Lex Info

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ADVISOR

Ashish Mehrotra
SDGM

Editors-in-Chief

K. Mani Kumar, DGM/Law &
N. Murali Krishna,
Sr. Law Officer

Editor:
K. Gopinath, LO/Genl.Admn.

Asst. Editors:
V. Appa Rao, CLA
M. Mohan Rao, CLA

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Please mail them to:

Sr. Law Officer,
Law Branch, SCR,
3rd Floor, Rail Nilayam,
Secunderabad.
PIN – 500025.
e-mail: loscrhq@gmail.com

Vol -VIII Issue - 3 Oct-Dec 2025

Page No.	Article
2	**ABC of Acts**—The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
3	Family Pension, whether can be granted to a spouse who has been living independently and separately and not even considered part of family by the deceased?
4	Section 17A of the Prevention of Corruption (Amendment) Act, 2018 - A Safeguard for Integrity or a Procedural Hindrance?
5	**Diff. Bet.**: Lawyer and Advocate **FAQ**: What is Bank Guarantee?
6	Proceedings u/S 124-A of the Railways Act are not criminal trials demanding proof beyond reasonable doubt, but welfare statues are governed by the principles of preponderance and probabilities.
7	Yours Legally - Terminating services of an employee for an allegation not brought out in the Charge sheet is against Principles of Natural justice
8	Treatise on Arbitration & Conciliation Act, 1996

Legal Maxim

Actio Personalis Moritur Cum Persona *- A personal right/cause of action dies with a person.*

Note: This is only a news capsule. For information and understanding to cite the case, please go through the original judgement.

ABC OF ACTS

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

Contd….from last issue

Section 38 provides for the Power of Central Government to make rules.

Section 39 provides for Certain provisions of this Act to apply after Central Registry is set up or cause to be set up.

The provisions of sub-sections (2), (3) and (4) of section 20 and sections 21, 22, 23, 24, 25, 26 and 27 shall apply after the Central Registry is set up or cause to be set up under sub-section (1) of section 20.

Section 40 provides for the Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Section 41 provides for Amendments to certain enactments

The enactments specified in the Schedule shall be amended in the manner specified therein.

Section 42 provides for Repeal and saving

(1) The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 (Ord. 3 of 2002) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

The schedule of the Act, 2002, refers to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Amendment) Rules, 2002, which are subsidiary rules that provide the procedural details for the Act's enforcement, particularly the sale of movable and immovable assets. These rules clarify how a bank or financial institution, as a secured creditor, should carry out the process after a borrower defaults, including issuing a demand notice, taking possession, and conducting the auction to recover the loan.

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KNOW OUR CONSTITUTION

(Continued from previous issue…)

Article 96: The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration

At any sitting of the House of the People, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of Article 95 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker, or, as the case may be, the Deputy Speaker, is absent.

The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the House of the People while any resolution for his removal from office is under consideration in the House and shall, notwithstanding anything in Article 100, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

Article 97 - Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker. There shall be paid to the Chairman and the Deputy Chairman of the council of States, and to the Speaker and the Deputy Speaker of the House of the People, such salaries and allowances as maybe respectively fixed by Parliament by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

Family Pension, whether can be granted to a spouse who has been living independently and separately and not even considered part of family by the deceased.

The appellant before the Supreme Court claiming family pension on the death of his wife (who was an employee) urged that the deceased was his legally wedded wife till her death. The marriage had not been dissolved by any Court of law. Appellant being the widower, was the sole legal heir of the deceased employee, entitled to receive the family pension under the Central Civil Services (Pension) Rules, 1972. He further submitted that the right of the sons or the daughters of deceased to receive pension was secondary and could arise only in the absence of the petitioner. He submitted that, in any case, the sons and daughters of the petitioner were over 25 years of age and married respectively and were, thus, ineligible to be beneficiaries under the 'Family Pension Scheme'.

On the other hand, where a separated spouse, who had been living independently claiming the pension under the Family Pension Scheme. It is not disputed that the petitioner had been living separately. Further, the deceased, who was required under Rule 54 of the Central Civil Services (Pension) Rules to disclose her family members, did not even include the petitioner as a 'family member'. She had mentioned and nominated her sons and in the alternative her daughters to receive the family pension. It is, thus, clear that petitioner who had been living separately was not even regarded by her as a member of her family. These factors prevailed with the department as also with the Central Administrative Tribunal in rejecting the claim of the petitioner to family pension.

The Supreme Court in Smt. Violet Issac And Ors vs Union Of India And Ors on 8 February, 1991, 1991 SCC (1) 725 explained the object of family pension as follows:

The family Pension Scheme under the Rules is designed to provide relief to a widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The employee has no title nor any control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition. Accordingly, in the present case the widow of the deceased Railway employee is entitled to receive the family pension, notwithstanding the will alleged to have been executed by the deceased."

The appeal filed by the husband for family pension was allowed by the Supreme Court. The judgement of the Apex Court is reproduced below:

"The sole question that arises for consideration in this appeal is whether the appellant, who happens to be the husband of the deceased government servant, is entitled to family pension under the provisions of the Central Civil Services (Pension) Rules (for short "the rules") notwithstanding the fact that the deceased wife in her nomination did not include the husband. The forums below have taken the view agreeing with the authorities that since the nomination was not in favour of the husband and the husband was staying separate from the wife, the husband would not be entitled to family pension in question. This view cannot be sustained in view of the provisions contained in Rule 54 of the rules. It is too well settled that **where rights of the parties are governed by statutory provisions, the individual nomination contrary to the statute will not operate.**

3. Under Rule 54 sub-rule (14)(b)(i) the expression "family" has been defined thus

"54. (14)(b)(i) Wife in the case of a male government servant, or husband in the case of a female government servant...."

4. Sub-rule (8)(ii) of Rule 54 states that

"54. (8)(ii) If a deceased government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child."

5. In the light of the aforesaid provisions and **there being no divorce between the husband and wife even though they might be staying separately, the appellant husband would be entitled to the family pension in terms of the rules** as noted aforesaid and the authorities, therefore, committed error in not granting family pension to the appellant relying upon the nomination made by the deceased wife of the appellant. The impugned order is, accordingly, set aside and this appeal stands allowed".

[G.l. Bhatia v. Union Of India And Another, Civil Appeal No. 2458 Of 1999 (Special Leave Petition (Civil) No. 1117 Of 1999) 23-04-1999]

Section 17A of the Prevention of Corruption (Amendment) Act, 2018 - A Safeguard for Integrity or a Procedural Hindrance?

The Prevention of Corruption Act, 1988 (PC Act) continues to be the foundation of India's anti-corruption framework. Over time, the need arose to modernize its provisions to protect honest decision-making while ensuring accountability. The Prevention of Corruption (Amendment) Act, 2018, effective from 26 July 2018, sought to achieve this balance by introducing Section 17A, which requires previous approval of the competent authority before initiating any enquiry or investigation against a public servant for official decisions taken in good faith. This provision, though protective in intent, has sparked wide debate, viewed by some as a shield for honest officers, and by others as a potential procedural obstacle for investigating agencies.

Section 17A provides that no police officer shall conduct any enquiry, inquiry, or investigation in respect of any offence relating to any recommendation made or decision taken by a public servant in the discharge of his official functions without prior approval of the competent authority. No approval is necessary if the public servant is caught on the spot while accepting or attempting to accept an undue advantage. The competent authority must convey its decision within three months, extendable by one additional month with reasons recorded in writing. Thus, the section aims to protect bona fide administrative decisions from being misinterpreted as corrupt acts while ensuring that deliberate bribery remains punishable.

The idea of prior approval in corruption cases dates back to the 1969 Single Directive, which required sanction before CBI investigations against senior officers. The Supreme Court in ***Vineet Narain v. Union of India (1998)*** struck it down, ruling that executive instructions cannot restrict statutory investigative powers. Later, Section 6A of the Delhi Special Police Establishment Act, 1946, introduced similar protection but was invalidated in ***Subramanian Swamy v. CBI (2014)*** as it violated Article 14 by granting protection only to higher ranking officials. The 2018 amendment reintroduced the safeguard as Section 17A, but crucially, it extends uniformly to all public servants, removing the earlier discriminatory classification.

In a key ruling, the Supreme Court held that **Section 17A is not retrospective**. The Court emphasized that since the provision came into force on 26 July 2018, it cannot apply to FIRs or offences registered before that date. Applying it retrospectively would invalidate ongoing investigations initiated under the earlier legal regime. Hence, only cases arising after 26.07.2018 require prior approval. The Supreme Court's split verdict in ***Nara Chandrababu Naidu v. State of Andhra Pradesh (2024)*** reignited the discussion on the scope of Section 17A. The alleged offences occurred before July 2018, but the enquiry began afterwards, leading to key questions on the definition of enquiry/investigation, its procedural or substantive nature, and its retrospective or prospective applicability. Due to differing opinions, the matter has been referred to a larger Bench.

There is no uniform view on whether Section 17A is procedural or substantive. The Constitution Bench in ***CBI v. RR Kishore (2023)*** held that a similar safeguard (Section 6A of the DSPE Act) was procedural. In contrast, ***State of Rajasthan v. Tejmal Choudhary (2021)*** and ***G.J. Raja v. Tejraj Surana (2019)*** observed that Section 17A creates new rights and obligations, making it substantive and hence prospective. To operationalize Section 17A, the Department of Personnel & Training (DoPT) issued O.M. No. 428/10/2021-AVD-IV(B) dated 18.10.2024, prescribing a 22-point checklist, a single-window system, and strict time limits for decision-making. While the Karnataka High Court in ***Shreeroopa v. State of Karnataka (2023)*** upheld the protective purpose of Section 17A, it cautioned that the provision could delay investigations, highlighting the need for balance.

Section 17A represents a judicially tested and legislatively balanced safeguard. It protects honest officers from vexatious prosecution, ensures administrative prudence, and reinforces the rule of law. However, its dual nature, both safeguard and procedural threshold, continues to invite judicial scrutiny. The upcoming decision of the Supreme Court's larger Bench in Chandrababu Naidu will ultimately determine whether Section 17A evolves as a substantive pillar of fairness or a procedural hurdle in India's anti-corruption regime. In either event, it reflects India's maturing legal approach, punishing corruption without paralyzing governance.

Key Takeaways of Section 17A:

Prior Approval Mandatory: No enquiry/investigation against a public servant for decisions taken in official duty without previous approval of the competent authority.

Exception: No approval needed if caught red-handed while accepting or attempting to accept a bribe.

Timeline: Decision to be conveyed within three months, extendable by one month with written reasons.

Prospective in Nature: Applicable only to enquiries initiated after 26 July 2018.

Balance of Interests: Protects honest officers yet ensures accountability through oversight and judicial review.

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Difference between Lawyer and Advocate

In the Indian legal system, there has always been a clear distinction between a *lawyer* and an *advocate*. A *lawyer* is a person who has obtained a law degree and may provide legal advice, prepare documents, or work in teaching or research. However, only those who are enrolled with a State Bar Council under the Advocates Act, 1961 are recognised as *advocates* and have the statutory right to practise before courts and tribunals. Reiterating this long established principle, the Supreme Court of India, in a recent judgment delivered by Justice K. Vinod Chandran for a Bench led by Chief Justice B. R. Gavai, clarified that *inhouse legal advisers or corporate counsel employed on a fulltime salary do not come within the definition of "advocate"* under the Bharatiya Sakshya Adhiniyam (BSA), 2023, and therefore cannot claim the protection of *advocate–client privilege*.

Statutory Definition and Legal Context: The Advocates Act, 1961, clearly delineates who may practise law. Under Section 2(a), an *advocate* is a person whose name is entered on the rolls of a State Bar Council. Sections 29 and 33 further mandate that only such enrolled advocates are entitled to practise before courts, tribunals, or statutory authorities. Merely holding a law degree or engaging in legal work does not confer the statutory right to practise law.

The Court relied on Rule 49 of the Bar Council of India Rules, which expressly prohibits an advocate from engaging in any fulltime salaried employment while practising. The rationale is that advocacy, being a profession of independence and public duty, cannot coexist with an employment relationship where the individual functions under the direction and control of an employer.

In-House Counsel: Lawyer but Not Advocate: Applying this principle, the Court observed that an *inhouse counsel*, though legally qualified and performing advisory duties, remains an employee in a master-servant relationship. Such employment takes the individual outside the purview of an *advocate* as defined in law. Consequently, communications between a company and its in-house counsel are not protected u/S 132 of the BSA, which extends privilege only to advocates practising independently. However, limited confidentiality may still be claimed under Section 134 concerning legal advisers.

Independence as the Defining Attribute: The Court emphasised that *independence* is the cornerstone of advocacy. Drawing upon the reasoning in *Akzo Nobel Ltd. v. European Commission (2010)*, it noted that inhouse lawyers, by virtue of their employment, cannot claim the same professional autonomy as external advocates. Their advice is inherently influenced by their employer's commercial interests and business objectives.

Conclusion: This judgment restores clarity to a fundamental professional boundary. While ***all advocates are lawyers, not all lawyers are advocates***. The right to practise law and the corresponding privilege of professional confidentiality are reserved exclusively for those enrolled and practising as independent advocates before the courts of law.

FAQ What is Bank Guarantee ?

A bank guarantee is a kind of guarantee from a lending institution. The bank guarantee means a lending institution ensures that the liabilities of a debtor will be met. In other words, if the debtor fails to settle a debt, the bank will cover it. Bank guarantee is designed to provide financial protection. The bank guarantee mechanism includes multiple stages, which extend from application submission through to payment processing or fulfilment execution.

Bank Guarantees are governed by the Indian Contract Act, 1872, the Limitation Act, 1963, and Reserve Bank of India (RBI) guidelines. The Bank Guarantee specifies that the bank must make payment when the applicant defaults on their obligation. The issued guarantee stays active during its predetermined time frame. Once the applicant fulfils their obligation the guarantee becomes void. When the applicant does not meet their obligation the bank becomes responsible for payment to the beneficiary. these are issued for some purpose and for a tenure which automatically get revoked on fulfilment of such purpose and/or completion of such specified period or vice versa. For example a bank guarantee might be revoked by the seller (beneficiary) when the buyer fails to pay the seller for the goods supplied. In such a situation, the bank pays the beneficiary to the extent of the amount of Bank Guarantee. Similarly, on the other side if the Seller fails to deliver the goods or complete the terms of agreement, the bank guarantee may be cancelled by the buyer.

The bank guarantees are issued in the format which is prescribed by the authority/party in whose favour the guarantee need to be issued. It constitutes an independent agreement between the bank and the beneficiary, separate from the original agreement between the creditor and the debtor at whose request the bank surety is invoked. When a contract is made that calls for the provision of bank guarantees, there are three parties involved. The bank has the responsibility to fulfil its contractual duty to deliver the guarantee whenever it is requested, regardless of who the beneficiary is or any issues that may have arisen during the process between the borrower and lender. This principle is based on the notion that the purpose of a bank guarantee is to protect the beneficiary by allowing them to file timely claims against another party based on the guarantee's terms.

The Kinds of Bank Guarantee include Financial Guarantee, Performance Guarantee, Bid Bond Guarantee, Advance Payment Guarantee, Deferred Payment Guarantee, Foreign Bank Guarantee, etc.

Proceedings u/S 124-A of the Railways Act are not criminal trials demanding proof beyond reasonable doubt, but welfare statues are governed by the principles of preponderance and probabilities.

The brief facts, are that the deceased is stated to have purchased a second-class ticket at Indore Railway Junction for travel to Ujjain by train no. 12465, Ranthambore Express. It is alleged that due to overcrowding, he was pushed out of the running train near pole no. 15/21, within the jurisdiction of Police Station Narwar, District Ujjain, resulting in fatal head injuries. Post-mortem report opined death due to profuse haemorrhage and shock consequent to head injury.

The appellants, being the widow and minor son of the deceased, filed Claim Case before the Railway Claims Tribunal, Bhopal, seeking compensation. The Tribunal, dismissed the claim petition on the ground that claimants had failed to prove deceased was a bonafide passenger. No ticket was recovered from his personal belongings, and the photocopy of tickets was considered doubtful as there was no seizure memo and the investigating officer was not examined. The High Court affirmed the dismissal of the claim petition by the Railway Claims Tribunal. Against which the present SLP has been filed before the Supreme Court.

The Supreme Court held that proceedings under Section 124-A of the Railways Act are not criminal trials demanding proof beyond reasonable doubt, but welfare statues are governed by the principles of preponderance and probabilities. Once the foundational facts of (i) possession or issuance of a valid ticket, and (ii) occurrence of an accidental fall from a train, are established through credible material, the statutory presumption of bona fide travel must operate in favour of the claimant. The Railways, as an instrumentality of the State, cannot defeat such claims by pointing to procedural imperfections in investigation or non-examination of formal witnesses. To hold otherwise would erode the beneficial character of the legislation and convert a social -justice remedy into a forensic obstacle race.

The Supreme Court also declared that where an official railway inquiry or evidentiary record verifies the issuance of a ticket corresponding to the date and route of an untoward incident, such verification shall constitute prima facie proof of bona fide travel, shifting the evidentiary burden on the Railway Administration. The absence of a seizure memo, or the inability of the police to preserve physical evidence, cannot by itself defeat a legitimate claim when the totality of circumstances supports the claimant's version. This principle shall guide all future tribunals and High Courts in construing Section 124-A, so that the statutory right to compensation remains real, accessible, and consonant with the humanitarian purpose of the enactment.

In the present case the Supreme Court observed that the appellant filed affidavit before the Railway Claims Tribunal stating in unequivocal terms that her husband late Shri Sanjesh Kumar on the date of the accident i.e., on 19.05.2017 was travelling from Indore to Ujjain by train no. 12485 Ranthambore Express with ticket in second class. She has further deposed that the ticket has been seized by the Police Narwar, District Ujjain. She has also deposed that on previous day night that is on 18.05.2017 she was told by the deceased that he was going out with some work and asked for his Aadhar Card and ID proof and thereafter he left the house with his luggage.

As the appellant had duly filed an affidavit stating the facts and adverting to the report arising from the investigation conducted by the respondent, which showed that the deceased was travelling on the train and that his death was caused by a fall during the course of his travel. The burden of proof then shifted to the Railways, which has not discharged its burden. Therefore, the presumption that the deceased was a bona fide passenger on the train in question was not rebutted.

Further, the report of the IO indicates the details mentioned in the post-mortem report. It states that the cause of death was due to an injury sustained on the head and that all injuries were ante mortem and caused by "blunt force impact". It also states that forty-eight to seventy-two hours had passed since the time of death."

In the light of the above, the Supreme Court held that the High Court had faulted in affirming the finding of the Railways Claims Tribunal and held that mere technical irregularities or lapses in procedure should not defeat a legitimate claim under a welfare statue, like the Railways Act, 1989. Particularly Chapter XIII which deals with liability of railway administration for death and injury to passenger due to accident. A Hyper technical approach which would frustrate the object of providing relief to victims of railway accidents should be eschewed and the Respondents are directed to pay a compensation of Rs.8,00,000/- to the appellants-applicant.

[RAJNI AND ANOTHER Vs. UNION OF INDIA AND ANOTHER, (SPECIAL LEAVE PETITION (C) No. 19549 OF 2024, October 08th, 2025]

YOURS LEGALLY

Terminating services of an employee for an allegation not brought out in the Charge sheet is against Principles of Natural justice

Facts in the case are that Certain posts of Teachers (Classes I to V) were advertised by the District Education Superintendent, Dhanbad (respondent no. 4). The appellants applied for the post and were successful in the recruitment process and the appellants started discharging their duties from December, 2015 as teachers. However, show cause notices were issued to them alleging that they did not fulfil the eligibility criterion of having secured a minimum of 45% marks in their intermediate examination (Class XII).

In reply to the show cause notices, the appellants contended that being members of the Scheduled Tribe category, they were required to secure only 40% marks in the intermediate examination and not 45%. In other words, they were entitled to a relaxation of 5% marks in terms of the advertisement. It was further asserted that they had secured 42.55%, 40.22%, and 41.33% marks, respectively, in the intermediate examination and, thus, were eligible for participation in the recruitment process.

However, the services of the appellants were terminated on the ground that they had secured less than 40% marks in the intermediate examination. According to the calculation made by the Department, they had secured 38.56%, 39.78%, and 39% marks respectively in the intermediate examination after excluding the additional marks secured by the appellants in the vocational subject under Rule 21 A (ii)(A) of the 2012 Rules which provides that the marks secured by a candidate in an "additional subject" will not be taken into consideration while calculating the "educational merit point".

Appellants challenged the termination orders before the High Court by filing separate writ petitions. A Single Judge of the High Court allowed these petitions and, consequently, the impugned termination orders were set aside. While, a Division Bench of the High Court allowed appeals filed by the department and dismissed the challenge against the orders of termination. Against said determination, the appellants have invoked this Court's appellate jurisdiction.

The Supreme Court held that in the absence of a bar or an alternate method provided by any law, the method provided on the mark sheet has to be followed. Therefore, the onus of proof shifted to the respondents to show that calculation as per the mark sheet is not warranted. Reliance on Rule 21 of the 2012 Rules by the respondent department is not correct since the eligibility of a candidate for appearing in the Teacher Eligibility Test is to be decided in accordance with Rule 4 and Merit list (for the purposes of appointment) is to be prepared in accordance with Rule 21. Thus, the respondents erred in applying Rule 21 for the purpose of deciding whether the appellants fulfilled the eligibility criteria.

Further, in the show cause notices issued to the appellants, a question was raised about them not fulfilling the eligibility criterion of having secured a minimum of 45% marks in their intermediate examination. The appellants, in their replies to the show cause notices, had categorically demonstrated that they were not required to secure 45% marks in their intermediate examination. They were required to secure more than 40% marks in the intermediate examination, which they did secure. Confronted with this situation, the respondents conveniently proceeded to terminate the appellants' services by computing their marks after excluding the marks secured in the vocational subject. Significantly, the allegation that the appellants had failed to secure 40% marks (after exclusion of marks secured in the vocational subject) in the intermediate examination did not even figure as an allegation in the show cause notices.

Therefore, the findings were returned by the respondents which were at variance with the allegations levelled in the show cause notices. The appellants having successfully defended the allegations, the respondents were precluded in law from proceeding with such notices. In the absence of fresh show cause notices specifically requiring the appellants to explain why the marks secured in the vocational subject should not be taken into account for determining their overall percentage, in our considered view, the appellants had been denied a fair and reasonable opportunity of hearing and the termination orders are wholly unsustainable and stand vitiated being in violation of the principles of natural justice.

Appellants, if provided a fair and reasonable opportunity, could have pointed out the error committed by the respondents. Complying with natural justice principles, on facts and circumstances, would not have been an idle formality and/or the decision a forgone conclusion. Hence, the Apex court held that the termination order vitiated for violation of principles of natural justice, inasmuch as the respondents excluded the marks secured in the vocational subjects without affording the appellants notice or an opportunity to contest such exclusion.

[RAVI ORAON THE STATE OF JHARKHAND & ORS. CIVIL APPEAL NO. 11748 OF 2025, OCTOBER 09, 2025].

TREATISE ON

Recourse against arbitral award

Section 34: Application for setting aside arbitral award:

An important chapter in the Arbitration and Conciliation Act, 1996 is recourse against arbitral award. Section 34 of the Arbitration and Conciliation Act, 1996 deals with setting aside an arbitration award made in India and domestic arbitration awards. It is not an appeal against the arbitration award but a challenge to the Arbitration award. An arbitration award can be challenged and set aside on the "only and only grounds" provided under section 34. This provision does not permit a review of the dispute on its merits. It permits judicial scrutiny only on specific, narrowly defined statutory grounds. The legislative intent is to balance the finality of arbitration with the need to ensure fairness, legality, and procedural integrity.

Per Section 34, an arbitral award can be set aside by the Court on the following grounds. They can be broadly divided into: 1. Party establishes that the grounds mentioned under S.34 (2) (a) are available for the court to set aside; 2. Court on its own finds that the grounds mentioned under S.34 (2) (b), and (2)(A) are available.

Under 1, i.e Party establishes that the grounds mentioned under S.34 (2) (a), the following grounds are enumerated:

Incapacity of a Party Sec 34(2)(a)(i)): A party may challenge an arbitration award if it could not effectively participate in the arbitration proceedings, such as mental incompetence, legal minority, or severe illness. An award can be set aside if a party was under some legal incapacity when entering the arbitration agreement as per the Indian Contract Act, 1872, which requires parties to be of the age of majority and of sound mind. The arbitration process ensures that vulnerable parties are not unfairly disadvantaged by the outcome. These protections maintain fairness and uphold justice in arbitration cases.

Invalid Arbitration Agreement (Sec 34(2)(a)(ii)): The award can be challenged if the arbitration agreement is not valid under the law to which the parties have subjected it, or, failing any indication thereon, under the law for the time being in force in India. If an arbitration agreement is found invalid under applicable law, the award may be set aside. This may happen if the agreement was improperly executed or lacking essential legal formalities.

Lack of Proper Notice or Opportunity to Present Case (Sec 34(2)(a)(iii)): An award is liable to be set aside if the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present their case. This ground protects the principles of natural justice and due process. This safeguard ensures that each party has a fair opportunity to present arguments and evidence without procedural bias.

Excessive Jurisdiction - Award deals with a dispute beyond the scope of Arbitration (Sec 34(2)(a)(iv)): An award may be set aside if it deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission. The court may invalidate an award if the arbitral tribunal exceeds its defined jurisdiction. This occurs when arbitrators rule on matters outside the scope of the arbitration agreement. Such actions undermine the agreed terms of the arbitration clause. This principle prevents arbitrators from adjudicating issues beyond their assigned authority. By enforcing this limit, the arbitration process respects the original agreement between the parties. However, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted may be set aside.

Improper Composition of the Tribunal or Procedure (Sec 34(2)(a)(v)): Parties can challenge an award if the arbitral tribunal was not properly constituted according to their agreement or governing rules. Ensuring proper composition of the tribunal is crucial to maintaining confidence in the arbitration process. Under part 2, i.e Grounds for Court's intervention on its finding that:

Non-Arbitrability of Subject-Matter (Sec 34(2)(b)(i)): The court may set aside an award if it finds that the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force. Certain disputes, such as those relating to criminal offenses, matrimonial matters, or guardianship, are reserved for public forums and are non-arbitrable.

Conflict with the Public Policy of India (Sec 34(2)(b)(ii)): An award can be set aside if the court finds that it is in conflict with the public policy of India. The 2015 amendment to the Act significantly clarified and narrowed this ground. An award is in conflict with public policy only if:

The making of the award was induced or affected by fraud or corruption.

It is in contravention with the fundamental policy of Indian law.

It is in conflict with the most basic notions of morality or justice.