

MAY 2024

RESILIENCE LAW ACADEMY

**LAW TIMES**

MONTHLY  
CONSOLIDATION



## Calcutta High Court refuses urgent hearing in PIL to restrain Justice Amrita Sinha from hearing cases on Police

The plea alleged bias on the ground that the judge's husband had tried to influence investigation into a criminal case.

### Important Verdicts of May Month

#### 1. Minimum Qualifying Marks in Interview as Selection Criteria

**Judgment Name:** [Abhimeet Sinha & Ors. vs. High Court of Judicature at Patna & Ors.](#)

**Bench:** Justice [Hrishikesh Roy](#) and Justice [Prashant Kumar Mishra](#)

**Articles and Acts Involved:** {Constitution of India, 1950- Articles 32, 14, 16, 234, and 320}

**Supreme Court Decision:** On [May 06, 2024](#), the SC in its important ruling, upheld the minimum qualifying marks requirement in the interviews/ viva voce test as a part of the Selection criteria for appointment to the District Judiciary in the states of Bihar and Gujarat. It also said, "Interviews are to produce better judicial candidates and do not violate Article 14;

policies like moderation (of marks) should ideally be part of the rules.” The bench said that the impugned selection process in the State of Bihar and Gujarat is legally valid and upheld. The operative part of the judgments reads, “The prescription of minimum cut-off is also not perceived to be of such a nature that it reeks of irrationality or was capricious and/or without any adequate determining principle. It does not appear to be disproportionate so as to adversely affect “meritorious” candidates, as has been argued. It is certainly not manifestly arbitrary, or irrational or violative of Article 14 of the Constitution of India... the validity challenge to Clause 11 of the Bihar Rules, 1951 and Rule 8(3) of the Gujarat Rules, 2005 (as amended in 2011) prescribing minimum marks for interview are repelled.”



**Don't want to be influenced by media coverage in Delhi water crisis case; will read case file first: Supreme Court**

## **2. Time Limit for Preliminary Assessment: JJ Act**

**Judgment Name:** [Child in Conflict with Law through his Mother vs. The State of Karnataka and Another](#)

**Bench:** Justice [CT Ravikumar](#) and Justice [Rajesh Bindal](#)

**Articles and Acts Involved:** {Indian Penal Code, 1860- Sections 342 and 376(i)}, {Protection of Children from Sexual Offences Act, 2012- Sections 4, 5, 6, 7, and 8}, and {Juvenile Justice (Care and Protection of Children) Act, 2015- Sections 14(1),14 (3), and 19}

**Supreme Court Decision:** The top court bench on [May 07, 2024](#), ruled that the time limit prescribed for completion of the preliminary assessment in Section 14(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), that is of 3 months from the date of the first production of the child before the Board, is not mandatory but merely directory. The bench observed, “Section 15 of the Act enables the Board to make preliminary assessment into heinous offences where such an offence alleged to have been committed by a child between 16 and 18 years of age. The preliminary assessment is to be conducted with regard to his mental and physical capacity to commit such an offence, ability to understand the consequences of the



offence and the circumstances in which the offence was allegedly committed.” Further, it stated that the provision of Section 14(3) of the Act, providing 3 months for completion of a preliminary assessment under Section 15 of the Act, is not mandatory. The same is held to be directory.

### 3. Delhi Liquor Policy Case: Interim Bail to Arvind Kejriwal

**Judgment Name:** [Arvind Kejriwal vs. Directorate of Enforcement](#)

**Bench:** Justice [Sanjiv Khanna](#) and Justice [Dipankar Datta](#)

**Articles and Acts Involved:** {Indian Penal Code, 1860- Sections 120-B and 447A} and {Prevention of Corruption Act, 1988- Section 7}

**Supreme Court Decision:** In this case, the Supreme Court bench was hearing an appeal filed by Delhi Chief Minister [Arvind Kejriwal](#) challenging the order and judgment passed by the trial court and the High Court upholding his arrest in a money laundering case by the ED (Enforcement Directorate) related to Delhi Liquor policy scam case. The SC bench granted interim bail to Arvind Kejriwal till June 01, 2024, to campaign for the ongoing Lok Sabha elections. While granting interim bail, the bench said, “...legality and validity of the arrest itself is under challenge before this Court and we are yet to finally pronounce on the same. The fact situation cannot be compared with harvesting of crops or plea to look after business affairs.” On [May 10, 2024](#), the top court granted him interim bail till June 01 and directed him to surrender on June 02, 2024.

### 4. Advocates and Consumer Protection Act

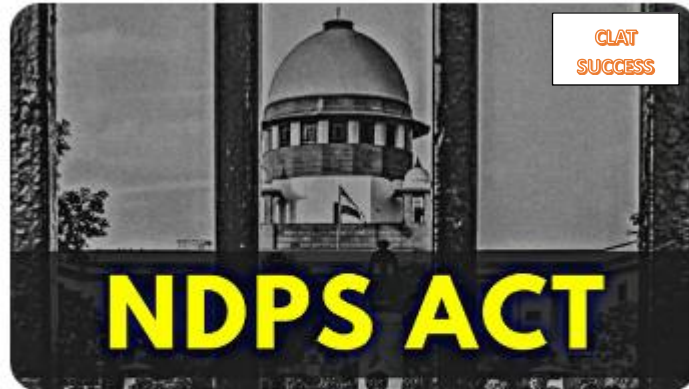
**Judgment Name:** [BAR of Indian Lawyers through its President vs. D.K. Gandhi PS National Institute of Communicable Diseases and anr.](#) (May 14, 2024)

**Bench:** Justice [Bela M Trivedi](#) and Justice [Pankaj Mithal](#)

**Articles and Acts Involved:** {Advocates Act, 1961} and {Consumer Protection Act, 2019}

**Supreme Court Decision:** The main question answered by the top Court, in this case, was “Whether a ‘Service’ hired or availed of an Advocate would fall within the definition of ‘Service’ contained in the C.P. Act, 1986/2019, so as to bring him within the purview of the said Act?” On [May 14, 2024](#), the SC bench passed the judgment that “A service hired or availed of an Advocate is a service under ‘a contract of personal service,’ and therefore would fall within the exclusionary part of the definition of ‘Service’ contained in Section 2 (42) of the CP Act 2019.”

The bench said that advocates are not liable under the Consumer Protection Act, 1986 for deficiency of service stating that the legal profession is sui generis and cannot be compared with any other profession.



**Liberty will override statutory embargo on bail under NDPS Act if trial not concluded within reasonable time: Supreme Court**

#### **5. CrPC has no Retrospective Application, Will Apply from the Day of Abrogation of Article 370**

**Judgment Name:** [National Investigation Agency New Delhi vs. Owais Amin @ Cherry & Ors.](#)

**Bench:** Justice [MM Sundresh](#) and Justice [SVN Bhatti](#)

**Articles and Acts Involved:** {Jammu and Kashmir State Ranbir Penal Code, 1989- Sections 306, 307, 4211, 120-B, 121, 121-A and 124-A}, {Unlawful Activities (Prevention) Act, 1967- Sections 39, 15, 16, 18, and 20}, {Explosive Substances Act, 1908- Sections 4 and 5}, {Jammu & Kashmir Public Property (Prevention of Damage) Act, 1985- Section 4}, and {Code of Criminal Procedure SVT., 1989- Sections 196 and 196-A}

**Supreme Court Decision:** The Supreme Court bench ruled that “CrPC, 1973 would govern the field only from the appointed day and consequently the CrPC, 1989 stands repealed. To reiterate, it would come into effect only from the appointed day and therefore has got no retrospective application. To make this position clear, the CrPC, 1973 shall be pressed into service from 31.10.2019 onwards (date when the Jammu and Kashmir Reorganization Act, 2019 came into effect), and thus certainly not before the appointed day.” The judgment was delivered on [May 17, 2024](#).

#### **6. Chartered Accountants: Specified Number of Tax Audits**

**Judgment Name:** [Shaji Poulouse vs. Institute of Chartered Accountants of India & Others](#) (May 17, 2024)

**Bench:** Justice [BV Nagarathna](#) and Justice [Augustine George Masih](#)

**Articles and Acts Involved:** {Constitution of India, 1950- Section 19(1)(g)}, {Chartered Accountants Act, 1949}, and {Income Tax Act, 1961}

**Supreme Court Decision:** In this case, the SC upheld a rule issued by the ICAA (Institute of Chartered Accountants Of India) barring Chartered Accountants (CAs) from accepting more than the "specified number of tax audit assignments" in a financial year. It said, "Liberty is reserved to the respondent-Institute to enhance the specified number of audits that a Chartered Accountant can undertake under Section 44AB of the IT Act, 1961 if it deems fit."

### **7. Amal Chandra Das vs State of West Bengal: Calcutta High Court Nullifies OBC Classification of 37 Communities, Cancels Certificates**

On May 22, 2024, the Calcutta High Court annulled the classification of 37 communities as Other Backward Classes (OBC) under the West Bengal Backward Classes (Other than Scheduled Castes and Scheduled Tribes) (Reservation of Vacancies in Services and Posts) Act, 2012. The division bench, led by Justices Tapabrata Chakraborty and Rajasekhar Mantha, invalidated these OBC certificates but ensured that those who had already benefited from the classification would remain unaffected.

The court specifically struck down Section 16 of the 2012 Act, which allowed the State Executive to amend any schedule of the Act, thus removing the 37 communities from Schedule 1. The bench also invalidated several Executive Orders that classified these communities as OBCs for public service reservations.

The West Bengal Backward Class Welfare Department, in consultation with the State Backward Class Commission, was directed to submit a report to the State legislature with recommendations for including new classes or excluding others from the OBC list.

The court highlighted the absence of a legislative policy guiding the State's power to classify OBCs and emphasised the need for quantifiable data showing backwardness and inadequate representation in public employment, as mandated by the Supreme Court.

### **8. Mukatlal versus Kailash Chand (D) Through Lrs. And Ors.: Supreme Court: Hindu Women Can Claim Full Ownership of Property Under S.14(1) of the Hindu Succession Act Only If in Possession**

The Supreme Court ruled that a Hindu woman can claim full ownership of a Hindu Undivided Family (HUF) property under Section 14(1) of the Hindu Succession Act only if she possesses it. Justices BR Gavai and Sandeep Mehta emphasized that the woman must have acquired the property through inheritance, partition, maintenance, gift, or purchase.

The case involved a widow whose adopted son sought partition of HUF property. The Court concluded that since the widow never possessed the property, her son couldn't claim

ownership. This decision reversed the High Court's ruling, underscoring possession as a critical requirement for claiming full ownership under the Act.

### **9. National Investigation Agency New Delhi versus Owais Amin @ Cherry & Ors: CrPC Not Retroactively Applicable to J&K Before 31.10.2019; Old Law Applies to Prior Proceedings**

The Supreme Court ruled that the Code of Criminal Procedure (CrPC) 1973 applies to Jammu and Kashmir (J&K) only from October 31, 2019, following the Jammu and Kashmir Reorganization Act 2019. Proceedings and investigations initiated before this date must adhere to the J&K CrPC 1989. Justices MM Sundresh and SVN Bhatti rejected the National Investigation Agency's (NIA) plea for retrospective application of the 1973 CrPC.

The Court emphasized that non-compliance with the J&K CrPC 1989 is a curable defect, allowing the NIA to seek appropriate sanction and proceed. This decision reinforces the need for compliance with the procedural laws in effect at the time of investigation initiation.

### **10. Supreme Court to Decide on Muslim Women's Right to Equality in Succession**

The Supreme Court will determine whether Muslim women have the right to claim equality in succession under Articles 14 and 15 of the Indian Constitution. This question arose in a case where respondents claimed that a will executed by Hazi left properties to three sons, excluding the fourth.

The trial court's decree was modified by a lower appellate court, limiting Hazi's will to one-third of his estate, with the remainder divided among legal heirs. The High Court later restored the trial court's order. The Supreme Court framed key questions on the equality in succession for Muslim women and the extent of a testator's rights under Mohammedan Law. Senior Advocate V. Giri was appointed [Amicus Curiae](#) and the matter is posted for July 25.

### **11. Ankit Singh And 3 Others vs State of UP and Another: Allahabad High Court Emphasizes the Importance of Maintaining Wedding Present Lists**

The Allahabad High Court stressed the importance of maintaining a list of wedding presents to combat false dowry allegations, referencing the Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985. Justice Vikram D Chauhan observed that couples rarely comply with this rule, which requires signed lists from both bride and groom to distinguish gifts from dowry.

The Court questioned the State Government on the appointment of dowry prohibition officers and their enforcement of these rules. The State must report on compliance and disclose any relevant orders or officer appointments by May 23, amid rising dowry-related disputes.

### **12. Bhikchand S/O Dhondiram Mutha (Deceased) Through Lrs. versus Shamabai Dhanraj Gugale (Deceased) Through Lrs.: S.144 CPC | Purchaser Aware of Appeal Cannot Claim Bona Fide Status: Supreme Court**

In a significant ruling on Section 144 of the Code of Civil Procedure, 1908 (CPC), the Supreme Court ruled that a purchaser who buys property knowing an appeal is pending cannot resist restitution by claiming to be a bona fide purchaser.

The bench, comprising Justices Hrishikesh Roy and Prashant Kumar Mishra, overturned a High Court decision, emphasizing that such purchasers, aware of ongoing appeals, are not protected as bona fide buyers. The judgment, referencing *Chinnamal & Ors. Vs. Arumugham & Anr.*, highlighted that knowledge of pending litigation disqualifies a purchaser from claiming innocence, mandating restitution upon decree reversal.

### **13. Sonu Sonkar v The Lt Governor, Delhi & Ors: Delhi High Court Denies Parole for Conjugal Relations with Live-In Partners**

The Delhi High Court ruled that Indian law does not allow parole for maintaining conjugal relationships with live-in partners. In the case of *Sonu Sonkar v The Lt Governor, Delhi & Ors.*, the court emphasized that live-in partners do not qualify as “family members” under prison rules. Justice Swarana Kanta Sharma highlighted that granting parole for such purposes could lead to numerous convicts seeking similar privileges, which would be against the existing legal framework. The case involved Sonu Sonkar, a murder convict who sought parole to consummate a relationship with a woman he married while on parole, without providing proof of divorce from his first wife.

The court noted that Sonkar’s request did not merit approval as he already had three children with his first wife and his second wife had recently given birth to a stillborn child. The plea was ultimately rejected, underscoring the strict boundaries set by law regarding the rights of convicts in relation to family and conjugal matters.

### **14. Child In Conflict With Law Through His Mother Versus The State Of Karnataka And Another: Supreme Court Rules Three-Month Deadline for Juvenile Preliminary Assessments as Directory, Not Mandatory**

The Supreme Court of India has clarified that the three-month timeframe stipulated in Section 14(3) of the Juvenile Justice (Care & Protection) Act, 2015 for preliminary assessments of juveniles is not mandatory. This section pertains to assessing the mental and physical capacity of children under sixteen accused of serious offences. The court noted that the process involves multiple parties, such as investigating officers and experts, which can lead to delays.

Since the Act does not specify consequences for failing to meet the three-month deadline, unlike the provision for petty offences, the timeframe is considered directory rather than mandatory. This interpretation allows for extensions if justified in writing, especially when expert opinions are delayed, ensuring the Act is applied in a purposeful and meaningful manner.

The decision aligns with previous rulings by various High Courts, emphasizing a flexible approach to the time limits for juvenile assessments to accommodate practical challenges in the judicial process.

**Bar of Indian Lawyers v. DK Gandhi PS National Institute of Communicable Diseases [2024] GCtR 1344 (SC)**, it has been held that services provided by Advocates are not covered under Consumer Protection Act, 2019. "Services hired or availed of an Advocate would be that



of a contract 'of personal service' and would therefore stand excluded from the definition of "service" contained in the section 2(42) of the Consumer Protection Act, 2019. As a necessary corollary, a complaint alleging "deficiency in service" against Advocates practising Legal Profession would not be maintainable under the CP Act, 2019."

In the case of **Child in Conflict with Law v. State of Karnataka [2024] GCtR 1352 (SC)**, it has been held that the provision of Section 14(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015, providing for the period of 3 months for completion of a preliminary assessment under Section 15 of the Act, is not mandatory. The same is held to be directory.

In **Bhikchand v. Shamabai Dhanaraj Gugale [2024] GCtR 1350 (SC)** it was reiterated that "if at a court auction sale in execution of a decree, the properties are purchased by a bona fide purchaser who is a stranger to the court proceedings, the sale in his favour is protected and he cannot be asked to reconstitute the property to the judgment debtor if the decree is set aside. The policy which prompts the extension of protection to the strangers who purchase at court auctions is based on a need to ensure that proper price is fetched at a court auction. The special protection afforded to a stranger who purchases at an execution sale is not extended to an assignee of the decree-holder auction purchaser. Persons who purchase at a court auction who are strangers to the decree are afforded protection by the court because they are not in any way connected with the decree. The reasons which prompt the courts to protect strangers who purchase at court auction sales also do not apply to assignees or purchasers from a decree-holder auction purchaser." It was also explained that "the execution of a decree by sale of the entire immovable property of the judgment debtor is not to penalise him but the same is provided to grant relief to the decree holder and to confer him the fruits of litigation."

In **M/s Embio Ltd v. DGFT [2024] GCtR 1336 (SC)** it was held that Section 11 (2) of Foreign Trade (Development and Regulation) Act, 1992 is a penal provision. It must be strictly construed.

In **Shento Varghese v. Julfikar Husen [2024] GCtR 1335 (SC)** issue arose was what is the implication of non-reporting of the seizure forthwith to the jurisdictional Magistrate as provided under Section 102(3) of Code of Criminal Procedure, 1973? or does delayed reporting of the seizure to the Magistrate vitiate the seizure order altogether..... It has been concluded that the "line of precedents which have taken the position that 'seizure orders' are vitiated for delay in compliance with the reporting obligation are declared to be manifestly erroneous and are accordingly, overruled."

In **Tapas Guha v. Union of India [2024] GCtR 1329 (SC)** it was held that "while acknowledging the importance of infrastructure development, it is paramount that such projects proceed in harmony with environmental laws to prevent irreparable damage to ecosystems and biodiversity. The requirement for Environmental Clearance serves as a crucial safeguard against unchecked exploitation of natural resources and helps uphold the principles of sustainable development- which safeguards the interests of both present and future generations."

In **Amanatullah Khan v. Commissioner of Police [2024] GCtR 1284 (SC)** on the issue of Minor Relatives and Inclusion in History Sheet, it has been commented while dealing with Standing Order No.L&O/54/2022 issued by Delhi Police Commissioner that "amended Standing Order that in the column "relations and connections", it has been decided that

identities of only those persons shall be reflected who can afford the history sheet/bad character shelter, when the offender is running/wanted by the police and it shall also include names of his associates in crime, abettors and receivers. The amended Standing Order emphatically says that no details of any minor relatives, i.e., son, daughter, siblings shall be recorded anywhere in the History Sheet unless there is evidence that such minor, has or earlier had, afforded shelter to the offender." Ultimately, the criminal appeal filed by Amanatuallah Khan was disposed of modifying the decision of Hon'ble Delhi HC.

In the case of **Chander Bhan v. Mukhtiar Singh [2024] GCtR 1273 (SC)** while dealing with issue of **Lis Pendens and equity**, it was held that "the object underlying the doctrine of lis pendens is for maintaining status quo that cannot be affected by an act of any party in a pending litigation. The objective is also to prevent multiple proceedings by parties in different forums. The principle is based on equity and good conscience." There can be no doubt that even if Section 52 of Transfer of Property Act, 1882 is not applicable in its strict sense in certain cases, then too the principles of lis-pendens, which are based on justice, equity and good conscience, would certainly be applicable.

In the case of **Shankar v. State of UP [2024] GCtR 1267 (SC)** on the issue of **S.319 of Code of Criminal Procedure, 1973** it was explained that "the degree of satisfaction required to exercise power under Section 319 is well settled. The evidence before the trial court should be such that if it goes unrebutted, then it should result in the conviction of the person who is sought to be summoned. The degree of satisfaction that is required to exercise power under Section 319 is much stricter, considering that it is a discretionary and an extra-ordinary power. Only when the evidence is strong and reliable, can the power be exercised. It requires much stronger evidence than mere probability of his complicity."

In the case of **Sharif Ahmed v. State of UP [2024] GCtR 1232 (SC)**, the important issue of **nonailable warrants and completion of chargesheet** was clarified. It was held that while there are no comprehensive set of guidelines for the issuance of nonailable warrants, it can be observed that nonailable warrants should not be issued, unless the accused is charged with a heinous crime, and is likely to evade the process of law or tamper/destroy evidence. The chargesheet is complete when it refers to material and evidence sufficient to take cognizance and for the trial. The nature and standard of evidence to be elucidated in a chargesheet should prima facie show that an offence is established if the material and evidence is proven. The chargesheet is complete where a case is not exclusively dependent on further evidence.

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