Consumer Protection Act which provides for giving of his/her version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum, has to be read as mandatory, and not directory.

Hon'ble Court also observed as under:

"19. The contention of the learned Counsel for the respondent is that by not leaving a discretion with the District Forum for extending the period of limitation for filing the response before it by the opposite party, grave injustice would be caused as

there could be circumstances beyond the control of the opposite party because of which the opposite party may not be able to file the response within the period of 30 days or the extended period of 15 days. In our view, if the law so provides, the same has to be strictly complied, so as to achieve the object of the statute. It is well settled that law prevails over equity, as equity can only supplement the law, and not supplant it. ……. In Nasiruddin vs Sita Ram Agarwal (2003) 2 SCC 577, this Court observed that "in a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom."

While considering the contention that the language of Section 13(2) of the Consumer Protection Act is pari materia to Order VIII Rule 1 of the Code of Civil Procedure, 1908, Hon'ble Court observed as under:

"In this regard, what is noteworthy is that Regulation 26 of the Consumer Protection Regulation, 2005, clearly mandates that endeavour is to be made to avoid the use of the provisions of the Code except for such provisions, which have been referred to in the Consumer Protection Act and the Regulations framed thereunder, which is provided for in respect of specific matters enumerated in Section 13(4) of the Consumer Protection Act. It is pertinent to note that non-filing of written statement under Order VIII Rule 1 of the Code is not followed by any consequence of such non-filing within the time so provided in the Code.

Now, while considering the relevant provisions of the Code, it is noteworthy that Order VIII Rule 1 read with Order VIII Rule 10 prescribes that the maximum period of 120 days provided under Order VIII Rule 1 is actually not meant to be mandatory, but only directory. Order VIII Rule 10 mandates that where written statement is not filed within the time provided under Order VIII Rule 1 "the court shall pronounce the judgment against him, or make such order in relation to the suit as it thinks fit". A harmonious construction of these provisions is clearly indicative of the fact that the discretion is left with the Court to grant time beyond the maximum period of 120 days, which may be in exceptional cases. On the other hand, sub-section (2)(b)(ii) of Section 13 of the Consumer Protection Act clearly provides for the consequence of the complaint to be proceeded ex parte against the opposite party, if the opposite party omits or fails to represent his case within the time given.

It may further be noted that in Order VIII Rule 10 of the Code, for suits filed under the Commercial Courts Act, 2015, a proviso has been inserted for 'commercial disputes of a specified value' (vide Act 4 of 2016 w.e.f. 23.10.2015), which reads as under:

"Provided further that no Court shall make an Order to extend the time provided under Rule 1 of this Order for filing the written statement"

From the above, it is clear that for commercial suits, time for filing written statement provided under Order VIII Rule 1 is meant to be mandatory, but not so for ordinary civil suits. Similarly, in our considered view, for cases under the Consumer Protection Act also, the time provided under Section 13(2)(a) of the Act has to be read as mandatory, and not directory.

Civil Appeal No(s).1966-1967 of 2020
Chief Information Commissioner v. High Court of Gujarat & Anr.
Decided on: March 04, 2020

Hon'ble Supreme Court held as under:

"(i) Rule 151 of the Gujarat High Court Rules stipulating a third party to have access to the information/obtaining the certified copies of the documents or orders requires to file an application/affidavit stating the reasons for seeking the information, is not inconsistent with the provisions of the RTI Act; but merely lays down a different procedure as the practice or payment of fees, etc. for obtaining information. In the absence of inherent inconsistency between the provisions of the RTI Act and other law, overriding effect of RTI Act would not apply.

(ii) The information to be accessed/ certified copies on the judicial side to be obtained through the mechanism provided under the High Court Rules, the provisions of the RTI Act shall not be resorted to.

Civil Appeal Nos. 7357-7376 of 2010
M/S Nandan Biomatrix Ltd. v. S. Ambika Devi & Ors.
Decided on: March 06, 2020

Hon'ble Supreme Court held that that an agreement for buyback by the seed company, of the crop grown by a farmer, cannot be regarded as a resale transaction, and he cannot be brought out of the scope of being a "consumer" under the 1986 Act only on such ground.

Though the question whether the purpose for which goods have been bought or services rendered is a "commercial purpose" is to be answered on the facts of each case, a person buying goods and using them himself exclusively for the purpose of earning a livelihood by means of self-employment would be covered by the definition of "consumer" within the 1986 Act, even if such use is commercial use.

Hon'ble Court reproduced the following from the judgment in the case of National Seeds Corporation Ltd. v. M. Madhusudan Reddy, (2012) 2 SCC 506:

"73. What needs to be emphasised is that the appellant had selected a set of farmers in the area for growing seeds on its behalf. After entering into agreements with the selected farmers, the appellant supplied foundation seeds to them for a price, with an assurance that within a few months they will be able to earn profit. The seeds were sown under the supervision of the expert deputed by the appellant. The entire crop was to be purchased by the appellant. The agreements entered into between the appellant and the growers clearly postulated supply of the foundation seeds by the appellant with an assurance that the crop will be purchased by it. It is neither the pleaded case of the appellant nor was any evidence produced before any of the Consumer Forums that the growers had the freedom to sell the seeds in the open market or to any person other than the appellant. Therefore, it is not possible to take the view that the growers had purchased the seeds for resale or for any commercial purpose and they are excluded from the definition of the term "consumer". As a matter of fact, the evidence brought on record shows that the growers had agreed to produce seeds on behalf of the appellant for the purpose of earning their livelihood by using their skills and labour."

Hon'ble Court also observed that that the view that a consumer dispute may not arise out of a contractual arrangement is erroneous since it falls foul of the clear stipulation under Section 2(f) of the 1986 Act that a deficiency in service may arise out of "any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service".

Hon'ble Court imposed Costs on the Appellant to the tune of Rs. 25,000/- payable to the Respondent, while observing that the tendency to resist even the smallest of claims on any ground possible, by exploiting the relatively greater capacity of seed companies to litigate for long periods of time, amounted to little more than harassment of agriculturists, and that it deemed fit to impose costs on the Appellant, to discourage such conduct in the future by the Appellant as well as other seed corporations.

S.L.P. (C) Nos.9036-9038 of 2016
Indore Development Authority v. Manohar Lal & Ors.
Decided on March 06, 2020

In a case involving interpretation of Section 24(2) of the Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the Supreme Court (5-Judge bench) held that proceedings under the Land Acquisition Act, 1894 will not lapse if the compensation has been tendered by deposit in Government Treasury. It is in the context that Section 24(2) of the 2013 Act provides that the compensation proceedings under the 1894 Act will lapse on the commencement of the 2013 Act, if 'compensation has not been paid'.

There had been a conflict of opinion in two judgments of the Supreme Court, one of 2014 (Pune Municipal Corporation Case) and other of 2017 (Indore Development Authority

Case. Another three judge bench of the Supreme Court had, shortly after the decision of 2017 case, had stayed the operation of judgment and had referred the matter for decision by the larger bench.

The Supreme Court answered the questions under reference as under:

"363. In view of the aforesaid discussion, we answer the questions as under:

1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31 (1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or 318 non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land 319 acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale

and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

Civil Appeal No. 1960/2020
Dhanpat v. Sheo Ram (Deceased) through LR's & Ors.
Date of Decision: March 19, 2020

The Supreme Court has held that there is no need to file an application seeking permission to produce secondary evidence. The secondary evidence cannot be ousted for consideration only because an application for permission to lead secondary evidence was not filed. The case was a civil appeal, in which the validity of a Will was in dispute. In a partition suit, the defendants had produced a Will, to deny the claim of the plaintiffs for share in the ancestral property. A certified copy of the registered Will was produced during the trial, on the ground that the original was lost.

The Supreme Court observed as under:

"There is no cross-examination of any of the witnesses of the defendants in respect of loss of original Will. Section 65 of the Evidence Act permits secondary evidence of existence, condition, or contents of a document including the cases where the original has been destroyed or lost. The plaintiff had admitted the execution of the Will though it was alleged to be the result of fraud and misrepresentation. The execution of the Will was not disputed by the plaintiff but only proof of the Will was the subject matter in the suit. Therefore, once the evidence of the defendants is that the original Will was lost and the certified copy is produced, the defendants have made out sufficient ground for leading of secondary evidence".

"There is no requirement that an application is required to be filed in terms of Section 65(c) of the Evidence Act before the secondary evidence is led. A party to the lis may choose to file an application which is required to be considered by the trial court but if any party to the suit has laid foundation of leading of secondary evidence, either in the plaint or in evidence, the secondary evidence cannot be ousted for consideration only because an application for permission to lead secondary evidence was not filed."

Civil Appeal No 2014 of 2020
The Joint Labour Commissioner and Registering Officer & Anr. v. Kesar Lal
Date of Decision: March 17, 2020

Issue involved in in this appeal is whether a construction worker who is registered under the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 19961 and is a beneficiary of the Scheme made under the Rules framed pursuant to the enactment, is a 'consumer' within the meaning of Section 2(d) of the Consumer Protection Act 1986. The respondents had instituted a consumer complaint before the District Consumer Disputes Redressal Forum, after denial by the Commissioner of their claim for grant of benefit of a scheme in which they had to get a financial assistance of Rs 51,000 on marriage of daughter. The complaint was dismissed. In appeal, the State Consumer Disputes Redressal Commission set aside the order and directed the appellants to pay an amount of Rs 51,000 to the respondent together with compensation and interest of 18 per cent per annum from the date of the institution of the complaint. The National Consumer Disputes Redressal Commission affirmed the decision, overruling the objection that the respondent is not a 'consumer' within the meaning of the Consumer Protection Act 1986, it however, reduced the rate of interest from 18% to 9%.

The Supreme Court observed as under:

"As a matter of interpretation, the provisions contained in the Consumer Protection Act 1986 must be construed in a purposive manner. Parliament has provided a salutary remedy to consumers of both goods and services. Public authorities such as the appellants who have been constituted under an enactment of Parliament are entrusted with a solemn duty of providing welfare services to registered workers. The workers who are registered with the Board make contributions on the basis of which they are entitled to avail of the services provided in

terms of the schemes notified by the Board. Public accountability is a significant consideration which underlies the provisions of the Consumer Protection Act 1986. The evolution of jurisprudence in relation to the enactment reflects the need to ensure a sense of public accountability by allowing consumers a redressal in the context of the discharge of non-sovereign functions which are not rendered free of charge. This test is duly met in the present case."

Held that such construction workers fall within the ambit of 'Consumer' and can maintain 'Consumer complaint'.

Civil Appeal No.2175 of 2020
Bank of Baroda v. Kotak Mahindra Bank Ltd.
Date of Decision: March 17, 2020

The Supreme Court considered the following issues arising in a matter of execution by court in India of a decree passed by a foreign court:

(i) Does Section 44A (CPC) merely provide for manner of execution of foreign decrees or does it also indicate the period of limitation for filing execution proceedings for the same?

(ii) What is the period of limitation for executing a decree passed by a foreign court (from a reciprocating country) in India?

(iii) From which date the period of limitation will run in relation to a foreign decree (passed in a reciprocating country) sought to be executed in India?

The Supreme Court answered thus:

"21. In our view Section 44A only enables the District Court to execute the decree and further provides that the District Court shall follow the same procedure as it follows while executing an Indian decree, but it does not lay down or indicate the period of limitation for filing such an execution petition."

"33. The view worldwide appears to be that the limitation law of the cause country should be applied even in the forum country. Furthermore, we are of the view that in those cases where the remedy stands extinguished in the cause country it virtually extinguishes the right of the decree holder to execute the decree and creates a corresponding right in the judgment debtor to challenge the execution of the decree. These are substantive rights and cannot be termed to be procedural. As India becomes a global player in the international business arena, it cannot be one of the few countries where the law of limitation is considered entirely procedural.

34. We have already clearly indicated that if the law of a forum country is silent with regard to the limitation prescribed for execution of a foreign decree then the limitation of the cause country would apply.

35. We answer question no. 2 by holding that the limitation period for executing a decree passed by a foreign court (from reciprocating country) in India will be the limitation prescribed in the reciprocating foreign country. Obviously this will be subject to the decree being executable in terms of Section 13 of the CPC."

"43. We answer the third question accordingly and hold that the period of limitation would start running from the date the decree was passed in the foreign court of a reciprocating country. However, if the decree holder first takes steps in aid to execute the decree in the cause country, and the decree is not fully satisfied, then he can then file a petition for execution in India within a period of 3 years from the finalisation of the execution proceedings in the cause country."

Civil Appeal No 1865 of 2020
Vijay Kishanrao Kurundkar & Anr. v. State of Maharashtra & Ors.
Date of Decision: February 28, 2020

The Supreme Court, relying upon the case law Punjab National Bank v. Vilas Govindrao Bokade, (2008) 14 SCC 545 and Chairman and Managing Director, Food Corporation of India v Jagdish Balaram Bahira, (2017) 8 SCC 670, held that it is trite law that an appointment secured on the basis of a fraudulent certificate is void ab initio. It is not open to the government to circumvent the existing statutory mandate by indefinitely protecting the deceitful activities of such candidates through the use of circulars or resolutions.

MA No. 357/2017
Mukesh Sharma & Anr. v. Sanjeev Bhasin

Date of Decision: March 10, 2020

In the Partnership agreement, the partners agreeing to resolve all their disputes in terms of the Arbitration and Conciliation Act, 1996 (Central Act) rather than the Arbitration and Conciliation Act, 1997 (State Act). Dispute arose between the partners and one partner approaching the civil court with a prayer for dissolution of partnership. Objection taken by the defendant in terms of section 8 of the State Act as to maintainability of the suit. Trial court rejected the plaint, holding that the matter was referable to the arbitrator and suit was not maintainable. Appellant filed an application under Section 9 (ii)(a-e) of the State Act of 1997 before the District Court. The maintainability of the application was opposed by the respondent taking, inter alia, a plea that the parties were governed by the provisions of Arbitration and Conciliation Act 1996 (Central Act) and, therefore, the Courts in Jammu and Kashmir had no jurisdiction to entertain the application for interim relief. Plea accepted by the Court and the application for interim relief filed in terms of Section 9(ii)(a-e) of the State Act of 1997 dismissed as 'not maintainable'. Appeal against – Contended that the Central Act was not applicable as the parties could not have agreed to be governed by a law which was not applicable to them or to the territories where the subject matter of partnership was situated. Remedy, therefore, could be availed of in terms of the State Act. Held that, since in terms of Section 11 of the Central Act nominated Judge of the High Court has already ordered appointment of an Arbitrator. In that view of the matter, the trial Court was perfectly correct incoming to the conclusion that the application under Section 9 (ii)(a-e) of the State Act of 1997 is not maintainable. Furthermore, now the Reorganisation Act, 2019 has made extension of the Central Act, as such remedy is available under the Central Act.

CR No. 83/2019
Kuldeep Kour v. Vice Chairman, JDA, Jammu & Ors.
Date of Decision: March 19, 2020

In an earlier suit for Permanent Prohibitory Injunction filed by the petitioner plaint rejected in view of bar of suit under section 48 of the Development Act. Another suit filed after serving notice in terms of section 48. application for temporary injunction also filed to restrain the respondent from interfering in or encroaching upon the suit property. Interim application dismissed by the trial, holding that the petitioner had failed to establish prima facie title over the property as the documents reflecting the right of petitioner to hold the land found to be fake and fabricated. Appeal against dismissal of interim application also dismissed. Petition under Article 227 of the Constitution of India filed - Held - High Courts in exercise of its power under Article 227 of the Constitution should interfere with the trial Court orders only to keep the Tribunals and Courts subordinate to it, "within the bounds of their authority" and to ensure that law is followed by such Tribunals and Courts by exercising jurisdiction which is vested in them and not declining to exercise the jurisdiction which is vested in them. Apart from the above, High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the Orders of the Tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise".

MA No. 576/2010
Ghulam Mohd. v. Divisional Manager, SFC Doda
Date of Decision: March 12, 2020

The Commissioner under the Workmen's Compensation Act (Assistant Labour Commissioner) passed award of compensation on account of accident suffered and provided that, in case the payment of the compensation is not made by the respondents within 30 days of the announcement of the award, then the appellant would be entitled to simple interest @ 12% per annum from the date of announcement of the award till the compensation amount was deposited/paid.

This part of the award, denying interest from the date of accident, challenged. Relying upon Saberabibi Yakubbhai Shaikh & Ors. v. National Insurance Co. Ltd. & Ors., 2014 ACJ 467 and Oriental Insurance Co. Ltd. v. Siby George, 2012 ACJ 2126 (SC), Hon'ble High Court held that - From the aforesaid, it is abundantly clear that, compensation under the provisions of the Employees" Compensation Act, becomes due on the date of accident and if the same is not paid by the employee within one month, the same becomes payable along with interest @ 12% per annum from the expiry of one month from the date of accident. In the instant case, the Commission has gone wrong in awarding the interest, only if the compensation was not paid within one month from the date of announcement of the award.

CR No. 08/2020
Mukhtar Ahmad & Ors. v. Halima & Anr.
Decided on: March 10, 2020

The petitioner filed a civil suit in the trial court. During the pendency of suit, an application came to be preferred by him seeking permission to withdraw the same with liberty to file a fresh one. However, no cogent reasons were reflected in the application except to the limited extent that many other legal facts are needed to be noted in the fresh suit. The application was considered by the court and by virtue of order impugned, while dismissing the suit, liberty to file a fresh suit on the same cause of action was denied. Challenged in revision petition – Held - While the court below appears to be right in rejecting the application to the extent that no sufficient cause had been shown by the plaintiffs to seek permission to file a fresh suit on the same cause of action, yet the plaintiff ought to have been given a further opportunity to decide whether he wishes to withdraw the suit even though the opportunity for filing a fresh suit was being denied. It needs to be seen that while the plaintiffs did make an application before the court below, they had shown enough intention to continue the litigation after seeking a proper amendment/ addition and incorporation of certain facts in the new suit. At no point of time the plaintiffs reflected their intention to give up their right to sue against the defendants on the same cause of action. - Passing the order impugned to the extent the court below dismissed the suit of the plaintiff while rejecting the prayer for filing the fresh suit on the same cause of action was legally impermissible, thus warranting the exercise of Revisional jurisdiction of this court.

FAO No. 02/2020
M/S Taj Fabricating Works v. Union Territory of JK & Ors.
Decided on: March 09, 2020

The petitioner failed before the trial court in getting interim relief, on his claim of being only qualified bidder and the tender having allotted to the respondent No. 6 who was not duly qualified to bid for the same. Appeal against order of dismissal of interim application – Held - Looking at the instant case from another perspective, it, needs, must be said that law is no more res integra to the effect that there must be judicial restraint in interfering with the administrative action, particularly in matter of tender or contract. Ordinarily, the soundness of the decision taken by the tender issuing authority ought not to be questioned, but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned, firstly, if the decision made is so arbitrary and irrational that the Court can say that the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached or, second, if the process adopted or decision made by the authority is malafide or intended to favour someone or, third, if the public interest is affected. All these issues have been raised in the suit filed by the appellant and same are pending adjudication before the Court below. Keeping in view the said aspect, the Court below, has, in the impugned order, clearly emphasized that any observation made while deciding the interim application shall not be construed as an expression with regard to the merits of the case. - Appeal dismissed.

WP (C) No.796/2020
Mohammad Mudasir Tantray & Ors. v. Union Territory of JK & Ors.
Decided on: March 09, 2020

The petitioner participated in a tender process open for Class 'A' Contractors and the Piece Workers. Before completion of tender process, superior authorities issuing communication withdrawing the clause in the tender document whereby "Piece Workers have been made eligible for submitting their e -bids." communication challenged - Held - It appears that the process of allotment of works to Piece Workers was other than by way of bidding process. It transpires in the past that the contracts were being allotted to Piece Workers without subjecting the work to any bidding process. It is precisely for that reason that the official respondents deemed it proper that the works were not leading to actual discovery of price was against the tenants of financial proprietary and, therefore, it was decided that the same should be avoided. Even otherwise allotment of contracts without subjecting the same to a bidding process would amount to distributing State largess arbitrarily and be otherwise arbitrary and violative of the Constitutional principles as enshrined under Article 14. Therefore, in my opinion, the communication impugned to the extent it clearly directs that the works be not allotted in favour of empanelled Piece Workers cannot be said to be a decision which can be said to be illegal and arbitrary. For executing the work for the government or any of the instrumentalities thereof, registration as a contractor under any of the four categories as prescribed under Government Order No. 14th March, 2011 under (SRO 82) is a must.

WP(C) No.686/2020
Suhail Anwar Khan & Ors. v. Union Territory of JK & Ors.
Decided on: March 09, 2020

The petitioners borne on the cadre of State Road Transport Corporation sent on deputation to the Motor Vehicles Department, seeks absorption in the later department. Held - Law is settled on the issue that Government employees on deputations have no right to seek continuation on such deputation for all times to come or claim absorption therein on permanent basis. The Hon'ble Supreme Court, in case titled 'Kunal Nanda v. Union of India & Anr.', reported as '(2000) 5 Supreme Court Cases 362', has held that the basic principle underlying the deputation itself is that the person concerned can always and at any time be repatriated to his/ her parent department to serve in his/ her substantive position therein at the instance of either of the departments and that there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he/ she had gone on deputation. Again, in case titled 'Union of India v. S. N. Panikar', reported as '(2001) 10 Supreme Court Cases 520', the Apex Court of the country repeated and reiterated the law with regard to deputation by holding that a deputationist cannot claim either a right to the post in question nor can he claim absorption on permanent basis to the post in question.

WP(C) No. 772/2020
Shamim Raza v. Union Territory of JK & Ors.
Decided on: March 06, 2020

In a petition challenging order of transfer from one place of posting to another, Hon'ble High Court observed as under:

"Petitioner has challenged the order of transfer on the ground that it is premature and against the transfer policy of the Government. Full Bench of this Court in Syed Hilal Ahmad & ors. vs. State of J & K and Ors. reported as 2015 (3) JKJ 398 has already held that transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service. It has further been held that government servant cannot insist that he is entitled to continue in a particular station/ post for a definite period. Relevant extract of the same is reproduced herein below:-

"It is also settled proposition of law that transfer is an incidence of service and a government servant is subject to orders of transfer on administrative exigencies. A

government servant cannot insist that he is entitled to continue in a particular station/ post for a definite period. Interference in the orders of transfer by the Courts are very limited i.e. only on three grounds orders of transfer can be interfered, namely, if the order of transfer is passed in violation of any statutory Rule, or on mala-fide reasons or by an incompetent authority."

"No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala-fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders, as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned...."

LPA No. 30/2020
Taslima Begum v. Union Territory of JK & Ors.
Decided on: March 04, 2020

The petitioner seeks pre-dated effect to her appointment as ReT and consequential benefit of regularisation of her service as teacher. Hon'ble High Court observed as under -

"As the trend remains in the Government employment that firstly any candidate makes all efforts to seek appointment. Once appointment is given, thereafter a new litigation starts in many cases seeking undue benefits. The case in hand is of that type. The petitioner though was appointed in September 2014 and joined as ReT Teacher in October 2014 but is praying that her deemed date of appointment as ReT be taken as 01.12.2004, when initial panel was prepared, which according to her was not correct. Any right to appointment will accrue to the applicant/appellant only after her name will find mention in the merit list. It was when the writ petition was decided and a fresh panel prepared on 04.07.2014. She joined her service thereafter. It is not the case of the applicant/appellant that any person out of that panel, which was subject matter of challenge, was appointed earlier and only the applicant/appellant was left out of that and as a result of the litigation, she lost in seniority and could not join services at the right time. Rather it was complete panel which was under challenge, which was set-aside and fresh panel had to be prepared."

Interaction of the Trainee Civil Judges (Junior Division)/Munsiffs, 2019-20 batch

In the first 2 weeks of March 2020, the Trainee Civil Judges (Junior Division)/ Munsiffs, in the course of their Induction Training Programme had interaction with the Advocate General, Union territory of Jammu and Kashmir, Mr. D.C. Raina and other advocates, namely, Mr. Ashok Parihar and Mr. D.S. Chauhan.

Mr. D.C. Raina shared his thoughts on working in various constitutional courts, including the Supreme Court of India and High Court of Jammu and Kashmir, as also in the trial courts in civil and criminal matters. In his address Mr. Raina told the Trainee Officers that in his professional life of four and a half decades he has seen number of sharp and brilliant judges and also a number of seasoned advocates of eminence. From each of them he has learnt a lot, which has contributed to his development in the profession. He shared many anecdotes relating to those brilliant judges and advocates. He said that in the profession of law everyday is a new day of learning and every moment spent in the court gives a new experience, provided one is open to learning. It is required, both for the judges and lawyers to keep updated with the latest development of law and to acquire knowledge from whatever source it may come. Books are the best buddies, and now the online and offline legal platforms are proving to be great help to the legal professionals. He exhorted the Trainee Officers to follow the mantra of success, which is to be humble, polite and respectful to all, follow high standards of values in professional and personal life, always conduct in dignified manner, avoid undesirable socialising, adopt uniform yardstick in the matters of exercise of discretion, give full opportunity to the advocates to present their case within the bounds of facts of the case and law, encourage new entrants in the profession to grow and hear every case with open mind. He said that every litigant coming to the court has very high expectations from the courts, and has trust, faith and confidence in the judicial processes. It is required by every judge to value litigant's expectations and uphold his trust, faith and confidence which actually is the biggest power available with every judge. He advised the Trainee Officers to read the biographies of great legal luminaries, thinkers and philosophers, that would give them great insight into law and social philosophy.

Mr. Ashok Parihar in his address to the Trainee Officers touched upon various aspects of criminal law. He shared his personal experiences in conducting trials, especially in criminal cases. He outlined the fundamental principles of criminal jurisprudence and elaborately discussed the trial procedures, as also the strengths and weaknesses of such procedures. Mr. Parihar told the Trainee Officers that a judge is very important component in the criminal trial for exploration of truth and procedural law vests lot of powers in him to get on record every material fact or document which may be essential for just decision of the case. It is requisite that a trial judge recognises his powers and is able to utilise them to the fullest to do justice in real sense. He further said that expeditious completion of trial is principle requirement of law and timely justice is the hallmark justice dispensation. Recognition of rights of the accused and those of victims is also essential to give meaning to the concepts of criminal jurisprudence. Every step in the trial procedure is required to be followed in letter and spirit to ensure certainty, uniformity and consistency. A

judicial officer has a pivotal role in ensuring effective participation of every stake holder in the trial process and to manage the trial in such manner that effective assistance of the prosecutor and defence counsel is ensured.

Mr. D.S. Chauhan dwelt on the topic of default bail in terms of Section 167 Cr.P.C. While dealing with the subject, Mr. Chauhan dealt with practice and procedure of remand of accused by the magistrates. All the important aspects concerning remand were discussed. To begin with, he told the Trainee Officers of the need for remanding the accused to custody and highlighted that custody of an accused has to be balanced with his constitutional right of liberty. Remand of accused to custody can not be ordered on mere asking. There has to be a satisfaction recorded by the magistrate as to reasonable connection of the accused with the offence alleged against him. Law requires that every offence is investigated in a given time frame so as to ensure that an accused is not kept in custody for any unreasonable period. And when investigation is not conducted in prescribed time frame it gives an unfettered right to the accused to be released on bail. While considering default bail it has to be borne in mind that such conditions may not be imposed that have the effect of denying full play of the right of the accused to be released on bail. Furthermore, it is also to be seen that some special laws prescribe longer period for completion of investigation and in those cases special law has to prevail over the general provision under Section 167 Cr.P.C. Mr. Chauhan then talked about the special features as to computation of period for grant of default bail and the precautions which are to be taken while considering such prayer of the accused.

Orientation Programme for Registrars/ Sub-Registrars and Allied Staff of District Ganderbal

A two days Orientation Programme was organized by the Jammu and Kashmir Judicial Academy in collaboration with District Administration, Ganderbal, for the Registrars/Sub-Registrars and allied staff of the district, on 14th and 15 of March 2020. The training programme was aimed to sensitize newly appointed Registrars and Sub - Registrars in the district about the practice and procedure of registration of documents and to orient them with the provisions under the Registration Act, 1908. Consequent upon the repeal of the Jammu and Kashmir Registration Act, 1977 and coming into force of the Registration Act, 1908 (Central), pursuant to the operation of the Jammu and Kashmir Reorganization Act, 2019, the Government appointed different Revenue Officers of the ranks of the Deputy Commissioners, Additional Deputy Commissioners, Assistant Commissioners, Sub Divisional Magistrates as Registrars and Sub-Registrars for attending to the registration work under the Act. The Judicial Academy felt it imperative to impart orientation training to sensitize the officers to the new field with which they have not been dealing earlier, and for the smooth functioning of registering authorities.

The introductory address on behalf of the Judicial Academy was delivered by the

Orientation Programme for Registrars/Sub-Registrars at Ganderbal

Deliberations in Orientation Programme at Ganderbal

Principal District & Sessions Judge, Ganderbal, Mr. Mohammad Yousuf Wani, while the inaugural address was delivered by Deputy Commissioner, Ganderbal. Mr. Wani in his address highlighted the need to train the newly appointed Registrars and Sub-Registrars on registration matters. He told the trainees that people had reposed great faith in judicial officers who were earlier dealing with registration work and were quite satisfied about the effectiveness of such dispensation. Now it is requisite for the Revenue Officers to display same effectiveness and ensure smooth transition of the functions. He further said that experience accumulated by the judicial officers shall be worth to be emulated by the new Registering Officers. Deputy Commissioner, District Ganderbal welcomed the initiative of the Judicial Academy in organising the Training Programme and ensured that inputs taken by the Registering Officers shall be utilised by them for smooth discharge of registration work and facilitating the public in registration of documents.

Mr. Aijaz Ahmad Mir, Senior District & Sessions Judge was the resource person of the Orientation Programme. He gave extensive insight to the participant officers and officials into procedural requirements of the Registration Act, 1908, with special focus on the procedure and remedies under the repealed Act and changes brought about by the Central Act. The resource person held sessions on incidental matters like, powers and duties of Registrar while hearing appeal, writing of endorsement, payment of Stamp Duty and registration fee. The resource person also held an interactive and practical sessions with the participants. The district administration and the newly appointed Registering Officers lauded the efforts of the Judicial Academy for organizing the orientation programme.

Interactions in Orientation Programme at Ganderbal

Special Awareness Programme on COVID-19 (Coronavirus)

High Court of Jammu and Kashmir launched an awareness campaign in view of outbreak of novel Corona Virus (COVID-19) in the UTs of Jammu & Kashmir, and Ladakh.

During the campaign, information pamphlets, posters and related material was displayed at all the conspicuous places in the High Court as well as in all the District Courts of the UTs of Jammu and Kashmir and Ladakh. Besides, various guidelines and advisories issued by WHO, Union Ministry of Health and Family Welfare and by Health and

Dr. Ravinder Singh interacting in the Awareness Programme at J&K Judicial Academy

Medical Education Department J&K were disseminated.

As a part of the awareness against novel Corona Virus (COVID-19), on March 11, High Court organized a training programme for the Court staff, lawyers and litigants in the premises of the High Court as well as in the Judicial Academy and District Courts. The training was imparted by Dr Ravinder Singh expert from the World Health Organisation in four sessions. In the first session held in the High Court at Jammu, Registry Officers were trained while second session was held in Judicial Academy Jammu where Judicial Officers, Trainee Munsiffs and the High Court staff were trained. Third session was held in District Court Complex Jammu where Judicial Officers, Advocates, Court Staff and PLVs were trained and the last session was held in Bar Room where Advocates were trained.

Dr. Ravinder talked about the origin of the virus and health hazards caused by it and the preventive measures required to be followed for minimising its spread. In his

Participants in the Awareness Programme on COVID-19 at J&K Judicial Academy

Dr. Ravinder Singh interacting in the Awareness Programme at Bar Room, High Court Complex, Jammu

presentation, he highlighted the need to maintain personal hygiene and cleanliness, observing social distancing and avoiding mass gathering. Every possible precaution needs to be taken to avoid coming into contact with any person found or suspected to be suffering from COVID-19, and any such symptoms to be reported immediately to the Medical Authorities.

Special Awareness Programme on Government e-Marketplace (GeM) - was organised at Judicial Academy, Jammu on 3rd March. Nodal Officer for UT of J&K highlighted GeM is meant to eliminates human interface in all processes including order placement and payment processing. GeM offers no entry barriers to bonafide suppliers who wish to do business with the Government. Online, cashless and time bound payment on GeM is facilitated through web-service integrated with PFMS and State Bank Multi Option System.

A dedicated e-market for different goods & services procured by Government Organisations/Departments/PSUs was set up, transforming erstwhile DGS&D to a digital ecommerce portal for procurement and selling of goods and services. The purchases through GeM by Government users have been authorised and made mandatory by Ministry of Finance by adding a new Rule No. 149 in the General Financial Rules, 2017.

Participants in the Awareness Programme on GeM at J&K Judicial Academy

S.O. 1123(E).—In exercise of the powers conferred by section 96 of the Jammu and Kashmir Reorganization Act, 2019 (34 of 2019), and of all other powers enabling it in that behalf, the Central Government hereby makes the following Order in respect of the Union territory of Jammu and Kashmir, namely: –

1. (1) This Order may be called the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020.

(2) It shall come into force with immediate effect.

2. The General Clauses Act, 1897 applies for the interpretation of this Order as it applies for interpretation of laws in force in the territory of India.

3. With immediate effect, the Acts mentioned in the Schedule to this Order shall, until repealed or amended by a competent Legislature or other competent authority, have effect, subject to the adaptations and modifications directed by the Schedule to this Order, or if it is so directed, shall stand repealed.

4. Where this Order requires that in any specified section or other portion of an Act, certain words shall be substituted for certain other words, or the certain words shall be omitted, such substitution or omission, as the case may be, shall, except where it is otherwise expressly provided, be made wherever the words referred to occur in that section or portion.

5. The provisions of this Order which adapt or modify any law so as to alter the manner in which, the authority by which or the law under or in accordance with which, any powers are exercisable, shall not render invalid any notification, order, commitment, attachment, bye-law, rule or regulation duly made or issued, or anything duly done before the 31st day of October, 2019; and any such notification, order commitment, attachment, bye-law, rule, regulation or anything may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances as if it had been made, issued or done after the commencement of this Order by the competent authority and in accordance with the provisions then applicable to such case.

6. (1) The repeal or amendment of any law specified in the Schedule to this Order shall not affect—

(a) the previous operation of any law so repealed or anything duly done or suffered thereunder;

(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 the Jammu and Kashmir Reorganisation Act, 2019 or this Order had not come into force.

(2) Subject to the provisions of sub-paragraph (1), 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 such 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 shall continue to be in force accordingly unless and until superseded by anything done or any action taken under the Central Laws now extended to the Union territory of

Jammu and Kashmir.

THE SCHEDULE

(See Paragraph 3)

CENTRAL LAWS

1 to 3.

4. **THE ARBITRATION AND CONCILIATION ACT, 1996 (26 of 1996)**

1. Section 1- In sub-section (1), omit the proviso and Explanation.

2. Insertion of section 8A and section 8B.— After section 8, insert the following sections, namely:–

—8A. Power of the court, seized of petitions under sections 9 or 11 of the Act, to refer the dispute to Mediation or Conciliation.—

(1) If during the pendency of petitions under sections 9 or 11 of the Act, it appears to the court, that there exists elements of a settlement which may be acceptable to the parties, the court may, with the consent of parties, refer the parties, for resolution of their disputes, to,-

(a) mediation; or

(b) conciliation.

(2) The procedure for reference of a dispute to mediation is as under–

(a) where a dispute has been referred for resolution by recourse to mediation, the procedure framed under that Act shall apply;

(b) in case of a successful resolution of the dispute, the Mediator shall immediately forward the mediated settlement to the referral court;

(c) on receipt of the mediated settlement, the referral court shall independently apply its judicial mind and record a satisfaction that the mediated settlement is genuine, lawful, voluntary, entered into without coercion, undue influence, fraud or misrepresentation and that there is no other legal impediment in accepting the same;

(d) the court shall record a statement on oath of the parties, or their authorized representatives, affirming the mediated settlement as well as a clear undertaking of the parties to abide by the terms of the settlement;

(e) if satisfied, the court shall pass an order in terms of the settlement;

(f) if the main petition, in which the reference was made is pending, it shall be disposed of by the referral court in terms thereof;

(g) if the main petition, in which the reference was made stands disposed of, the mediated settlement and the matter shall be listed before the referral court, which shall pass orders in accordance with clauses (iii), (iv) and (v);

(h) such a mediated settlement, shall have the same status and effect as an arbitral award and may be enforced in the manner specified under section 36 of the Act.

(3) With respect to reference of a dispute to conciliation, the provisions of Part II of this Act shall apply as if the conciliation proceedings were initiated by the parties under the relevant provision of this Act.

8B. Power of the court, seized of matters under sections 34 or 37 of the Act, to refer the dispute to Mediation or Conciliation. —

(1) If during the pendency of a petition under section 34 or an appeal under section 37 of the Act, it appears to the court, that there exists elements of a settlement which may be acceptable to the parties, the court may, with the consent of parties, refer the parties, for resolution of their disputes, to:–

(a) mediation; or

(b) conciliation.

(2) The procedure for reference of a dispute to mediation is as under:-

(a) where a dispute has been referred for resolution by recourse to mediation, the procedure framed under the Act shall apply;

(b) in case of a successful resolution of the dispute, the Mediator shall immediately forward the mediated settlement to the referral court;

(c) on receipt of the mediated settlement, the referral court shall independently apply its judicial mind and record a satisfaction that the mediated settlement is genuine, lawful, voluntary, entered into without coercion, undue influence, fraud or misrepresentation and that there is no other legal impediment in accepting the same;

(d) the court shall record a statement on oath of the parties, or their authorized representatives, affirming the mediated settlement, a clear undertaking of the parties to abide by the terms of the settlement as well as statement to the above effect;

(e) if satisfied, the court shall pass an order in terms of the settlement;

(f) if the main petition, in which the reference was made is pending, it shall be disposed of by the referral court in terms thereof;

(g) if the main petition, in which the reference was made stands disposed of, the mediated settlement and the matter shall be listed before the referral court, which shall pass orders in accordance with clauses (iii), (iv) and (v);

(h) such a mediated settlement, shall have the status of a modified arbitral award and may be enforced in the manner specified under section 36 of the Act.

(3) With respect to reference of a dispute to conciliation, the provisions of Part III of the Act, shall apply as if the conciliation proceedings were initiated by the parties under the relevant provision of this Act.

3. Amendment of sections 29A.—

(a) for sub-section (1), the following sub-section shall be substituted, namely:––

―(1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation.—For the purposes of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.;

(b) in sub-section (4), omit second and third provisos.

4. Amendment of section 34.—

(i) after sub-section (2), insert the following sub-section, namely:-

―(2A) An arbitral award may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.;

(ii) in sub-section (3),–

(i) for ―three months‖ substitute, ―six months;

(ii) in proviso thereto, for, ―three months and ―thirty days‖ substitute respectively ―six months and ―sixty days.

5. ....

6. ....

7. ....

8. **THE CODE OF CIVIL PROCEDURE, 1908 (5 of 1908)**

1. Section 35.— In section 35, in sub-section (1), omit ―Commercial‖.

2. Section 35A.— In section 35A, omit sub-section (2).

3. Amendment of First Schedule.— In the First Schedule to the Code,–

(A) In Order V, in Rule 1, in sub-rule (1), for the second proviso, substitute the following proviso, namely:–

―Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written

statement to be taken on record.;
(B) In Order VII, after Rule 2, insert the following Rule, namely:–
—2A. Where interest is sought in the suit.—
(1) Where the plaintiff seeks interests, the plaint shall contain a statement to that effect along with the details set out under sub-rules (2) and (3).
(2) Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil Procedure, 1908 and, furthermore, if the plaintiff is doing so under the terms of a contract or under an Act, in which case the Act is to be specified in the plaint; or on some other basis and shall state the basis of that.
(3) Pleadings shall also state—
(a) the rate at which interest is claimed;
(b) the date from which it is claimed;
(c) the date to which it is calculated;
(d) the total amount of interest claimed to the date calculation; and
(e) the daily rate at which interest accrues after the date.‖;
(C) In Order VIII,––
(i) in Rule 1, for the proviso thereto, substitute the following proviso, namely,—
—Provided that where the defendant fails to file the written statement with the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.;
(ii) after Rule 3, insert the following Rule, namely,–
—3A. Denial by the defendant in suits.—(1) Denial shall be in the manner provided in sub-rules (2), (3), (4) and (5) of this rule.
(2) The defendant in his written statement shall state which of the allegations in the particulars of plaint he denies, which allegations he is unable to admit or deny, but which he requires the plaintiff to prove, and which allegations he admits.
(3) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.
(4) If the defendant disputes the jurisdiction of the court he must state the reasons for doing so, and if he is able, give his own statement as to which court ought to have jurisdiction.
(5) If the defendant disputes the plaintiff valuation of the suit, he must state his reasons for doing so, and if he is able, give his own statement of the value of the suit.;
(iii) in Rule 5, in sub-rule (1) after first proviso thereto, insert the following proviso, namely–
—Provided further, that every allegation of fact in the plaint, if not denied in the manner provided under Rue 3-A of this order, shall be taken to be admitted except as against a person under disability.;
(iv) in Rule 10, insert the following proviso, namely–
—Provided that no court shall make an order to extend the time provided under Rule 1 of this order for filing of the written statement.;
(D) For Order XI of the Code, substitute the following Order, namely.–
—ORDER XI
DISCLOSURE, DISCOVERY AND INSPECTION OF DOCUMENTS
1. Disclosure and discovery of documents.—(1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with

the plaint, including:–

(a) documents referred and relied on by the plaintiff in the plaint;

(b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiffs case; and

(c) nothing in this rule shall apply to documents produced by plaintiffs and relevant only–

(i) for the cross-examination of the defendant's witnesses, or

(ii) in answer to any case setup by the defendant subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode or execution, issuance or receipt and line of custody of each document.

(3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control, or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

Explanation.— A declaration on oath under this sub-rule shall be contained in the Statement of Truth set out in the Appendix I.

(4) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by court, the plaintiff shall file such additional documents in court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.

(5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.

(6) The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody or the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.

(7) The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counter-claim if any, including–

(a) the documents referred to and relied on by the defendant in the written statement;

(b) the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defense;

(c) nothing in this rule shall apply to documents produced by the defendants and relevant only–

(i) for the cross-examination of the plaintiff's witnesses;

(ii) in answer to any case setup by the plaintiff subsequent to the filing of the plaint; or

(iii) handed over to a witness merely to refresh his memory.

(8) The list of documents filed with the written statement or counter-claim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document.

(9) the written statement or counter-claim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule (7) (c) (iii), pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the counter-claim, have been disclosed and copies thereof annexed with the written statement or counter-claim and that the defendant does not have in its power, possession, control or custody, any other documents.

(10) Save and except for sub-rule (7) (c) (iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counter-claim, save and except by leave of court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counter-claim.

(11) The written statement or counter-claim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same.

(12)Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.

2. Discovery by interrogatories.—

(1) In any suit the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties or anyone or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose:

Provided further that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

(2) On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court, and that court shall decide within seven days from the day of filing of the said application, in deciding upon such application, the court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs.

(3) In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

(4) Interrogatories shall be in the form provided in Form No. 2 in Appendix C to the Code of Civil Procedure, 1908, with such

variations as circumstances may require.
(5) Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer of other person, any opposite party may apply for any order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.
(6) Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters required into are not sufficiently material at that stage, or on the ground of privilege or any other ground may be taken in the affidavit in answer.
(7) Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous and any application for this purpose may be made within seven days after service of the interrogatories.
(8) Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the court may allow.
(9) An affidavit in answer to interrogatories shall be in the form provided in Form No. 3 in Appendix C to the Code of Civil Procedure, 1908, with such variations as circumstances may require.
(10) No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the court.
(11) Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court for an order requiring him to answer, or to answer further, as the case may be, and an order may be made requiring him to answer, or to answer further, either affidavit or by viva voce examination, as the court may direct.

3. Inspection.–

(1) All parties shall complete inspection of all documents disclosed within thirty days of the date of filing of the written statement or written statement to the counter-claim, whichever is later, the court may extend this time limit upon application at its discretion, but not beyond thirty days in any event.
(2) Any party to the proceedings may seek directions from the court, at any stage of the proceedings, for inspection or production of documents by the other party, of which inspection has been refused by such party or documents have not been produced despite issuance of a notice to produce.
(3) Order in such application shall be disposed of within thirty days of filing such application, including filing replies and rejoinders (if permitted by court) and hearing.
(4) If the above application is allowed, inspection and copies thereof shall be furnished to the party seeking it, within five days of such order.
(5) No party shall be permitted to rely on a document, which it had failed to disclose or of which inspection has not been given, save and except with leave of court.
(6) The Court may impose exemplary costs against a defaulting party, who willfully or negligently failed to disclose all documents pertaining to a suit or essential for a decision therein and which are in their power, possession, control or custody or where a court holds that inspection or copies of any documents had been wrongfully or unreasonably withheld or refused.

4. Admission and denial of documents.—

(1) Each party shall submit a statement of admissions or denials of all documents disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the court.
(2) The statement of admissions and denials shall set out explicitly, whether such party was admitting or denying:

(a) correctness of contents of a document;
(b) existence of a document;
(c) execution of a document;
(d) issuance or receipt of a document;
(e) custody of a document.

Explanation.—A statement of admission or denial of the existence of a document made in accordance with clause (b) of sub-rule (2) shall include the admission or denial of the contents of a document.

(3) Each party shall set out reasons for denying a document under any of the above grounds and bare and unsupported denials shall not be deemed to be denials of a document and proof of such documents may then be dispensed with at the direction of the court.

(4) Any party may however submit bare denials for third party documents of which the party denying does not have any personal knowledge of, and to which the party denying is not a party to in any manner whatsoever.

(5) An affidavit in support of the statement of admissions and denials shall be filed confirming the correctness of the contents of the statement.

(6) In the event that the court holds that any party has unduly refused to admit a document under any of the above criteria, costs (including exemplary costs) for deciding on admissibility of a document may be imposed by the court on such party.

(7) The court may pass orders with respect to admitted documents including for waiver of further proof thereon or rejection of any documents.

5. Production of documents.—(1) Any party to a proceeding may seek or the court may order, at any time during the pendency of any suit, production by any party or person, of such documents in the possession or power of such party or person, relating to any matter in question in such suit.

(2) Notice to produce such document shall be issued in the form provided in Form No. 7 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908).

(3) Any party or person to whom such notice to produce is issued shall be given not less than seven days and not more than fifteen days to produce such document or to answer to their inability to produce such document.

(4) The court may draw an adverse inference against a party refusing to produce such document after issuance of a notice to produce and where sufficient reasons for such non-production are not given and order costs.

6. Electronic Records.— (1) In case of disclosures and inspection of electronic records as defined in the Information Technology Act, 2000 (21 of 2000), furnishing of printouts shall be sufficient compliance of the above provisions.

(2) At the discretion of the parties or where required (when parties wish to rely on audio or video content), copies of electronic records may be furnished in electronic form either in addition to or in lieu of printouts.

(3) Where electronic records form part of documents disclosed, the declaration on oath to be filed by a party shall specify –

(a) the parties to such electronic record;

(b) the manner in which such electronic record was produced and by whom;

(c) the dates and time of preparation or storage or issuance or receipt of each such electronic record;

(d) the source of such electronic record and date and time when the electronic record was printed;

(e) in case of e-mail ids, details of ownership, custody and access to such e-mail ids;

(f) in case of documents stored on a computer or computer resource (including on external servers or cloud), details of ownership, custody and access to such data on the computer or computer resource;

(g) deponent‘s knowledge of contents and correctness of contents;

(h) whether the computer or computer resource used for preparing or receiving or

storing such document or data was functioning properly or in case of malfunction that such malfunction did not affect the contents of the document stored;

(i) that the printout or copy furnished was taken from the original computer or computer resource.

(4) The parties relying on printouts or copy in electronic form, of any electronic records, shall not be required to give inspection of electronic records, provided a declaration is made by such party that each such copy, which has been produced, has been made from the original Electronic Records.

(5) The court may give directions for admissibility of electronic records at any stage of the proceedings.

(6) Any party may seek directions from the court and the court may of its motion issue directions for submission of further proof of any electronic record including metadata or logs before admission of such electronic record.

(E). **Insertion of Order XV-A.—**

After Order XV of the Code, insert the following Order, namely,–

—ORDER XV-A

1. First Case Management Hearing.—The court shall hold the first Case Management Hearing, not later than four week's from the date of filing of affidavit of admission or denial of documents by all parties to the suit.

2. Orders to be passed in a Case Management Hearing.—In a Case Management Hearing, after hearing the parties, and once it finds that there are issues of fact and law which require to be tried, the court may pass an order—

(a) framing the issues between the parties in accordance with Order XIV of the Code of Civil Procedure, 1908 (5 of 1908) after examining pleadings, documents and documents produced before it, and on examination conducted by the court under Rule 2 of Order X, if required;

(b) listing witnesses to be examined by the parties;

(c) fixing the date by which affidavit of evidence to be filed by parties;

(d) fixing the date on which evidence of the witnesses of the parties to be recorded;

(e) fixing the date by which written arguments are to be filed before the court by the parties;

(f) fixing the date on which oral arguments are to be heard by the court; and

(g) setting time limits for parties and their advocates to address oral arguments.

3. Time limit for the completion of a trial.—In fixing dates or setting time limits for the purposes of Rule 2 of this order, the court shall ensure that the arguments are closed not later than six months from the date of the first Case Management Hearing.

4. Recording of oral evidence on a day-to-day basis.—The court shall, as far as possible, ensure that the record of evidence shall be carried on, on a day-to-day basis until he cross examination of all the witnesses is complete.

5. Case Management hearings during trial.— The court may, if necessary, also hold Case Management Hearings anytime during the trial to issue appropriate orders so as to ensure adherence by the parties to the dates fixed under Rule 2 and facilitate speedy disposal of the suit.

6. Powers of the court in a Case Management Hearing.—(1) In any Case Management Hearing held under this order, the court shall have the power to –

(a) prior to the framing of issues, hear and decide any pending application filed by the parties under Order XIII-A;

(b) direct parties to file compilations of documents or pleadings relevant and necessary for framing issues; (c) extend or shorten the time for compliance with any practice, direction or court order if it finds sufficient reason to do so;

(d) adjourn or bring forward a hearing if it finds sufficient reason to do so;

(e) direct a party to attend the court for the purposes of examination under Rule 2 of

Order X;

(f) consolidate proceedings;

(g) strike off the name of any witness or evidence that it deems irrelevant to the issues framed;

(h) direct a separate trial of any issue;

(i) decide the order in which issues are to be tried;

(j) exclude an issue from consideration;

(k) dismiss or give judgment on a claim after a decision on a preliminary issue;

(l) direct that evidence be recorded by a Commission where necessary in accordance with Order XXVI;

(m) reject any affidavit of evidence filed by the parties for containing irrelevant, inadmissible or argumentative material;

(n) strike off any parts of the affidavit of evidence filed by the parties containing irrelevant, inadmissible or argumentative material;

(o) delegate the recording of evidence to such authority appointed by the court for this purpose;

(p) pass any order relating to the monitoring of recording the evidence by a commission or any other authority;

(q) order any party to file land exchange a costs budget;

(r) issue directions or pass any order for the purpose of managing the case and furthering the overriding objective of ensuring the efficient disposal of the suit.

(2) When the court passes an order in exercise of its powers under this order, it may –

(a) make it subject to conditions, including a condition to pay a sum of money into court; and

(b) specify the consequence of failure to comply with the order or a condition.

(3) While fixing the date for a Case Management Hearing, the court may direct that the parties also be present for such Case Management Hearing, if it is of the view that there is a possibility of settlement between the parties.

7. Adjournment of Case Management Hearing.—(1) The Court shall not adjourn the Case Management Hearing for the sole reason that the advocate appearing on behalf of a party is not present:

Provided that an adjournment of the hearing is sought in advance by moving an application, the court may adjourn the hearing to another date upon the payment of such costs as the court deems fit, by the party moving such application.

(2) Notwithstanding anything contained in this rule, if the court is satisfied that there is a justified reason for the absence of the advocate, it may adjourn the hearing to another date upon such terms and conditions it deems fit.

8. Consequences of non-compliance with orders.—Where any party fails to comply with the order of the court passed in a Case Management Hearing, the court shall have the power to–

(a) condone such non-compliance by payment of costs to the court;

(b) foreclose the non-compliant party's right to file affidavits, conduct cross-examination of witnesses, file written submissions, address oral arguments or make further arguments in the trial, as the case may be; or

(c) dismiss the plaint or allow the suit where such non-compliance is willful, repeated and the imposition of costs is not adequate to ensure compliance.

(F). **Amendment of Order XVIII.—**

In Order XVIII of the Code,–

(I) in Rule 2, after sub-rule (3), insert the following sub-rules, namely:–

"(3A) A party shall, within four weeks prior to commencing the oral arguments, submit concisely and under distinct headings written arguments in support of his case to the court and such written arguments shall form part of the record.

(3B) The written arguments shall clearly indicate the provisions of the laws being cited in support of the arguments and the

citations of judgments being relied upon by the party and include copies of such judgments being relied upon by the party.

(3C) A copy of such written arguments shall be furnished simultaneously to the opposite party.

(3D) The court may, if it deems fit, after the conclusion of arguments, permit the parties to file revised written arguments within a period of not more than one week after the date of conclusion of arguments.

(3E) No adjournment shall be granted for the purpose of filing the written arguments unless the court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3F) It shall be open for the court to limit the time for oral submissions having regard to the nature and complexity of the matter".

(II) In Rule 4, after sub-rule (1), insert the following sub-rules, namely:–

—(1A) The affidavits of evidence of all witnesses whose evidence is proposed to be led by a party shall be filed simultaneously by that party at the time directed in the first Case Management Hearing.

(1B) A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an affidavit) unless sufficient cause is made out in an application for that purpose and an order, giving reasons, permitting such additional affidavit is passed by the court.

(1C) A party shall however have the right to withdraw any of the affidavits so filed at any time prior to commencement of cross-examination of that witness, without any adverse inference being drawn based on such withdrawal:

Provided that any other party shall be entitled to tender as evidence and rely upon any admission made in such withdrawn affidavit".

(G). Amendment to Order XIX.-In Order XIX of the Code, after Rule 3, insert the following new rules,

namely –

"4. Court may control evidence.-

(1) The court may, by directions regulate the evidence as to issues on which it requires evidence and the manner in which such evidence may be placed before the court.

(2) The court may, in its discretion and for reasons to be recorded in writing, exclude evidence that would otherwise be produced by the parties.

5. Redacting or rejecting evidence.-A court may, in its discretion, for reasons to be recorded in writing-

(i) redact or order the redaction of such portions of the affidavit of examination-in-chief as do not, in

its view, constitute evidence; or

(ii) return or reject an affidavit of examination-in-chief as not constituting admissible evidence.

6. Format and guidelines of affidavit of evidence.-An affidavit must comply with the form and requirements set forth below: – (a) such affidavit should be confined to, and should follow the chronological sequence of, the dates and events that are relevant for proving any fact or any other matter dealt with;

(b) where the court is of the view that an affidavit is a mere reproduction of the pleadings, or contains the legal grounds of any party's case, the court may, by order, strike out the affidavit or such parts of the affidavit, as it deems fit and proper;

(c) each paragraph of an affidavit should, as far as possible, be confined to a distinct portion of the subject;

(d) an affidavit shall state–

(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and

(ii) the source for any matters of information or belief.

(e) an affidavit should–

(i) have the pages numbered consecutively as a separate document (or as one of several

documents contained in a file);

(ii) be divided into numbered paragraphs;

(iii) have all numbers, including dates, expressed in figures; and

(iv) if any of the documents referred to in the body of the affidavit are annexed to the affidavit or any other pleadings, give the annexures and page numbers of such documents that are relied upon".

9. **THE CODE OF CRIMINAL PROCEDURE, 1973 (2 of 1974)**

A. Section 24.— After sub-section (6), insert the following sub-section, namely:-

—(6A).– Notwithstanding anything contained in sub-section (1) and sub-section (6), the Government of the Union territory of Jammu and Kashmir may appoint a person who has been in practice as an Advocate for not less than seven years as Public Prosecutor or Additional Public Prosecutor for High Court and for the District Courts and it shall not be necessary to appoint Public Prosecutor or Additional Public Prosecutor for the High Court in consultation with High Court and Public Prosecutor or Additional Public Prosecutor for the District Court from amongst the person constituting the cadre of Prosecution for the State of Jammu and Kashmir.

B. Section 25A.-(i) for sub-sections (1) and (2), substitute–

(1) The Government of the Union territory of Jammu and Kashmir shall establish a Directorate of Prosecution consisting of a Director General of Prosecution and such other officers, as may be provided in rules to be framed by the said Government; and

(2) The Post of Director General of Prosecution and all other officers, constituting the prosecution cadre, shall be filled in accordance with the rules to be framed by the said Government.

(ii) in sub-section (3), substitute —Director of Prosecution with —Director General of Prosecution;

(iii) for sub-section (4), substitute–

—(4) subject to the control of the Director General of Prosecution, the Deputy Director shall be subordinate to and under the Control of a Joint Director.

(iv) substitute sub-section (5),–

—Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the Government of the Union territory of Jammu and Kashmir under subsection (1), or the case may be under sub-section (8) of section 24 to conduct cases in the High Court shall be subordinate to the Advocate General.;

(v) for sub-section (7), substitute–

—(7) The powers and functions of the Director General of Prosecution and other officers of the prosecution cadre shall be such as may be provided by the rules.

C. Amendment of The First Schedule.— In the First Schedule of the Code of Criminal Procedure, 1973 after the entries relating to section 354E, insert the following entries, namely,–

1.	2.	3.	4.	5.	6
354E	Sextor-tion	Imprisonment of not less than 3 years but which may extend to five years and with fine.	Cognizable	Non-bailable	Magis-trate of the First Class

10 –21. ....

22. **THE INDIAN PENAL CODE, 1860 (45 of 1860)**

354E .— After section 354D, insert the following section, namely:-

—**354E. Sextortion**.—(1) Whoever,—

(a) being in a position of authority; or

(b) being in a fiduciary relationship; or

(c) being a public servant, abuses such authority or fiduciary relationship or misuses his official position to employ physical or non physical forms of coercion to extort or demand sexual favours from any woman in exchange of some benefits or other favours that such person is empowered to grant or withhold, shall be

guilty of offence of sextortion.

Explanation.–For the purpose of this section, 'sexual favour' shall mean and include any kind of unwanted sexual activity ranging from sexually suggestive conduct, sexually explicit actions such as touching, exposure of private body parts to sexual intercourse, including exposure over the electronic mode of communication.

(2) Any person who commits the offence of sextortion shall be punished with rigorous imprisonment for a term which shall not be less than three years but may extend to five years and with fine.

23. ....

24. **THE LIMITATION ACT, 1963 (36 of 1963)**

Insertion of Section 30A .— After section 30, insert the following section, namely:-

—30A. Provision for suits, etc., for which the prescribed period is shorter than the period prescribed by the Limitation Act, samvat 1995.—Notwithstanding anything contained in this Act,—

(a) Any suit for which the period of limitation is shorter than the period of limitation prescribed by the Limitation Act, Samvat 1995, may be instituted within a period of one year next after the commencement of the Jammu and Kashmir Reorganisation Act, 2019 or within the period prescribed for such suit by the Limitation Act, Samvat 1995, whichever period expires earlier:

Provided that if in respect of any such suit, the said period of one year expires earlier than period of limitation prescribed therefor under the Limitation Act, Samvat 1995 (now repealed) and the said period of one year together with so much of the period of limitation in respect of such suit under the said Act, as has already expired before the commencement of the Jammu and Kashmir Reorganisation Act, 2019 is shorter than the period prescribed for such suit under the Limitation Act, 1963, then, the suit may be instituted within the period of limitation prescribed therefor under the Limitation Act, 1963;

(b) Any appeal or application for which the period of limitation is shorter than the period of limitation prescribed by the Limitation Act, Samvat 1995, may be preferred or made within a period of ninety days next after the commencement of the Jammu and Kashmir Reorganisation Act, 2019 or within the period prescribed for such appeal or application by the Limitation Act, Samvat 1995, whichever period expires earlier.

25.

26.

27.

29. **THE PREVENTION OF CORRUPTION ACT, 1988 (49 of 1988)**

Insertion of section 17B.— After section 17A, insert the following section, namely:-

—**17B. Establishment of Anti-Corruption Bureau for the Union territory of Jammu and Kashmir**.—(1) Notwithstanding anything contained in this Act, the Government of Union territory of Jammu and Kashmir shall, by notification in the Official Gazette, establish a Bureau for investigation of offences under this Act under the name of 'Anti-Corruption Bureau'.

(2) The Bureau shall consist of the Director and such other officers and staff subordinate to him as the Government of Union territory of Jammu and Kashmir may from time to time think fit to appoint.

(3) The qualification of officers (other than the Director) shall be such as may be prescribed by the Government of Union territory of Jammu and Kashmir:

Provided that till qualification of officers (other than the Director) is prescribed by the Government of Union Territory of Jammu and Kashmir, the rules notified by the Government in this regard under the Prevention of Corruption Act, Samvat, 2006 (now repealed) shall continue to govern the qualification of such officers.

(4) The Director and the officers and staff subordinate to him shall hold office for such term and on such conditions as the Government of Union Territory of Jammu and Kashmir may from time to time determine.

Explanation:–The Anti-Corruption Bureau established under the Prevention of Corruption Act, Samvat, 2006 (now repealed) shall deemed to be Anti-Corruption Bureau established under the provisions of this Act, as if the same has been established under the provisions of this Act and any reference to the Anti-Corruption Bureau in any law, order, notification or rules in force in the Union Territory of Jammu and Kashmir shall be construed to mean the Anti-Corruption Bureau established under the provisions of this Act.

Insertion of section 17C to 17G.— After section 17A, insert the following sections, namely:–

—17C. Powers of attachment of property. – (1) If an officer (not below the rank of Deputy Superintendent of Police) of the Anti-Corruption Bureau, investigating an offence committed under this Act, has reason to believe that any property in relation to which an investigation is being conducted has been acquired by resorting to such acts of omission and commission which constitute an offence of criminal misconduct' as defined under section 5, he shall, with the prior approval in writing of the Director of the Anti-Corruption Bureau, make an order seizing such property and, where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order or of the Designated Authority to be notified by the Government of Union territory of Jammu and Kashmir before whom the properties seized or attached are produced and a copy of such order shall be served on the person concerned:

Provided that the Investigating Officer may, at any stage of investigation after registration of F.I.R. in respect of any case under the Act where he has reason to believe that such property is likely to be transferred or otherwise dealt with to defeat the prosecution of the case direct that such property shall not be transferred or dealt with for such period, not exceeding ninety days, as may be specified in the order except with the prior approval of the Designated Authority.

Explanation.– For the purposes of this section, attachment shall include temporarily assuming the custody, possession and/or control of such property.

(2) The Investigating officer shall inform the Designated Authority, within forty eight hours, of the seizure or attachment of such property together with a report of the circumstances occasioning the seizure or attachment of such property, as the case may be.

(3) It shall be open to the Designated Authority before whom the seized or attached properties are produced either to confirm or revoke the order of seizure or attachment so issued within [thirty days]:

Provided that an opportunity of being heard shall be afforded to the Investigating Officer and the person whose property is being attached or seized before making any order under this sub-section:

Provided further that till disposal of the case the Designated Authority shall ensure the safety and protection of such property.

(4) In the case of immovable property attached by the Investigating Officer, it shall be deemed to have been produced before the Designated Authority, when the Investigating Officer notifies his report and places it at the disposal of the Designated Authority.

(5) Any person aggrieved by an order under the proviso to sub-section (1) may apply to the Designated Authority for grant of permission to transfer or otherwise deal with such property.

(6) The Designated Authority may either grant, or refuse to grant, the permission to the applicant.

(7) The Designated Authority, acting under the provisions of this Act, shall have all the powers of a civil court required for making a full and fair enquiry into the matter before it.

17D. Appeal against the order of Designated Authority.–

(1) Any person aggrieved by an order made by the Designated Authority under subsection (3) or sub-section (5) of section 17C may prefer an appeal, within one month from the date of receipt of the order, to the Special Judge and the Special Court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property or pass such order as it may deem just and proper within a period of sixty days.

(2) Where any property is seized or attached under section 17C and the Special Court is satisfied about such seizure or attachment, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached is prosecuted in the Special Court for an offence under this Act.

(3) It shall be competent for the Special Court to make an order in respect of property seized or attached, –

(a) directing it to be sold if it is a perishable property and the provisions of section 459 of the Code of Criminal Procedure, 1973 (2 of 1974) shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) nominating any officer of the Government, in the case of any other property, to perform the function of the Administrator of such property subject to such conditions as may be specified by the Special Court.

17E. Issue of show-cause notice before forfeiture of the property. –

No order under sub-section (2) of section **17D shall be made by the Special Court** –

(a) unless the person holding or in possession of such property is given a notice in writing informing him of the grounds on which it is proposed to forfeit such property and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter;

(b) if the person holding or in possession of such property establishes that he is a bona fide transferee of such property for value without knowing that such property has been so acquired.

17F. Appeal.–

(1) Any person aggrieved by order of the Special Court under section 17D may within one month from the date of the receipt of such order, appeal to the High Court of Jammu and Kashmir.

(2) Where any order under section 17D is modified or annulled by the High Court or where in a prosecution instituted for the contravention of the provisions of this Act, the person against whom an order of the special court has been made is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price therefor as if the property had been sold to the Government with reasonable interest calculated from the date of seizure of the property and such price shall be determined in the manner prescribed.

17G. Order of forfeiture not to interfere with other punishments.–

The order of forfeiture made under this Act by the Special Court, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under this Act.

{*It may be recalled that these provisions were already included in the State Laws since repealed*—Editor}

VICTIM'S RIGHTS: A PERSPECTIVE

In criminal law, a victim of a crime is an identifiable person who has been harmed individually and directly by the perpetrator, rather than by society as a whole. However, this may not always be the case, as with victims of white collar crime, who may not be clearly identifiable or directly linked to crime against a particular individual. Victims of white collar crime are often denied their status as victims by the social construct.

In the eyes of law, a victim is known as persons having suffered harm or injury, physical or mental, emotional suffering, economic loss or substantial impairment of his fundamental rights, through acts or omissions that are in violation of criminal laws. The study of victimization is called as "Victimology". Emotional distress as the consequence of crime is a recurring theme for all victims of crime and the most common problems, affecting three quarters of victims, are psychological problems, viz. fear, anxiety, nervousness, self-blame, anger, shame and it has been found that Victims may even experience psychological reactions. The experience of victimization may result in increasing fear on the part of the victim, and the spread of fear in the community.

In "Balasaheb Rangnath Khade v. State of Maharashtra, decided on 27-04-2012", it was observed that basic human rights are required to be protected and the State has to see the welfare of the citizens. Once Justice V.R. Krishna Iyer commented "the criminal law in India is not victim oriented and suffering of the victim often immeasurable are entirely overlooked in misplaced sympathy for the criminal". Besides, the Apex Court has reiterated that a prisoner, be a convict or an undertrial or a detenue does not cease to be a human being even when lodged in jail and therefore, he continues to be entitled to all his fundamental rights. As such he cannot be deprived of his right to liberty in accordance with the procedure established by the law.

Due to evolving and developing jurisprudence, the rights of victim of crime has been recognized but still we have to go a long way to bring the rights of victim of crime to the centre stage.

Victim facilitation, finds its roots in the writings of criminologists such as Marvin Wolfgang and the choice to use 'victim facilitation' as opposed to 'victim proneness' is not blaming the victim, but the interactions of the victim that make him/her vulnerable to a crime. Hence, it is significant to study and understand the concept of 'victim facilitation' as well as continuing to research on the said topic of victimization. One of the ultimate purpose of the type of knowledge is to inform the public and increase awareness so that fewer people become victims. The term victimology denotes to the subject, which deals with the study of harms caused to victim in commission of crime and the relative scope for compensation to the victim as a means of redressal. In criminal jurisprudence, mere punishing of offender is not sufficient to redress the grievance of victim but there is need to compensate the loss or harms suffered by the victim. In Criminal Procedure Code, provisions have been made to provide compensation to victims, who have suffered loss or harm in consequence of commission of offence but, compensatory measure to victims of crimes, is not enough and this aspect is needed to be reviewed by the legislature and the legislatures in their wisdom have re-visited the enactment so as to sufficiently compensate to victims of crimes and to provide safeguards to victims of crimes.

As we all know that victims have core rights as Right to Protection, Right to restitution, Right to a proceedings free from unreasonable delay, Right to be treated with fairness, Respect for the victims dignity and privacy, Right to adequate compensation, Right of being heard and to participate in criminal justice proceedings, Right to speedy trial, Right to enforcement of these rights and Victims eligibility to counselling expenses and even who pays victims medical or funeral expenses should be eligible for direct reimbursement from the compensation programme.

Rights of victim and society at large are not sub-servient to rights of accused, as was held in 'Fainul Khan v. State of Jharkhand'. A Victim has a right to assist the Court in trial before Magistrate and if is victim found in a position to assist it, the Magistrate can grant permission to victim to be heard in the matter. (Amir Hamza Sheikh & Ors. Vs. State of Maharashtra & Anr., AIR 2019 SC 3721)

Victim Compensation is a Government programme to reimburse victims of violent crimes- such as assault, homicide, rape, and, in some States, burglary - as well as their families for many of their out-of-pocket expenses. Currently we have the Victims Compensation Scheme, 2019, for facilitation of victims for their survivor so that they cannot be laid down in the scrap heap of the society.

Family members of homicide victims are also eligible for compensation or disbursement of medical bills and of funeral or burial expenses and to pay for counselling and lost wages or support. The victims must be educated to report the crime promptly to the Police or concerned for agitating their rights and move for compensation within a stipulated time as prescribed in the schemes of respective States of the Country.

It is pertinent to mention herein that a person cannot get compensation for being thereby dealing with drugs or not having been involved in other serious misconduct that caused or contributed to the injury or death that are not covered by the insurer or some other programme. Compensation can be paid even when no one is arrested or convicted for the crime. Constitution of India provides certain safeguards to the victims of the crime and Articles 14 as well as Article 21 of the Constitution forcefully supports the arguments. The Court passes the order of fine of any denomination when an accused is proven guilty, in that eventuality the Court can pass order such fine or any part of it to be paid to the victim of crime. While awarding conviction and fine as part of the sentence, the fine imposed is utilized for the welfare of the victim. As we know that litigation costs are very high in India and the lawyers charge hefty amounts, hence getting justice at times, particularly in the present scenario, adds to the burden of the victim itself and he is trapped in the "Honey Comb" of justice delivery system. Compensation for incurring expenses during litigation is essential to enable a victim to have a sigh of relief. (Kulsum Bibi v. State of Assam & Ors. Decided on 30th April, 2019)

Though much has been done as a policy of healing touch for victims, yet tremendous efforts are required so that they will no longer treat themselves as victims and they live a peaceful life in the society regardless of the harms inflicted to them.

Contributed by—
Ms. Bala Jyoti
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High Court of Jammu & Kashmir

Spirit of Constitution and Beggary

There is no doubt that public perception about begging and beggars, differs from person to person, as also from society to society. There are a vast number of

people who believe that beggary should not be encouraged, and needs to be stopped. But that is equally true that there are many people on the other side who believe that sympathetic and supportive attitude towards beggars needs to be adopted. Even donations are a phenomenon which exists from ancient times. Even in religions, the followers are ordained to donate out of the incomes earned by them.

So far as India is concerned, everything needs to be tested on the values and yardsticks laid in the Constitution. Though public beliefs and sentiments need to be taken care by the law makers yet the ultimate standard to test the validity of a law is its tuning with the principles, values and objectives underlying the Constitution. And a law which is not in tune with the said principles, values, and objectives, cannot be said to be a valid law.

In a judgment in case bearing no. PIL 24/2018 titled '**Suhail Rashid Bhat v. State of Jammu & Kashmir and others,** decided on 25-10-2019, Hon'ble High Court of J&K quashed the order dated 23rd May, 2018, passed by the District Magistrate, Srinagar whereby it had been ordered that any person soliciting alms shall be immediately arrested under Section 4 of the Jammu & Kashmir Prevention of Beggary Act, 1960. Hon'ble High Court also held that begging involves peaceful communication with strangers, verbal or non-verbal, whereby a beggar conveys a request for assistance, and such communicative activity is essentially part of the valuable right of freedom of speech and expression guaranteed to all under Article 19 (1)(a) of the Constitution of India, and that the restrictions to be considered reasonable, must be couched in the narrowest possible terms or narrowly interpreted so as to abridge or restrict only what is absolutely necessary, and further that the restrictions imposed by the Jammu & Kashmir Prevention of Beggary Act, 1960, which cast an absolute prohibition on the rights of persons guaranteed under Article 19(1)(a) have to be held to be the restrictions as are disproportionate to the object sought to be achieved by the statute and unsustainable. Hon'ble High Court further held that the classification made by Section 2(a) of the Jammu & Kashmir Prevention of Beggary Act, 1960, is arbitrary, irrational and discriminatory, as it has no nexus at all with the object sought to be achieved, and that it fails to ensure equality before law to the persons whom it targets. Hon'ble Court also observed that the cause of irritation or annoyance to one person, may be a reason for invocation of sympathy, or inconsequential to another, and that such perceived "subjective annoyance" to a casual visitor cannot justify under Article 19(2), a complete prohibition on the exercise of a right under Article 19(1)(a) of a person.

This judgment gives useful insight in the Constitutional values. It recognises that Beggars are just like other citizens, and enjoy the same rights as are guaranteed to the fellow citizens. In India also, the beggars enjoy the fundamental and other rights guaranteed by the Constitution and other statutes. Though the words 'begging', 'beggars' or any of their synonyms, are not found specifically in the Constitution of India yet the implications of begging are covered by various provisions in the Constitution. Freedom of speech and expression guaranteed under Article 19 (1) (a) of the Constitution is available to the beggars also. And so they can express themselves to solicit charity for their needs. Rights to equality, life and personal liberty are other fundamental rights which are available to this section of society also. And right to life means that a person must get the basic essentials of life, like food, clothing shelter, health etc. Another fundamental right guaranteed to the citizens

of India under Article 19 (1) (d), including beggars, is the right to move freely throughout the territory of India.

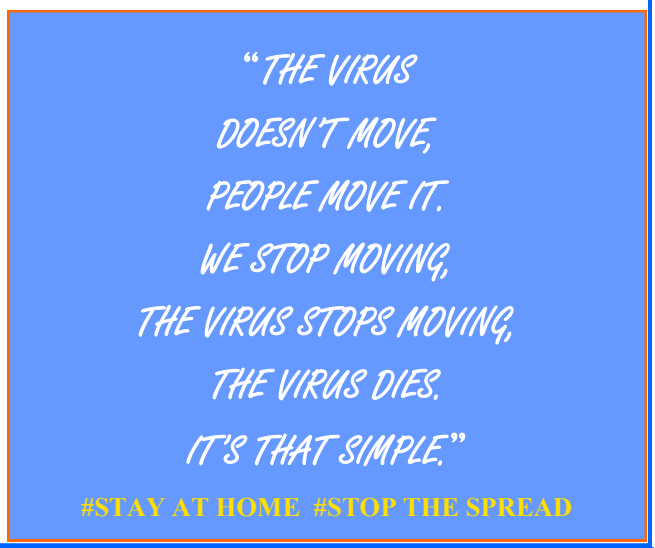
Certain directive principles contained in Part IV Constitution of India placing obligations on the State, also oblige the State to take such steps as are mentioned in the concerned Directive Principles, for securing the welfare of its citizens, which obviously includes the beggars. Article 38 obliges the State to secure a social order for the promotion of welfare of the people. Article 39 (a) provides that the State shall direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. In fact the right to livelihood has been raised to the status of a fundamental right within the meaning of Article 21, by virtue of various Supreme Court pronouncements. Article 41 provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Also, under Article 47, the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. Thus, the needs of its citizens, inclusive of beggars, were well understood by the makers of the Constitution when they included Part IV i.e. the Directive Principles of State Policy in the Constitution, thereby obliging the State to take such measures so as to ensure some sort of social security aimed by the Constitution.

Different rights in Part-III and Directive Principles in Part-IV of the Constitution of India, oblige the State to ensure that the basic needs of the citizens are fulfilled. And failure of the State to accomplish the needful, itself indicates the gravity of the problem of poverty which is one of the reasons prompting a person to beg.

There is no doubt that many of the laws governing begging and beggars might not have been challenged earlier in the courts of law in India, due to the peculiar conditions including monetary conditions of the beggars. But now, especially with the advent of public interest litigation, such initiatives are not so hard to be found. It is hoped that such like vulnerable sections of society would also get their due and many arbitrary laws depriving them of equality and other fundamental rights would be removed.

To conclude, it can be said that though begging cannot be held to be an absolute right, and remains subject to control and check by legislative prerogatives and actions, yet the exercise of legislative powers in this regard would always have to satisfy the constitutional requirements noted hereinbefore and elsewhere, especially the one that any such statue, shall bear a reasonable nexus with the object which may be the maintenance of a balance between the societal as well as individual needs, or any object aimed by the legislature.

Contributed by—
Mr. Ritesh Dubey
District & Session Judge
(One Man Forest Authority, J&K)



What is a coronavirus?

- Coronaviruses are a large family of viruses that are known to cause illness ranging from the common cold to more severe diseases such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS).
- A novel, or new, coronavirus is called nCoV
- The current new coronavirus is called 2019-nCoV

What are the symptoms of Coronavirus?

- The most common symptoms are fever, cough, shortness of breath, and breathing difficulties.
- In more severe cases infection can cause pneumonia, severe acute respiratory syndrome, and even death. The period within which the symptoms would appear is 2-14 days.

Where do coronaviruses come from?

- Coronaviruses cause disease in a wide variety of animal species
- Several known coronaviruses are circulating in animals that have not yet infected humans
- A spillover event is when a virus that is circulating in an animal species is found to have been transmitted to human(s)

How can I protect myself from infection?

- Wash your hands with soap and water or an alcohol-based hand rub
- Cover your mouth and nose with a tissue, sleeve or a flexed elbow when coughing or sneezing
- Avoid unprotected close contact with anyone developing cold or flu-like symptoms
- Seek medical care if you have a fever, cough, and/or difficulty breathing
- When visiting live markets, avoid direct unprotected contact with live animals and surfaces in contact with animals
- Cook your food and especially meat thoroughly
- Seek medical care if you have a fever, cough, and difficulty breathing; please reveal your travel or contact history

Is there treatment?

- As of yet, there are no specific treatments for coronaviruses, but symptoms can be treated.

Are antibiotics effective in preventing and treating 2019-nCoV?

- No, antibiotics do not work against viruses. The 2019-nCOV is a virus and, therefore, antibiotics should not be used as a means of prevention or treatment.

Does 2019-nCoV only affect older people, or are younger people also susceptible?

- People of all ages can be infected by the virus. Older people and those with pre-existing medical conditions appear to be more vulnerable to becoming severely ill with the virus

Can pets at home spread the 2019-nCoV?

- At present, there is no evidence that companion animals/pets such as dogs or cats can be infected with the virus. However, it is always a good idea to wash your hands with soap and water after contact with pets.

World Health Organization

COVID-19 Awareness Material - Source - World Health Organization, Department of Health and Family Welfare (Government of India), Centre for Disease Control (CDC) United States, BBC World and Livelaw websites.