

***Weekly Legal Updates
for Law Exams
06-12 July***



WEEKLY LEGAL UPDATES for LAW EXAMS: 06- 12 July

1. Supreme Court allows service of summons through Email, Fax, and Instant Messaging Apps; specifies when limitation periods will extend till

- While hearing the *suo-motu* case on **extending limitation of statutes due to the COVID-19 induced lockdown**, the Supreme Court today allowed for summons and notices to be served through email, fax, and instant messaging applications.
- The Bench of Chief Justice of India **SA Bobde** and Justices **R Subhash Reddy** and **AS Bopanna** passed the order after hearing submissions by Attorney General **KK Venugopal**. The AG stated that the government was "not comfortable" with the service of the summons and notices through WhatsApp because it was "a completely encrypted platform".
- **However, allaying his concerns, CJI Bobde noted that the "blue tick" feature of the messaging application could prove whether the message was delivered or not.**
- **"If the two blue ticks are there then it can be proved under the Evidence Act, but if the person has turned it off, then it cannot be proven. So WhatsApp can be used (for summons).": Court**
- Regarding extending the limitation period for the validity of cheques under Section 138 of the Negotiable Instruments Act, the Court refused to intervene in the domain of the Reserve Bank of India (RBI). The Court thus stated,
- **"Under Section 35A of the Banking Regulation Act, we don't consider appropriate to interfere in the deadline prescribed by RBI. If RBI considers extending, then they can do it." CJI Bobde**
- On March 23, a three-judge Bench of CJI Bobde and Justices **L Nageswara Rao** and **Surya Kant** invoked its power under Article 142 read with Article 141 of the Constitution of India and extended limitation period of appeals from high courts or tribunals on account of the COVID-19 pandemic.

2. Can restriction on use of social media be a condition for grant of bail? Supreme Court to consider

- The Supreme Court today said that it would consider the issue of whether a person can be restricted from using social media as a condition for grant of bail.
- During the hearing, CJI Bobde observed that it is not unreasonable to impose such restrictions, to prevent further mischief. He said,
- **"We don't think it is too erroneous. If a person's participation in social media creates mischief, why can't the court say you don't use the instrument by which you caused mischief?" CJI Bobde**
- Thus, the three-judge bench led by CJI SA Bobde issues notices on a petition to consider the question of law on whether a trial court while granting bail can restrict a person from using social media.

3. "Petitioners invoking Supreme Court's jurisdiction in all matters like an omnibus jurisdiction", CJI SA Bobde

- Chief Justice of India **SA Bobde** today remarked that the Supreme Court's jurisdiction was being invoked in matters concerning all aspects as though it has "omnibus jurisdiction".
- This remark came from the CJI while the Bench headed by him and comprising Justices **R Subhash Reddy** and **AS Bopanna** was hearing a petition which sought for exemption from payment of school fees in Uttarakhand due to COVID-19.

- "Petitioners these days are invoking the jurisdiction of the court in all matters whether it be education or migrants... like an omnibus jurisdiction." *CJI SA Bobde*
- While some cases are "fact-intensive", there are other petitions which raise concerns that are "purely within the executive domain", CJI Bobde pointed out. And yet, these pleas find their way to the Supreme Court, it was implied.
- When the Court refuses to hear the said matters or refuses to pass any orders, then the petitioners get disappointed regardless of the nature of the issues concerned in the plea, he went on to add.

4. [COVID-19] Continue providing food and ration benefits to persons with no ration cards: Karnataka HC to the state government

- The Karnataka High Court recently directed the state government to continue providing food and other ration benefits to all persons who were not holding ration cards amid the COVID-19 pandemic.
- The Bench was further informed that as **Anganwadi was closed, pregnant/lactating women and minor children were finding it difficult to get nutritious food**. In this regard, the Court asked the state government what steps it had taken to better the existing situation and also, to place on record the up-to-date information regarding the supply of food to *Anganwadi* beneficiaries.
- **The Court also opined that the issue of a mid-day meal scheme had to be considered by the state, as schools were closed during the Unlock phase.**
- Another issue pointed out was the poor health of *Pourakarmikas*. During the hearing, the Bench was informed that 23 *Pourakarmikas* working within BBMP limits had been tested positive for COVID-19. On this issue, **the state was asked to inform the Court on the measures it had taken for the safety and protection of *Pourakarmikas*.**
- The matter has been next posted for hearing on July 13.

5. Mandatory for banks to ensure continuity of businesses: Karnataka HC directs RBI to monitor implementation of loan moratorium circular

- The Karnataka High Court yesterday held that the Reserve Bank of India (RBI) is required to monitor the implementation of its March 27 circular granting a loan moratorium to borrowers in the face of the COVID-19 pandemic.
- The Court was faced with a number of questions to be answered in this matter.
- ***Whether a writ of mandamus can be issued against private banks to implement RBI's March 27 circular?***
- **The Court noted that the aim of issuing the circular was to ease the burden on the public, and it can be said that the circular was issued in the public interest. Therefore, it would attract a public law element.**
- "The said circular having been issued to protect and preserve the economy of the country on account of COVID-19 pandemic. The issuance of the circular is in the public interest, the interest of the economy and the country. The enforcement thereof would also come within the purview of enforcing a public duty." *Karnataka High Court*.

- The Court was also faced with the question of whether one bank can deny a moratorium request when other Banks in the consortium are agreeable to the same. It was held that the banks, keeping in mind the viability of a business, cannot refuse to grant moratorium when other banks are willing to extend the benefit.

6. Which is the competent court to hear plea for the appointment of an arbitrator when the seat of arbitration is not specified? Delhi HC answers

- When the parties have not agreed on the seat of the arbitration, the court competent to entertain an application under Section 11 of *the Arbitration and Conciliation Act* is the one defined in Section 2(1) (e) of the Act read with Sections 16 to 20 of the Code of Civil Procedure, Delhi High Court has held.
- After considering the submissions of the parties, the relevant provisions of the Arbitration Act and judgments relied upon by the parties, the Court observed that in terms of Section 20, parties had the autonomy to choose a "neutral seat of arbitration" i.e. where no part of the cause of action has arisen and this place may not otherwise have jurisdiction under Sections 16 to 21 of Code of Civil Procedure.
- Once the seat is determined, the court of that place would have the exclusive jurisdiction to regulate the arbitration proceedings arising out of the agreement between the parties, it added.
- However, when the parties have not determined the seat of arbitration, the seat of arbitration shall be determined by the Arbitral Tribunal under Section 20(2) of the Arbitration and Conciliation Act, the Court further stated.

7. The state can't be a silent spectator, provide compensation to migrants whose huts were burned down: Karnataka HC to the state government

- The Karnataka High Court today directed the state government to pay some amount as compensation to those migrants in Bangalore whose huts were burned down by miscreants earlier this year.
- The direction came in a suo-motu plea dealing with the burning of temporary shanties that had housed migrant workers in the city.
- *"Now the State must come forward and make a statement about the compensation which will be paid to the affected families and especially 170 families who have come back and repaired demolished huts and started staying there."*Karnataka High Court
- Further, the Bench was informed that criminal law had also been set in motion against the persons suspected to behind the burning down of huts.
- The Court also clarified that the state can always offer to pay a reasonable amount as compensation to these families without affecting its right to initiate proceedings for eviction in accordance with the law.

8. Application for an Educational Loan cannot be rejected solely because the applicant's parents have unsatisfactory credit scores: Kerala HC

- The court relied on the **model loan scheme** referred to by the Bank and an earlier judgment of the Kerala High Court that had ruled:

- **“the rejection of the request for a loan on the ground that the father of the petitioner does not have the requisite credit score is arbitrary and violative of the spirit of the circular issued by the Reserve Bank of India (the basis for the model loan scheme) which is binding on the Bank.”**
- The Court, therefore directed that the loan application be assessed per the Court’s ruling, within two weeks. Further, the credit scores of the loan applicant's parents were not to *“be pressed into service to deny the loan”*, if the loan-applicant was otherwise eligible, the judge said.

9. Senior lawyers, former judges urge MHA-constituted Criminal Law Reforms Committee to disclose terms of reference; ensure diversity

- The *Criminal Reforms Committee* recently constituted by the Union Ministry of Home Affairs (MHA) has been urged by lawyers and former judges to ensure diversity and transparency in its functioning by disclosing details regarding the terms of its reference and how it proposes to function.
- **A letter signed by lawyers, academics, and former judges and bureaucrats working with the criminal justice system has raised concerns that the present Committee *“lacks diversity both in terms of the social identity of the members, as well as their professional background and experience.”***
- **The letter addressed to the Committee members points out that *“unlike previous law reform efforts of similar magnitude, this Committee does not consist of full-time members.”***
- **This, the letter notes, is despite the existence of the 22nd Law Commission of India, which has the mandate to recommend law reform, although it remains understaffed.**
- The Criminal Reforms Committee has now been called on to *“demonstrate its bonafides and its commitment to a rigorous law reform exercise by ensuring full transparency regarding its constitution and its functioning.”*

10. All inmates can avail video conferencing facility: Delhi HC disposes of the challenge to suspension of the legal interview in jails due to COVID-19

- A Delhi prison authority today informed the Delhi High Court that a circular has been issued to allow all inmates in all jails to avail video conferencing facility for the purpose of legal interview/legal consultation.
- **The Court was informed that a specific time slot of 30 minutes shall be given to each inmate and the link will be shared with the lawyer concerned.**
- **It was added that while the Jail Superintendent shall remain present during the virtual legal interview, he shall be outside the hearing range to maintain the confidentiality of the conversation.**
- In view of the above, the Court remarked that it was not inclined to pass any further directions and proceeded to dispose of the petitions.

11. No, stay on reservation for OBC, EWS categories: Delhi HC allows NLU Delhi to issue a clarification after Delhi government moves application

- Clarifying that its June 29 stay order only pertained to the 50% horizontal reservation for Delhi locals, the Delhi High Court today directed National Law University, Delhi to issue an addendum to its admission notification.

- **NLU Delhi has now been directed to amend its revised admission notification to clarify that the reservation for Other Backward Classes (OBC) and Economically Backward Sections (EWS) will continue.**
- University stated that the order had called for maintenance of "status quo ante as of the previous academic year". The Court responded,
- *"You interpreted the order as you had to. If you had any doubt, you should have come to the High Court."*
- *Asking NLU Delhi to undo what it had done, the Court remarked, "You are creating a mess for the students. As it is, it's very late."*

12. An accused cannot claim to be released on bail only on the ground of grant of bail to other co-accused: Rajasthan HC

- The Jaipur Bench of the Rajasthan High Court yesterday ruled that parity of accused with other accused persons is not the sole ground upon which bail may be granted.
- **The Court, referring to prior judicial pronouncements, affirmed that the role of the particular accused and "other relevant factors" were to be considered when deciding a concession of bail.**
- **Further, the Money-Laundering Act disallows a grant of bail when a *prima facie* case is made out against persons accused of offenses under the Act, they argued further. Since the accused were "kingpins" in the conspiracy, they were placed-differently from the other accused and thus not entitled to bail, the State submitted.**
- The Single-Bench accepted the State's submissions and declined the grant of bail, stating that:
- *"The case of present applicants is not similar to those co-accused persons looking to their major role in the alleged crime, the evidence collected against them, their conduct of evading trial and other relevant factors."*

13. Karnataka HC sets up Special Remand Court for the physical production of accused to ensure the safety of Judges, other stakeholders amid COVID-19

- In order to minimize the risk of COVID-19 spread for Trial Court Judges, the Karnataka High Court has set up a specially designed remand court with transparent partitions, where arrested persons or undertrial prisoners can be produced physically.
- The special remand court has been set up at Guru Nanak Bhavan in Vasanth Nagar, which is over a kilometer away from the Karnataka High Court.

"In continuation of the Standard Operating Procedure (SOP) issued by the High Court of Karnataka from time to time in order to prevent the spread of pandemic COVID-19 in the Court premises on account of the physical production of the arrested person/s - Under Trial Prisoner/s for the purpose of Remand / considering the bail a dedicated specially designed Remand Court having transparent partitions is established and started functioning at Gurunanak Bhavan, Vasanthnagar, Bengaluru."

- Earlier, a Division bench headed by Chief Justice **Abhay Shreeniwas Oka** had informed that a public hall outside the court premises had been identified where magistrates could take up remand matters in such a way that the safety of judicial officers and staff would not be compromised.

14. The real challenge before our legal system is not of docket explosion but docket exclusion", Karnataka HC CJ AS Oka to Roots Resource

- The Chief Justice of the Karnataka High Court, Chief Justice **Abhay Shreeniwas Oka** yesterday gave his insights *on issues related to the practice of law*.
- During the conversation, Chief Justice Oka spoke on the need for young lawyers to practice in Trial Courts, access to justice for all especially the poor, and the need for competent legal aid lawyers.
- Chief Justice Oka observed that it was extremely crucial for every lawyer to start his/her litigation career by practicing in Trial Courts. He commented that one could learn the art of drafting pleadings, conducting examination-in-chief, cross-examination, and several other procedural aspects only with a few years of practice in the Trial Courts.

"There are many young lawyers and if you wish to practice in the High Court or the Supreme Court, please spend a couple of years - three years, four years to practice in the Trial Court", said Chief Justice AS Oka.

While practicing in Trial Courts, lawyers get first-hand experience of the many difficulties faced by litigants especially the poor and the downtrodden. *This is also a great learning experience, Chief Justice Oka said.*

"After becoming a judge, what I realized is that the real issue before the judicial system is not of overflowing dockets or huge pendency. The real challenge before our legal system is not of docket explosion but docket exclusion:" Chief Justice AS Oka.

15. Surrender cannot be construed as consent for sexual intercourse: Kerala HC upholds conviction of 67-year-old for the rape of a minor

- The complainant, who was around 14 years of age when the act was committed, used to regularly visit the home of the accused to watch television. The man had a granddaughter who was around the same age as the complainant. One day, when the complainant was at the home of the accused, he forcibly had sexual intercourse with her. Just before the act, he had sent his granddaughter out to do some "shopping".

"Consent, on the part of a woman as a defense to an allegation of rape, requires voluntary participation, not only after the exercise of intelligence, based on the knowledge, of the significance and moral quality of the act but after having freely exercised a choice between resistance and assent." Kerala High Court.

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