



COURT NEWS

Vol. XII Issue No. 3

July - September, 2017



EDITORIAL BOARD

Hon'ble Mr. Justice Sharad Arvind Bobde, Judge, Supreme Court of India
Hon'ble Mr. Justice Adarsh Kumar Goel, Judge, Supreme Court of India
Hon'ble Mr. Justice Amitava Roy, Judge, Supreme Court of India

COMPILED BY

Ravindra Maithani, Secretary General, Supreme Court of India
Bibhuti Bhushan Bose, Editor, Supreme Court Reports

A quarterly newsletter published by Supreme Court of India, New Delhi

Also available on website : www.supremecourtfindia.nic.in

LIST OF SUPREME COURT JUDGES

(As on 30-09-2017)

S.No.	Name of the Hon'ble Judge	Date of Appointment	Date of Retirement
01.	Hon'ble Shri Dipak Misra, Chief Justice of India	10-10-2011 As CJI: 28-08-2017	03-10-2018
02.	Hon'ble Mr. Justice J. Chelameswar	10-10-2011	23-06-2018
03.	Hon'ble Mr. Justice Ranjan Gogoi	23-04-2012	18-11-2019
04.	Hon'ble Mr. Justice Madan B. Lokur	04-06-2012	31-12-2018
05.	Hon'ble Mr. Justice Kurian Joseph	08-03-2013	30-11-2018
06.	Hon'ble Mr. Justice A.K. Sikri	12-04-2013	07-03-2019
07.	Hon'ble Mr. Justice Sharad Arvind Bobde	12-04-2013	24-04-2021
08.	Hon'ble Mr. Justice R.K. Agrawal	17-02-2014	05-05-2018
09.	Hon'ble Mr. Justice N.V. Ramana	17-02-2014	27-08-2022
10.	Hon'ble Mr. Justice Arun Mishra	07-07-2014	03-09-2020
11.	Hon'ble Mr. Justice Adarsh Kumar Goel	07-07-2014	07-07-2018
12.	Hon'ble Mr. Justice R.F. Nariman	07-07-2014	13-08-2021
13.	Hon'ble Mr. Justice Abhay Manohar Sapre	13-08-2014	28-08-2019
14.	Hon'ble Mrs. Justice R. Banumathi	13-08-2014	20-07-2020
15.	Hon'ble Mr. Justice Uday U. Lalit	13-08-2014	09-11-2022
16.	Hon'ble Mr. Justice Amitava Roy	27-02-2015	01-03-2018
17.	Hon'ble Mr. Justice A.M. Khanwilkar	13-05-2016	30-07-2022
18.	Hon'ble Dr. Justice D.Y. Chandrachud	13-05-2016	11-11-2024
19.	Hon'ble Mr. Justice Ashok Bhushan	13-05-2016	05-07-2021
20.	Hon'ble Mr. Justice L. Nageswara Rao	13-05-2016	08-06-2022
21.	Hon'ble Mr. Justice Sanjay Kishan Kaul	17-02-2017	26-12-2023
22.	Hon'ble Mr. Justice Mohan M. Shantanagoudar	17-02-2017	05-05-2023
23.	Hon'ble Mr. Justice S. Abdul Nazeer	17-02-2017	05-01-2023
24.	Hon'ble Mr. Justice Navin Sinha	17-02-2017	19-08-2021
25.	Hon'ble Mr. Justice Deepak Gupta	17-02-2017	07-05-2020

CONTENTS

Appointments and Retirements in the Supreme Court of India.....	2
Appointments in the High Courts	3 - 4
Vacancies in the Courts.....	5 - 6
Institution, Disposal and Pendency of Cases in the Supreme Court.....	7
Institution, Disposal and Pendency of Cases in the High Courts	8
Institution, Disposal and Pendency of Cases in the District and Subordinate Courts	9
Some Supreme Court Judgments / Orders of Public Importance.....	10 - 24
Major activities of National Judicial Academy.....	25 - 27
Major activities of National Legal Services Authority.....	28
Foreign delegations in Supreme Court.....	28
Some Important Visits and Conferences	29 - 32

This newsletter is intended to provide public access to information on the activities and achievements of the Indian Judiciary in general. While every care has been taken to ensure accuracy and to avoid errors/omissions, information given in the newsletter is merely for reference and must not be taken as having the authority of, or being binding in any way on, the Editorial Board of the newsletter and the officials involved in compilation thereof, who do not owe any responsibility whatsoever for any loss, damage, or distress to any person, whether or not a user of this publication, on account of any action taken or not taken on the basis of the information given in this newsletter.

**APPOINTMENTS AND RETIREMENTS
IN THE SUPREME COURT OF INDIA
(FROM 01-07-2017 TO 30-09-2017)**

RETIREMENTS

S.No.	Name of the Hon'ble Judge	Date of Retirement
1	Hon'ble Shri J.S. Khehar, Chief Justice of India	28-08-2017
2	Hon'ble Mr. Justice Prafulla C. Pant	30-08-2017

APPOINTMENTS IN THE HIGH COURTS (FROM 01-07-2017 TO 30-09-2017)

S.No.	Name of the High Court	Name of the Hon'ble Judge	Date of Appointment
1	Allahabad	Akhilesh Chandra Sharma	07-07-17
		Krishna Singh	07-07-17
		Rajiv Lochan Mehrotra	07-07-17
		Mahboob Ali	07-07-17
		Rang Nath Pandey	07-07-17
		Aniruddha Singh	07-07-17
		Dinesh Kumar Singh-I	07-07-17
		Ifaqt Ali Khan	07-07-17
		Umesh Chandra Tripathi	07-07-17
		Rajiv Joshi	22-09-17
		Rahul Chaturvedi	22-09-17
		Salil Kumar Rai	22-09-17
		Jayant Banerji	22-09-17
		Rajesh Singh Chauhan	22-09-17
		Irshad Ali	22-09-17
		Saral Srivastava	22-09-17
		Jahangir Jamshed Munir	22-09-17
		Rajiv Gupta	22-09-17
		Siddharth	22-09-17
		Ajit Kumar	22-09-17
		Rajnish Kumar	22-09-17
		Abdul Moin	22-09-17
		Dinesh Kumar Singh	22-09-17
Rajeev Misra	22-09-17		
Vivek Kumar Singh	22-09-17		
Chandra Dhari Singh	22-09-17		
Ajay Bhanot	22-09-17		
Neeraj Tiwari	22-09-17		

2	Calcutta	Rajasekhar Mantha	21-09-17
		Protik Prakash Banerjee	21-09-17
		Sabyasachi Bhattacharyya	21-09-17
		Moushumi Bhattacharya	21-09-17
		Shekhar Bobby Saraf	21-09-17
		Rajarshi Bharadwaj	21-09-17
3	Punjab & Haryana	Arvind Singh Sangwan	10-07-17
		Rajbir Sehrawat	10-07-17
		Anil Kshetarpal	10-07-17
		Avneesh Jhingan	10-07-17
		Mahabir Singh Sindhu	10-07-17
		Sudhir Mittal	10-07-17
4	Telangana & Andhra Pradesh	D.V.S.S. Somayajulu	21-09-17
		K.Vijaya Lakshmi	21-09-17
		P. Keshava Rao	21-09-17
		Manthoj Ganga Rao	21-09-17
		A.K. Shavili	21-09-17
		T. Amarnath Goud	21-09-17

VACANCIES IN THE COURTS

A) SUPREME COURT OF INDIA (As on 30-09-2017)

Sanctioned Strength	Working strength	Vacancies
31	25	06

B) HIGH COURTS (As on 30-09-2017)

S.No.	Name of the High Court	Sanctioned Strength	Working Strength	Vacancies
1	Allahabad	160	109	51
2	Hyderabad (A.P & Telangana)	61	32	29
3	Bombay	94	73	21
4	Calcutta	72	35	37
5	Chhatisgarh	22	13	9
6	Delhi	60	38	22
7	Gujarat	52	31	21
8	Gauhati	24	19	5
9	Himachal Pradesh	13	8	5
10	Jammu & Kashmir	17	12	5
11	Jharkhand	25	14	11
12	Karnataka	62	26	36
13	Kerala	47	36	11
14	Madhya Pradesh	53	35	18
15	Madras	75	53	22
16	Manipur	5	2	3
17	Meghalaya	4	3	1
18	Orissa	27	18	9
19	Patna	53	33	20
20	Punjab & Haryana	85	50	35
21	Rajasthan	50	36	14
22	Sikkim	3	3	0
23	Tripura	4	2	2
24	Uttarakhand	11	10	1
Total		1079	691	388

- Above statement is compiled on the basis of figures received from the High Courts.

C) DISTRICT & SUBORDINATE COURTS (As on 30-09-2017)

S.No.	State/ Union Territory	Sanctioned Strength	Working Strength	Vacancies
1	Uttar Pradesh	3191	1873	1318
2	Andhra Pradesh & Telangana	984	874	110
3(a)	Maharashtra	2260	2188	72
3(b)	Goa	57	47	10
3(c)	Diu and Daman	4	4	0
3(d)	Silvassa	3	3	0
4	West Bengal and Andaman & Nicobar	1013	930	83
5	Chhatisgarh	398	339	59
6	Delhi	799	483	316
7	Gujarat	1511	1109	402
8(a)	Assam	427	352	75
8(b)	Nagaland	34	23	11
8(c)	Mizoram	63	30	33
8(d)	Arunachal Pradesh	28	17	11
9	Himachal Pradesh	159	149	10
10	Jammu & Kashmir	249	214	35
11	Jharkhand	672	422	250
12	Karnataka	1303	978	325
13(a)	Kerala	534	461	73
13(b)	Lakshadweep	3	2	1
14	Madhya Pradesh	2021	1259	762
15	Manipur	49	31	18
16	Meghalaya	91	41	50
17(a)	Tamil Nadu	1097	921	176
17(b)	Puducherry	26	13	13
18	Odisha	862	661	201
19	Bihar	1826	1003	823
20(a)	Punjab	674	540	134
20(b)	Haryana	644	497	147
20(c)	Chandigarh	30	30	0
21	Rajasthan	1222	1135	87
22	Sikkim	23	15	8
23	Tripura	107	74	33
24	Uttarakhand	291	216	75
TOTAL		22655	16934	5721

- Above statement is compiled on the basis of figures received from the High Courts.

INSTITUTION, DISPOSAL AND PENDENCY OF CASES IN THE SUPREME COURT [01-07-2017 to 30-09-2017]

i) Table I

						Pendency (At the end of 30-06-2017)		
						Admission matters	Regular matters	Total matters
						32,696	26,469	59,165
Institution (01-07-2017 to 30-09-2017)			Disposal (01-07-2017 to 30-09-2017)			Pendency (At the end of 30-09-2017)		
Admission matters	Regular matters	Total matters	Admission matters	Regular matters	Total matters	Admission matters	Regular matters	Total matters
12,113	590	12,703	12,011	3,468	15,479	32,798	23,591	56,389

Note:

1. Out of the 56,389 pending matters as on 30-09-2017, if connected matters are excluded, the pendency is only of 29,016 matters as on 30-09-2017.
2. Out of the said 56,389 pending matters as on 30-09-2017, 6,662 matters are upto one year old and thus arrears (i.e. cases pending more than a year) are only of 49,727 matters as on 30-09-2017.

ii) Table II

	OPENING BALANCE AS ON 01-07-17	INSTITUTION (FROM 01-07- 17 TO 30-09-17)	DISPOSAL (FROM 01-07-17 TO 30-09-17)	PENDENCY AT THE END OF 30-09-17
CIVIL CASES	48,888	9,706	11,192	47,402
CRIMINAL CASES	10,277	2,997	4,287	8,987
ALL CASES (TOTAL)	59,165	12,703	15,479	56,389

INSTITUTION, DISPOSAL AND PENDENCY OF CASES IN THE HIGH COURTS (FROM 01-07-2017 TO 30-09-2017)

Srl. No.	Name of the High Court	Cases brought forward from the previous Quarter (Civil/Crl.) (Nos.) (As on 1/07/2017)			Freshly instituted Cases during this Quarter (Jul-Sep 2017) (Civil/Crl.) (Nos.)			Disposed of Cases during this Quarter (Jul-Sep 2017) (Civil/Crl.) (Nos.)			Pending Cases at the end of this Quarter (Jul-Sep 2017) (Civil/Crl.) (Nos.) (As on 30/09/2017)			% of Institution of Cases w.r.t Opening Balance as on 1/07/17	% of Disposal of Cases w.r.t Opening Balance as on 1/07/17	% Increase or Decrease in Pendency w.r.t Opening Balance as on 1/07/17
		CIVIL	CRL.	(Civ + Crl.)	CIVIL	CRL.	(Civ + Crl.)	CIVIL	CRL.	(Civ + Crl.)	CIVIL	CRL.	(Civ + Crl.)			
1	Allahabad	544868	369862	914730	36044	46662	82706	43448	41798	85246	537464	374726	912190	9.04	9.32	-0.28
2	Hyderabad (A.P & Telangana)	260476	43946	304422	25178	5177	30355	12501	3859	16360	273153	45264	318417	9.97	5.37	4.60
3	Bombay	215755	52715	268470	20210	7347	27557	19066	7107	26173	216899	52955	269854	10.26	9.75	0.52
4	Calcutta	182502	39630	222132	13245	5306	18551	12159	5056	17215	183588	39880	223468	8.35	7.75	0.60
5	Chhatisgarh	36531	22119	58650	5961	3599	9560	6051	2655	8706	36441	23063	59504	16.30	14.84	1.46
6	Delhi*	50827	18541	69368	7769	4304	12073	8389	3392	11781	50207	19453	69660	17.40	16.98	0.42
7	Gujarat*	76934	32644	109578	14549	11480	26029	13394	11039	24433	78089	33085	111174	23.75	22.30	1.46
8	Gauhati *	23442	5732	29174	3614	608	4222	3544	727	4271	23512	5613	29125	14.47	14.64	-0.17
9	Himachal Pradesh	24856	5653	30509	5085	1287	6372	5283	1168	6451	24658	5772	30430	20.89	21.14	-0.26
10	Jammu & Kashmir*	55223	5818	61041	3872	663	4535	3118	610	3728	55977	5871	61848	7.43	6.11	1.32
11	Jharkhand	45803	42512	88315	3373	6969	10342	2732	6582	9314	46444	42899	89343	11.71	10.55	1.16
12	Karnataka	266108	26880	292988	34855	4745	39600	17733	3134	20867	283230	28491	311721	13.52	7.12	6.39
13	Kerala	134418	38429	172847	15883	5670	21553	13559	5468	19027	136742	38631	175373	12.47	11.01	1.46
14	Madhya Pradesh	183590	111870	295460	19558	17992	37550	16090	15642	31732	187058	114220	301278	12.71	10.74	1.97
15	Madras*	265915	35638	301553	22908	15443	38351	26437	16047	42484	265748	35034	300782	12.72	14.09	-0.26
16	Manipur	3184	157	3341	397	43	440	268	26	294	3313	174	3487	13.17	8.80	4.37
17	Meghalaya	685	32	717	152	38	190	154	40	194	683	30	713	26.50	27.06	-0.56
18	Orissa	127941	44075	172016	10295	10370	20665	13844	9926	23770	124392	44519	168911	12.01	13.82	-1.81
19	Patna	85320	59317	144637	8401	19963	28364	9030	23240	32270	84691	56040	140731	19.61	22.31	-2.70
20	Punjab & Haryana	219094	100029	319123	18683	17908	36591	16413	14982	31395	221364	102955	324319	11.47	9.84	1.63
21	Rajasthan	185991	71868	257859	18531	13531	32062	16763	14826	31589	187759	70573	258332	12.43	12.25	0.18
22	Sikkim	126	45	171	42	18	60	32	12	44	136	51	187	35.09	25.73	9.36
23	Tripura	2069	422	2491	737	152	889	713	135	848	2093	439	2532	35.69	34.04	1.65
24	Uttarakhand	21705	9392	31097	3635	2277	5912	4848	2415	7263	20492	9254	29746	19.01	23.36	-4.34
TOTAL		3013363	1137326	4150689	292977	201552	494529	265569	189886	455455	3044133	1148992	4193125	11.91	10.97	1.02

* Figures modified by the High Court concerned.

- Above statement is compiled on the basis of figures received from the High Courts

SOME SUPREME COURT JUDGMENTS / ORDERS OF PUBLIC IMPORTANCE (01-07-2017 TO 30-09-2017)

1. On 3rd July, 2017, in the case of *Mukund Dewangan v. Oriental Insurance Company Limited* [Civil Appeal No.5826 of 2011], the question for consideration was whether a driver who is having a licence to drive 'light motor vehicle' and is driving 'transport vehicle' of that class is required additionally to obtain an endorsement to drive a transport vehicle. The issued was examined keeping in view the conflict in the earlier decisions of the Supreme Court with respect to the legal position of the amendment made on 28-3-2001 in the Forms for driving licence. The amendment made in section 10 of the Motor Vehicles Act, 1988 by virtue of Amendment Act 54 of 1994 was also examined.

A three Judge Bench held that Section 10 of the Motor Vehicles Act, 1988 "requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10(2)(d), Rule 8 of the Central Motor Vehicles Rules, 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h)." It was accordingly held as follows:-

"(i) 'Light motor vehicle' as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which

does not exceed 7500 kg. or a motor car or tractor or road-roller, the “unladen weight” of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained “medium goods vehicle” in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and “heavy passenger motor vehicle” in section 10(2)(h) with expression ‘transport vehicle’ as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act *i.e.* light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of “light motor vehicle” continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.”

2. On 4th July, 2017, in the case of *Union of India & Ors v. M/s Margadarshi Chit Funds (P) Ltd. etc.* [Civil Appeal Nos. 5724 - 5725 of 2011], it was held that “the term ‘cash management’ as understood in common parlance would not embrace chit fund business” and that “chit fund cannot be treated as fund management as understood in the sense the term is known in business parlance”.

3. On 4th July, 2017, in *In Re, Hon’ble Shri Justice C.S. Karnan* [Suo-Motu Contempt Petition (Civil) No. 1 of 2017], a seven Judge Bench held that the actions of Shri Justice C.S. Karnan, a Judge of the High Court, “constituted the grossest and gravest actions of contempt of Court” and he “also committed contempt, in the face of the Court” and was “therefore liable to be punished, for his unsavoury actions and behaviour.” Accordingly, he was punished “with imprisonment for six months.”

Referring to the letters written by Shri Justice C.S. Karnan, from time to time, and the orders passed by him suo-motu (in the purported exercise of the jurisdiction vested in him under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure), even after the issuance of the contempt notice to him, by this Court, the Bench observed that “his demeanour was found to have become further aggressive, after this Court passed orders from time to time, in this case. The contents of the letters addressed by him contained scandalous material against Judges of High Courts and the Supreme Court. This correspondence was addressed to the highest constitutional authorities, in all three wings of governance –

the legislature, the executive and the judiciary. His public utterances, turned the judicial system into a laughing stock. The local media, unmindful of the damage it was causing to the judicial institution, merrily rode the Karnan wave. Even the foreign media, had its dig at the Indian judiciary. None of his actions can be considered as bona fide, especially in view of the express directions issued by this Court on 8.2.2017, requiring him to refrain from discharging any judicial or administrative work.”

The Bench held that “none of the allegations levelled by Justice Karnan were supported by any material. His allegations were malicious and defamatory, and pointedly by name, against many of the concerned Judges. He carried his insinuations to the public at large, in the first instance, by endorsing his letters carefully so as to widely circulate the contents of his communications, to the desired circles. Some of his letters were intentionally endorsed, amongst others, to the President of the Tamil Nadu Advocate Association. And later, through the internet, he placed his point of view, and the entire material, in the public domain. During the course of hearing of the instant contempt petition, his ridicule of the Supreme Court remained unabated. In fact, it was heightened, as never before. In this process, he even stayed orders passed by this Court. One of the orders passed by him, restrained the Judges on this Bench, from leaving the country. By another order he convicted the Judges on this Bench, besides another Judge of this Court, and sentenced them to 5 years imprisonment, besides imposing individual costs on the convicted Judges.”

4. On 14th July, 2017, in the case of *Extra Judl. Exec. Victim Families Assn. & Anr. v. Union of India & Ors.* [Writ Petition (Crl.) No. 129 of 2012], wherein it was alleged that number of persons had been killed in Manipur in fake encounters by police personnel and personnel in uniform of the armed forces of the Union, the Supreme Court observed that “it would be appropriate if the Central Bureau of Investigation (or the CBI) is required to look into these fake encounters or use of excessive or retaliatory force.” Accordingly, the Director of the CBI was directed to nominate a group of five officers to go through the records of the cases, lodge necessary FIRs and to complete the investigations into the same by 31st December, 2017 and prepare charge sheets, wherever necessary.

5. On 20th July, 2017, in the case of *Karnati Ravi & Anr. v. Commissioner Survey Settlements and Land Records & Ors.* [Civil Appeal No.897 of 2010], the question for consideration was whether in the matter of selection and appointment, executive instructions pertaining to the procedure of selection, which are not prescribed under the Rules can rule the field. It was held that the Rules only provide the essential qualifications for the post and that the method of selection, in the absence of Rules, has to be supplied by the executive instructions. It was further held that in the absence of the Rules, it is well within the powers of the Executive under Article 162 of the Constitution to provide for the required instructions with regard to the procedure for selection, so long as they do not come in conflict with the Rules.

6. On 21st July, 2017, in the case of *Swaraj Abhiyan (V) v. Union of India & Ors.* [Writ Petition(C) No. 857 of 2015], the Supreme Court observed that the National Food Security Act, 2013, “a social justice and social welfare legislation, is not being implemented as it should be” and issued a set of directions for effective implementation of the National Food Security Act, 2013. The Court observed that the “Government of India cannot plead helplessness in requiring State Governments to implement parliamentary laws” and “it is more important that each State Government and Union Territory realizes and appreciates their statutory and constitutional obligations and ensures that the will of Parliament which enacted the National Food Security Act, 2013 is given full effect to in letter and spirit.”

7. On 21st July, 2017, in the case of *Ms. Eera through Dr. Manjula Krippendorf v. State (Govt. of NCT of Delhi) & Anr.* [Criminal Appeal Nos. 1217 – 1219 of 2017], the issue for consideration was whether the definition in Section 2(d) of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) that defines “child” to mean any person below the age of 18 years, should engulf and embrace, in its connotative expanse, the “mental age” of a person or the age determined by the prevalent science pertaining to psychiatry so that a mentally retarded person or an extremely intellectually challenged person who even has crossed the biological age of 18 years can be included within the holistic conception of the term “child”. It was held that the “definition in Section 2(d) defining the term “age” cannot include mental age.”

8. On 27th July, 2017, in the case of *Naresh Kumar alias Nitu v. The State of Himachal Pradesh* [Criminal Appeal No.1053 of 2016], it was held that presumption against the accused of culpability under Section 35, and under Section 54 of the Narcotic Drugs and Psychotropic Substances Act, 1985 “to explain possession satisfactorily, are rebuttable. It does not dispense with the obligation of the prosecution to prove the charge beyond all reasonable doubt. The presumptive provision with reverse burden of proof, does not sanction conviction on basis of preponderance of probability. Section 35(2) provides that a fact can be said to have been proved if it is established beyond reasonable doubt and not on preponderance of probability.”

9. On 27th July, 2017, in the case of *Rajesh Sharma & Ors. v. State of U.P. & Anr.* [Criminal Appeal No.1265 of 2017], the question for consideration was whether any directions are called for to prevent the misuse of Section 498A, IPC as acknowledged in certain studies and decisions.

While considering the background of the issue and taking into account the 243rd Report of the Law Commission dated 30th August, 2012, 140th Report of the Rajya Sabha Committee on Petitions (September, 2011) and earlier decisions, the Supreme Court said that though it was “conscious of the object for which the provision was brought into the statute”, at the same time, “violation of human rights

of innocent cannot be brushed aside. Certain safeguards against uncalled for arrest or insensitive investigation have been addressed by this Court. Still, the problem continues to a great extent.”

“To remedy the situation”, the Court was of the view that involvement of civil society in the aid of administration of justice can be one of the steps, apart from the investigating officers and the concerned trial courts being sensitized” and that “it is also necessary to facilitate closure of proceedings where a genuine settlement has been reached instead of parties being required to move High Court only for that purpose.”

Accordingly, the following directions were given by the Court:-

“i) (a) In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority. (b) The Committees may be constituted out of para legal volunteers/social workers/retired persons/wives of working officers/other citizens who may be found suitable and willing. (c) The Committee members will not be called as witnesses. (d) Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication. (e) Report of such committee be given to the Authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint. (f) The committee may give its brief report about the factual aspects and its opinion in the matter. (g) Till report of the committee is received, no arrest should normally be effected. (h) The report may be then considered by the Investigating Officer or the Magistrate on its own merit. (i) Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time. (j) The Members of the committee may be given such honorarium as may be considered viable. (k) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper. ii) Complaints under Section 498A and other connected offences may be investigated only by a designated Investigating Officer of the area. Such designations may be made within one month from today. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from today; iii) In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior Judicial Officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord; iv) If a bail application is filed with at least one clear day’s notice to the Public Prosecutor/complainant, the same may be decided as far as possible on the

same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife/minor children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations, requirement of further arrest/ custody and interest of justice must be carefully weighed; v) In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine; vi) It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the Court to whom all such cases are entrusted; and vii) Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial. viii) These directions will not apply to the offences involving tangible physical injuries or death.”

It was further held that “after seeing the working of the above arrangement for six months but latest by March 31, 2018, National Legal Services Authority may give a report about need for any change in above directions or for any further directions. The matter may be listed for consideration by the Court in April, 2018.”

10. On 1st August, 2017, in the case of *Rajkishore Purohit v. State of Madhya Pradesh and Others* [Criminal Appeal No.1292 of 2017], it was held that “common intention is a state of mind. It is not possible to read a person’s mind. There can hardly be direct evidence of common intention. The existence or non-existence of a common intention amongst the accused has to be deciphered cumulatively from their conduct and behavior in the facts and circumstances of each case. Events prior to the occurrence as also after, and during the occurrence, are all relevant to deduce if there existed any common intention. There can be no straight jacket formula. The absence of any overt act of assault, exhortation or possession of weapon cannot be singularly determinative of absence of common intention.”

It was further held that “if common intention by meeting of minds is established in the facts and circumstances of the case, there need not be an overt act or possession of weapon required, to establish common intention.”

11. On 1st August, 2017, in the case of *Central Bureau Of Investigation v. M. Sivamani* [Criminal Appeal Nos.1261-1262 of 2017], it was held that “once the High Court directs investigation into a specified offence mentioned in Section 195, bar under Section 195(1)(a) cannot be pressed into service.” It was observed that “while the bar against cognizance of a specified offence is mandatory, the same has to be understood in the context of the purpose for which such a bar is created. The bar is not intended to take away remedy against a crime but only to protect an innocent person against false or frivolous proceedings by a private person.” It was held that the “direction of the High Court is at par with the direction of an administrative superior public servant to file a complaint in writing in terms of the statutory

requirement. The protection intended by the Section against a private person filing a frivolous complaint is taken care of when the High Court finds that the matter was required to be gone into in public interest. Such direction cannot be rendered futile by invoking Section 195 to such a situation.”

12. On 4th August, 2017, in the case of *U. Manjunath Rao v. U. Chandrashekar & Anr.* [Civil Appeal No.9951 of 2017], it was held that the judgment of the appellate court has to state the reasons for the decision. It was held that “by no stretch of imagination it can be stated that the first appellate court can quote passages from the trial court judgment and thereafter pen few lines and express the view that there is no reason to differ with the trial Court judgment. That is not the statement of law expressed by the Court.”

It was further held that “the first appellate court has a defined role and its judgment should show application of mind and reflect the reasons on the basis of which it agrees with the trial Court. There has to be an “expression of opinion” in the proper sense of the said phrase. It cannot be said that mere concurrence meets the requirement of law. Needless to say, it is one thing to state that the appeal is without any substance and it is another thing to elucidate, analyse and arrive at the conclusion that the appeal is devoid of merit.”

13. On 9th August, 2017, in the case of *Vithal Tukaram Kadam and Another v. Vamanrao Sawalaram Bhosale and Others* [Civil Appeal Nos. 7245-7246 of 2011], it was held that “the question whether a document is a mortgage by conditional sale, or a sale with an option to repurchase, has to be determined in the facts of each case, dependent on the recitals in the document, intention of the parties, coupled with attendant surrounding circumstances. There can be no hard and fast rule for determining the nature of the document devoid of these circumstances.”

It was observed that “an ostensible sale with transfer of possession and ownership, but containing a clause for reconveyance in accordance with Section 58(c) of the Transfer of Property Act, 1882, will clothe the agreement as a mortgage by conditional sale”, however, “the execution of a separate agreement for reconveyance, either contemporaneously or subsequently, shall militate against the agreement being mortgage by conditional sale.”

14. On 10th August, 2017, in the case of *J. Vasanthi & Ors. v. N Ramani Kanthammal (D) Rep. by LRs. & Ors* [Civil Appeal No. 3396 of 2017], a three Judge Bench observed that “proper valuation of the suit property stands on a different footing than applicability of a particular provision of an Act under which court fee is payable and in such a situation, it is not correct to say that it has to be determined on the basis of evidence and it is a matter for the benefit of the revenue and the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. It is because the Act empowers the defendant to raise the plea of jurisdiction on a different yardstick.”

15. On 22nd August, 2017, in the case of *Shayara Bano v. Union of India and Others* [Writ Petition (C) No. 118 of 2016], by a majority of 3:2, the Supreme Court set aside “the practice of ‘talaq-e-biddat’ – triple talaq”. The majority view was recorded in a common judgment of two Hon’ble Judges and in a separate judgment delivered by a single Hon’ble Judge.

In the common judgment of two Hon’ble Judges, it was held that “given the fact that Triple Talaq is instant and irrevocable, it is obvious that any attempt at reconciliation between the husband and wife by two arbiters from their families, which is essential to save the marital tie, cannot ever take place.” “It is clear that this form of Talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it. This form of Talaq must, therefore, be held to be violative of the fundamental right contained under Article 14 of the Constitution of India” and therefore, the Muslim Personal Law (Shariat) Application Act, 1937, “insofar as it seeks to recognize and enforce Triple Talaq, is within the meaning of the expression “laws in force” in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq.”

In the judgment delivered by the single Hon’ble Judge, it was held that “the Holy Quran has attributed sanctity and permanence to matrimony. However, in extremely unavoidable situations, talaq is permissible. But an attempt for reconciliation and if it succeeds, then revocation are the Quranic essential steps before talaq attains finality. In triple talaq, this door is closed, hence, triple talaq is against the basic tenets of the Holy Quran and consequently, it violates Shariat.” It was observed that “what is held to be bad in the Holy Quran cannot be good in Shariat and, in that sense, what is bad in theology is bad in law as well.” It was further held that the Muslim Personal Law (Shariat) Application Act, 1937 was enacted to put an end to the unholy, oppressive and discriminatory customs and usages in the Muslim community, and that “the whole purpose of the 1937 Act was to declare Shariat as the rule of decision and to discontinue anti-Shariat practices with respect to subjects enumerated in Section 2 which include talaq. Therefore, in any case, after the introduction of the 1937 Act, no practice against the tenets of Quran is permissible. Hence, there cannot be any Constitutional protection to such a practice.” It was observed that “merely because a practice has continued for long, that by itself cannot make it valid if it has been expressly declared to be impermissible.

16. On 24th August, 2017, in the case of *Justice K.S.Puttaswamy (Retd.) and Anr. v. Union of India and Ors.* [Writ Petition(Civil) No.494 of 2012], a nine judge Bench examined the issue as to whether there is any fundamental right of privacy under the Indian Constitution. It was held that “the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.”

17. On 8th September, 2017, in the case of *Vijay Singh v. Shanti Devi and Anr.* [Civil Appeal No.2062 of 2009], the issue for consideration was whether, in a suit for pre-emption, an ex parte decree which is later set aside, can be termed to be the decree of the court of first instance. It was held that “an ex parte decree is passed when the court believes that the defendant has been served but is not appearing in court despite service of summons.” It was further held that “after the ex parte decree is set aside, it is no decree in the eyes of law. The decree passed by the trial court on merits should be treated as the decree of the first court.”

18. On 11th September, 2017, in the case of *Asfaq v. State of Rajasthan and Others* [Civil Appeal No. 10464 of 2017], the parameters to be kept in mind while considering the request of a convict for a parole were discussed. It was held that mere nature of the offence committed by a convict “should not be a factor to deny the parole outrightly. Wherever a person convicted has suffered incarceration for a long time, he can be granted temporary parole, irrespective of the nature of offence for which he was sentenced.” However, it was also held that “in those cases where a person has been convicted for committing a serious offence, the competent authority, while examining such cases, can be well advised to have stricter standards in mind while judging their cases on the parameters of good conduct, habitual offender or while judging whether he could be considered highly dangerous or prejudicial to the public peace and tranquillity etc.” Further, the Court observed that the 1955 Rules of the Central Government for grant of parole are skeleton in nature, and there is an imperative and immediate need for updating these Rules thereby including comprehensive provisions.

19. On 12th September, 2017, in the case of *Aravali Power Company Pvt. Ltd. v. Era Infra Engineering Ltd.* [Civil Appeal Nos.12627-28 of 2017], it was held that in cases governed by the Arbitration and Conciliation Act, 1996 as it stood before the Arbitration and Conciliation (Amendment) Act, 2015 came into force, the fact “that the named arbitrator is an employee of one of the parties is not ipso facto a ground to raise a presumption of bias or partiality or lack of independence on his part. There can however be a justifiable apprehension about the independence or impartiality of an employee arbitrator, if such person was the controlling or dealing authority in regard to the subject contract or if he is a direct subordinate to the officer whose decision is the subject-matter of the dispute.” It was further held that in such cases “unless the cause of action for invoking jurisdiction under Clauses (a), (b) or (c) of sub-section (6) of Section 11 of 1996 Act arises, there is no question of the Chief Justice or his designate exercising power under sub-section (6) of Section 11; that the Chief Justice or his designate while exercising power under sub-section (6) of Section 11 shall endeavour to give effect to the appointment procedure prescribed in the arbitration clause and while exercising such power under sub section (6) of Section 11, If circumstances exist, giving rise to justifiable doubts as to the independence and impartiality of the person nominated, or if other circumstances warrant appointment of an independent arbitrator by ignoring the procedure

prescribed, the Chief Justice or his designate may, for reasons to be recorded ignore the designated arbitrator and appoint someone else.”

The Supreme Court further held that in cases governed by 1996 Act after the Amendment Act has come into force “if the arbitration clause finds foul with the amended provisions, the appointment of the Arbitrator even if apparently in conformity with the arbitration clause in the agreement, would be illegal and thus the Court would be within its powers to appoint such arbitrator(s) as may be permissible.”

20. On 12th September, 2017, in the case of *Amardeep Singh v. Harveen Kaur* [Civil Appeal No.11158 of 2017], the question for consideration was whether the minimum period of six months stipulated under Section 13B(2) of the Hindu Marriage Act, 1955 for a motion for passing decree of divorce on the basis of mutual consent is mandatory or can be relaxed in any exceptional situations. The Supreme Court held that “the period mentioned in Section 13B(2) is not mandatory but directory”, and “it will be open to the Court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.”

It was held that “where the Court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13B(2), it can do so after considering the following: i) the statutory period of six months specified in Section 13B(2), in addition to the statutory period of one year under Section 13B(1) of separation of parties is already over before the first motion itself; ii) all efforts for mediation/conciliation including efforts in terms of Order XXXIIA Rule 3 CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts; iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties; iv) the waiting period will only prolong their agony.” It was further held that “the waiver application can be filed one week after the first motion giving reasons for the prayer for waiver” and “if the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the concerned Court.”

21. On 13th September, 2017, in the case of *D. Sarojakumari v. R. Helen Thilakom & Ors.* [Civil Appeal Nos.8345-8346 of 2009], an advertisement was issued by Respondent No.6 inviting applications for the post of school teacher. Respondent No.1 did not raise any objection that the post could not be filled in by direct recruitment and she should be considered for promotion, and further applied for the post and took part in the selection process. In the facts and circumstances of the case, it was held that after having taken part in the selection process and being found lower in merit to the appellant, respondent no.1 could not “be permitted to turn around and claim that the post could not be filled in by direct recruitment.”

22. On 14th September, 2017, in the case of *Damini and Another v. Managing Director, Jodhpur Vidyut Vitran Nigam Limited and Another* [Civil Appeal No. 12851 of 2017], while examining the period of limitation for filing a suit or claim under the Fatal Accidents Act, 1855, it was held that when a suit for compensation is filed under the said Act, “the same has to be filed within the period of two years as prescribed under Article 82 of the Limitation Act, 1963.” The Court observed that “once a specific period of limitation is referable to any of the entries in the Schedule to the Limitation Act, 1963, then the residuary Article 113 cannot be invoked.”

23. On 15th September, 2017, *Re- Inhuman Conditions in 1382 prisons* [Writ Petition (Civil) No. 406 of 2013], while examining the issue of unnatural deaths in prisons, the Supreme Court asked all the High Courts “to register a *suo motu* public interest petition with a view to identifying the next of kin of the prisoners who have admittedly died an unnatural death as revealed by the NCRB during the period between 2012 and 2015 and even thereafter, and award suitable compensation, unless adequate compensation has already been awarded.” The Supreme Court further issued the following directions:-

(a) “The Union of India through the Ministry of Home Affairs will ensure circulation within one month and in any event by 31st October, 2017 of (i) the Model Prison Manual, (ii) the monograph prepared by the NHRC entitled “Suicide in Prison - prevention strategy and implication from human rights and legal points of view”, (iii) the communications sent by the NHRC referred to above, (iv) the compendium of advisories issued by the Ministry of Home Affairs to the State Governments, (v) the Nelson Mandela Rules and (vi) the Guidelines on Investigating Deaths in Custody issued by the International Committee of the Red Cross to the Director General or Inspector General of Police (as the case may be) in charge of prisons in every State and Union Territory. All efforts should be made, as suggested by the NHRC and others, to reduce and possibly eliminate unnatural deaths in prisons and to document each and every death in prisons – both natural and unnatural.”

(b) “The Union of India through the Ministry of Home Affairs will direct the NCRB to explain and clarify the distinction between unnatural and natural deaths in prisons as indicated on the website of the NCRB and in its Annual Reports and also explain the sub-categorization ‘others’ within the category of unnatural deaths. The NCRB should also be required to sub-categorize natural deaths. The sub-categorization and clarification should be complied with by 31st October, 2017.”

(c) “The State Governments should, in conjunction with the State Legal Services Authority (SLSA), the National and State Police Academy and the Bureau of Police Research and Development conduct training and sensitization programmes for senior police officials of all prisons on their functions, duties and responsibilities as also the rights and duties of prisoners.

A copy of this order be sent by the Registry of this Court to the Member-Secretary of each SLSA to follow-up and ensure compliance.”

(d) “The necessity of having counselors and support persons in prisons cannot be over-emphasized. Their services can be utilized to counsel and advice prisoners who might be facing some crisis situation or might have some violent or suicidal tendencies. The State Governments are directed to appoint counselors and support persons for counselling prisoners, particularly first-time offenders. In this regard, the services of recognized NGOs can be taken and encouraged.”

(e) “While visits to prison by the family of a prisoner should be encouraged, it would be worthwhile to consider extending the time or frequency of meetings and also explore the possibility of using phones and video conferencing for communications not only between a prisoner and family members of that prisoner, but also between a prisoner and the lawyer, whether appointed through the State Legal Services Authority or otherwise.”

(f) “The State Legal Services Authorities (SLSAs) should urgently conduct a study on the lines conducted by the Bihar State Legal Services Authority in Bihar and the Commonwealth Human Rights Initiative in Rajasthan in respect of the overall conditions in prisons in the State and the facilities available. The study should also include a performance audit of the prisons, as has been done by the CAG. The SLSAs should also assess the effect and impact of various schemes framed by NALSA relating to prisoners. We request the Chief Justice of every High Court, in the capacity of Patron-in-Chief of the State Legal Services Authority, to take up this initiative and, if necessary, set up a Committee headed preferably by the Executive Chairperson of the State Legal Services Authority to implement the directions given above.”

(g) “Providing medical assistance and facilities to inmates in prisons needs no reaffirmation. The right to health is undoubtedly a human right and all State Governments should concentrate on making this a reality for all, including prisoners. The experiences in Karnataka, West Bengal and Delhi to the effect that medical facilities in prisons do not meet minimum standards of care is an indication that the human right to health is not given adequate importance in prisons and that may also be one of the causes of unnatural deaths in prisons. The State Governments are directed to study the availability of medical assistance to prisoners and take remedial steps wherever necessary.”

(h) “The constitution of a Board of Visitors which includes non-official visitors is of considerable importance so that eminent members of society can participate in initiating reforms in prisons and in the rehabilitation of prisoners. Merely changing the nomenclature of prisons to ‘Correction Homes’ will not

resolve the problem. Some proactive steps are required to be taken by eminent members of society who should be included in the Board of Visitors. The State Governments are directed to constitute an appropriate Board of Visitors in terms of Chapter XXIX of the Model Prison Manual indicating their duties and responsibilities. This exercise should be completed by 30th November, 2017.”

(i) “The suggestion given by the learned *Amicus* of encouraging the establishment of ‘open jails’ or ‘open prisons’ is certainly worth considering. It was brought to our notice that the experiment in Shimla (Himachal Pradesh) and the semi-open prison in Delhi are extremely successful and need to be carefully studied. Perhaps there might be equally successful experiments carried out in other States as well and, if so, they require to be documented, studied and emulated.”

(j) “The Ministry of Women & Child Development of the Government of India which is concerned with the implementation of Juvenile Justice (Care and Protection of Children) Act, 2015 is directed to discuss with the concerned officers of the State Governments and formulate procedures for tabulating the number of children (if any) who suffer an unnatural death in child care institutions where they are kept in custody either because they are in conflict with law or because they need care and protection. Necessary steps should be taken in this regard by 31st December, 2017.”

It was further stated by the Supreme Court that in the event of any difficulty in the implementation of the above directions, the Bench hearing the *suo motu* public interest litigation in the High Court in term of its first direction would be “at liberty to consider those difficulties and pass necessary orders and directions.”

24. On 15th September, 2017, in the case of *State of Maharashtra & Ors. v. Reliance Industries Ltd. & Ors.* [Civil Appeal No. 1699 of 2017], wherein the owner of the land was the State whereas the owner of the building was a respondent, it was held that “since, building cannot stand without the land, the building also becomes part of the land. However, since the owner of the building is different from the owner of the land, and if a portion of the building is required for public purpose, it is open for the State to acquire that portion of the building by paying adequate compensation in respect of that portion of the building, as well as, in respect of proportionate diminution” of the user, if any, of the land under Section 23 of the Land Acquisition Act, 1894, in accordance with law.”

25. On 21st September, 2017, in the case of *M.D. Frozen Foods Exports Pvt. Ltd. & Ors. v. Hero Fincorp Ltd.* [Civil Appeal No.15147 of 2017], it was held that proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) are in the nature of enforcement proceedings, while arbitration is an adjudicatory process”, and that

“SARFAESI proceedings and arbitration proceedings can go hand in hand.” It was held that the provisions of the SARFAESI Act are “a remedy in addition to the provisions of the Arbitration Act.” “Liquidation of secured interest through a more expeditious procedure is what has been envisaged under the SARFAESI Act and the two Acts are cumulative remedies to the secured creditors.”

26. On 21st September, 2017, in the case of *Employees State Insurance Corporation & Anr. v. Mangalam Publications (I) Private Limited* [Civil Appeal No. 4681 of 2009], while referring to the definition of “wages” contained in Section 2(22) of the Employees State Insurance Act, 1948, the Supreme Court observed that “the inclusive part and exclusive portion of the definition of “wages” clearly indicate that the expression “wages” has been given wider meaning”. It was held that “under the definition, firstly whatever remuneration is paid or payable to an employee under the terms of the contract of the employment, expressed or implied, is “wages”. Secondly, whatever payment is made to an employee in respect of any period of authorized leave, lock-out etc. is “wages”. Thirdly, other additional remuneration, if any, paid at intervals not exceeding two months is also “wages”. Observing that any ambiguous expression should be given a beneficent construction in favour of employees, the Court held that “if the definition of “wages” is read in its entirety including the inclusive part as well as the exclusive portion, it appears that inclusive portion is not intended to be limited only of items mentioned therein, particularly, having regard to the objects and reasons for which the Employees’ State Insurance Act is enacted. The Act has to be necessarily so construed as to serve its purpose and objects.”

Accordingly, in the facts and circumstances of the case, it was held that the payment made by respondent by way of interim relief to its employees was not a “gift” or “inam”, but was a part of wages, as defined under Section 2(22) of the ESI Act, and the respondent was liable to pay ESI contribution on the amount of interim relief paid to its employees.

27. On 22nd September, 2017, in the case of *Techi Tagi Tara v. Rajendra Singh Bhandari & Ors.* [Civil Appeal No. 1359 of 2017], the Supreme Court observed that the National Green Tribunal (NGT) had exceeded its jurisdiction in directing the State Governments to reconsider the appointment of some persons to the State Pollution Boards (SPCBs) and in laying down guidelines for appointment to the SPCBs.

However, the Supreme Court also observed that such appointments “should not be made casually or without due application of mind considering the duties, functions and responsibilities of the SPCBs” and “there should be considerable deliberation before an appointment is made and only the best should be appointed to the SPCB. It is necessary in this regard for the Executive to consider and frame appropriate rules for the appointment of such persons who would add lustre and value to the SPCB.”

It was held that “the appointment of the Chairperson and members of the SPCBs cannot be classified in any circumstance as a substantial question relating to the environment. At best it could be a substantial question relating to their appointment. Moreover, their appointment is not a dispute as one would normally understand it.”

It was held that the appointments concerned were not ‘disputes’ as such or even disputes for the purposes of the National Green Tribunal Act, 2010 and “they could be disputes for a constitutional court to resolve through a writ of *quo warranto*, but certainly not for the NGT to venture into. The failure of the State Government to appoint professional and experienced persons to key positions in the SPCBs or the failure to appoint any person at all might incidentally result in an ineffective implementation of the Water Act and the Air Act, but this cannot be classified as a primary dispute over which the NGT would have jurisdiction. Such a failure might be of a statutory obligation over which, in the present context and not universally, only a constitutional court would have jurisdiction and not a statutory body like the NGT.”

On being informed that some States have implemented the order of the NGT and removed some members while others have approached the Supreme Court and obtained an interim stay order, the Supreme Court observed that “those officials who were removed pursuant to the order of the NGT (including the appellant Techhi Tagi Tara) have an independent cause of action” and it is “open to them to challenge their removal in appropriate and independent proceedings.” On the grievance relating to the issue of guidelines by the NGT, the Supreme Court observed that “this is for each State Government to consider and decide what is the right thing to do under the circumstances” and “that in matters relating to the protection and preservation of the environment (through the appointment of officials to the SPCBs) the Central Government as well as the State Governments have to walk the extra mile.”

Accordingly, while setting aside the judgment and order of the NGT, the Supreme Court directed “the Executive in all the States to frame appropriate guidelines or recruitment rules within six months, considering the institutional requirements of the SPCBs” and the law laid down by statute, by the Supreme Court and as per the reports of various committees and authorities and ensure that suitable professionals and experts are appointed to the SPCBs.

MAJOR ACTIVITIES OF NATIONAL JUDICIAL ACADEMY(NJA) (01-07-2017 to 30-09-2017)

Workshop for Additional District Judges was held from 04th to 06th August, 2017 and 11th to 13th August, 2017. The Workshop was designed to explore challenges in implementation of the ADR system in Subordinate Courts. Issues pertaining to sentencing practices and advantages of court & case management also formed part of deliberations. The workshop *inter alia* intended to cover issues and practices of collection, preservation and appreciation of electronic evidence; the advances and bottlenecks of law relating to cybercrimes; and challenges relating to adoption in India with reference to the juvenile justice law of India. The discourses also provided opportunity to debate, discuss, evaluate and share best practices on the status of appellate and revisional jurisdiction of District Judges relating to both criminal and civil justice administration.

Refresher Course for Family Courts was held from 11th to 13th August, 2017. The programme reflected on the functioning of Family Courts and deliberated on the psycho-social dimensions to disputes in marriage, divorce, maintenance *vis-a-vis* role of judges in reconciliation of such disputes. The programme also discussed the role of Family Courts in protecting rights and interests of children. An open discussion was also held on challenges and constraints that affect the functioning of family courts.

Workshop for Magistrate on Animal Rights was held on 18th to 20th August, 2017. The workshop intended to enhance knowledge and skills of participants dealing with issues involving atrocities on animals. Procedural difficulties faced by judicial officers and how to address these while adjudicating cases also formed part of discussions during the workshop. It further aimed to apprise and strengthen understanding of judicial officers with regard to animal welfare legislations such as the Prevention of Cruelty to Animal Act, 1960 and The Wildlife Protection Act, 1972.

Workshop for Magistrates on Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 was held from 18th to 20th August, 2017. The workshop was aimed at augmenting the awareness and perception of the participating Judicial Magistrates as regards the cultural, social and economic factors that promote gender bias; grey areas concerning medical termination of pregnancy and sex selection; the role and functions of authorities; trial processes; and appreciation of evidence under the P.C. & P.N.D.T. Act. It also aimed at sensitizing judges about female foeticide and the proper implementation of the Act.

National Seminar of Principal District and Sessions Judges: Joint Course for Different Stakeholders (RG, PDJ, Court Manager) was held from 25th to 27th August, 2017. The seminar aimed to discuss the role of the Registrar General, the Registrar (Administration) of High Court, Principal District Judges and the Court Manager *vis-a-vis* the administration of District Court. The seminar engaged participants in discussions on

creation of digitalized and paperless courts, and development of efficient and speedy judicial processes. Discussions were held on management skills that are relevant to functions of the Registry at High Courts, Principal District Judges and Court Managers for efficient administration of the District Courts.

Court Excellence Enhancement Programme was held from 25th to 28th August, 2017 for High Courts; namely Allahabad, Telangana & Andhra Pradesh, Bombay, Calcutta, Chhattisgarh, Delhi, Gauhati, Gujarat, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka. The main purpose of CEEP programme was to develop a comprehensive framework for enhancing the excellence of courts involving all stakeholders of a court i.e. Chief Judicial Magistrate, Members of the Bar, Public Prosecutors and ministerial staff (reader and clerk). The programme provided a forum to bring together several stakeholders and engage them in deliberations to evolve a standard working model for delivery of quality in justice delivery.

Conference of Registrar dealing with Court Procedures and Process Reengineering was held from 8th to 10th September, 2017. The Conference covered various aspects of Procedures and Process of the High Courts viz. Writ Jurisdiction, Civil and Criminal Appellate Jurisdiction and Civil Original side, Revisional Jurisdiction and matters covered U/S 482 Cr. P.C., Listing and mentioning of Matters. The Conference aimed to provide a forum to discuss best practices and procedures of various High Courts dealing with adjournments and backlog. Use of ICT in enhancing the efficacy of judicial institutions was also deliberated.

National Judicial Conference for High Court Justices on the Regime of Goods and Services Tax was held from 8th to 10th September, 2017. The conference was conceived to provide insights into the recently introduced legislation- the GST Act, 2017 and to provide a forum for discussing normative issues pertaining to evolution of indirect taxes, from a regime of discrete and multiple taxation to one of substantial uniformity across different tax domains and jurisdictions, Federal and State. It explored and identified potential areas of conflict and litigation resultant from this legislative shift, the constitutional evolution in the area and the litigative and socio judicial implications that may arise thereby.

Refresher Course for POCSO Courts was held from 8th to 10th September, 2017. The programme was designed to explore issues faced by POCSO Courts while adjudicating cases under the POCSO Act, 2012. The programme provided insights for capacity building through deliberations focused on maintenance of child friendly court procedures and judicial attitudes; exercise of judicial discretion by POCSO Courts; recording and appreciation of evidence of victims; issues relating to the age of victim and perpetrator; and rehabilitation and compensation for victims of child sexual abuse. The programme also dealt with 'reverse burden of proof'; 'presumption' of culpability and obligations of reporting incidents of child abuse under the POCSO Act. Emerging areas of concern and contemporary issues of child pornography, including issues relating to determining jurisdictions; challenges faced by the prosecution; and fixing of the liabilities of intermediaries formed part of discourses during the sessions.

National Judicial Conference for Newly Elevated High Court Justices on Public Law was held from 15th to 17th September, 2017. The conference facilitated deliberations among participant Justices on contemporary topics such as Information and Communications Technology (ICT) in courts and court management techniques to improve efficiency and strengthen justice administration; core constitutional principles such as the concept of Judicial Review, Federal architecture, Separation of Powers, Theory of Basic Structure and Fundamental Rights under our constitutional arrangement.

Refresher Course for CBI Courts was held from 15th to 17th September, 2017. The objective of the programme was to sensitize judges with contemporary developments in law and precedents and to accrete their knowledge base and skills to enable qualitative and timely delivery of justice. The sessions included deliberations on combating corruption in India, prosecution of civil servants, cyber crimes, appreciation and preservation of electronic evidence, economic offences and extradition of fugitives.

Workshop for Additional District Judges was held from 15th to 17th September, 2017. The Workshop aimed to discuss critical areas concerning adjudication at the District level. The sessions involved discussions on issues related to challenges in implementation of the ADR system, Sentencing, Role of Judges in Court and Case Management, Electronic Evidence, cybercrime, Adoptions in India under the Juvenile Justice Act and Fair Sessions Trial. The Workshop also focused on appellate and revision jurisdiction of District Judges under criminal and civil justice administration.

National Judicial Conference for High Court Justices was held from 22nd to 24th September, 2017. This conference provided an open forum for High Court Justices, for sharing experiences and insights with a panel of distinguished resource persons from the judiciary and other domain experts. The objective was to discuss developments in the area of Constitutional law, Economic crimes, Supervisory powers of High Courts over Subordinate Court, Intellectual Property Laws, Effect of Tribunalization and Judicial Review.

National Seminar for Principal District and Sessions Judges on Stress Management was held from 22nd to 24th September, 2017. The seminar addressed various aspects of stress management viz. understanding stress, whys and wherefores of stress in judicial officers, consequence of occupational stress in judges, stress management through enhancing emotional intelligence, judges' perspectives on stress in the courtroom and institutional strategies to preclude and relieve occupational stress. The seminar also apprised participants with approaches and techniques to manage judicial stress.

MAJOR ACTIVITIES OF NATIONAL LEGAL SERVICES AUTHORITY (NALSA) (01-07-2017 to 30-09-2017)

National Seminar of “Law School based Legal Services Clinics: NALSA organized the seminar on 30th July, 2017 at New Delhi. Hon’ble Mr. Justice Dipak Misra, Executive Chairman, National Legal Services Authority inaugurated the said Seminar in the august presence of Hon’ble Mr. Justice Amitava Roy, Judge, Supreme Court of India, Hon’ble Mr. Justice A.M.Khanwilkar, Judge, Supreme Court of India, and Hon’ble Dr. Justice D.Y.Chandrachud, Judge, Supreme Court of India. Hon’ble Mr. Justice Ranjan Gogoi, Judge, Supreme Court of India & Chairman, Supreme Court Legal Services Committee co-chaired one of the sessions. Various activities of the Legal Services Clinics in Law Schools were discussed and a Committee was constituted to prepare a uniform curriculum for the said clinics.

Filming of NALSA song and success stories: NALSA in coordination with Director General, Doordarshan is preparing 26 episodes based on the success stories received from all SLSAs. Two episodes have been telecast on DD National on 20th August, 2017 on 27th August, 2017 respectively.

Regional Conference of North Eastern Region: The Regional Meet of the State Legal Services Authorities of North Eastern States was convened on 27th September, 2017 at Shillong, Meghalaya. The broad objectives of the Meet were to discuss “Evaluation & Review of the Work-Performance of SLSAs on Legal Aid, National Lok Adalats and Implementation of NALSA Schemes & Identification of the areas for expansion of the SLSAs activities under the NALSA Schemes”. The Regional Meet was inaugurated by Hon’ble Mr. Justice Ranjan Gogoi, Judge, Supreme Court of India and Executive Chairman, National Legal Services Authority.

FOREIGN DELEGATIONS IN SUPREME COURT (From 01-07-2017 to 30-09-2017)

On 19-09-2017, Hon’ble Shri Dipak Misra, the Chief Justice of India, Hon’ble Mr. Justice J. Chelameswar, Hon’ble Mr. Justice Ranjan Gogoi, Hon’ble Mr. Justice Madan B. Lokur and Hon’ble Mr. Justice Kurian Joseph had a meeting with a Delegation from American Bar Association headed by Ms. Hilarie Bass, President, American Bar Association.

SOME IMPORTANT VISITS AND CONFERENCES (From 01-07-2017 to 30-09-2017)

INLAND:

1. Hon'ble Shri Jagdish Singh Khehar, the then Chief Justice of India, visited Bengaluru, to attend the General Council Meeting and the Convocation of the NLSIU, Bengaluru, and the National Roundtable Conference organized by Supreme Court Committee on Juvenile Justice, supported by UNICEF, India Country Office on 4th August, 2017.
2. Hon'ble Shri Dipak Misra, Chief Justice of India (i) (as a Judge as His Lordship then was) inaugurated (a) the Legal Assistance Establishment Programmes at Mohali, Panchkula and Chandigarh, and (b) building of Punjab State Legal Services Authority at Mohali, on 9th July, 2017; (ii) (as a Judge as His Lordship then was) inaugurated (a) the Video Conferencing facility at Odisha State Legal Services Authority, Cuttack, and (b) as Chief Guest, the "Sensitization Programme" for Secretaries of District Legal Services Authorities, Para-Legal Volunteers, Legal Service Panel Lawyers, etc. at Odisha Judicial Academy, Cuttack on 23rd July, 2017; (iii) (as a Judge as His Lordship then was) attended the launch of "Tele-Law : Mainstreaming Legal Aid through Common Service Centres" at Sri Krishna Memorial Hall, North Gandhi Maidan, Patna on 6th August, 2017; and (iv) (as Chief Justice of India) delivered the Presidential Address on the occasion of 125th Anniversary Celebrations of Madras High Court Heritage Building, at Chennai on 16th September, 2017.
3. Hon'ble Mr. Justice J. Chelameswar visited (i) Visakhapatnam to attend the program of SANA at a Koduru Village Kotapadu Mandal Visakhapatnam on 30th July, 2017; (ii) Bengaluru to attend 25th Annual Convocation of NLSU and General Council Meeting from 4th to 6th August, 2017; (iii) Lucknow to inaugurate the State Level Judicial Officers Conference at High Court Auditorium on 9th September, 2017; (iv) Ahmedabad to (a) attend Valedictory Session of Workshop of Lawyers on "The Preamble Pledge of Social, Economic and Political Justice : Are They Out of Order" at Gujarat Law Society Compus on 16th September, 2017 and (b) attend the National Conclave on "Alternative Dispute Resolution : Mapping the Challenges in India" at Karnavati University, Gandhinagar on 17th September, 2017; and (v) Ahmedabad to inaugurate the Fifth National Conference organized by All India Federation of Women Lawyers on 23rd September, 2017.
4. Hon'ble Mr. Justice Madan B. Lokur visited (i) Ranchi, Jharkhand (a) for inauguration of the 'Clean and Green Solar Energy Project for Civil Courts' at Garhwa Civil Court on 8th July, 2017 and (b) to inaugurate the '40 Hours Mediation Training of the 2nd Batch of Experts' on 9th July, 2017; (ii) Kochi to attend the Round Table Consultations on Juvenile Justice Issues and other issues pertaining to Children on 22nd and 23rd July, 2017; (iii) Kolkata to deliver a Lecture in a function at the West Bengal Judicial Academy

Campus held on 15th July, 2017; (iv) Bhopal to attend the State Conference on Juvenile Justice and Capacity Building on 29th July, 2017; (v) Bangalore to attend the Regional Conference on Effective Implementation of the Juvenile Justice (Care and Protection of Children) held on 5th August, 2017; (vi) Allahabad to inaugurate the first paperless Court (e-Court) on 19th August, 2017; (vii) Himachal Pradesh to (a) deliver the Lecture on 'Different Facets of Indian Constitution and (b) attend the 'Foundation Week Programme of Himachal Pradesh Law University as Chief Guest organised by Himachal Pradesh Law University on 2nd September, 2017; (viii) Srinagar to attend the Round Table Conference on the effective implementation of the Juvenile Justice System at Srinagar from 9th to 10th September, 2017; (ix) Bhopal to attend the National Judicial Conference for Newly Elevated High Court Justices on Public Law, organized by the National Judicial Academy from 15th to 17th September, 2017 and (x) Jodhpur to inaugurate and present the Key Note Address at the 2nd CARTAL Conference on International Arbitration organized by the National Law University, Jodhpur from 30th September to 1st October, 2017.

5. Hon'ble Mr. Justice Kurian Joseph visited (i) Hyderabad to inaugurate the "19th World Congress on Environment Management" on 7th July, 2017; (ii) Coimbatore to deliver the 16th Convocation Address of the Karunya University, Karuny Nagar, Coimbatore on 8th July, 2017; (iii) Bhopal to attend a "Workshop of Additional District Judges" organized by the National Judicial Academy, Bhopal on 6th August, 2017; (iv) Shimla to deliver a Lecture on Constitutional Law organized by Himachal Pradesh State Legal Services Authority on 19th August, 2017; (v) Kochi (a) to address a Symposium on "Pre-Enrolment Training & Continuing Legal Education" organized by Bar Council of India on 26th August, 2017; and (b) to inaugurate Barrister M.I. Joseph Memorial Trust at the Kerala High Court premises, Kochi on 16th September, 2017; (vi) Bhopal to attend "National Judicial Conference for Newly Elevated High Court Justices on Public Law" organized by the National Judicial Academy, Bhopal on 17th September, 2017; (vii) Trivandrum to attend the Silver Jubilee celebrations of Sree Chithira Thirunal Residential Central School, Kunnathukal, Karakonam P.O., Thiruvananthapuram on 23rd September, 2017 and (viii) Bhopal to attend "National Seminar for Principal District and Sessions Judges on Stress Management" organized by the National Judicial Academy, Bhopal on 24th September, 2017.

6. Hon'ble Mr. Justice Arjan Kumar Sikri visited (i) Bengaluru to attend the Colloquium on Developments in the Practice and Procedure before NCLT organized by the Indian Institute of Corporate Affairs on 15th July, 2017; (ii) Bhopal to attend the Regional Conference organized by the National Green Tribunal on 30th July, 2017; (iii) Lucknow to attend the Valedictory Function organized by the Allahabad High Court on 10th September, 2017 and (iv) Manesar to attend the Introductory Mediation Training Workshop organized by Delhi High Court Mediation and Conciliation Centre on 16th September, 2017.

7. Hon'ble Mr. Justice Sharad Arvind Bobde visited (i) Nagpur to attend "1st G.L. Sanghi Endowment Memorial Lecture at Nagpur on 29th July, 2017; (ii) Bengaluru to attend the meeting of the General Council of National Law School of India University, Bengaluru

on 5th August, 2017; (iii) Mumbai to attend the 3rd meeting of the General Council of Maharashtra National Law University, Mumbai on 2nd September, 2017; (iv) Guwahati to attend the Regional Conference of the National Green Tribunal, Eastern Zone at Guwahati on 9th September, 2017 and (v) Ranchi to attend State Level Conference on Mediation : Shaping the Future of State Litigation and to inaugurate the grid connected clean and green inexhaustible Solar Power Plant at the District Court, Simdega from 16th to 17th September, 2017.

8. Hon'ble Mr. Justice R. K. Agrawal visited (i) Bangalore to (a) attend a meeting at NLSIU, Bangalore on 5th August, 2017 and (b) participate in the 25th Annual Convocation of NLSIU on 6th August, 2017; (ii) Noida to attend the inaugural function of the Bar Council of India 34th All India Inter University National Moot Court competition, 2017 at Galgotia University on 25th August, 2017; (iii) Lucknow to participate in the Conference of District Judges and Additional District Judges at Lucknow on 9th September, 2017; (iv) Chennai to participate in the 125th Anniversary Celebrations of Madras High Court Heritage Building on 16th September, 2017; (v) Visakhapatnam to participate in the Regional Conference of the National Green Tribunal at Vizag on 17th September, 2017; and (vi) Allahabad to attend the Foundation Day function at University of Allahabad on 23rd September, 2017.

9. Hon'ble Mr. Justice N. V. Ramana visited Visakhapatnam to take part in the Inaugural Session of the Regional Conference on Environment – 2017 at Madhurawada, Visakhapatnam on 16th September, 2017.

10. Hon'ble Mr. Justice Arun Mishra visited (i) Jaipur to participate in Mukat Bihari Lal Bhargava Memorial Lecture organized by Bar Council of Rajasthan as “Chief Guest” on 15th July, 2017; and (ii) Bhopal to participate in the “Regional Conference on National Green Tribunal” as “Guest of Honour” at RCVN Noronha Academy of Administration and Management, Bhopal on 30th July, 2017.

11. Hon'ble Mr. Justice Uday Umesh Lalit visited Guwahati, Assam to attend the Eastern Zone Regional Conference on Waste Disposal and Management organized by National Green Tribunal on 9th September, 2017.

12. Hon'ble Mr. Justice Ashok Bhushan visited (i) Lucknow to attend a conference of the Officers of Higher Judicial Service at Lucknow – Speech Delivered by His Lordship at Allahabad High Court, Lucknow on 9th September, 2017; and (ii) Allahabad to address at Foundation Day function of the University of Allahabad, on 23rd September, 2017.

13. Hon'ble Mr. Justice L. Nageswara Rao (i) attended as Chief Guest the Fifth Convocation of the Vignn's University at Convocation Hall, Vignn's University, Vedlamudi, Guntur Dist., A.P. on 29th July, 2017; (ii) delivered Sri C. Padmanabha Reddy Memorial Lecture on “Criminal Law and Marriages” organised by Indian Association of Lawyers at I.V. Palace, Prakasam Road, Opp. Vijayawada City, Civil Court, Governorpet, Vijayawada on 27th August, 2017; and (iii) visited Visakhapatnam (a) to deliver the key note address in the inaugural session of the “Regional Conference

on Environment, 2017” organized by National Green Tribunal and (b) also to deliver Lecture on “Law, Democracy and Freedom of Speech” organized by Visakhapatnam Bar Association on 16th September, 2017.

14. Hon'ble Mr. Justice Mohan M. Shantanagoudar visited (i) Bangalore (a) to attend meeting and 25th Annual Convocation of National Law School, Bangalore from 5th – 6th August, 2017; and (b) to attend a seminar of TDSAT on 9th September, 2017; and (ii) Hubballi to attend Late Sri L.G. Havanur Endowment Lecture of Karnataka State Law University at Navanagar, Hubballi on 7th August, 2017.

15. Hon'ble Mr. Justice Navin Sinha visited Bhopal to Chair the Sessions of the Workshop for Additional District Judges conducted by National Judicial Academy, Bhopal on 5th and 6th August, 2017.

16. Hon'ble Mr. Justice Deepak Gupta visited Bengaluru to attend (a) Meetings of the Academic Council and the General Council of National Law School of India University on 5th August, 2017 and (b) 25th Annual Convocation on 6th August, 2017.

The



Supreme Court Reports

(WEEKLY)

Official Journal
of Reportable Supreme Court Decisions

[2017] 1 S.C.R. (Part-I)

Highlights of the issue

High Court, whether empowered to punish for contempt of Supreme Court.

Vitusah Oberoi v. Court of Its Own Motion ...25

Purpose and intention behind the enactment of s. 123(3) of the Representation of the People Act, 1951 – Discussed.

Abhiram Singh v. C.D. Commachen (D) by LRs. ...158

PUBLISHED UNDER THE AUTHORITY OF THE SUPREME COURT OF INDIA
BY THE CONTROLLER OF PUBLICATIONS, GOVT. OF INDIA, DELHI