



SJA NEWSLETTER

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Chief Patron

Hon'ble Mr. Justice
M. M. Kumar
Chief Justice

Judge-In-Charge

Hon'ble Mr. Justice
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MESSAGE

Prof. Dicey in his celebrated work 'History of Constitutional Law of England' has opined that Laws do not only reflect the public opinion but laws further help in creating public opinion which results in further formulations. Law is not static and it continue to evolve. It is trite to observe that law and judgments of the courts impact the life of citizens on everyday basis. I believe it is the duty of all concerned to keep every stakeholder in the system well informed about the developments of law whether in the form of Legislation or by verdict of the Hon'ble Supreme Court and High Courts.

SJA Newsletter has undertaken the task of spreading judicial knowledge. It highlights the important decisions of the Courts which is evident from a casual glance of its contents and information as to what the law is. It is a significant catalyst which sets in motion a thinking process as to what the law ought to be.

I wish to greet the State Judicial Academy for its continuous efforts of bringing legal and judicial education at the doorsteps of all stakeholders.

SRINAGAR
July 04, 2012

(M. M. Kumar)
Chief Justice

TOPIC OF THE MONTH

Judiciary and Environmental Protection

“Earth provides enough to satisfy every man’s need but not every man’s greed”

- Mahatma Gandhi

The emergence of the creed that scientific knowledge means technological power over nature can scarcely be dated before the 18th century. These Scientific and Technological advancements though made living on the earth easier, they also gave mankind a free hand in exploiting natural resources without having regard to ecological balance. Industrialization and urbanization gave rise to uncontrolled deforestation, insanitation, waste disposal, acid rain and even made the natural resources of potable water, clean air scarce. The Chernobyl and the Bhopal gas disaster proved to be the major examples of manmade disasters.

Indian way of life recognizes air, fire, atmosphere, earth and water as ‘Panchabhuthas’ essential for making life meaningful. Similarly, rivers such as Yamuna are worshipped here. But the environment degradation brought it to such situation that when it leaves Delhi, the oxygen content in the little water is zero per cent. The same is the fate of other rivers.

In any country, the forest cover should be at 33 per cent of the land mass. India had only 15 per cent forest cover. The issue of environmental protection is the stark reminder of tragedy of commons.

The urgency of the situation became apparent in the decades that lie behind us. The 1970’s, 1980’s and 1990’s brought immense volumes of new knowledge about pollution and over-use of natural resources.

The 42nd Amendment to the Indian Constitution in 1976 introduced principles of environmental protection in an explicit manner through Articles 48-A and 51-A(g). Article 48-A, part of the Directive Principles of State Policy, obligated the State to protect and improve the environment. Article 51-A(g) obligated citizens to undertake the same responsibilities. As far as legislative powers was concerned, the amendment also moved the subjects of “forests” and “protection of wild animals and birds” from the State list to the Concurrent List.

The study of various environmental cases provides an interesting reading as to how the Indian judiciary creatively interpreted various laws to suit the environmental principles and needs of the country. The environmental law jurisprudence owes its

development to flexibility with which the extensive interpretation of Part III, IV, IV-A the conjoint reading of various provisions in light of various international law and natural law principles where by both the Fundamental rights and Directive Principles were placed on the equal footing were easily adopted by the Judiciary for the purposes of environmental law. In the process, the Constitutional Courts of India have stood tallest not only before the other two organs of the ‘State’ - the Legislature and Executive -but also, before its Judicial counterparts in the developed and developing countries.

The Judiciary not only gave rise to the extensive interpretation but also to the “*new right to clean and green environment*” developed to suit the changing conditions of the society. This was achieved by placing the Right to clean environment within the scope of the Fundamental Rights.

The relaxation of *locus standi* under Art. 32, also known as public interest litigation or social action litigation proved to be effective solution in the environmental disputes. This is because the environmental cases are concerned with the rights of the community rather than the individual. And above all, in the country where large numbers of citizens are unaware of their rights such expansion proved to be a boon to the environmentalists.

[Excerpts taken from the Article by Justice S.B. Sinha, Former Judge, Supreme Court of India on ‘Judiciary and Environmental Protection’]

ACADEMY NEWS

1. Hon’ble Shri Justice Mahesh Mittal Kumar takes over as the Chief Justice of the High Court of Jammu & Kashmir

Hon’ble Shri Justice Mahesh Mittal Kumar took oath as Chief Justice of the High Court of Jammu and Kashmir on 8th of June, 2012 at a simple but impressive ceremony at SKICC, Srinagar.

His Excellency the Governor, Shri N. N. Vohra administered the oath of office to Justice Kumar.

Hon’ble the Chief Minister, Shri Omar Abdullah, Hon’ble Speaker, Legislative Assembly Shri Mohammad Akbar Lone, Hon’ble Ministers, Political Advisor to the Chief Minister, Hon’ble Judges of the High Court including Hon’ble Shri Justice Virender Singh, Hon’ble Shri Justice Mansoor Ahmad Mir, Hon’ble Shri Justice J.P. Singh, Hon’ble Shri Justice Mohammad Yaqoob Mir, Hon’ble Shri Justice Muzaffar Hussain Attar and Hon’ble Shri Justice Hasnain Masoodi, number of Hon’ble Judges of Punjab and Haryana High Court and Advocates,

senior Civil, Judicial and Police officers and family members of Justice Kumar attended the oath ceremony.

The Warrant and Notification of Appointment of Justice Mahesh Mittal Kumar, as Chief Justice of the Jammu and Kashmir High Court, was read out by the Registrar General of the High Court.



His Excellency the Governor administering Oath to Hon'ble Shri Justice Mahesh Mittal Kumar as Chief Justice

His Lordship Born on January 5, 1953, did his L.L.B in 1977. His Lordship was enrolled as an Advocate with the Bar Council of Punjab and Haryana, Chandigarh in the same year. Practiced for a brief period at the District Courts, Sangrur and then left for England for his Master's degree. His Lordship was awarded degree of LL.M by the University of Birmingham in 1982. His Lordship also worked as part-time lecturer at the Faculty of Law, Punjab University, Chandigarh, from 1984 to 1990. Lordship authored a book titled 'Control of Exclusion Clauses in England and India' published in London in 1985. In 1991-92, His Lordship was elected to the office of Vice President, Punjab and Haryana Bar Association, Chandigarh, also worked as an Additional Advocate General Punjab from October, 1995 to December, 1996. His Lordship lectured at Haryana Administrative Academy. His Lordship was President of International Law Association, Punjab, Haryana & Chandigarh Chapter. Also President of Punjab, Haryana and Chandigarh Chapter of Indian Law Institute. Lordship has been closely associated with Chandigarh Judicial Academy and has been delivering lectures to Additional District Judges and Civil Judges. Lordship also attended various Seminars, National Conference of the I.L.A. His Lordship was elevated to the Bench on July 2, 2001. Remained Acting Chief Justice of Punjab & Haryana High Court from Sept. 2011 to Nov. 2011 and also from April 2012 till elevation as Chief Justice of High Court of Jammu and Kashmir.

2. His Lordship visited the High Court of Jammu and Kashmir at Srinagar on Saturday, June 9,

2012 which was the first available opportunity. On the occasion, a Guard-of-Honour was given to His Lordship and warmly welcomed by the Hon'ble Judges, Officers of the Registry and staff of the High Court.



Hon'ble the Chief Justice inspecting Guards after the Guard of Honour

3. Special Training Programme for Sub-Judges and Munsiffs of Srinagar, Budgam and Ganderbal Districts

State Judicial Academy in recent years has been working enormously for improvement of justice delivery system in the State of Jammu & Kashmir and has achieved encouraging results. Judicial Academy is striving to achieve dispensation of timely and quality justice and access of justice to all the sections of society in the State.

In this regard, State Judicial Academy has organized two days special training programme on 2nd of June, 2012 after the court hours and on 3rd of June, 2012 (Sunday) for Sub-Judges and Munsiffs of three districts viz., Srinagar, Budgam and Ganderbal in the High Court complex at Srinagar.



Judicial Officers while interacting with Resource persons during training programme

Training programme was conducted by Shri Abdul Wahid, Director, J&K State Judicial Academy and Syed Javed Ahmed, Faculty Member (District & Sessions Judge –Retd.) on the topics, “Constitutional Rights – Speedy Trials, Negotiable Instrument Act, Code of Criminal Procedure and Juvenile Justice

Act” as Resource person. Training programme was conducted in such a way as to give each and every participant opportunity to share his experience and knowledge besides projecting problems and difficulties faced by them.

During the interactive session, it was impressed by Shri Abdul Wahid, Director, J&K State Judicial Academy that speedy trial of the case would ensure justice to accused as well as victim. Right to speedy trial is a fundamental right implicit in article 21 of the Constitution of India. Some ideas and suggestions were thrown for ensuring the fulfillment of constitutional goal of speedy trial. Suggestions made were that there should be prioritization of cases. Old cases should be taken-up on priority and time frame be fixed for their disposal. The trial of such cases should be conducted on day to day basis or alternatively shorter dates be fixed not beyond a week. The prosecution wing should be geared up including the Investigation Officers be directed to make the attendance of witnesses possible. It should be ensured that no witness in any circumstances be sent back without recording his statement. The Judicial Officers were asked to follow the mandate of law provided under section 344 CrPC in letter and spirit so that no case of under trial is adjourned beyond 15 days.

Recent amendments made in CPC which *inter alia* including taking of evidence on affidavit by courts in civil matters were concisely explained by Syed Javed Ahmed, Faculty Member of the Academy to the participants. They were requested to strictly follow these amendments which would go long way in reducing the pendency in the courts.

There was lively interactive session held on Negotiable Instrument Act and Juvenile Justice Act. The participants were asked to strictly follow the mandate of law and guidelines laid down by various courts in respect of Juveniles who are in conflict with law. It was pointed out that duty is cast upon the Magistrates to make preliminary enquiry about the determination of age of suspect juvenile so that he is kept away from hardened criminal and other offenders.

4. Training programme for Private Secretaries, Stenographers and Steno-Typists of High Court

The State Judicial Academy, in its intense drive to train and develop the skills of Staff as well as to strengthen the Judicial Institution in holistic way, imparted training to Private Secretaries, Senior Stenographers, Junior Stenographers and Steno-Typists of Srinagar and Main wing of the High Court at Srinagar on Sunday, 3rd of June, 2012. Shri Abdul

Hamid, Faculty Member was the resource person who imparted training on Important matters relating to Ethics and Behaviour, Vocabulary and Punctuation, Improvement of Speed, Maintenance of Secrecy and Confidentiality.

5. Workshop for District and Sessions Judges of Valley

Jammu & Kashmir State Judicial Academy in its endeavour to strengthen the Judicial Institution and impart necessary skills and training organized a workshop for the Judicial Officers of Kashmir Valley in the High Court complex, Srinagar in which Principal District and Sessions Judges and Additional District and Sessions Judges of all the districts of Valley participated.



Sessions Judges in the workshop

Topics for the discussion were “Murder Trials and Bails/Anticipatory Bails”. During the workshop, Shri Abdul Wahid, Director, J&K State Judicial Academy emphasized that the purpose of this workshop is to update knowledge, sharpen the skills and to learn from experiences of each others. There is need to change our mind-set and we can take innovative measures and initiatives for the speedy disposal of criminal cases.

During the brain-storm sessions, each of the Sessions Judge shared his experience on various aspects of murder trials and suggested measures adopted by them to ensure expeditious disposal of cases. These measures include gearing up of prosecution agency to ensure the production of evidence and also production of accused on each and every day of hearing.

Long and healthy discussions were also held during the workshop on the subject of ‘Bail/Anticipatory Bails’. The officers discussed the latest verdict of the Apex Court on the subject and shared their experiences with each other.

Earlier, Syed Javed Ahmed, Faculty Member (Retired District and Sessions Judge) highlighted the importance of knowledge exchange particularly in legal discipline to address ever increasing challenge

in this field. He said that by organizing such type of programmes and workshops on various subjects of importance provide necessary platform to the judicial officers to ponder upon crucial issues and exchange valuable experience and knowledge.

Academy was able to achieve the objective of organizing these workshops as the participants were enormously enriched and were greatly satisfied.

NEWS AND VIEWS

SC lays guidelines for preventive detention

A person's liberty is sacrosanct and cannot be taken away by the state without due process of law as it violates fundamental rights, the Supreme Court has ruled, laying down fresh guidelines on invoking provisions for preventive detention against a person already in jail.

While Article 21 grants right to life and liberty subject to reasonable restrictions, Article 22 protects a person against arrest and detention in certain cases.

A Bench of Justices B.S. Chauhan and Dipak Misra passed the ruling upholding Manipur native Huidrom Singh's appeal against the State Government's decision to invoke the provisions of preventive detention under the National Security Act (NSA) against his son lodged in judicial custody in a murder case.

The Bench said for invoking the provisions of preventive detention against a jailed person, the detaining authority has to satisfy the court if it was fully aware that the detenu was actually in custody.

The detaining authority also has to satisfy that it had reliable material on the basis of which it had reasons to believe that there was real possibility of the arrested person's getting bail and that after his release, he would indulge in activities, prejudicial to public order, the Apex Court said.

It added the authority has to justify its preventive order on these two counts.

"In case either of these facts does not exist the detention order would stand vitiated," said Justice Chauhan writing the judgement for the Bench.

(PTI/20-05-2012)

Be cautious while quashing FIRs: HC

Delhi High Court in a significant ruling has said that FIRs in certain criminal cases cannot be quashed immediately even if parties arrive at an out-of-court compromise.

The court said it needs to be looked into if the decision would affect the peace and tranquillity in a particular locality. Justice M.L. Mehta said discretion must be exercised while compounding (allowing out

of court settlement) offences which are a menace to residents of a particular area and embolden the "bad characters" there.

"Crimes are offences against the society. Its repercussions are inflicted upon every person who is a part of a civilized society. A settlement arrived between two parties in a criminal offence cannot become the touchstone for arriving at the decision of quashing the proceedings in such cases," Justice Mehta said.

FIR quashing a plea was filed by two "bad characters" in Najafgarh area after they arrived at a settlement with the victim. They were charged under Sections 323 (voluntarily causing hurt), 336 (act endangering human life) and 452 (house trespass) of the Indian Penal Code filed by a property dealer Kanhiya Lal on May 5, 2012.

Lal alleged the two along with another person, while they were drunk, came to his office and entered into an altercation with him. One of them fired at a TV set, damaging it, while the other hit his head with a beer bottle and assaulted him. Dismissing the plea to quash the FIR, the court considered various factors.

The offence, it said, was serious in nature. The victim had done nothing to provoke them. The attack was not in self-defence or in the heat of the moment. The petitioner was the "bad character" of the area and feared by the people of the locality because of criminal antecedents. There are admittedly as many as eight FIRs lodged against him, including murder.

(HT/08-06-2012)

Kids should not be prevented from meeting their parent: HC

The vacation Bench of the Bombay High Court observed that no child should be prevented from meeting either of his or her parents. The Court was hearing a petition where a mother had challenged the family court's order allowing her five-year-old son's father to meet him during the child's summer vacation.

The Bench, however, rapped the petitioner for trying to trick the court and refusing to send her son to her estranged husband during summer vacation.

Bench of Justice S.J. Kathawala and Justice P.D. Kode was hearing a petition filed by a woman from Pune challenging the Pune family court order giving custody of her son to her estranged husband for a month.

According to the petition, the couple had married in 2006 but filed for divorce in 2009. The family court had directed the wife to send the son to her husband.

The wife had, however, refused to send the child and approached the High Court alleging that her

husband was mentally unstable and she could not risk sending her boy to him. The petitioner's lawyer told the Court that the husband also had a history of physically abusing the wife.

The lawyer further claimed that the husband has not been paying maintenance to the wife for the child's well-being.

The Court retorted, "Why allege the father is mentally unstable when the real problem is that he is not paying maintenance?" No child can be deprived of meeting either of his parents, the Bench observed. Justice Kathawala, while directing the woman to allow the father to meet his son, warned the petitioner not to play "tricks with the court".

(HT/22-05-2012)

'Maintenance law being abused by greedy persons'

A benevolent law, enabling needy and deserted women, kids and parents to seek maintenance, is often being abused by "greedy" persons for settling personal scores, the Delhi High Court has said.

The Court made the observation while dwelling upon the provisions of Section 125 of Code of Criminal Procedure which enables women, kids and parents, deserted by their near and dear ones and have no means to sustain themselves, to seek maintenance.

"This Section is designed to help the needy and not the greedy. It is not meant for settling the personal scores, but it is experienced that it is often being misused and the present case is an instance," Justice M.L. Mehta said, adding that it was a "benevolent" law and should not be abused by deserted persons having sufficient means to live.

The Court made the remark in its verdict on a petition by a Delhi-based elderly woman seeking enhancement of maintenance amount from her "retired and ailing" husband.

The woman, in her plea, had also sought maintenance from her two sons, living in Australia and Mumbai respectively.

"This is a case of really one of the unfortunate family of scattered members. All the four members are living their independent lives," the court said. Upholding the lower court's order, Justice Mehta asked the husband to pay Rs. 4,500 per month to her as maintenance.

"In addition, she would be entitled to maintenance of 100 Australian Dollars from her son living in Australia and Rs. 1500 per month from her son living in Mumbai," it said. In addition, the woman, who also owns a house in Mumbai, was allowed to get Rs. 5,000 from her estranged husband who has let out a floor of their three-storied house here for a monthly

rent of Rs. 10,000.

Discussing the conduct of the woman, the court said, "here is a lady who owns a house at Mumbai, but is neither prepared to let it out on rent nor give it to her son who is living at the mercy of his sister and sometimes, in some rented house at Mumbai".

It said the woman, who knows that her husband is a retired and ailing person, lied about his income. Earlier, a magisterial court had held "she was capable of maintaining herself."

(PTI/20-05-2012)

LEGAL JOTTINGS

Legal briefs from High Court of J&K

[Case No. SWP 852 of 2008]

Khurshid Ahmad Shah v. State & Ors.

Dated of Decision : 02-05-2012

Judge(s) : Hon'ble Mr. Justice Mansoor Ahmad Mir

Subject Index : Service matter - petitioner appointed as constable in 1983 - came to be promoted as Head Constable Ministerial Executive Cadre - pursuant to Advt. Notice inviting applications from in service Graduate Sr. Grade Constable for their induction in Ministerial cadre - Enquiry conducted against the petitioner by Vigilance Commissioner about alleged production of fake B.A. Certificate - petitioner exonerated - certificate sent to Kashmir University for verification - Report of University that certificate is valid - Respondents without enquiry and without hearing passed impugned order whereby petitioner came to be demoted - Held : Impugned order issued in the year 2008 while enquiry in the matter concluded in the year 2001 - for 7 years Respondents not chose to question the Enquiry Report or report of University nor did they opt for 2nd enquiry - what influenced the respondents to pass impugned order of demotion is a mystery -impugned order held to be violative of principal of natural justice - further respondents estopped to initiate 2nd enquiry in view of ratio laid down in the Apex court judgment AIR 2012 SCW 1791 - impugned order quashed.

[Case No. B.A. 96 of 2011]

Khaja Shahid Farooq & Anr. v. State of J&K

Dated of Decision : 20-04-2012

Judge(s) : Hon'ble Mr. Justice Mohammad Yaqoob Mir

Subject Index : NDPS Act - Section 8 / 20, and Section 37 read with Section 120-B RPC - 1 Kg charas like substance recovered from one member of the organized group and half-half Kg from each of the other two members - the total weight would qualify

for a commercial quantity - Bail can not be claimed - rigour of Section 37 of NDPS Act - other two member cannot say that only 500 gms of charas was recovered from each of them, which is not a commercial quantity - Bail rejected.

[Cr. Rev. No. 64 of 2011]

Muzaffar Ahmad Thokur v. State of J&K

Dated of Decision : 05-04-2012

Judge(s) : Hon'ble Mr. Justice Mohammad Yaqoob Mir

Subject Index : Code of Criminal Procedure - S. 173 and 167(2) - Chargesheet filed without documents - Post Mortem Report, FSL Report and Medical Report - Whether can be held incomplete chargesheet - Held : No - Further held - filing of such documents subsequently will not render filing of chargesheet as incomplete - accused cannot claim the benefit of grant of bail u/s 167(2) on the ground that chargesheet was incomplete though it was filed within stipulated period of 60 days - Held : No indefensible right accrues to accused for grant of bail u/s 167(2) if chargesheet is not accompanied by some material documents, those documents can be produced at the later stage.

- Normally collection of report from the concerned agencies takes some time - filing of such documents subsequently will not render filing of charge sheet as incomplete.

[Case No. CIMA 1696 of 2010]

United India Insurance Co. Ltd. v. Asha Rani

Dated of Decision : 02-03-2012

Judge(s) : Hon'ble Mr. Justice Hasnain Massodi

Subject Index : Motor Vehicle Act - Section 166 - Whether the claim petition by a widow after her re-marriage is maintainable - Held : Yes - Remarriage of widow whose husband has died in a vehicular accident does not disentitle her to claim compensation under Section 166 - She is entitled to claim compensation alongwith other legal representatives, if any. - 'Smt. Seema Malik & Anr. v. Union of India', 2003 KLJ 6 : 2003(2)JKJ HC-113 relied upon.

Legal briefs from Supreme Court

[Case No: Cr. Appeal No. 878 of 2010]

Rohtash versus State of Haryana

Date of Decision: 22-05-2012.

Judge(s): Hon'ble Dr. Justice B.S. Chauhan and Hon'ble Mr. Justice Dipak Misra.

Subject Index: Indian Penal Code, 1860 — sections 304-B, 498-A — conviction and sentence under — the order of the High Court reversing the judgment and order of the Sessions Court by which

the appellant has been acquitted of the charges under — in challenge — the accused contended that deceased was suffering from fits, as a result of which she died — whether there was a dowry demand by the appellant and for that purpose the deceased Indro had been ill-treated to the extent that she had to take a drastic step of committing suicide — there had been major improvements/embellishments in the prosecution case and demand of Rs.10,000/- by the appellant does not find mention in the statements under Section 161 Cr.P.C. More so, even if such demand was there, it may not necessarily be a demand of dowry. Further, the chemical analysis report falsifies the theory of suicide by deceased taking any pills — impugned judgment of the High Court set aside — appellant acquitted on benefit of doubt — appeal allowed.

[Case No: Cr. Appeal No. 870 of 2007]

State of Rajasthan versus Darshan Singh

Date of Decision : 21-05-2012.

Judge(s): Hon'ble Dr. Justice B.S. Chauhan and Hon'ble Mr. Justice Dipak Misra.

Subject Index: Indian Penal Code, 1860 — section 302 — punishment of murder — acquittal of the offence under — appeal against — the admissibility and credibility of sole eye-witness Geeta (PW.16) (deaf & dumb) — in issue — the evidence of Geeta (PW.16) was recorded in sign language with the help of her father Jaswant Singh (PW.1). Admittedly, neither she nor her father while acting as her interpreter had been administered oath — sufficient material on record that Geeta (PW.16) was able to read and write but the statement was not recorded in writing — the Supreme Court held that the statement of PW-16 was recorded with the help of her father as an interpreter, who being an interested witness who had assisted during the trial, investigation and was examined without administering oath, made the evidence unreliable — acquittal order confirmed — appeal dismissed.

[Case No: Cr. Appeal Nos. 1887 & 1888 of 2008]

State of Rajasthan versus Vinod Kumar

Date of Decision: 18-05-2012.

Judge (s) : Hon'ble Dr. Justice B.S. Chauhan and Hon'ble Mr. Justice Dipak Misra.

Subject Index: Indian Penal Code, 1860 — section 376 r/w section 120-B — punishment of rape with criminal conspiracy — the order of the High Court maintaining the conviction of the accused persons but reducing the sentence from 7 years to 5 years and from 7 years to 11 months and 25 days — in challenge — whether there could be any justification for the High Court in reduction of sentences and that

too without recording any reason — to consider — the Supreme Court held that awarding punishment lesser than the minimum sentence of 7 years was permissible only for adequate and special reasons. However, no such reasons recorded by the court for doing so, and thus, failed to ensure compliance of such mandatory requirement. Such an order is violative of the mandatory requirement of law and defeated the legislative mandate — sentences awarded by the High Court set aside and awarded by the trial court restored — appeals allowed.

[Case No: SLP(C) No. 17689 of 2012]

ACC Limited versus Global Cements Ltd.

Date of Decision: 11-06-2012.

Judge(s): Hon'ble Mr. Justice K. S. Radhakrishnan and Hon'ble Mr. Justice Jagdish Singh Khehar.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11 — application filed under — for appointment of an arbitrator — allowed — hence, the petition — whether on the death of a named arbitrator, the arbitration agreement survives or not — to consider — sections 14 and 15 provide the grounds for termination of the mandate of the arbitrator on the ground of incapability of the arbitrator to act or if he withdraws from his office or when the parties agree to the termination of the mandate of the arbitrator — the Supreme Court viewed that arbitration clause 21 of the agreement does not prohibit or debar the parties in appointing a substitute arbitrator in place of the named arbitrators and, in the absence of any prohibition or debarment, parties can persuade the court for appointment of an arbitrator under clause 21 of the agreement — petition dismissed.

LATEST AMENDMENTS

Editor's Note : A new feature under head “Latest Amendments” has been introduced for the benefit and use of Judicial Officers and all other concerned whereby Academy will strive to provide latest information.

1. The Code of Criminal Procedure (Amendment) Act, 2012

The Code of Criminal Procedure (Amendment) Act, 2012 has been passed by Act No. X of 2012 dated 24th April, 2012 whereby Amendments have been made in Sections 244, 247, 252, 265-E, 417, 488, 489, 545 and Section 545-A inserted after Section 545 in the Code of Criminal Procedure Svt. 1989. (as published in Govt. Gazette dated 26th April, 2012).

Notable amendments are :-

a) In sub-section (1) of Section 488 CrPC where

the words “not exceeding two thousand rupees in the whole” has been deleted. Magistrates can now grant any amount of maintenance which is just and reasonable.

b) After sub-section (2) of Section 545, sub-section (3) has been added under which court can upon conviction of a person direct the accused to pay by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act of accused.

c) Section 545-A has been inserted - which provides for preparation of scheme by Government for providing funds for the purpose of compensation to the victim or his dependents who require rehabilitation - quantum of compensation to be awarded by District Legal Service Authority or State Legal Services Authority to the victims on the recommendation of trial court. Even in cases, which end in acquittal or discharge.

2. The Jammu and Kashmir Municipal Laws (Amendment) Act, 2012

The Jammu and Kashmir Municipal Laws (Amendment) Act, 2012 has been passed by Act No. XIII of 2012 dated 25th April, 2012 whereby amendment have been made in Section 2 and Section 52 A, 62-A, 62-B, 62-C, 62-D and 62-E are inserted in the Jammu and Kashmir Municipal Act, 2000. Similarly, Amendment have been made in Section 2 and Section 69 A, 83-A, 83-B, 83-C, 83-D and 83-E are inserted in the Jammu and Kashmir Municipal Corporation Act, 2000. (as published in Govt. Gazette dated 26th April, 2012)

3. The Jammu and Kashmir Public Safety (Amendment) Act, 2012

The Jammu and Kashmir Public Safety (Amendment) Act, 2012 has been passed by Act No. VII of 2012 dated : 17th April, 2012 whereby Amendments have been made in Sections 8, 13, 14, 16, 18 in the Jammu and Kashmir Public Safety Act, 1978. (as published in Govt. Gazette dated 18th April, 2012)

4. The Jammu and Kashmir Protection of Women against Sexual Harassment at Workplace Bill, 2011

To provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto, a bill has been introduced vide No. 25 of 2011. (as published in Govt. Gazette dated 14th May, 2012).