

Legal Updates, Insights and Summary Judgements

INSIDE

Recent Features

A close look at our recent features on various platforms and publishing houses

New Bills 2023

The new and important bills introduced in 2023 decoded for you

Insight and Foresight

Our Perspective on Key Global Developments



Real Life 'DUNKI' - Tackling Human Trafficking

Our Managing Partner, Nilesh Tribhuvann offered his opinion in a program called REAL LIFE 'DUNKI': How to Handle Human Trafficking, contributing to a deeper understanding of the legal aspects of human trafficking. He noted that -

It's clear that there is a pattern of chartered flights operated by a Romanian charter company carrying large numbers of passengers, predominantly Indians, to Nicaragua and then allegedly facilitating illegal entry into the USA. The fact that these flights return empty and lack of return passengers should have raised alarms for the airline company. The repeated nature of these flights, with over 95,000 Indians reportedly making this journey, points to a potentially ignored or overlooked pattern that might indicate the airline's awareness or negligence of these activities.

The grounding of the Airbus A340 in France, carrying 303 Indian passengers, including 11 unaccompanied minors, highlights alleged trafficking network. The systematic issue is the broader failure of regulatory oversight, the apparent disregard by the involved parties for legal immigration processes, and the exploitation of vulnerable individuals seeking a better life. This incident underscores the urgent need for international cooperation and stricter enforcement of regulations governing charter flights and immigration to prevent such alleged human trafficking operations. Click on the link to see the [Full Video](#)

Tax & Litigation Judgments

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The Dunki Dream: Death & Deception on Donkey Route

In a recent follow-up discussion on NDTV, our esteemed Managing Partner, NILESH TRIBHUVANN delivered insightful remarks in the panel discussion titled "The Dunki Dream: Death & Deception on Donkey Route" anchored by the dynamic Marya Shakil

Nilesh emphasized the critical importance of public awareness and active participation in combatting the 'Dunki Drama.' He urged citizens to step forward, lodge complaints, and identify the travel agents involved in these illegal operations.

This active citizen involvement is crucial for the effective implementation of laws and Special Investigation Teams (SITs).

His perspective on the necessity of cooperation between the public and authorities across states sheds light on the collaborative efforts needed to address this issue effectively. [Click on the link to see the full video .](#)

Future Forward Law Firms - CXO Today

We have been featured in CXOToday in their recent article on "[Future-Forward Law Firms Providing Legal Assistance to New-Age Businesses.](#)"

White and Brief - Advocates & Solicitors is recognized for our innovative approach to navigating the legal intricacies of modern business.

Increasing cyberattacks in focus as FM Sitharaman meets heads of public sector banks

In light of the recent discussions led by Finance Minister Nirmala Sitharaman, the importance of robust cybersecurity in India's journey towards a digital future cannot be overstated. The banking sector, in particular, has seen a worrying rise in cyberattacks.

Our insights on this crucial matter have been featured in THE WEEK recent article, "Increasing cyberattacks in focus as FM Sitharaman meets heads of public sector banks."

Here, NILESH TRIBHUVANN, our Managing Partner and Founder, underscores the urgency of the situation: "The AIIMS Delhi cyberattack is a classic example of how even premier institutes can fall prey to such attacks. This is enough to worry the government and authorities as such threats pose a challenge to India's ambitions of becoming a digital economy.

He continues, highlighting a growing concern for every citizen, "As mobile phones are increasingly utilized for government digitalization, cyber threats become a significant challenge for ordinary citizens."

It's high time for all stakeholders to enhance cybersecurity measures and protect our digital endeavors. For the full article, [click here](#)



The Investor's Handbook: Navigating Legal Landmines In Private Equity And Venture Capital

We are delighted to share that NILESH TRIBHUVANN our Managing Partner, has been featured in a recent Inc42 Media article, "The Investor's Handbook: Navigating Legal Landmines In Private Equity And Venture Capital."

[Click here to read the full article.](#)



9th Annual Pharma Legal & Compliance Summit 2023

Our Founder and Managing Partner, Mr. NILESH TRIBHUVANN, was a distinguished speaker at the 9th Annual Pharma Legal & Compliance Summit 2023. This prestigious event was organized by Lex Witness - India's 1st Magazine on Legal & Corporate Affairs

Mr. Tribhuvann shared his invaluable insights in a session focused on Demystifying the Digital Data Protection Act 2023 for Pharmaceutical Companies. His expertise shed light on the impact of new legislation on Telemedicine and e-Pharmacies, contributing significantly to the discourse. He joined an illustrious panel of experts, including:

1. Shreekanth Katti - India Head - Legal, Compliance, and Data Privacy Officers, Merck Group
2. Rakesh Chandra Sinha- Head Legal, SUN PHARMA
3. Dr.Vivek Mittal - Global General Counsel Dr. Reddy's Laboratories
4. Nandan Pendsey, Esq. - Partner, AZB & Partners
5. Suvarna Mandal- Partner, Saikrishna & Associates

This summit was a confluence of ideas and innovation, setting new benchmarks in the Pharma Legal & Compliance arena.



9th Annual IT Legal Summit 2024

Our esteemed Founder and Managing Partner, NILESH TRIBHUVANN will be featured as a distinguished speaker at The 9th Annual IT Legal Summit 2024. This prestigious event, announced by Lex Witness - India's first magazine on Legal & Corporate Affairs, is a melting pot of #LegalInnovation and #TechSavvyProfessionals.

It brings together leading legal experts, professionals, and industry leaders from various sectors including pharmaceutical, healthcare, MedTech, E-commerce, FinTech, Gaming, and Information Technology.

BUSINESS
Worst might be over for Adani Group but 'investors still cautious'



India's apex court ruling out a separate inquiry on Hindenburg allegations could signal a turning point, analysts tell **Rebecca Handberg** in Mumbai

The apex court's decision to reject a separate inquiry into the Hindenburg Research allegations against the Adani Group is seen as a significant development. It suggests that the legal challenges faced by the group may be coming to an end, which could help restore investor confidence. However, analysts note that investors remain cautious due to the group's history of legal and financial issues.

Adani Group's path to recovery post the Hindenburg Research allegations

Our Managing Partner, Mr. NILESH TRIBHUVANN, has been featured in today's edition of The National News providing his expert analysis on the. His insights offer a deep dive into the resilience and strategic approach of the group during these challenging times.

Mr. Tribhuvann states: "This may signal a turning point, potentially marking the end of the worst phase of the crisis and positively impacting the group's standing and investor confidence. The Adani Group has been proactive in its recovery, raising over \$15 billion through equity and debt, regaining investor confidence and re-establishing its bankability."

New Bills of 2023

1. Broadcasting Regulation: India's 2023 Bill



The Broadcasting Services Regulation Bill 2023, a groundbreaking proposal by India's Ministry of Information and Broadcasting, is poised to transform the country's broadcasting sector. This bill seeks to integrate a range of platforms and technologies under one regulatory umbrella, heralding a new era in media governance.

#MediaRevolution: This comprehensive bill is set to bring uniformity across various broadcasting mediums, streamlining regulations and fostering innovation in the digital and traditional media spaces.

#DigitalTransformation: India's steps towards a consolidated regulatory environment underscore a commitment to embracing technological advances and ensuring equitable practices across the media

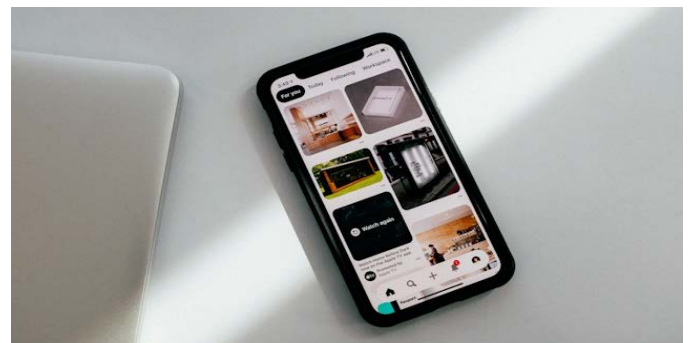
spectrum.

#BroadcastingFuture: The development of this bill is pivotal for all stakeholders in the broadcasting sector, from content creators to consumers, promising clarity and standardization in regulatory practices.

#PublicConsultation: The proactive approach of inviting public consultation demonstrates the government's dedication to inclusive policymaking and crafting well-rounded regulations.

To explore the details and implications of this bill, read this informative article published at [The Hindu](https://lnkd.in/dQYdHSxM) <https://lnkd.in/dQYdHSxM>

2. New Legal Landmark: 2023 Guidelines on Dark Patterns



At [White and Brief - Advocates & Solicitors](#), we're keenly observing the evolving landscape of digital consumer protection. The introduction of the "Guidelines for Prevention and Regulation of Dark Patterns, 2023" by India's Central Consumer Protection Authority (CCPA) represents a significant legal development in this realm.

A Milestone in Consumer Rights - These guidelines are a pioneering effort to curb deceptive practices in digital interfaces, known as dark patterns. Such practices can mislead users, impacting their choices and potentially infringing on their rights.

What This Means for Businesses and Consumers For businesses operating digitally, compliance with these guidelines is crucial. They not only protect consumers but also set a standard for ethical digital practices. As legal professionals, we understand the nuances and implications of these regulations for both businesses and consumers.

Expert Legal Guidance - Our team at White & Brief is well-equipped to advise and assist in navigating these new guidelines. Whether you're a business owner seeking to align your digital platforms with these regulations or a consumer looking to understand your rights, we're here to help.

3. Exploring the Journey of Article 370: From Inception to Supreme Court Verdict



The recent Supreme Court verdict upholding the abrogation of Article 370 marks a significant moment in India's legal and political landscape. This decision not only affects the federal structure but also sets a path for Jammu and Kashmir's future development.

[White and Brief - Advocates & Solicitors](#) brings to you an overview of the historical context, the evolving legal framework, and the implications of this landmark

decision. Dive into the debates and discussions that continue to shape India's journey towards a more integrated and progressive future.

Click here to access the full details

<https://www.linkedin.com/feed/update/urn:li:activity:7140298702950232065>

4. Reforming India's Criminal Laws: A New Era Begins



Introduction of Reworked Bills - In a landmark move, Union Home Minister Amit Shah has presented three revised bills in the Lok Sabha, aiming to overhaul India's colonial-era criminal laws.

Historic Codes Being Replaced

- Bharatiya Nyaya Sanhita is set to supersede the Indian Penal Code of 1860.
- Bharatiya Nagarik Suraksha Sanhita will replace the Code of Criminal Procedure.
- Bharatiya Sakshya aims to update the Indian Evidence Act.

Key Changes in the Revised Bills - These revised bills introduce major reforms including:

- Modernizing legal codes to reflect contemporary issues.
- Strengthening provisions to protect women from cruelty.
- Enhanced penalties for revealing the identity of sexual assault survivors.

Expanding the Definition of Terrorist Acts - The new definition includes acts threatening India's sovereignty

and security, with life imprisonment stipulated for such offenses.

Parliamentary Committee's Role

Led by BJP MP Brij Lal, focusing on safeguarding digital records in legal proceedings.

Objectives and Controversies

While the primary goal is to update outdated laws, controversies include debates over the death penalty for certain crimes and the impact on freedom of expression.

Click here to access the full details

<https://www.linkedin.com/feed/update/urn:li:activity:7140673034067103745>

5. India's New Telecom Bill 2023 Introduced in Lok Sabha



In a significant move, the Indian government has tabled the much-anticipated Telecom Bill 2023 in the Lok Sabha. This bill represents a major overhaul of India's telecommunications sector, aiming to modernize and adapt the regulatory framework to the changing landscape of digital communication.

Key Highlights of the Bill

Enhanced Consumer Protection: The bill focuses on safeguarding consumer rights and ensuring fair practices in service provision.

Boost to Innovation: Emphasizes support for new technologies and innovation within the telecom sector.

Improved Regulatory Framework: Aims to streamline

the regulatory environment, reducing red tape and fostering a more business-friendly atmosphere.

Cybersecurity and Privacy: Addresses critical issues related to data protection and cybersecurity in the era of digital communication.

Implications for the Industry

This bill is expected to bring in a wave of new investments and technological advancements in the telecom sector. It could potentially reshape the competitive landscape, offering more choices and better services for consumers. Enhanced focus on cybersecurity and data privacy aligns India's telecom sector with global best practices.

Click here to access the full details

<https://www.linkedin.com/feed/update/urn:li:activity:7142819280571596800>

6. Rewind & Reflect: The Evolution of the Indian Penal Code (IPC)



A quick overview of how the Code has traversed through times.

In the ever-evolving landscape of Indian law, the Indian Penal Code (IPC) has stood as a testament to our nation's legal and societal progress from 1860 to 2023. From its inception during British rule to the recent transformative overhaul, the IPC has continually adapted to meet the changing needs of our society.

Major Milestones:

Post-Independence Adaptation: Adopted with minor modifications after India's independence.
Significant Amendments: From addressing dowry-related offenses to introducing harsher penalties for sexual crimes,

each amendment has reflected our society's demands and needs.

2023 Transformation: The replacement of the IPC with the Bharatiya Nyaya Sanhita marks a departure from the colonial legacy, aiming to address contemporary challenges and align with modern legal principles.

Why This Matters:

The IPC's evolution is more than just legal amendments; it's about reflecting India's journey from a colonized nation to a modern republic. It's about shaping social norms, enhancing human rights, and striving for a more just society.

In-Depth Insights:

Deep dive into the IPC's history, major amendments, societal impacts, and the most recent overhaul. From the repeal of sedition laws to the introduction of gender-neutral provisions, the changes are both groundbreaking and indicative of our nation's legal maturity.

Click here to access the full details
<https://www.linkedin.com/feed/update/urn:li:activity:7148482447855263744>

7. Reflecting on the Evolution of India's Criminal Procedure Code (1973-2023)



As we mark the 50th anniversary of the Criminal Procedure Code (CrPC) in India, it's a moment to appreciate how far we've come in shaping a justice system that balances the scales between law enforcement efficiency and individual rights.

From its inception in 1973, post-independence, the CrPC has undergone several pivotal changes. Key amendments over the

years have focused on enhancing trial fairness, protecting victims and witnesses, and addressing urgent societal issues like sexual offenses.

The latest 2023 amendments signify a major leap, emphasizing speedy legal processes, technological integration in legal proceedings, and bolstered rights for both the accused and victims.

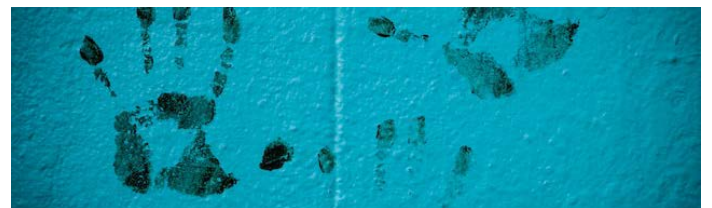
*Notably: Electronic FIR registration and Zero FIRs
Use of technology in summonses and searches
First-time witness protection schemes
Streamlining procedures to reduce case backlogs
Expanded provisions for victim support and compensation*

These changes not only reflect India's dynamic societal context but also its adaptation to modern technological challenges in criminal activities.

As we look ahead, the CrPC's evolution is a testament to India's commitment to a more responsive, just, and equitable criminal justice system. Let's continue this journey towards upholding justice in our rapidly changing world.

Click here to access the full details
<https://www.linkedin.com/feed/update/urn:li:activity:7148747348540542976>

8. Transforming Evidence Law in India: Introducing the Bharatiya Sakshya Bill



As we witness a historical shift in India's legal landscape, the introduction of the Bharatiya Sakshya Bill, set to replace the century-old Indian Evidence Act, marks a significant milestone. This transformative move aligns our legal framework with the contemporary needs of Indian society and its legal principles.

Key Highlights of the Bharatiya Sakshya Bill:

*Modern Framework: The Bill introduces a modern framework better suited for the digital age, addressing current legal challenges more effectively.
Digital and Scientific Evidence: Emphasizing the importance of digital footprints, the Bill gives more*

weight to digital and electronic evidence, integrating technological advancements into legal practices.

Scientific Approaches in Evidence Gathering: The use of scientific methods is encouraged for evidence gathering and verification, fostering more objective and reliable judicial processes.

Protection of Privacy: Provisions have been included to safeguard personal data and privacy in the collection and use of digital evidence, a crucial step in our digital era.

Accessibility and Fairness: The Bill aims to ensure that the new legal framework is accessible to all citizens, maintaining fairness and transparency in judicial proceedings.

The Bharatiya Sakshya Bill reflects a significant shift towards reformative justice, retaining some offenses from the IPC and CrPC and focusing on more precise definitions for ‘documents’ and ‘electronic evidence’. However, the success of these reforms will heavily rely on their implementation and interpretation by the judiciary and law enforcement agencies.

This change represents a promising step forward in modernizing India's criminal justice system while addressing contemporary societal issues and technological challenges.

Click here to access the full details

<https://www.linkedin.com/feed/update/urn:li:activity:7148752680805408771>

Insight & Foresight

1. Exciting Times in Fintech: The Rise of Generative AI



We're at the brink of a transformative era in fintech and financial services, thanks to the advent of generative AI. Here's a quick insight:

Generative AI - The Game Changer: The integration of generative AI in financial services is revolutionizing how we approach problem-solving, customer service, and product development. This technology isn't just about efficiency; it's about redefining possibilities.

Impact on Jobs and Skills: As generative AI takes a more prominent role, the job landscape in fintech is rapidly evolving. There's a growing demand for professionals who can blend finance expertise with AI know-how.

Opportunities Ahead: This shift isn't just a challenge; it's a massive opportunity for innovation and growth. Whether you're in tech, finance, or both, now is the time to embrace the change and upskill.

2. Mr. Nilesh Tribhuvann (Founder and Managing Partner) insights on the Inc42 publication "The Investor's Handbook: Navigating Legal Landmines In PE & VC"-



When it comes to the dynamic landscape of finance, venture capital (VC) and private equity (PE) have emerged as potent tools driving innovation and growth across various industries.

Navigating the complex terrain of these investment strategies requires not only financial acumen but also a keen understanding of the legal intricacies that can significantly impact the success of ventures.

A clear knowledge of the essential legal considerations for savvy investors aiming to make informed and strategic choices can be really helpful as well as keep the investors safe from the risks of investment.

Let's explore the different facets of these two types of funds—VC and PE—and find out some legal must-knows for smart investing and reducing risks:

Venture Capital Vs Private Equity Funds

Before diving into the legal landscape, it's crucial to understand the diverse nature of VC and PE funds.

Venture capital funds typically invest in early-stage startups with high growth potential. On the other hand, private equity funds target more mature companies, aiming to drive operational improvements and increase profitability.

Within these broad categories, there are various specialised funds, such as seed-stage funds, growth equity funds, and buyout funds, each catering to specific investment objectives.

Process Of Investing

The investment process in VC and PE involves rigorous due diligence, negotiations, and strategic decision-making. Legal considerations begin at the outset with the drafting and negotiation of term sheets, outlining key terms and conditions.

The due diligence phase involves a comprehensive legal examination of the target company, assessing issues such as regulatory compliance, intellectual property rights, and contractual obligations.

Negotiating definitive agreements, including shareholder agreements and purchase agreements, is a critical legal step in finalising the investment.

Associated Risks and Rewards

While VC and PE investments offer lucrative returns, they are not without risks. Legal due diligence is essential to identify potential legal pitfalls that could impact the success of an investment.

Regulatory compliance, contractual obligations, and intellectual property-related concerns are among the key legal risks. On the flip side, successful navigation of these risks can lead to substantial rewards, including capital appreciation, significant equity stakes, and active involvement in the strategic direction of the invested companies.

Smart Investing With Legal Must-Knows

To ensure smart investing in VC and PE, investors must be well-versed in the legal considerations that underpin these transactions. Here are some crucial legal must-knows:

- **Regulatory Compliance:** Understanding and navigating the regulatory landscape is paramount. Compliance with securities laws and other regulations governing investments is critical to avoid legal complications.
- **Due Diligence:** Thorough legal due diligence is non-negotiable. Investors must scrutinise contracts, regulatory filings, and potential legal disputes to assess the legal health of the target company. It is paramount to assess whether the investee companies have complied with the applicable laws related to their business operations.
- **Contractual Agreements:** Well-drafted and negotiated contractual agreements, including term sheets, shareholder agreements, and purchase agreements, are the bedrock of successful investments. Clarity on rights, obligations, and dispute resolution mechanisms is vital.
- **Exit Strategies:** Developing and understanding exit strategies is integral to the investment process. Whether through an initial public offering (IPO) or a strategic acquisition, legal considerations play a pivotal role in successful exits.
- **Intellectual Property Protection:** Safeguarding intellectual property is crucial, especially in technology-driven industries. Investors must ensure that the target company has robust IP protection measures in place.

In the fast-paced world of investments, smart investing goes beyond financial calculations. It requires a comprehensive understanding of the legal landscape that surrounds these investments.

From regulatory compliance to meticulous due diligence and well-crafted contractual agreements, legal considerations are integral to mitigating risks and unlocking the full potential of VC and PE investments.

For investors aiming to navigate this intricate terrain, partnering with a reputable law firm with expertise in private equity and venture capital is not just a wise choice; it's a strategic and legal risk-mitigating imperative.

With a solid legal foundation, investors can embark on their journey towards smart and successful investments in the ever-evolving world of finance.

3. Mr. Prateek Bansal (Partner - Taxation) Insights on -Navigating Global Business: Legal Perspectives on Taxation and Trade Laws



Business dynamics around the globe have undergone a radical transformation in the contemporary commerce space, largely propelled by the forces of globalization. As markets evolve, aligning services and products with global standards becomes imperative. This shift necessitates a comprehensive understanding of international trade, taxation, and legal frameworks that govern cross-border transactions.

Businesses must navigate a complex web of regulations to thrive internationally. Let's look at some key legal perspectives that serve as navigational tools for businesses venturing into the global arena.

Taxation: Navigating the Fiscal Landscape

Understanding local tax regulations in target countries is paramount for businesses with global aspirations. Local nuances can significantly impact financial outcomes.

Double taxation treaties emerge as crucial instruments to prevent being taxed on the same income in multiple jurisdictions, offering a strategic advantage for cross-border enterprises.

To optimize tax efficiency, businesses should explore incentives and exemptions provided by different countries. Compliance with transfer pricing rules ensures fairness in pricing between international entities, avoiding potential conflicts. Implementing

proper accounting practices for cross-border transactions is foundational for financial transparency and regulatory compliance.

Trade Laws: Sailing Smoothly through International Waters

Familiarizing yourself with international trade agreements and treaties, such as Free Trade Agreements (FTA), is fundamental.

Compliance with import/export regulations and customs requirements is essential for seamless cross-border transactions. Understanding tariff structures and duty rates for products in each market is critical to financial planning and pricing strategies.

To avoid legal pitfalls, businesses must comply with trade restrictions, sanctions, and embargoes imposed by various countries. Staying updated on changes in international trade policies, akin to India's Foreign Trade Policy (FTP), allows for agile adjustments in business strategies to align with evolving regulatory landscapes.

Legal Structure: The Foundation for Global Operations

Choosing an appropriate legal structure for global operations is a strategic decision. Options such as subsidiaries, branches, or joint ventures require careful consideration.

Compliance with corporate governance and reporting standards in each jurisdiction is imperative to maintain credibility and adhere to legal obligations. Understanding the legal implications of operating in different countries ensures a solid legal foundation.

Documentation: Building a Legal Fortress

Maintaining accurate and detailed records of international transactions is not just a best practice; it is a legal necessity for tax and compliance purposes. Contracts and agreements should be meticulously crafted to align with local laws, minimizing the risk of legal disputes.

Risk Management: Navigating Choppy Waters

Assessing political, economic, and regulatory risks in target markets is integral to crafting a robust global strategy. Developing risk mitigation strategies, including securing insurance coverage for global

operations, is vital to safeguard against unforeseen challenges.

Technology and Compliance Tools: Harnessing Innovation

Leveraging technology for efficient international financial management and compliance tracking is indispensable. Investing in systems that facilitate adherence to diverse regulatory frameworks empowers businesses to navigate complex legal landscapes. Integrating AI tools and relevant models enhances accuracy and efficiency in compliance processes.

Local Expertise: Navigating Nuances with Precision

Engaging local professionals, such as tax advisors, legal counsel, and consultants, provides invaluable insights into specific country nuances. Local expertise is instrumental in deciphering complex regulations, ensuring compliance, and mitigating risks effectively.

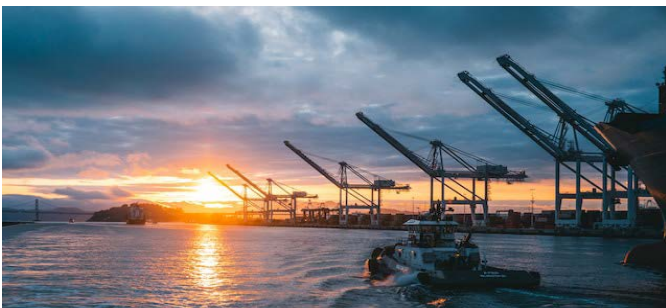
In conclusion, as businesses traverse the global landscape, a keen awareness of legal perspectives on taxation and trade laws becomes the cornerstone of success.

By adopting a proactive approach to understanding and integrating these legal nuances, businesses position themselves for compliance and seizing opportunities, establishing resilient frameworks, and fostering sustainable growth in the dynamic global arena.

Summary Judgements

TAX

1. East Coast Constructions and Industries Ltd. Vs Assistant Commissioner



In the recent noteworthy judgment of East Coast Constructions and Industries Ltd. v. Assistant Commissioner [W.P. No. 26457 of 2023 dated September 11, 2023], the Madras High Court addressed a significant procedural issue in the GST framework. The Court, recognizing the Petitioner's lack of fair opportunity due to unnoticed notices on the GST Portal, granted the writ petition, overturning the Impugned Order.

The judgment emphasized the need for clarity in the portal's notification system, particularly the confusion arising from two separate dropdown menus - "View Additional Notices and Orders" and "View Notices and Orders." This miscommunication had led to oversight by the Petitioner, who missed crucial notices in Form GST DRC-01A and Form GST DRC-01, resulting in dissatisfaction with the Assessment Order dated May 8, 2023.

The Court's directive for the case's revaluation by the Respondent authority is a testament to the principle that justice must not only be done but must also be seen to be done, especially in complex matters where procedural nuances can significantly impact outcomes. Moreover, the Court's order to resolve the dashboard issues underscores the importance of user-friendly and clear communication in automated legal processes, a principle also echoed in the Allahabad High Court's decision in Harbir Singh Contractor v. Union of India and Ors. [Writ Tax No. 454 of 2020 dated October 26, 2023].

This decision affirmed the Petitioner's right to redressal for sufferings due to unintended machine errors, reinforcing the Court's role in ensuring that procedural laws under automated systems are equitable and efficient. Such judgements highlight the evolving interplay between technology and law, underscoring the necessity for legal frameworks to adapt and cater to the realities of digital administration.

W&B Comments: The Hon'ble Madras High Court acknowledges the petitioners grievance regarding unnoticed notices on the GST portal, emphasizing the importance of clarity in the notification system. The directive for revaluation by the department and the call to address dashboard issues clearly reflects the court's commitment to ensuring justice is done and is also perceived to be done. This decision will help the assesses who missed the opportunity to reply to the notices or intimations due to their being a communication gap arising out of the GST portal technical issue.

2. Deepak Sales Corporation v. Union of India



In a pivotal decision, the Punjab and Haryana High Court in *M/s. Deepak Sales Corporation v. Union of India* [CWP No. 283 of 2023 dated September 21, 2023] resolved a crucial issue concerning the imposition of interest and penalty on Input Tax Credit (ITC) errors under the GST regime. The Petitioner, *M/s. Deepak Sales Corporation*, inadvertently entered an excess ITC amount in the Electronic Credit Ledger (ECL) while transitioning to the GST system. Upon realizing the error, the Petitioner sought guidance from the Revenue Department to reverse the excess credit but received no response. Despite the subsequent reversal of the excess credit, the Revenue Department issued a Show Cause Notice demanding interest and penalty, which was contested by the Petitioner.

The High Court, referencing judgments such as *Commissioner of Central Excise v. Jagatjit Industries Ltd.* and *CCE Rohtak v. Grasim Bhiwani Textile Ltd.*, underscored the principle that interest and penalty are unjustifiable when erroneously availed credit is reversed before utilization. The Court observed that mere wrongful reflection of ITC in ECL does not warrant penal proceedings unless the ITC is utilized. The judgment is significant for its clarification that liability for interest and penalty does not arise when excess credit is not utilized and is reversed, thereby protecting taxpayers from undue burdens due to inadvertent errors in the complex GST system. This decision is a testament to the judiciary's understanding of the practical challenges faced by taxpayers and its commitment to fair and reasonable application of tax laws.

W&B Comments: The Hon'ble Punjab & Haryana High Court made a noteworthy decision by establishing the principle that interest and penalty are unwarranted if erroneously availed credit is promptly reversed before utilization. This clarification is beneficial for taxpayers as it safeguards them from undue financial burdens arising from any erroneous availment of ITC made due to technical mistake.

3. Tvl. Kavin HP Gas Gramin Vitrak Vs Commissioner of Commercial Taxes (Madras High Court)



In the case of *Tvl. Kavin HP Gas Gramin Vitrak vs Commissioner of Commercial Taxes* [W.P.(MD).Nos.7173 and 7174 of 2023], the Madras High Court addressed the complexities surrounding the belated claims of Input Tax Credit (ITC) in the context of the GST regime. The core issue lay in the non-notification of Form GSTR-2, essential for claiming ITC. The petitioner, engaged in the business of Petroleum Gases, faced scrutiny for GSTR-3B returns for 2017-2018 and 2018-2019. The key contention was that the unavailability of Form GSTR-2 hindered the petitioner's ability to claim ITC accurately, compounded by the need to submit GSTR-3B physically due to financial constraints. The respondents argued for the maintainability of the writ petitions, pointing to the petitioner's failure to file objections or attend a personal hearing.

However, the Court recognized the technical barriers faced by the petitioner, notably the absence of Form GSTR-2, aligning with precedents that acknowledge the necessity of enabling mechanisms for tax compliance. Consequently, the Court quashed the impugned orders and directed authorities to accept manual returns for ITC claims, acknowledging the practical difficulties encountered by the petitioner. This judgment is pivotal in highlighting the judiciary's role in ensuring a fair, equitable, and accessible tax system, especially in cases where procedural shortcomings impede compliance. The decision underscores the importance of addressing technical glitches within the GST framework to support taxpayers in fulfilling their obligations.

Similarly, the constitutional validity of Section 16(4) was challenged on the basis that the non-obstante clause in Section 16(2) overrides Section 16(4) of *Jain Brothers*

[2023 (12) TMI 829] decided by Hon'ble Chhattisgarh High Court, BBA Infrastructure [2023 (12) TMI 835] by Calcutta High Court and Gobinda Construction [2023 (9) TMI 902] by Patna High Court where the courts denies the assessee's prayer and upheld the constitutional validity on Section 16(4). The decision of Hon'ble Patna High Court has been challenged in SLP [-] by the taxpayer before the Hon'ble Supreme Court where the court issued notice.

W&B Comments: The Hon'ble Madras High Court's decision is a positive stance towards the taxpayers as it addresses the challenges faced by the taxpayers in claiming ITC of belated returns. The Court acknowledges the technical barriers, specifically the absence of FORM GSTR-2A, aligns with the practical difficulties encountered by businesses. It takes a different path from the previous rulings of High Courts on the issue of validity of Section 16(4) and provides as a reassuring precedent to the taxpayer. The SLP challenging the Patna High Court's decision before the Hon'ble Supreme Court will provide a clear stance on this issue.

4. Vivo Mobile India Private Limited by GST Authorities



In a landmark ruling [Writ Tax No. - 433 of 2021], the Allahabad High Court granted relief to Vivo Mobile India Private Limited against a substantial tax demand of INR 235.52 Crores imposed under Section 74(9) of the Goods and Service Tax Act 2017. The Court, presided over by Justices Saumitra Dayal Singh and Vinod Diwakar, emphasized that Input Tax Credit (ITC) is an intrinsic right under Section 16 of the GST Act, which cannot be contravened by administrative circulars. The case hinged on Vivo Mobile's claim of cumulative ITC for February to August 2020 in their September 2020 GSTR-3B return, which was challenged by the GST Authorities based on Circular No. 113 dated 11.11.2019.

The petitioner argued against the monthly computation mandated by the circular, asserting the statutory right to ITC and the facilitative role of GSTR-2A. The Court highlighted the legislative intent in Rule 36(4) of the GST Rules 2017, establishing a legal fiction for an extended reconciliation period during the pandemic. It held that the circular could not override this statutory provision and directed the authorities to refund the excess amount with interest. This judgment underscores the supremacy of statutory law over administrative directives and reinforces the fundamental rights of taxpayers within the GST framework.

W&B Comments: The Hon'ble High Court emphasized on the intrinsic right to ITC under Section 16 of the Act, underscoring the supremacy of statutory law over administrative circulars.

5. AB Enterprises v. Commissioner of Goods and Services Tax



In the case of M/s. AB Enterprises v. Commissioner of Goods and Services Tax [WP (C) 7919 of 2023 dated November 21, 2023], the Delhi High Court ruled in favor of the petitioner, M/s. AB Enterprises, regarding their refund application for unutilized Input Tax Credit (ITC) related to zero-rated supplies. The Revenue Department had issued a communication deeming the application as deficient due to allegedly incomplete supporting documents. However, the High Court, referencing a previous judgment in National Internet Exchange of India v. Union of India, established that if a refund application fulfills the criteria set forth in Rule 89(2) of the CGST Rules, it cannot be rejected as deficient.

The Court clarified that while the officer may request additional documents to process the claim, the absence of these documents does not render the application deficient. The Court criticized the Impugned Communication for its lack of specificity, noting it failed

to identify missing or incomplete documents. Consequently, the Court set aside the Impugned Communication and directed the Respondent to process the refund application as per the conditions in Rule 90 of the CGST Rules. This judgment emphasizes the importance of adhering to the stipulated procedural requirements in tax administration and protects the rights of taxpayers to claim refunds where due under the law.

W&B Comments: The ruling underscores the significance of adhering to stipulated procedural requirements, particularly in refund applications for unutilized ITC related to zero-rated supply. The Court emphasized that a refund application meeting the criteria cannot be rejected as deficient, providing a safeguard for taxpayers against the arbitrary decisions of the department. The Court also criticised the lack of specificity in identifying missing or incomplete documents by the department

6. Landmark Supreme Court Verdict in Suncraft Energy Tax Credit Case



In a significant development, the Supreme Court of India has affirmed the Calcutta High Court's judgment in a pivotal tax credit dispute, marking a crucial milestone in the interpretation of GST laws. This case, involving the Assistant Commissioner of State Tax and Suncraft Energy Private Limited, has been closely watched by industry experts and tax professionals alike.

The ruling, delivered by Justices B.V. Nagarathna and Ujjal Bhuyan, rejected the Special Leave Petitions filed by the Assistant Commissioner of State Tax. This decision, made under the purview of Article 136 of the Indian Constitution, concludes a long-standing legal battle and settles all associated pending applications.

Originating from the Calcutta High Court's judgment in

favor of Suncraft Energy, this case revolved around the denial of input tax credit for the FY 2017-18. The High Court's verdict had emphasized the need for authorities to address issues with suppliers before taking any action against the taxpayer, a stance now upheld by the Supreme Court.

This verdict sends a resounding message about the importance of procedural fairness and strict compliance within the GST framework. It is expected to have far-reaching implications on future tax-related litigation and policy interpretation.

For businesses and tax professionals, this ruling is a reminder of the evolving landscape of GST regulations and the need for diligent adherence to procedural norms.

Litigation Judgements

CIVIL

1. Vivek Narayan Sharma v. Union of India (2023) 3 SCC 1



The 5-judge bench of the Supreme Court of India finally ended the long-standing debate on whether the Central Government's Notification dated 08.11.2026 declaring 'demonetization' of the 500- and 1000-rupee currency notes were valid or not. The Apex court in its judgment in the ratio of 4:1 with Justice B.V. Nagarathna being the dissenting Judge upheld the Notification's validity and legality. The Central Government of India had issued such orders by exercising the powers conferred to it by applying the provisions of Section 26(2) of the RBI Act, 1934. The petition challenged this very provision alleging the same to be a case of "excessive delegation of legislation".

The Apex Court held that since such delegation was premised on the recommendation of the Central Board, which was a body of the RBI, and the powers given to the Government were not absolutely unfettered, the legislation would be valid. Further the Court concluded that Court is to confine itself to the issue of 'whether a decision-making authority exceeded its powers, 'Whether there is an error committed in the eyes of law an error of law,' and whether there has been a breach of the rules of natural justice. The Court does not have the expertise to go into the question whether the object with which demonetization was affected is served or not. Lastly, it has held that the Notification withheld even the four-pronged test of proportionality and merely because there might be a possibility for misuse, or the policy might not have been entirely successful, is not enough to vitiate its satisfaction of the four-pronged test.

The Supreme Court has with their interpretation of "any" shall mean "all" essentially amplified the ambit of Section 26 (2) of the RBI Act. But they have done the same by establishing that such an extended power shall not be unsupervised but be exercised only after prior approval of the Parliament and the Central Board of the RBI, thus providing a balanced interpretation.

2. Govt. of NCT Of Delhi Through the Secretary, Land and Building Department & Another vs. M/S. K.L. Rathi Steels Limited and Others (2023) 9 SCC 757



The Supreme Court in this 50:50 verdict on an important question of law concerning powers of the Court to entertain a batch review applications / petitions under Article 137 of the Constitution of India and Order 47 of the Code of Civil Procedure, 1908 (CPC). The judgment delves into the issue of 'whether judgements which

followed precedents that were later overruled could be subject to review'.

In the present case a decision was laid down in *Pune Municipal Corporation vs. Harakchand Misirimal Solanki* (2014) 3 SCC 183 was overturned by *Indore Development Authority vs. Manoharlal* (2020) 8 SCC 129 with respect to interpretation of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Govt of NCT Delhi wished to reopen civil appeals where the court decreed that land acquisition had lapsed following the interpretation of Section 24(2) in Pune Municipal Corporation. Justice M R Shah was of the view that the primary reason for the dismissal of the review of land acquisition cases was the decision in Pune Municipal Corporation, which has now been overruled, and that there is an overwhelming public interest at play in the case, wherein the municipality could have acquired the land for a publicly beneficial purpose and developed them for use of the general public. Therefore, all the review applications should be decided afresh in larger public interest. While on the other hand, Justice B V Nagarathna was of the view that merely because a judgment is subsequently overruled by a subsequent decision of a superior court in any other case, it should not be a ground for review. Since the Judges pronounced divergent judgments, the matter will be placed before the Chief Justice of India for appropriate orders.

At this stage since there is no conclusive judgment, we can wait for the decision to come and see how the court infers Article 137 of the Constitution as well as Order 47 of CPC in cases where larger public interest is involved. In our opinion, there must not be a blanket interpretation in all such matters which will lead to revival of plethora of cases.

3. Landmark Decision by the Supreme Court: Non-Stamping of Agreements



In a recent ruling, the Supreme Court has clarified an important aspect of contract law, emphasizing that the non-stamping of an agreement is a curable defect and only renders a document inadmissible, not void.

Key Takeaways

This decision safeguards the validity of contracts that may have missed the stamping process.

It ensures that such oversights do not lead to the voiding of otherwise legally binding agreements.

The ruling highlights the importance of adhering to procedural norms while also providing a relief mechanism for rectifying procedural lapses.

Implications

Businesses and legal professionals must note this development for contract enforcement and dispute resolution.

This ruling balances the need for procedural compliance with practical realities, offering a pragmatic approach to contract law.

ARBITRATION

1. Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act 1996 And the Indian Stamp Act 1899

This was the most talked about judgment of the previous year wherein a 7-judge bench unanimously upheld the validity of an unstamped arbitration agreement overruling all its previous decisions. The Court ruled that the arbitration clause in agreements lacking proper stamping is legally enforceable, but inadmissible in evidence. The reference arose in the context of the decision in N.N. Global II that sought to clarify disparate legal jurisprudence on the implications of an unstamped or insufficiently stamped agreement including, more specifically, on its enforceability at the stage of reference to arbitration under Sections 8 or 11 of the Arbitration Act. The apex court clarified that agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. However, such agreements are not merely rendered void or void ab initio or unenforceable. Further, non-stamping or inadequate stamping is a curable defect, and once it is corrected, the arbitral tribunal can continue with the arbitral proceedings as the arbitral tribunal has the power to get the issue of deficient stamp duty rectified in pursuance of the provisions of the Stamp Act.

An objection relating to stamping does not fall to determination under Sections 8 or 11 of the Arbitration Act. The concerned court must only examine whether the arbitration agreement prima facie exists and any objections in relation to the stamping of the agreement fall within the ambit of the arbitral tribunal.

Consequently, in our opinion this is a pro-arbitration approach with minimal judicial intervention and extends the scope of *kompetenz-kompetenz* principle thus reinforcing the authority of arbitral tribunals. The decision positively enhances the ease of arbitration in India, marking a significant stride towards India's aspirations to become a hub for international arbitration.

While the Supreme Court has clarified the position on the enforceability of unstamped or insufficiently stamped arbitration agreements, it will be interesting to see how some of the open issues, such as its applicability on foreign-seated arbitrations, validity and enforceability of arbitral awards based on unstamped or insufficiently stamped arbitration agreements and effect of impounding agreements on the timelines in the

arbitral proceedings, will be decided in the future by Indian courts. The decision has restored the intention of the Arbitration Act to provide efficacious and speedy remedy and promote arbitration as a means of dispute resolution.

2. Cox and Kings Ltd vs SAP India Pvt. Ltd. & Anr. 2023 SCC OnLine SC 1634



The matter was referred to a larger bench of Hon'ble Supreme Court to define and settle the law position on the 'group of companies' doctrine with respect to Arbitration in India.

This doctrine seeks to adopt a pragmatic approach by bringing together all parties that are closely associated in a disputed transaction. The main issue involved in this manner was whether a non-signatory can be made a party to the Arbitration Agreement and further, the phrase 'claiming through or under' in Sections 8 and 11 could be interpreted to include the Group of Companies doctrines.

The Hon'ble Supreme Court held that companies which are not party to the arbitration agreement can be made parties to arbitration proceedings as per the Group of Companies doctrine and further observed that there is certain criterion basis which a non-signatory can be made a party to the Agreement, which are:

- (i) The mutual intent of the parties;
- (ii) The relationship of a non-signatory to a party which is a signatory to the agreement;
- (iii) The commonality of the subject-matter;
- (iv) The composite nature of the transactions; and
- (v) The performance of the contract.

The Hon'ble Supreme Court further held that the doctrine did not derive its legitimacy solely from the phrase 'through or claiming under' as mentioned in the Arbitration and Conciliation act, it was rather a common law doctrine developed for its utility in today's interconnected and convoluted commercial world.

Therefore, a non-signatory entity is not 'claiming through or under' a signatory party. It has also been opined that the definition of a 'party' under Section 2(1)(h) read with Section 7 of the Arbitration Act includes both signatory as well as non-signatory parties and that the concept of a 'party' is distinct and different from the concept of 'persons claiming through or under a party' to the arbitration agreement.

The judgement discusses the standing of this doctrine not only in India but also across other leading jurisdictions across the globe.

The Apex Court has once again with this progressive judgment not only invited international commercial transactions but have also served as a blow to all such group companies who try to wriggle out of their liabilities in arbitral disputes on technicalities of "who signed" the arbitrarily agreement, rather than what the actual intent of the parties was.

GENERAL CORPORATE

1. Vishal Tiwari vs, Union of India & Ors. Writ Petition (C) No. 162 of 2023 decided on 03.01.2024



The Adani Group was on its way to take over the entire securities market when it hit a sudden blow with a Hindenburg Report alleging several illegal and unethical practices on the part of the Adani Group. The direct implication being that their share prices came down crashing down with fear and unrest amongst the

investors which led to a batch 4 writ petitions were filed before the Hon'ble Supreme Court praying that the existing regulatory mechanism in the financial sector needs to be reviewed in order to ensure that the mechanism is strengthened to protect Indian investors from volatility in the market. The Supreme Court rejected the mechanisms are proper and in place that the SEBI must proceed with its investigation and submit a report within 2 months.

In November 2023, the Petitioners pressed for precisely two directions, being:

- a. an SIT to oversee the SEBI investigation into the Adani group and that all such investigations be court monitored.
- b. a direction to SEBI to revoke certain amendments made to the SEBI (Foreign Portfolio Investments) Regulations, 20143 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

The matter once again came up on 03.01.2024 wherein the Petitioners raised direct allegation not on the mechanisms but on the members of SEBI conducting the investigation. Further, the bench even denied relying upon the OCCPR report which suggested that SEBI was laid back approach in conducting the investigation. The Court stated that a mere report by a third-party organization without any attempt to verify the authenticity of its allegations cannot be regarded as conclusive proof.

The Apex Court primarily held that the power of this Court to enter the regulatory domain of SEBI in framing delegated legislation is limited. The court must refrain from substituting its own wisdom over the regulatory policies of SEBI. The scope of judicial review when examining a policy framed by a specialized regulator is to scrutinize whether it violates fundamental rights, any provision of the Constitution, any statutory provision or is manifestly arbitrary.

Accordingly, the Supreme Court refused to transfer the Adani investigation from SEBI. The decision has empowered SEBI not only has a regulatory body but a body of investigations having sound procedures which cannot be challenged on baseless grounds.

2.M. Suresh Kumar Reddy Versus Canara Bank & Ors. (2023) 8 SCC 387



The Supreme Court in this case followed and upheld the judgment and law laid down in Innovative Industries Limited vs ICICI Bank (2018 1 SCC 407) and held that once NCLT is satisfied that there is default on payment and that debt is established, an application under Section 7 of the IBC Code 2016 seeking initiation of corporate insolvency resolution process has to be mandatorily admitted. However, if there is any debt which has not become due and payable, NCLT can reject the application. The Court considered the position in law and discussed the scope of Section 7 of the IBC Code 2016 and how it stands on different footing from Section 8 of the IBC Code 2016 where a demand notice of the unpaid debt is to be delivered to the debtor. However, the NCLT under the ambit of Section 7 has to only determine whether a "default" has occurred i.e., whether the "debt" was due and remain unpaid. The NCLT majorly stressed the definition of default as enshrined under the IBC Code 2016. If the NCLT is of the opinion that a default has occurred, it has to admit the application unless the application is incomplete. It only has to look at the evidence produced by the financial creditor and the records of the information utility to satisfy that default has occurred.

This judgment has reaffirmed the ratio held in various judgments and finally clarified on the powers of NCLT with respect to admitting application of the financial creditor under Section 7 of the IBC Code 2016. This was much awaited since the Supreme Court's decision in Vidarbha Industries vs Axis Bank Limited in July 2022 wherein the court held that the NCLT possesses sufficient discretion to not admit the application even if the debt existed and default is proved. By way of this judgment, the issue regarding the discretionary powers of NCLT is settled and more importantly the corporate debtors will not be able to avoid admissions of applications.

CRIMINAL

1.State Through CBI V. T. Gangi Reddy @ Yerra Gangi Reddy (2023)



The Supreme Court in this case considered whether default bail (also known as statutory bail) granted under Section 167(2) of the Code of Criminal Procedure, 1973, can be cancelled on merits after presenting the chargesheet. The court held that when special reasons were made out from the chargesheet and the chargesheet revealed the commission of a non-bailable crime, default bail granted under this section could be cancelled. The court opined that the object and purpose of this section is to impress upon the investigating agencies, the need to expeditiously conclude investigations, and not let innocent persons rot in jail due to their inefficiency. Thus, an order granting default bail is merely procedural, and cannot be understood to mean a determination on the merits of the case.

The court considered past precedents in *Aslam Babalal Desai Vs. State of Maharashtra*, (1992) 4 SCC 272 and *Abdul Basit Alias Raju and Ors. Vs. Mohd. Abdul Kadir Chaudhary and Anr.*, (2014) 10 SCC 754, and reaffirmed that while strong grounds have to exist before such bail can be cancelled, such cancellation cannot be understood to be absolutely barred by law. The court further laid down important guidelines to this effect stating that release of accused on default bail under this section is not on merits, but on the failure of the investigating agency in completing the investigation and filing the chargesheet within the stipulated time prescribed therein. Default bail cannot be cancelled on mere filing of the chargesheet but can be cancelled on making out a special and strong ground that commission of non-bailable crime is actually disclosed from the chargesheet. The Supreme Court correctly quashed the order of the High Court dismissing the plea for the cancellation of bail and remitted the matter back for determination of plea for cancellation of bail on the basis of merits.

The interpretation of this section is in furtherance to the administration. It is not merely a statutory right, but a

fundamental right as enshrined under Article 21 of the Constitution. The above decision of the Court has reaffirmed the importance of protecting the rights of the accused persons/victims while holding that default bail is a matter of right. The judgment strikes a fine balance between the legal possibility of cancellation of a default bail if the compelling facts and circumstances so require, and the law that an accused cannot be detained indefinitely without a trial.

2. Police Strategy for Grant of Bail 2022 SCC OnLine SC 1487



The Hon'ble Supreme Court in its suo moto Writ Petition has dealt with the issue of disposal of criminal cases by resorting to the 'triple method' of plea bargaining, compounding of offences and under the Probation of Offenders Act, 1958. The Apex court invited three Amici Curiae for providing suggestions in this method.

The Court directed the administrative side of the High Court to prescribe such number of courts as may be considered practical by each High Court to identify cases pending at pre-trial stage, or evidence stage, where the accused is charged with offence(s) with a maximum sentence of 7 years' imprisonment, excluding certain cases. Only cases of first-time offenders would be taken up. Thereafter, the identified cases shall be considered for disposal under Chapter XXIA of Cr.P.C. plea bargaining, Probation of Offenders Act, 1958 or compounding i.e. Section 320 of Cr.P.C via a notice. The notice will also indicate that the accused must remain present with his/her advocate and the complainant may also remain present with his/her advocate.

The Public Prosecutor would be required to ascertain the criminal antecedents of the accused. Accordingly, the court can inform the accused of the provisions of plea bargaining / persuade the parties to compound the offence / inform the accused of the benefits of Probation of Offenders Act, 1958. The Court may give time to the accused/complainant to think over the matter and give another date. In cases where the under

trial is in judicial custody, the trial court may explore the possibility of plea bargaining or compounding or benefit of Probation of Offenders Act. A timeline of 4 months was to be fixed to carry out the whole exercise. Further, the Hon'ble Supreme Court remissioned sentence for convicts undergoing fixed-term sentences. The state government can consider commuting the remaining sentence for the convicts sentenced upto 10 years of imprisonment who are also a first-time offender and have undergone half the sentence, upon good conduct of the convict.