



# CJA e-NEWSLETTER

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## FROM THE DESK OF CHIEF EDITOR

The month of August, 2018 stands out in the journey of Chandigarh Judicial Academy. The First Programme for Sri Lankan Judges was held in December 2016. This programme was inaugurated by the then Chief Justice of Sri Lanka, Justice K. Sripavan. The Fifth and Sixth Groups of Sri Lankan Judges came in August 2018. These two groups were of 70 Judges. Both these programmes were inaugurated by **the present Chief Justice of Sri Lanka, Hon'ble Mr. Justice Priyasath Dep, PC**. Justice Dep served as the 40<sup>th</sup> Solicitor General of Sri Lanka from 2007-2011 when he was elevated as the puisne judge of the Supreme Court of Sri Lanka. He became the 45<sup>th</sup> Chief Justice of Sri Lanka on February 27, 2017. Thereafter, we had three programmes in the months of April, August and December 2017. During the year 2017 Justice Nalin Perera and Justice Eva Wanasundra, Judges, Supreme Court of Sri Lanka came to Chandigarh Judicial Academy in different programmes. The two groups of Sri Lankan Judges occupy special position. It was sometime towards the end of June 2018, Chandigarh Judicial Academy was asked to structure two programmes for Sri Lankan Judges in the month of August. We were also asked to ensure that both the programmes should conclude by August 20<sup>th</sup> so that during the short vacation, the Sri Lankan Judges could attend and participate in the same. The two programmes were so structured that on the 72<sup>nd</sup> Independence Day celebrations at the Punjab & Haryana High Court, all the participating Sri Lankan Judges could attend the celebrations. An invitation was extended to Hon'ble the Chief Justice of Sri Lanka to be the Guest of Honour on this occasion. Consequently, 1/3<sup>rd</sup> of the Sri Lankan Judiciary was present in the Chandigarh Judicial Academy. They participated in the Independence Day celebrations at the High Court. **Hon'ble Mr. Justice Krishna Murari, Chief Justice of High Court of Punjab and Haryana** extended a very warm welcome during his address on the Independence Day.

Chandigarh Judicial Academy has a bond with the Sri Lankan Judges' Institute. I am happy to make reference to the **Founder Director of SLJI, Justice J.F.A. Soza**. He served the Institute for many years. He died in 2013. One gets such satisfying feeling when one finds that the Founder Director is held in the highest esteem by the Judges of Sri Lanka. He is described as virtual saint. It would not be wrong, when I say, virtually every judge from Sri Lanka whom I met, worships him. He was an epitome of everything of what a good judge must possess. All the six groups of Sri Lankan Judges who visited CJA, without exception, everyone had such admiration for Justice Soza. What a good and positive feeling.

Judges Journal of the Sri Lankan Judges Institute records about **Justice Soza** :

**“Although the voice is still, the echoes remain undiminished.”**

It augurs well that CJA has been able to establish its bond with SLJI during the period of 2016-17-18. This bond would be a bond of continuity. It would get further cemented during the years to come. The effort on the part of CJA is to give a meaningful and constructive shape to Judicial Education. It is also the object and purpose of CJA to ensure that the best practices being followed in India be shared. Judicial Education is not merely meant to share what is contained in the books. It is Senior Judges sharing their experience with younger Judges. Judicial Education must strengthen Judicial Human Fabric. A good Judge needs to be a good human being. The focus of Judicial Education is to nurture good human beings in order to be good judges. CJA has opened its doors to the Sri Lankan Judicial Fraternity. Judicial Education is a two way traffic. Let us resolve to built up and strengthen the Judicial Human Fabric through the medium of Judicial Education.

Balram K. Gupta

## LATEST CASES : CIVIL

*“It is well settled that where a confession or an admission is separable there can be no objection to taking one part into consideration which appears to be true and reject the other part which is false.”*

*S. Murtaza Fazal Ali, J. in Keshoram Bora vs. State of Assam, (1978) 2 SCC 407*

**M/s. Alagu Pharmacy vs. N. Magudeswari : 2018 SCC OnLine SC 961 (SC) : Eviction can be ordered under the Rent Act, compromise would not prevail – Held** – In a petition seeking eviction, a compromise deed between the landlord and tenant was presented before the Rent Control Court, which ordered eviction recording the same. Before the appellate court, the tenants contended that they were pressurized into signing the compromise deed and said compromise was brought about because of pressure exerted by the police. The high court reversed the order of the appellate court on the ground that the tenants could have stated before the court which recorded the compromise that the compromise was out of compulsion or coercion, which they did not. The eviction in terms of the aforesaid provisions can be ordered only if the concerned Rent Controller or Court is satisfied that the ground seeking eviction is made out. It has been held by Supreme Court that unless and until ground seeking eviction in terms of the concerned contract is not made out, no eviction of a tenant can be ordered, even if the parties had entered into a compromise and reiterated earlier decision in *K.K. Chari v. R.M. Seshadri (1973) 1 SCC 761*.

**Union Bank of India and Others vs. C.G. Ajay Babu & Anr.:2018 SCC OnLine SC 962 (SC): Gratuity can be forfeited as per the Provisions of Act – Held** – The Apex Court Interpreting Section 4(6)(b)(ii) of the Payment of Gratuity Act, has held that forfeiture of gratuity on the ground of misconduct which constitutes an offence involving moral turpitude, is permissible only if he is convicted by a court of competent jurisdiction. Further, it is observed that forfeiture of gratuity is not automatic on dismissal from service; it is subject to sub-Sections (5) and (6) of Section 4 of The Payment of Gratuity Act, 1972.

**Ram Chandra Singh vs. Rajaram : 2018 SCC OnLine SC 959 (SC) – Impact of fake driving licence in the determination of compensation in MACT cases – Held** – The Apex Court has held that the mere fact that the driving licence is fake, per se, would not absolve the insurer and it

can only be absolved if it is found that the owner was aware of the fake licence and still permitted the driver to drive the vehicle. The bench also noticed that the high court had referred to the decision in *Pepsu Road Transport Corporation v. National Insurance Company*, but distinguished it by observing that it was on the facts of that case, where the court opined that there was no evidence to prove that the driving licence produced by the authorities was fake.

**M/s Ved Parkash Sons vs. UOI : SLP No. 20195 of 2017 : DoD August 8, 2018 (SC) : U/s 34(3) of Arbitration Act, the “disposal” of the application can be either by allowing it or dismissing it – Held** – The Supreme Court has made it clear that the limitation period to make application to set aside arbitral award would start running from the date of disposal of the application seeking correction of the award, irrespective of whether such an application is allowed or dismissed. The Delhi High Court in this case had reversed the finding of the district judge, before whom Section 34 application was filed, and it was time-barred, as the application should have been made on and from the first date. It is further observed by upholding the decision of Delhi High Court that in law, if an application is ex facie not maintainable under Section 33 of the Act then limitation would not commence after the disposal of the application as held by the Supreme Court in *M/s Damini Construction’s case* and once it is found that two views are possible from the situation, with one view being in favour of the party who files an application under Section 33 of the Act, it cannot be held that the filing of the application under Section 33 of the Act was wholly misconceived and completely beyond the provisions of Section 33 of the Act.

**Shivaji & Anr. vs. Divisional Manager United India Insurance Company Ltd. : 2018 SCC OnLine SC 877 (SC) – Plea of negligence is not permissible under Section 163A of MACT cases – Held** – The Supreme Court has upheld compensation awarded to the parents of deceased driver of the vehicle, reiterating that an

insurer cannot be permitted to raise a defence of negligence of the driver (victim) in proceedings under Section 163A of the Motor Vehicles Act. Factually, the car was dashed into a truck which resulted death of victim along with two other persons. The parents filed a claim petition before the tribunal which was allowed. On appeal by the insurance company, the High Court held that protection is extended only to the injured person or to the legal heirs of the deceased victim, and not to the driver who is responsible for causing the said accident. The high court held that the compensation could not have been awarded to the deceased driver as he was the tortfeasor and responsible for causing the accident. The apex court by allowing the appeal has held that the issue involved is covered by a recent judgment of three judges in a case *United India Insurance Co. Ltd. v. Sunil Kumar & Anr.* wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163A of the Act as contemplating such a situation, would be inconsistent with the legislative object. It is further observed that if an insurer was permitted to raise a plea of negligence u/s 163A of the Act, it would "bring a proceeding under Section 163A of the Act at par with the proceeding u/s 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention". Therefore, in a proceeding under Section 163A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation.

**Pimpri Chinchwad New Township Development Authority vs. Vishnudev Cooperative Housing Society : 2018 SCC OnLine SC 784 (SC) : Noting(s) or/and deliberation(s) are always capable of being changed or/and amended or/and withdrawn by the competent authority – Held** – The Supreme Court has observed that a mere noting in the official files of the government while dealing with any matter pertaining to any person is essentially an internal matter of the government and carries with it no legal sanctity. In this case an application u/s 48(1) of the Land Acquisition Act was filed by the respondent. The Revenue Minister had noted in the file that the land in question be deleted from the acquisition

proceedings. Thereafter, the government had changed and the new ministry decided all the matters where the orders were not communicated to the parties concerned to be placed for fresh consideration for passing appropriate orders. The High Court in a challenge ordered to restore the earlier position as per the notings / deliberations. In an appeal the Hon'ble Supreme Court has observed that First, a mere noting in the official files of the Government while dealing with any matter pertaining to any person is essentially an internal matter of the Government and carries with it no legal sanctity; Second, once the decision on such issue is taken and approved by the competent authority empowered by the Government in that behalf, required to be communicated to the person concerned by the State Government. The court has further held that so long as the decision based on such internal deliberation is not approved and communicated by the competent authority as per the procedure prescribed in that behalf to the person concerned, such noting does not create any right in favour of the person concerned nor does it partake the nature of any legal order so as to enable the person concerned to claim any benefit of any such internal deliberation. Also, such noting(s) or/and deliberation(s) are always capable of being changed or/and amended or/and withdrawn by the competent authority, the bench added.

**Shamanna & Anr. vs. The Divisional Manager, Oriental Insurance Company Ltd.:2018 SCC OnLine SC 849 (SC): Doctrine of “pay and recover” in motor accident claim cases still holds the field – Held** – The Supreme Court has held that so far as the recovery of the amount from the owner of the vehicle, the insurance company can recover the compensation paid to the claimants and reiterated its earlier view in *Oriental Insurance Co. Ltd. v. Nanjappan & Ors.(2004) 13 SCC 224* wherein it was held that for the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.

## LATEST CASES : CRIMINAL

“Ordinarily, rape is violation with violence, of the private person of a woman – an outrage by all canons.”

V.R. Krishna Iyer, J. in *Phul Singh vs. State of Haryana*, (1979) 4 SCC 413

**Raju Manjhi vs. State of Bihar : 2018 (9) SCALE 360 : 2018 SCC OnLine SC 778 : Test Identification Parade is not a substantive piece of evidence & evidentiary value of confession made before police – Held** – The Appellant has assailed his conviction affirmed by the Lower Court on the ground that his confessional statement was not made before a Magistrate, hence was not legally valid and that he was not identified by any witness in the Test Identification Parade (TIP) and also in the Court. The Supreme Court dismissed the appeal and upheld the appellant’s conviction by holding that confession made by any person while he was in the custody of police shall not be proved against him. However, statement leading to the recovery of incriminating material or discovery of any fact concerning the alleged offence, could be proved against him. Further, the Apex Court opined that the appellant’s contention that no prosecution witness identified the accused-appellant did not mean that the prosecution case against the accused was on false footing. Also, the identification tests did not constitute substantive evidence and the purpose of identification test was only to help the investigating agency as to whether the investigation into the offence was proceeding in a right direction or not. Thus, non-identification of the appellant by any prosecution witness would not vitiate the prosecution case. It was further opined by the Supreme Court that the identification parade belonged to the stage of investigation, and that there was no provision in the Code of Criminal Procedure which obliged the investigating agency to hold or confer a right upon the accused to claim a TIP. In appropriate cases however, the Court could accept the evidence of identification even without insisting on corroboration.

**Surinder Kumar Khanna vs. Directorate of Revenue Intelligence : 2018 SCC OnLine SC 757 : The confessional statement of a co-accused not a substantive piece of evidence against another co-accused – Held** – The Apex court allowed a criminal appeal filed against the judgment passed by High Court

whereby it affirmed the appellant’s conviction for offences punishable under Section 21(c) read with Section 29 of Narcotic Drugs and Psychotropic Substances Act, 1985. The appellant was convicted for the above said offences in a criminal case registered on recovery of 3.99 kg of contraband substance-heroin from a white coloured Indica car on interception by Revenue Intelligence Officer. The trial court convicted the appellant which was confirmed by the High Court. The appellant was specifically named by the co-accused Ram Kumar. Apart from such statement, nothing was brought on record to indicate the involvement of the appellant. Counsel for the appellant submitted that he was neither arrested at the site nor was the contraband material in any way associated with him. On such contention, the decision of the High Court was impugned in the instant appeal. The Supreme Court proceeded on the footing that the statements of the co-accused were recorded under Section 67 of the Act, and on the premise that they amount to confession. It was observed that even on such a premise, certain additional features must be established before such a confessional statement could be relied upon against a co-accused. There is no specific provision in the Act making such a confession admissible against a co-accused. The Court reiterated its earlier view in *Hari Charan Kurmi vs. State of Bihar*, (1964) 6 SCR 623 and held that a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be utilized in order to lend assurance to the Court. In the absence of any substantive evidence, it would be inappropriate to base the conviction of the appellant purely on the statements of a co-accused. In the present case, the conviction having been based solely on the confession of the co-accused, the Court was of the view that the appellant was entitled to be acquitted and the conviction was set aside.

**Pooja Devi vs. State of Punjab & Anr. : CWP No.16579 of 2015: DoD 17.04.2018 : Cr.P.C 1973: Section 337 – POCSO Section 6 – Compensation to victims of crime of rape – Held** – Scheme of Punjab government notified on 15.10.2013 for payment of compensation to rape victims . The Punjab and Haryana High Court directed district level services authority to reconsider the claim of the petition for grant of compensation. The accused was convicted under Sections 363/366-A/376 of the Indian Penal Code, 1860 and Section 6 of the POCSO Act, by the Additional Sessions Judge, and was sentenced for maximum period of 10 years besides the imposition of fine of Rs.5,000/-. The appeal preferred by the accused before the high court against the order of conviction and sentence had been admitted and the recovery of fine had been stayed. The application for grant of compensation was not decided one way or the other, therefore, the petitioner filed and District Legal Services Authority, ordered that for the grant of compensation to the rape victim, the recommendation by the Court was sine qua non and since there was no recommendation by the Court, the amount of compensation could not be awarded. The high court observed that the petitioner could not be deprived of the amount of compensation in terms of Section 357-A of the Cr.P.C. and the Scheme. The order passed by the DLSA, Hoshiarpur was modified and a direction was issued to the DLSA, Hoshiarpur to reconsider the case of the petitioner for the grant of compensation under the 'victim compensation scheme'.

**Amar Nath Jha vs. Nand Kishore Singh: 2018 SCC OnLine SC 786: Non-reporting of essential facts, in the FIR, known to the informant, fatal to the case of prosecution. – Held** – The Apex court upheld the decision of the High Court answering a death reference in negative and acquitting the Respondent 1. Respondent 1, along with co-accused, was convicted by the trial court u/s 396 and 412 IPC. The trial court awarded a death sentence to Respondent 1. The High Court not only answered the death reference in negative, but also acquitted Respondent 1. The Supreme Court observed that there was non-reporting of essential facts which were known to the informant in the FIR. Even the name of the material witness was conspicuously missing. Such non-mentioning of name created suspicion on the hypothesis portrayed by the

prosecution. It was further observed, although the FIR is not an encyclopedia of the crime, absence of certain essential facts, which were conspicuously missing in the FIR, pointed towards suspicion that the crime itself may be staged. On such and other reasons, the Court was of the view that the judgment of the High Court did not warrant any interference. Accordingly, the appeal was dismissed.

**Lalit Yadav vs. State of Chhattisgarh : 2018 SCC OnLine SC 680: Disclosure of Rape victim's identity is inconsistent in terms of Section 228-A IPC – Held** – The Supreme court while addressing the petition of a convict under Sections 376 and 342 IPC and affirming the sentence granted to him by the High Court, took notice of a very essential point of concern, that the name of the 'rape' victim has been stated in both the judgments of the Trial Court as well as that of the High Court. The Supreme Court found no merits in intervening with the High Court's conviction and sentence. The point to be addressed was that of victim's name being mentioned in the judgments of the Trial Court and High Court, which was inconsistent with Section 228-A of IPC. The Supreme Court while stating that the courts should make every attempt in not disclosing the identity of the victim, reiterated view taken in **State of Punjab vs. Ramdev Singh, (2004) 1 SCC 421** and understand the essence of Section 228-A IPC.

**Om Prakash Singh vs. State of Bihar: 2018 SCC OnLine SC 684: Second complaint based on discovery of new facts in the same matter is maintainable – Held** – The Apex Court allowed an appeal filed against the judgment of High Court wherein it set aside the order of CJM taking cognizance of various offences under IPC. The Supreme Court held that the High Court was at fault in quashing the order of the Magistrate. High Court was primarily influenced by the fact that the earlier order of taking cognizance was quashed in the same matter. The Court referred to its previous decision in **Udai Shankar Awasthy vs. State of U.P., (2013) 2 SCC 435**, to observe that law does not prohibit filing the second complaint in the same matter if it is based on the discovery of new facts. In the instant case, new facts of replacing the original parts with duplicate had emerged, and thus the second complaint was maintainable. Also, the Court found that there was a prima facie case against the respondents.

## LATEST CASES: FAMILY LAW

“It is one thing to say that every wear and tear of married life need not lead to suicide and it is another thing to put it so crudely and suggest that one or two assaults on a woman is an accepted social norm. Judges have to be sensitive to women’s problem. Assault on a woman offends her dignity. What effect it will have on a woman depends on the facts and circumstances of each case.”

**Joseph Shine vs. Union of India : 2018 SCC OnLine SC 783 – Adultery : Section 497 IPC : Dent on the individual identity? – Held** – The 5-Judge Constitution Bench has commenced with the proceedings on reconsideration of the judgments on the Constitutional validity of Section 497 IPC that brings adultery into the box of criminalization. The 3-Judges Bench had referred the said matter to the Constitution Bench in **Joseph Shine vs. Union of India, (2018) 2 SCC 189 on 05-01-2018**. In the mentioned case, the bench was of the opinion that Section 497 IPC creates a dent on the individual identity of the woman as: *“the fulcrum of the offence is destroyed once the consent or the connivance of the husband is established. Viewed from the said scenario, the provision really creates a dent on the individual independent identity of a woman when the emphasis is laid on the connivance or the consent of the husband. This tantamounts to subordination of a woman where the Constitution confers equal status. A time has come when the society must realise that a woman is equal to a man in every field.”*

**Manju Kumari Singh vs. Avinash Kumar Singh: 2018 SCC OnLine SC 739 – SC gives quietus to litigation in matrimonial dispute to ensure that parties may live peacefully – Held** – The apex court had given judgment in a civil appeal arising out of matrimonial dispute whereby the appellant challenged the decree of divorce passed by family court and affirmed by High Court of Jharkhand. The appellant-wife was married to the respondent-husband, and they had a daughter born out of the wedlock who was of marriageable age. The parties married in 1997, but their relations were not cordial from soon after the marriage. This led to the filing of a divorce petition by the husband against the wife on grounds of cruelty and desertion. The Family Judge dissolved the

Ranjana P. Desai, J. in **Vajresh Venkatray Anvekar vs. State of Karnataka, (2013) 3 SCC 462**

marriage and the decree was confirmed by the High Court. Aggrieved thus, present appeal was filed by the wife. The Supreme Court heard the parties and perused the record. It was noted that the parties were living separately for more than a decade. All attempts to conciliation through mediation had failed. There was absolutely no chance of them living together to continue their marital life. While referring to **Naveen Kohli vs. Neelu Kohli, (2006) 4 SCC 558** and **Sanghamitra Ghosh vs. Kajal Kumar Ghosh, (2007) 2 SCC 220**, the Court held that in order to ensure that parties may live peacefully in future and their daughter would be settled properly, a quietus must be given to all litigation between the parties. Consistent with the broad consensus arrived at between the parties, the Court directed the husband to pay Rs. 10 lakhs towards permanent alimony and maintenance to the appellant and the daughter.

**Anu Bhandari vs. Pradip Bhandari : (2018) 6 SCC 389 – Jurisdiction of Family Court is to involve itself in process of conciliation / mediation between parties for assisting them not only to settle disputes, but also secure speedy settlement of disputes – Held** – Under Section 9 of the Family Courts Act, 1984, the Court has a duty to make an endeavour to assist and persuade the parties in arriving at a settlement. Unlike many other legislations, the legislature has cast a duty on the Court in that regard. The jurisdiction is not just to decide a dispute, on the contrary, the court also has to involve itself in the process of conciliation/mediation between the parties for assisting them not only to settle the disputes but also to secure speedy settlement of disputes. Such timely intervention of the court will not only resolve the disputes and settle the parties peacefully but also prevent sporadic litigations between the parties.

**Siddaling vs. State : 2018 SCC OnLine SC 958 – SC upholds conviction of man whose**

**extra-marital affair abetted wife's suicide – Held**– The Supreme Court upheld the conviction of a man whose illicit relationship with another woman allegedly 'abetted' his wife's suicide. That for conviction of a husband under Section 306 IPC, the prosecution has to prove that he had provoked, incited or induced the wife to commit suicide and mere proof of illicit/extramarital relationship of husband would not suffice. In this judgment delivered by Justice Banumathi, the whole focus is on the proof of illicit relationship. The bench said: *"Keeping in view the fact that within four months of her marriage, the deceased-Kavitha has taken the extreme step of putting an end of her life and also within three months of convening the panchayat, the deceased Kavitha has committed suicide, showing any leniency would be a misplaced one."*

**K. Subba Rao vs. State of Telengana Rep. by its Secretary, Department of Home & Ors: 2018 SCC OnLine SC 1080 : Husband's kin shouldn't be roped in on the basis of omnibus allegations in Matrimonial Dispute Cases – Held** – While quashing case against distant relatives of a 'husband' accused of kidnapping the child, the Supreme Court has cautioned the courts while proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The 'wife', had filed complaint alleging harassment by her husband and his family members including the maternal uncles of her husband. The bench then quashed the criminal proceedings as against the uncles, observing that no prima facie case has been made out against them for proceeding against them under Sections 498 A, 120 B, 420 and 365 IPC.

**Prakash Babulal Dangi vs. The State of Maharashtra & Anr.: CRLWP No. 3791 of 2016 in CRA No. 296/2017 : DoD 10.10.2017– Husband held to be paid maintenance under Cr.P.C as well as D.V. Act – Held** – In the case Apex Court has issued notice on the question that "Should Husband Follow Both Maintenance Orders under Cr.P.C and Domestic Violence Act." In case, a wife obtains an order of maintenance passed in the proceedings filed under Section 125 of Cr.P.C, and another order passed in the proceedings

filed under the Domestic Violence Act. The Supreme Court has issued notice in special leave petitions filed by a husband against Bombay High Court order which ordered that he should follow both orders. The summit court held that this order under Section 125 of Cr.P.C stands independently and in addition to the maintenance awarded under the Domestic Violence Act. The court had further observed: "There remains absolutely no scope as to the confusion between the parties as to which order is to be obeyed. It follows that, as both the orders are passed by two different Forums in two different proceedings, both the orders are binding on the Petitioner-husband and Respondent-wife and they have to comply with both the orders, unless they are varied or set aside."

**State of Maharashtra vs. Vijay Dhondiram Shinde: 2018 SCC OnLine Bom 2047 – Asking wife to cook properly is not ill-treatment as envisaged in Penal Code – Held** – The Bombay High Court has dismissed an appeal concerning the aspect of cruelty being taken on a mere submission that the deceased was ill-treated as the deceased failed to cook properly. The present case deals with a very interesting factual matrix and submissions being made by the prosecution. The accused in the present case was charged under Sections 498A and 306 read with Section 34 of Indian Penal Code, for which the learned judge had acquitted all the accused persons but further the State of Maharashtra had preferred an appeal against the same. The submissions of the prosecution had two primary folds, which were: Accused being in an illicit relationship with his sister-in-law and deceased facing ill treatment due to failure to cook properly; and based on these grounds Nanda, i.e. the deceased had consumed poison. Therefore, the High Court while concluding its judgment stated that the prosecution failed to prove the illicit relationship of the accused by placing no evidence on record. Also for the other allegation of 'not cooking-properly', the Court stated that "Telling to cook properly or to do household work properly, by itself, would not mean that a person was ill-treated."

## NOTIFICATION

**PENCIL Online Portal for Effective Enforcement of 'Child Labour Act' and 'NCLP Scheme'**: As per Ministry of Labour & Employment, Government is following a multi-pronged strategy for elimination of child labour. It comprises of statutory and legislative measures, rehabilitation and universal elementary education along with convergence with other schemes for socio economic development. Government has enacted the Child Labour (Prohibition & Regulation) Amendment Act, 2016 which came into force w.e.f. 01-09-2016. The Amendment Act inter alia provides for complete prohibition of work or employment of children below 14 years in any occupation and process and adolescents in the age group of 14 to 18 years in hazardous occupations and processes. The amendment also provides stricter punishment for employers for violation of the Act and made the offence as cognizable.

After strengthening the legislative framework through amendment in Child Labour Act, Government has framed the Child Labour (Prohibition & Regulation) Amendment Rules, 2017 which inter alia specifies the duties and responsibilities of State Governments and District Authorities to ensure effective enforcement of the provisions of the Act. Government has also devised a Standard Operating Procedure (SOP) as a ready reckoner for trainers, practitioners and enforcing and monitoring agencies. Government is also implementing the National Child Labour Project (NCLP) Scheme for rehabilitation of child labour. Under the Scheme children in the age group of 9-14 years, rescued/withdrawn from work are enrolled in the NCLP Special Training Centres, where they are provided with bridge education, vocational training, mid day meal, stipend, health care, etc. before being mainstreamed into formal education system. Further to ensure effective enforcement of the provisions of the Child Labour Act and smooth implementation of the NCLP Scheme a separate online portal PENCIL (Platform for Effective Enforcement for No Child Labour) has been developed.

In addition to above, Ministry of Women and Child Development has enacted Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act). As per Section 2 (14) (ii) and (ix) of JJ Act, a child who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street and who is found vulnerable and is likely to be inducted into drug abuse or trafficking is included as a "child in need of care and protection", among others. The children in need of care and protection (CNCP) for rehabilitation has been placed in institutional care i.e. children homes or non-institutional care, such as sponsorship, foster care by Child Welfare Committee. As per JJ Act, 2015, State/UTs are required to set-up Child Care Institutions (CCIs) and are also required to register and monitor them under Section 41 and 54 of the Act respectively. The primary responsibility of execution of the Act, lies with the State/UTs. However, Central Government is managing "Child Protection Services" (CPS) (erstwhile Integrated Child Protection Scheme) under umbrella Integrated Child Development Services, and providing financial assistance, as Grant-in-Aid, to the States/UTs on sharing pattern for, inter-alia, undertaking a situational analysis of children in difficult circumstances, for setting up and maintenance of various types of CCIs. Further National Commission for Protection of Child Rights (NCPCR), a statutory organization under this ministry, has developed a Standard Operating Procedure (SOP) for care and protection of Children in Street Situations to streamline the processes and interventions regarding children in street situations. Under the scheme "CPS", institutional care is provided through CCIs, as a rehabilitative measure. In these CCIs, children are provided age appropriate education either within the institution or outside in a formal education system through convergence with other schemes and programs of the Government or civil society. Under the non-institutional care component, support is extended for adoption, foster care and sponsorship.



## EVENTS OF THE MONTH

1. **Refresher-cum-Orientation Course for Civil Judges-cum-Judicial Magistrates from the States of Punjab and Haryana** was organized on **August 04, 2018** to sensitize them with regard to important Civil Matters. The Judicial Officers were sensitized on the topics : Relevance of Revenue Records for Disposal of Civil Matters-I&II, Law of Admissions and Confession, Examination of Witnesses – Principles and Procedures. 55 participants attended the programme.

2. **Academic Programme for Fifth Delegation of 35 High Court and Senior District Judges from Sri Lanka** was organized from **August 11–13, 2018** at Chandigarh Judicial Academy. In the Academic Programme 15 sessions were taken: Introduction of the Programme and Welcome, Application of Constitutional Provisions to Welfare Legislations, Access to Justice & Rights of Victims, Environment & Recent Developments, Sentencing Principles, Cyber Crimes : A Challenge, Justice Administration : Case & Court Management, Strengthening Justice Delivery System by Building Judicial Human Fabric, Alternative Dispute Resolution Initiatives taken in India, e-Courts Project, Role of Courts in Upholding the Rule of Law, Fair Trial Rights, Best Practices for Speedier Justice, Inter-Parental Child Removal, Domestic Violence and Voice of the Child. The different sessions were taken by HMJ Madan B. Lokur, Justice Swatanter

Kumar, Justice S.S. Saron, HMJ Rajesh Bindal, HMJ A.B. Chaudhari, HMJ Ajay Tewari, HMJ G.S. Sandhwalia, Dr. Balram K. Gupta, Director (Academics), CJA, Anil Malhotra, Advocate & Author and Neeraj Aarora, Lawyer & International Arbitrator. Dr. Balram K. Gupta introduced the Programme. In his inaugural address, HMJ Priyasath Dep, PC, Chief Justice of Sri Lanka **spoke on Organized Crime**. The Valedictory Session was chaired by HMJ Priyasath Dep, PC, Chief Justice of Sri Lanka. HMJ A.B. Chaudhari awarded the certificates to the participants.

3. **Academic Programme for Sixth Delegation of 35 District Judges from Sri Lanka** was organized from **August 16-19, 2018** at Chandigarh Judicial Academy. In this Academic Programme, 20 sessions were taken: The Art of Writing Judgments, Inter-Parental Child Removal, Domestic Violence and Voice of the Child, Civil Laws and Procedure : Recent Developments, Civil Disputes : Interlocutory Applications, Strengthening Justice Delivery System by Building Judicial Human Fabric, Fair Trial Rights, Best Practices for Speedier Justice, Alternative Disputes Resolution and Plea Bargaining, Sentencing Principles, Cyber Crimes : A Challenge, Appreciation of Electronic Evidence, e-Courts Project, The Process of Trial in Civil Cases : Best Practices, Jurisprudence of Circumstantial

Evidence, Protection of Child Rights Procedure while dealing with Child in Conflict with Law, Application of Constitutional Provisions to the Welfare Legislation. The various sessions were taken by Justice S.S. Saron, HMJ Rajesh Bindal, HMJ A.B. Chaudhari, Justice Rajive Bhalla, Justice Dr. B.B. Parsoon, Dr. Balram K. Gupta, Director (Academics), CJA, Anil Malhotra, Advocate and Author, Neeraj Aarora, Lawyer & International Arbitrator. The welcome address was delivered by Dr. Balram K. Gupta. In the inaugural address, HMJ Priyasath Dep, PC, Chief Justice of Sri Lanka **spoke on Restorative Justice**. In the Valedictory Session, certificates were awarded to the participating judges by HMJ A.B. Chaudhari. In fact, Hon'ble the Chief Justice of Sri Lanka was the Guest of Honour on the occasion of 72<sup>nd</sup> Independence Day celebrations at the High Court of Punjab and Haryana on August 15, 2018. 70 Sri Lankan Judges also participated in the Independence Day celebrations.

4. The Chandigarh Judicial Academy held a **Condolence Meet on the sad demise of Shri Atal Bihari Vajpayee, former Prime Minister of India in the Convention Hall on August 17, 2018 at 9:30 a.m.** In this meet, Dr. Balram K. Gupta, Director (Academics) paid rich tributes to the departed soul. Even in death, he was larger than life. His statesmanship. His oratory. His poetry. His humour. All sui generis. He stood the tallest. Above all, a great human being. He will never be forgotten. Hon'ble Mr. Justice Priyasath Dep, Chief Justice, Supreme Court of Sri Lanka also paid his homage to the departed soul and conveyed condolences on behalf of Sri Lanka to the people of India. This Condolence Meet was attended by Mr. Inderjeet Mehta, Director (Administration), the Registrar, the Faculty Members, the Researchers and the Staff Members of Chandigarh Judicial Academy. Moreover, 35 Sri Lankan Judges who were attending the Academic Training Programme at the Academy also were part of condolence meet. Two minutes silence was observed.

## **FORTHCOMING EVENTS**

1. **Refresher-cum-Orientation Course for Civil Judges-cum-Judicial Magistrates from the States of Punjab and Haryana** is scheduled to be held on September 01, 2018 to sensitize them with regard to important Civil and Criminal Matters.
2. **Video Conferencing for Additional District & Sessions Judges from the State of Punjab** is scheduled to be held on September 7, 2018.

3. **Training for Fourth Batch of Public Prosecutors from Punjab** is scheduled to be held from September 10 to 20, 2018.
4. **Refresher-cum-Orientation Course for Additional District & Sessions Judges from the States of Punjab and Haryana** is scheduled to be held on September 15, 2018.
5. **Refresher-cum-Orientation Course for Civil Judges from the States of Punjab and Haryana** is scheduled to be held on September 29, 2018.