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For circulation among the stakeholders in Judicial Education

FROM THE DESK OF CHIEF EDITOR

The Constitution is a living document. It grows with the passage of time. It is like a plant. To keep the Constitution in shape, this plant needs manuring as also pruning. The governance of any Constitutional System envisages the role of the three organs – the Parliament, the Executive and the Judiciary. This trinity works within the Constitution. It is the Constitutional duty of the Constitutional Courts, to keep the other two organs within the discipline of the Constitution. The Apex Court is the final interpreter of the Indian Constitution. Even the Constitutional Amendments have to adhere to the discipline of Basic structure of the Constitution. The Supreme Court is the 'lighthouse' and the 'lamp' of the Constitution. Supreme Court is the 'Balancing Wheel'. It provides the illumination during the dark times. The task is gigantic. It is equally challenging. Highly demanding.

It is Judicial Review which prevents the Constitution from becoming a fossil. It is equally the Judicial Review which ensures that the Constitution does not get aged. Judicial Review helps the Constitution to keep pace with the changing times. Judicial Review is the life-line of the Constitution. In fact, the very heart of the Constitution. Judicial Review helps in ensuring that there are no blockages in the arteries of the Constitution. Whenever the situation demands, the top court conducts either the biopsy or the open-heart surgery.

Judicial Activism and Judicial Review are twins. Judicial Review makes Judicial Activism possible. Do judges make legislation? Do we have Judicial Legislation? If there is Judicial Review, Judicial Legislation is inevitable. It is through the medium of Judicial Review that the Constitution lives for decades, generations and even centuries. Sans Judicial Review, the Constitution would not last long. In the Constitutional journey, different situations arise. Constitutional solutions are required to be found. Therefore Judicial Activism is the ultimate result. Indian Constitution is 70 years old. It continues to govern us. The basic elements of the Indian Constitution are still intact. If the new constitution is to be crafted in the present situation, it would seem to be an impossibility. It would not be wrong to say that it is Judicial Activism which has contributed to the durability, longevity of the Indian Constitution. Judicial Activism is the best recipe for the sustenance and continuance of the Indian Constitution.

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Who is supreme? The three organs are required to function within the Constitution. The Constitution is the creator of the Parliament, the Executive and the Judiciary. They are the legitimate children of the Constitution. If the Parliament or the Executive or both over-reach the Constitution, Judiciary is to check the over-reach of the two other organs. This role of 'check and balances' is assigned to the Judiciary. The Judiciary is to play this role within the Constitution. Be you ever so high, the Constitution is above you. Therefore, it is the Constitution which is supreme, not any of the three organs. This is Constitutional supremacy. We need to realize that to say that the Parliament is supreme (being the elected body) is a myth. 70 years journey of the Indian System of Constitutional democracy breaks this myth loud and clear. The sooner we realize it, the better it is.

The Judiciary is to ensure the supremacy of the Constitution. This is vital for the sustenance of Constitutional supremacy in India. Therefore, Judicial Activism is the Constitutional recipe. The Constitutional Courts in India cannot abrogate their role. To retain and maintain the supremacy of the Constitution is the oath of the Judges. Judicial Activism must not be seen as judicial over-reach. Judicial Activism is a medium to sustain Constitutional supremacy. Judicial Activism is integral to the growth and well being of the Constitution. Sans Judicial Activism, it would not be possible to bask in the supremacy of the Constitution. This also is the story of 230 years of US Constitution and the US Supreme Court.

Judicial Activism connects Law and Justice. It helps in filling up the space between the two. The good option is to do justice according to law. Yet that may not be (on occasions) the best kind of Justice. It is here where the judges play their role. Normally, the role of a judge is that of 'Interpreter' or 'Decision Maker'. On occasions, the role changes. To breathe life into the law. So that the rule of law becomes functional. It is the Constitutional obligation of the summit court to do complete justice. May it be the executive action or legislative action. Judges test those actions on the touch-stone of Constitution. If the Parliament feels that the law needs to be changed in the light of the judgment of the Supreme Court, certainly, it can do so. The only caveat is, the amended law also should be within the constitutional frame-work. It is common knowledge that the judgments of the Indian Supreme Court of earlier years are over-ruled in later years. The judgment of yesterday years of Senior Justice Chandrachud has been recently over-ruled by Junior Chandrachud. Judges have regretted (at times) for taking a particular view. Sometimes, even still being on the bench. Sometimes, after retirement but during their life time. The development of law is based upon 'experience'. Thus, Judicial Activism is the response to meet the ends of justice. Judicial Activism helps in clearing the obstacles in the stream of justice. The stream of justice must continue to flow.

Judicial Activism has helped in making the Indian Constitution a living organism. Basic structure, Public Interest / Social Action Litigation, Right to Equality (Article 14), Basic Freedoms (Article 19), Right to Life and Personal Liberty (Article 21) and Complete Justice (Article 142) are all attributable to Judicial Activism. It is through the medium of Judicial Activism that the top court has connected the people of India to the Constitution. Judicial Activism has contributed in expanding the Constitutional Vision and Constitutional Morality. Judicial Activism is not a myth. In fact, it is a reality.

LATEST CASES : CIVIL

“Judges and courts have diverse duties. But functionally, historically and jurisprudentially, the value which is dear to the community and the function which deserves to be condoned off from public molestation is judicial.”

V.R. Krishna Iyer, J. in *Baradakanta Mishra vs. Registrar of Orissa High Court*, (1974) 1 SCC 374

Beemaneni Maha Lakshmi vs. Gangumalla Appa Rao : 2019 SCC OnLine SC 719 : Held :

Specific Performance : Plea of hardship cannot be raised if not pleaded in written statement:

The Supreme Court has observed that a defendant in a specific performance suit should plead in his written statement the hardship that will be caused if the decree of specific performance of the contract is passed against him. Otherwise, such plea cannot be permitted to be raised in a later stage. In the present case, the High Court dismissed appeal against a Trial Court decree of specific performance directing the defendant to execute the sale deed with respect to property. As the Apex Court bench refused to interfere on the aspect of readiness and willingness of the plaintiff, the defendant raised a plea that if the decree for specific performance of the contract is passed after number of years, it would cause undue hardship to the defendant (vendor). Addressing this contention, the bench noted that in the written statement the defendant has not pleaded any hardship to be caused if the decree of specific performance of the contract is passed against the defendant.

SBI vs. M/s Jah Developers Pvt. Ltd : 2019 SCC OnLine SC 688 : Held : Borrower has no right to be represented by lawyer before in-house committee probing 'wilful default' :

The Supreme Court has observed that a borrower has no right to be represented by a lawyer before the In-House Committee of banks constituted for the purpose of determining whether he is a willful defaulter or not. The bench set aside High Court judgment that held that a lawyer has the right to represent his client before such in-house committees. But the bench modified the revised RBI circular, and held that the First Committee must give its order to the

borrower as soon as it is made so that the borrower can then represent against such order within a period of 15 days to the Review Committee. The court further observed that these in-house committees are not vested with any judicial power at all, their powers being administrative powers given to in-house committees to gather facts and then arrive at a result.

Hemareddi vs. Ramachandra Yallappa Hosmari : 2019 SCC OnLine SC 665 : Held :

When does death of a co-appellant result in the abatement of appeal as a whole? SC

answers: In the present case the Supreme Court had occasion to deal with a situation where the death of one of the appellants led to the abatement of appeal as a whole. The Court noted that if the decree is joint and indivisible and the situation is such that it would lead to irreconcilable decrees between the parties, the appeal will abate as a whole. The Court also referred to the decision in *Sardar Amarjit Singh Kalra (Dead) by LRS. & Ors. vs. Pramod Gupta (Smt.)(Dead) by LRs. & Ors.* 2003 (3) SCC 272, which was an appeal from a land acquisition claim, where several persons with independent rights had come together in a single appeal. In such a case, abatement as against one of the appellant will not affect other appellants, held the court. Because, the appellants had distinct, independent claims, and the decree was divisible.

Bhivchandra Shankar More vs. Balu Gangaram More : 2019 SCC OnLine SC 663 :

Held : Statutory appeal can be filed even if application to set aside ex-parte decree dismissed :

The Supreme Court has observed that the right of appeal under Section 96(2) CPC is a statutory right and the defendant cannot be deprived of the statutory right of appeal merely

on the ground that the application filed by him under Order IX Rule 13 CPC [to set aside ex-parte decree] has been dismissed. The court considered three issues in the said case: (i) Whether the time spent in the proceedings taken to set aside the ex-parte decree constitute "sufficient cause" within the meaning of Section 5 of the Indian Limitation Act, 1908 so as to condone the delay in preferring an appeal against the ex-parte decree on merits? (ii) When an application filed under Order IX Rule 13 CPC has been dismissed on merits, whether regular appeal under Section 96(2) CPC is barred? Answering these issues, the bench said that the scope of Order IX Rule 13 CPC and Section 96(2) CPC are entirely different. The court observed that merely because the defendant pursued the remedy under Order IX Rule 13 CPC, it does not prohibit the defendant from filing the appeal if his application under Order IX Rule 13 CPC is dismissed. It also said that "sufficient cause" should be given liberal construction and generally, delays in preferring appeals are required to be condoned, in the interest of justice, where there is no gross negligence or deliberate inaction or lack of bonafide is imputable to the party seeking condonation of delay.

Karnataka Housing Board vs. K.A. Nagamani: 2019 SCC OnLine SC 657 : Held : Revision Petition before NCDRC not maintainable against an order passed in execution proceedings : The Supreme Court has held that a Revision Petition before the National Consumer Disputes Redressal Commission [NCDRC] is not maintainable against an order passed by the State Consumer Commission in execution proceedings. The bench observed that orders passed for enforcement of the final order in the Consumer dispute, cannot be construed to be orders passed in the 'consumer dispute'. Affirming the view of full bench of High Court, the bench said that Execution proceedings even though they are proceedings in a suit, cannot be considered to be a continuation of the original suit. The court noted that under Section 21(b) revisional

jurisdiction conferred on the National Commission is with respect to a pending or disposed of 'consumer dispute' before the State Commission. Orders passed for enforcement of the final order in the Consumer dispute, cannot be construed to be orders passed in the 'consumer dispute', the bench said.

Ganesan vs. The Commissioner, TN Hindu Religious and Charitable Endowments Board: 2019 SCC OnLine SC 651 : Held : Limitation Act applicable to suits, appeals, application filed in courts, not before statutory authorities: The Supreme Court has observed that the suits, appeals and applications referred to in the Limitation Act, 1963 are suits, appeals and applications which are to be filed in a Court, and not before a statutory authority. However, a special or local law can very well provide for applicability of any provision of Limitation Act or exclude applicability of any provision of Limitation Act.

Thulasidhara vs. Narayanappa : 2019 SCC OnLine SC 645 : Held : Unregistered family settlement will operate as a complete estoppel against the parties to it: The Supreme Court has observed that even if the family settlement was not registered, it would operate as a complete estoppel against the original plaintiff who was party to such settlement. Reiterating the view of Subraya M.N. vs. Vittala M.N., the bench said that even without registration a written document of family settlement/family arrangement can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties.

Sai Babu vs. Clariya Steels Pvt. Ltd : Law Finder Doc Id # 1464165 : Civil Appeal No.4956 of 2019 arising out of SLP (C) No. 20641 of 2017 : DoD 15.05.2019 : Held : Termination of arbitration proceedings u/s 32 of Arbitration and Conciliation Act cannot be recalled : The Supreme Court has observed that the termination of Arbitration proceedings by the Arbitrator under Section 32(2) (c) of the Arbitration and Conciliation Act cannot be recalled.

LATEST CASES : CRIMINAL

“A reasonable expeditious trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India.”

H.L. Dattu, J. in *Ranjan Dwivedi vs. CBI*, (2012) 8 SCC 495

Beemaneni Maha Lakshmi vs. Gangumalla Appa Rao: 2019 SCC OnLine SC 719: Held : Information contained in a document is a 'Corporeal Property' and can be subject matter of theft : The Supreme Court has held that the "document" as defined in Section-29 of the Indian Penal Code is a "moveable property" within the meaning of Section-22 IPC and the information contained thereon in the documents would also fall within the purview of the "corporeal property" and can be the subject matter of the theft. The bench however quashed criminal cases lodged against some shareholders of a company who used some documents belonging to the company in judicial proceedings is to substantiate their case namely, "oppression and mismanagement" of the administration of Company and their plea in other pending proceedings. It added that information contained in a document, if replicated, can be the subject of theft and can result in wrongful loss, even though the original document was only temporarily removed from its lawful custody for the purpose of extracting the information contained therein.

Tejaswini Gaud vs. Shekhar Jagdish Prasad Tewari: 2019 SCC OnLine SC 713: Held : Writ of habeas corpus can be issued when the detention of a minor is by a person who is not entitled to his legal custody: The Supreme Court has observed that the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

Omanakuttan vs. The State of Kerala: 2019 SCC OnLine SC 684 : Held : The 'Acid' undoubtedly a 'corrosive' substance within the meaning of S.326 IPC: With acid attack cases seeing a phenomenal increase in country and victims literally "living under the shadows" for the rest of their lives, the Apex Court, while dismissing appeal of the accused appellant observed that "the acid is undoubtedly a corrosive substance within the meaning of

Section 326 IPC...It needs hardly any emphasis that the act of causing grievous hurt by use of acid, by its very nature, is a gruesome and horrendous one, which, apart from causing severe bodily pain, leaves the scars and untold permanent miseries for the victim.”

Rafiq Qureshi vs. Narcotic Control Bureau Eastern Zonal Unit : 2019 SCC Online SC 666 : Held : Quantity of narcotic substance a relevant factor to award punishment higher than the minimum under NDPS Act: The Supreme Court has observed that the decision to impose a punishment higher than the minimum prescribed under the Narcotic Drugs and Psychotropic Substances Act, 1985 is not confined or limited to the factors enumerated in Clauses (a) to (f) of Section 32B of the. The bench observed that the quantity of substance with which an accused is charged is a relevant factor, which can be taken into consideration while fixing quantum of the punishment. The bench noticed that the Section 32B uses the phrase "the court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment". Thus, the court may where minimum term of punishment is prescribed take into consideration "such factors as it may deem fit" for imposing a punishment higher than the minimum term of imprisonment or fine; in addition, take into account the factors for imposing a punishment higher than the minimum as enumerated in clause (a) to (f), the court said.

Rajesh vs. State of Haryana : 2019 SCC OnLine SC 638 : Held : Section 319 Cr.P.C: persons named in FIR, but not chargesheeted can be summoned even if stage of protest petition is over : The Supreme Court has observed that a trial court can summon under Section 319 of the Criminal Procedure Code, those persons named in FIR, but who were not charge-sheeted, even if the stage of giving opportunity to the complainant

to file a protest petition is over. Referring to constitution bench judgment in Hardeep Singh, the court observed that (i) the Court can exercise the power under Section 319 of the Cr.P.C even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 of the Cr.P.C.

Kumar Ghimirey vs. State of Sikkim: 2019 SCC OnLine SC 566: Held : Sentence can be enhanced in convict's appeal only by giving him notice of enhancement : The Supreme Court has reiterated that the power of an appellate Court to enhance sentence awarded to a convict, while considering his appeal, can only be exercised after giving him the notice of enhancement.

Periyasami vs. Nallasamy: 2019 SCC OnLine SC 379: Held : Mere disclosure of names by some witnesses during trial not enough to add persons not named in FIR as additional accused: The Supreme Court has observed that mere disclosure of the names of some persons by the witnesses during trial cannot be said to be strong and cogent evidence to summon them under Section 319 of the Criminal Procedure Code. The court reiterated that, under Section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused.

Bhagyan Das vs. State of Uttrakhand : 2019 SCC OnLine SC 378: Held : Courts have discretion to refuse compounding of offences having social impact : The Supreme Court has observed that a court has discretion to reject a plea to compound an offence having social impact, even if the offence is

compoundable under Section 320 of the Code of Criminal Procedure.

Sachin Kumar Singhraha vs. State of Madhya Pradesh: 2019 SCC OnLine SC 363 : Held : Death sentence can be imposed only when life imprisonment appears to be an altogether inappropriate punishment: While commuting death sentence awarded to a man convicted for rape and murder of a five year old girl, the Supreme Court observed that death sentence must be imposed only when life imprisonment appears to be an altogether inappropriate punishment. The court said: "As has been well settled, life imprisonment is the rule to which the death penalty is the exception. The death sentence must be imposed only when life imprisonment appears to be an altogether inappropriate punishment, having regard to the relevant facts and circumstances of the crime.

State of Karnataka vs. M. R. Hiremath : 2019 SCC OnLine SC 734 : Law Finder Doc Id # 1460251 : Held : Electronic Evidence: Failure to produce certificate u/s 65B Evidence Act along with chargesheet not fatal to prosecution: Failure to produce a certificate under Section 65B(4) of the Evidence Act at the stage when the charge-sheet was filed is not fatal to the prosecution, the Supreme Court observed. Setting aside the High Court order, the court also reiterated that, at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence.

Accused X vs. State of Maharashtra: Review Petition (Criminal) No. 301 of 2008 In Criminal Appeal No. 680 of 2007: DoD 17.04.2019 : Held : Pre-sentence hearing on a separate date not mandatory: The Supreme Court has observed that there is no bar on the pre-sentencing hearing taking place on the same day after passing the judgment of conviction, if the accused and the prosecution are ready to submit their arguments.

CASES ON CONSTITUTION LAW

“To build bridges of juridical understanding based on higher values, is good; to don imported legal haberdashery, on meretricious appeal, is clumsy.”

V.R. Krishna Iyer, J. in *Nandini Satpathy vs. P.L. Dani*, (1978) 2 SCC 424

Re Inhuman Condition in 1832 Prisons: 2019 SCC OnLine SC 2806 : Held : As a part of the right to live with human dignity conferred under Article 21 of Constitution, a prisoner is entitled to have interviews with members of his family and friends: The Supreme Court has observed that prisoners on death row should be allowed to have meetings and interviews with his lawyers or members of his immediate family or even mental health professionals. The applications prayed that prisoners sentenced to death by any court have a right to be treated at par with other convicted prisoners and should be provided all similar facilities as are provided to other prisoners and that solitary confinement of prisoners on death row or their separate and cellular confinement be struck down as unconstitutional. On this the bench held that, “...as a part of the right to live with human dignity, a prisoner is entitled to have interviews with members of his family and friends and no prison regulation and procedure to the contrary can be upheld as being constitutionally valid under Articles 14 and 21 of the Constitution unless it is reasonable, fair and just...the rights of prisoners as enunciated by this Court would be available not only in a particular State but would be available to them in all the States and Union Territory Administrations across the country.”

Ashwani Kumar vs. Union of India (UOI) and Ors.: 2018 SCC OnLine SC 2804 : Held : Article 21 of the Constitution in its expansive meaning encompasses various rights of elderly persons / senior citizens such as right to dignity, right to health, right to adequate pension and right to shelter: In the present case, petitioner preferred a writ petition under Article 32 of Constitution with regard to enforcement of rights of elderly persons under Article 21 of Constitution. Relief prayed for in the present petition related to four issues i.e. Pension for elderly, Shelter for elderly, Medical facilities for elderly, Effective implementation of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ('MWP Act'). Submissions of Petitioner were based entirely on Article 21 of Constitution and / or supporting constitutional provisions. On this the Apex Court observed, “...Right to Live with Dignity was, in effect, a part of Right to Life as postulated in Article 21 of Constitution. Such a right would be rendered meaningless if an aged person does not have financial means to take care of basic

necessities and had to depend for it on others. Right to shelter or right to reasonable accommodation is one of basic needs of any human being. Unfortunately, while there had been some positive development in this regard, attention had not been paid to needs of elderly who require special care and attention which, in many Sections of society, was missing. With this in mind, Petitioner emphasised right to shelter and referred to several decisions, many of which recognised right to adequate shelter as a fundamental right, which applied to elderly as well...Right to life provided for in Article 21 of Constitution must be given an expansive meaning. Right to life, encompasses several rights but for time being Present Court was concerned with three important constitutional rights, each one of them being basic and fundamental. These rights articulated by Petitioner were right to live with dignity, right to shelter and right to health. State was obligated to ensure that, these fundamental rights were not only protected but were enforced and made available to all citizens... A set of directions issued by this Court would not fulfill constitutional mandate or mandate of MWP Act. There was a need to continuously monitor progress in implementation of constitutional mandate to make available to elderly right to live with dignity and to provide them with reasonable accommodation, medical facilities etc. While this might take some time, only available solution was a continuing mandamus which was a well-recognised practice and procedure adopted by this Court in several cases to ensure that, rights of people were respected, recognized and enforced and that social justice as postulated by Preamble in Constitution was given meaning and teeth.

Indian Hotel and Restaurant Assn. (AHAR) vs. State of Maharashtra: 2019 CriLJ 1427: Held : Condition imposed that the liquor cannot be served at such places where dances are staged is violative of Articles 14, 19(1)(a) and 19(1)(g) of Indian Constitution : The Supreme Court has held that there cannot be a total prohibition of dance bars in Maharashtra. The Bench has also relaxed the stringent conditions imposed by the Government for getting license for dance bars. The main question that came up before court was whether condition can be imposed that the liquor cannot be served at such places where dances are staged? On this the court observed

that the impugned provision did not pass the muster of constitutional provisions as it was found to be violative of Articles 14, 19(1)(a) and 19(1)(g) of the Constitution.

Bir Singh vs. Delhi Jal Board and Others: 2018 SCC OnLine SC 1241: Held : **The federal nature of the Constitution finds broad manifestation in two principal areas i.e. division of legislative power and constitutional provisions relating to services under the Union and the States:** The constitution bench of the Supreme Court has held that Pan India Reservation Rule in force in National Capital Territory of Delhi is in accord with the constitutional scheme relating to services under the Union and the States/Union Territories. The main issue in the present case was, "Whether a person belonging to a Scheduled Caste in relation to a particular State would be entitled or not, to the benefits or concessions allowed to Scheduled Caste candidate in the matter of employment, in any other State?" On this the court held that a person belonging to a Scheduled Caste in one state cannot be deemed to be a Scheduled Caste person in relation to any other state to which he migrates for the purpose of employment or education. Further it observed, "The federal nature of the Constitution finds broad manifestation in two principal areas i.e. division of legislative power and exercise thereof by the Union and the constituent States and secondly, which is more relevant and important to the subject in hand, is the constitutional provisions relating to services under the Union and the States as dealt with in Part XIV of the Constitution.

Meenal Bargava vs. Naveen Sharma: 2018 SCC OnLine SC 508: Held : **In the custody disputes welfare of the child should be the paramount consideration:** In the present case, the parties entered into settlement before the High court to live together with child again. However, subsequently husband filed a contempt petition alleging non-compliance of the settlement conditions by the wife. Upon this the High Court held the wife guilty. While setting aside the high court order punishing wife for contempt, the Supreme Court observed that forcing a spouse to join the company of the other and on failing to do so punishing her in committing contempt of the court's order that too by awarding maximum civil imprisonment in law, cannot be countenanced. The Apex Court further held that in the custody disputes welfare of the child should be the paramount consideration. Parties should endeavour to keep alive settlement in their own interest and in the interest of the child burying the hatches and understanding reasons which led to disputes between them.

Nanda Kumar & Anr. vs. The State of Kerala & Ors. : 2018 SCC OnLine SC 492 : Held : **Right to marry or have live-in-relationship with person of own choice is a fundamental Right covered under Article 19 and 21 of the Indian Constitution:** Setting aside the Kerala High Court order that 'entrusted custody' of a major girl to her father, the apex court observing that the girl has freedom of choice as to with whom she wants to live. It further held that even if they were not competent to enter into wedlock, they have right to live together even outside wedlock. It would not be out of place to mention that 'live-in relationship' is now recognized by the Legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005. Quoting the landmark judgment of Shafin Jahan v. Asokan K.M. & Ors.' [2018 SCC Online SC 343], the court stated, "What is seminal is to remember that the song of liberty is sung with sincerity and the choice of an individual is appositely respected and conferred its esteemed status as the Constitution guarantees. It is so as the expression of choice is a fundamental right under Articles 19 and 21 of the Constitution, if the said choice does not transgress any valid legal framework."

Dilawar vs. The State of Harvna and Ors.: 2018 SCC OnLine SC 477: Held: **Like the right to speedy trial, right to speedy investigation is also a part of Fundamental Right under Article 21 of the Indian constitution:** In the present case the Petitioner was arrested for offence alleging mob violence. He was in custody for more than two years and investigation was pending with the CBI for more than one and a half years. The court observed, "Speedy investigation is recognized as a part of fundamental right of fair procedure Under Article 21 of the Constitution... there is implicit right under Article 21 for speedy trial which in turn encompasses speedy investigation, inquiry, appeal, revision and retrial. To determine whether undue delay has occurred, one must have regard to nature of offence, number of Accused and witnesses, workload of the court and the investigating agency, systemic delays. Inordinate delay may be taken as presumptive proof of prejudice particularly when Accused is in custody so that prosecution does not become persecution. Court has to balance and weigh several relevant factors. Though it is neither advisable nor feasible to prescribe any mandatory outer time limit and the court may only examine effect of delay in every individual case on the anvil of Article 21 of the Constitution, there is certainly a need for in-house mechanism to ensure that there is no undue delay in completing investigation." Thus court directed CBI to complete the investigation within in two months.

NOTIFICATION

Rights of Persons with Disabilities (Amendment) Rules, 2019 : G.S.R.209(E) –

Whereas a draft of certain rules to amend the Rights of Persons with Disabilities Rules, 2017 was published as required by sub-sections (1) and (2) of section 100 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016) in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i) vide number G.S.R. 1053(E), dated the 22nd October, 2018 inviting objections and suggestions from all persons likely to be affected thereby, before the expiry of thirty days from the day on which the copies of the Official Gazette containing the said notification was made available to the public;

And whereas the copies of the Official Gazette in which the said notification was published were made available to the public on the 23rd October, 2018;

And whereas the objections and suggestions received from the public were considered by the Central Government;

Now, therefore, in exercise of powers conferred by sub-sections (1) and (2) of Section 100 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016), the Central Government hereby makes the following rules, to amend the Rights of Persons with Disabilities Rules, 2017, namely:

1. Short title and extent-

(1) These rules may be called the Rights of Persons with Disabilities (Amendment) Rules, 2019.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Rights of Persons with Disabilities Rules, 2017, after Chapter V, the following Chapter shall be inserted, namely:-

“CHAPTER VA

14A. (1) The State Governments or Union Territory Administrations shall notify the authority to whom a person with benchmark disability can apply for the high support requirement as per sub-section (1) of Section 38 of the Act.

(2) Only the persons with benchmark disabilities having permanent certificate of disability shall be eligible for applying for high support requirement.

(3) The State Governments shall constitute Assessment Board at the District level or Division level based on the number of persons with benchmark disabilities comprising the following:-

(a) District Chief Medical Officer or Civil Surgeon or Medical SuperintendentChairperson;

(b) District Social Welfare Officer.....Member;

(c) Five rehabilitation specialists [Physical Medicine and Rehabilitation or Orthopaedic specialist, ENT specialist, Ophthalmologist, General Physician (if the applicant is 18 years or above) or Pediatrician (if the applicant is less than 18 years), Psychiatrist].....Members;

(d) Occupational therapist or speech therapist or Clinical Psychologist or Physiotherapist (as per requirement)..... Member;

(e) Any other expert as the Chairperson deems appropriate.....Member.

(4) The authority notified under sub-rule (1) shall refer every case to the Assessment Board for assessment of applicant's high support requirement.

(5) The Assessment Board shall invite the applicant of high support requirements for **assessment and may, if necessary, seek clinical assessment.**

EVENTS OF THE MONTH

1. **Refresher-cum-Orientation Course for Civil Judges-cum-Judicial Magistrates of Punjab and Haryana** was organized on 11.05.2019 at Chandigarh Judicial Academy. The Judicial Officers were sensitized on the topics: Guidelines for Recording of Statements under Section 164 Cr.P.C, An Insight from Judicial Magistrate's Point of View, Recent Changes in Criminal Law – Substantive and Procedural, Role of Referral Judges – Mediation, Training on Practical Use of Computers in Courts. The second session was taken by Dr. K.P. Singh, IPS, Director General, State Vigilance Bureau, Haryana. Other sessions were taken by In-Service Officers of CJA and Faculty from Punjab and Haryana High Court. 63 Judicial Officers participated in the Refresher Course.

2. **Four Months Induction Training Programme for newly appointed 3 Additional District and Sessions Judges from the State of Haryana** concluded on May 13, 2019. Accordingly, they were awarded the certificates at the valedictory session. Dr. Balram K. Gupta, Director (Academics) counseled them to take up the responsibility of belonging to the Superior Judicial Service with humility, humanism and compassion. He reminded them that judges are not engines of power. They are engines of justice.

3. **Dr. Rashmi M. Oza, Head, Department of Law, University of Mumbai** and Chair M.C. Chagla on Human Rights delivered a special lecture to Trainee Judicial Officers from the State of Punjab on May 16, 2019. She spoke on Crime Free Society – the Role of Values. During the course of her lecture, she emphasized that Human Values are even more important than Human Rights. In fact, Human Values need to be blended with Human Rights. If human beings come to realize human values. There would be sea-change in the crime environment prevailing in the society.

4. **Ten Days Programme for Eighth Batch of 32 Public Prosecutors (30 from the State of Punjab and 2 from UT Chandigarh)** commenced from May 20, 2019 at Chandigarh Judicial Academy. The programme concluded on May 30, 2019. The training included four sessions of 1.15 hours per day. Total 39 sessions and the valedictory session were structured covering different aspects relevant for Public Prosecutors regarding Criminal and Civil Matters in order to

enhance their capacity to perform their duties effectively and efficiently. Sh. Pradeep Mehta & Dr. Nandita Kaushik, Faculty, CJA co-ordinated the programme. The different sessions were taken by Dr. Balram K. Gupta, Director (Academics), Dr. K.P. Singh, IPS, Director General, State Vigilance Bureau, Haryana, Anil Malhotra, Advocate, Punjab & Haryana High Court, Dr. J.S. Dalal, Prof. & Head, Department of Forensic Medicine, CMC, Ludhiana, Faculty from CJA and CFSL, Chandigarh. The valedictory session was held on May 30, 2019.

5. **Refresher-cum-Orientation Course for Civil Judges-cum-Judicial Magistrates of Punjab and Haryana** was organized on 25.05.2019 at Chandigarh Judicial Academy. The Judicial Officers were sensitized on the topics : Role of Referral Judges – Mediation, An Insight from Judicial Magistrate's Point of View, Recent Changes in Criminal Law – Substantive and Procedural, Guidelines for Recording of Statements under Section 164 Cr.P.C. Training on Practical Use of Computers in Courts. The second session was taken by Dr. K.P. Singh, IPS, Director General, State Vigilance Bureau, Haryana. Other sessions were taken by In-Service Officers of CJA and Faculty from Punjab and Haryana High Court. 62 Judicial Officers participated in the Refresher Course.

6. **Four Special Lectures were organized for Trainee Judicial Officers** from State of Punjab undergoing One Year Induction Training at CJA on May 25, 2019. The first session was taken by **Justice (Dr.) B.B. Parsoon on "Maintaining Decorum & Managing the Court"**. The second session was taken by **Mr. V.K. Kapoor, IPS (Retd.) on "Managing Judicial Stress"**. The third and fourth sessions were taken by **Sh. Yashpal Chand Jain on "Forensic Examination of Question Documents & Handwriting and its Identification"**. In fact, it was thought appropriate that on Saturday all the four sessions be taken by outside experts.

7. **Revenue Training (practical)** was provided to two ADJs from the State of Haryana on May 26, 2019, who are undergoing One Month Induction Training at CJA. Mr. B.M. Lal, Faculty Member accompanied the two ADJs. The Revenue Training was organized at the farm house of Justice S.S. Saron. Justice Saron himself provided the practical training as also the hospitality. CJA is grateful to Justice S.S. Saron.

FORTHCOMING EVENTS

One Month Induction Training of two ADJs from State of Haryana will be concluding on June 06, 2019. Accordingly, the certificates would be awarded during the valediction programme.