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NEWSLETTER

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Relief Under Protection of Women from Domestic Violence Act, 2005 Enhanced

<p>Appellant: Hiral P. Harsora and Ors.</p> <p>Respondent: Kusum Narottamdas Harsora and Ors.</p>	<p>Court: The Supreme Court of India</p> <p>Date of Judgment: 06.10.2016</p> <p>Case No: Civil Appeal No. 10084 of 2016 (Arising out of SLP (Civil) No. 9132 of 2015)</p>
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Recently, there has been a notable development in statutory provisions contained in Protection of Women from Domestic Violence Act, 2005 (the "Act") which is aimed at protecting women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

The Supreme Court in the above case, while setting aside the order pronounced by Bombay High Court has struck down the words "*adult male*" from the Section 2 (q) of the Act and has consequently deleted the proviso following Section 2(q). Now a complaint of domestic violence can be made against any person who is, or has been, in a domestic relation

with the aggrieved person. The Court has observed that since the Section 3 of the Act defines domestic violence which is gender neutral, physical abuse, verbal abuse, emotional abuse, economic abuse and even sexual abuse in a given fact and circumstance can all be by women against other women. Therefore, construing "adult male" as respondent in all factual circumstances defeats the provisions of the Act and is violative of fundamental rights enshrined in the Constitution of India.

The Apex Court categorically observed that "It is not difficult to conceive of a non-adult 16 or 17 year old member of a household who can aid or abet the commission of acts of domestic violence, or who can evict or help in evicting or excluding from a shared household an aggrieved person." Thus, the words "adult male" will stand deleted since these words do not square with Article 14 of the Constitution of India.

Validity Of Entry Tax Imposed On Goods Imported From Other States

Appellant: Jindal Stainless Ltd. & Anr.	Court: The Supreme Court of India
Respondent: State of Haryana & Ors..	Date of Judgment: 11.11.2016
	Case No: Civil Appeal No. 3453/2002

In the above case, a nine- judge's bench of the Supreme Court with a majority of 7:2 upheld the validity of the entry tax imposed by the States on goods imported from other States. It was held that taxes simpliciter are not within the contemplation of Part XIII of the Constitution of India and that the word 'Free' used in the Article 301 does not mean "free from taxation".

Seven judges from the bench gave their majority support in view saying that States are well within their right to design their fiscal legislations to ensure that the tax burden on goods imported from other states and goods produced within the state fall equally. If such steps are taken by the State then it would not amount to contravention of the Article 304(a) of the Constitution. Taxes which are discriminatory in nature are prohibited by the Article 304(a). It was also observed that levy of a non-discriminatory tax would not constitute an infraction of the Article 301 of the Constitution. A tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing State.

Temporary Employees Entitled To Draw Wages At The Minimum Of The Pay-Scale (- At The Lowest Grade, In The Regular Pay-Scale), Extended To Regular Employees, Holding The Same Post

Appellant: State of Punjab & Ors.	Court: The Supreme Court of India
Respondent: Jagjit Singh & Ors.	Date of Judgment: 26.10.2016
	Case No: Civil Appeal No. 213/2013

In the above case, the Apex Court decided on an appeal against the High Court order which had held that temporary employees are not entitled to the minimum of the pay-scale, as was being paid to similarly placed regular employees. The SC Bench held that the principle of 'equal pay for equal work' is applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

Classification of temporary employees for differential treatment on the subject of wages, is clearly unsustainable, and is liable to be set aside. The principle of 'equal pay for equal work' constitutes law declared by this

Court and is binding on all the courts in India, under Article 141 of the Constitution of India. This principle is also extended to temporary employees (differently described as workcharge, daily-wage, casual, ad-hoc, contractual, and the like).

Supreme Court Restricts High Court's Scope Of Review Under Workmen's Compensation Act, 1923 In Cases Involving Assessment Of Workmen's Disabilities

Appellant: Golla Rajanna & Ors.	Court: The Supreme Court of India
Respondent: The Divisional Manager & Ors.	Date of Judgment: 23.11.2016
	Case No.: Civil Appeal Nos. 11114-11119 of 2016 (Arising out of S.L.P (C) Nos. 6696-6701 of 2015)

In the above case, Appellants were workmen employed in service. They met with an accident and sustained heavy injuries. The Workmen Compensation Commissioner (WCC) passed an order, on the basis of proof, stating that the appellants should be awarded compensation based on their wages for the injuries sustained.

However, the Insurance Company challenged the order passed by the WCC before the High Court under Section 30(1) of the Workmen's Compensation Act, 1923 ('the Act') disputing the injuries having been sustained. The High Court then proceeded to enquire into the case on the basis of facts and held that the proof of the injuries sustained was disputable, holding that only 5% of the workmen's earning capacity was lost, and the compensation was thus reworked.

The Supreme Court, accepted the petition and held that the High Court had a restricted scope of appeal, confined only to 'substantial questions of law' under the Workmen's Compensation Act, which was a welfare

legislation. Thus, the Supreme Court ruled that the inquiry into the facts was not within the competence of the High Court.

Hence, the Supreme Court, upheld the WCC's order which was based on the certificate issued by a qualified medical practitioner, which met the requirement of Section 4(1)(c)(ii) of the Act. The Supreme Court held that the question of assessment of percentage of disability of the workmen was a pure question of fact and the WCC was the last authority on questions of fact.

Arbitration Agreement Only Required At The Time Of Section 8 Application Being Considered

Appellant: Anantesh Bhakta	Court: The Supreme Court of India
Respondent: Nayana S. Bhakta	Date of Judgment: 15/11/2016
	Case No.: Civil Appeal No. 10837 of 2016 (Arising out of SLP (C) No. 31179 of 2014)

In this case, the Supreme Court decided on the issue of whether non-filing of either original copy or certified copy of arbitration agreement (agreement containing provisions of arbitration) along with application entailed dismissal of the application as per Section 8(2) of Arbitration and Conciliation Act, 1996 (the "Act"), which states that the application for referral of parties to arbitral proceedings shall not be 'entertained' unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

The Appellants submission that application of the Respondents under the Section 8 was liable to be defeated on the basis of the fact that it is only after filing of original deeds containing the arbitration agreement that Court proceeded to decide the application of the Respondents.

The Court held that merely because only one party, namely Defendant 6, was not party to the retirement deed or partnership, it could not be said that the dispute which relates 'essentially' to the subject matter of the arbitration agreement, could not have been referred to arbitration.

Legal Updates:

- **Two sets of Regulations Notified under Insolvency and Bankruptcy Code, 2016:**

The Ministry of Corporate Affairs said the following in its latest press release "These two regulations inter alia provide for the eligibility norms to be a professional member of an insolvency professional agency and also for eligibility norms to be registered with the IBBI as an insolvency professional agency,".

The Regulations notified by IBBI (Insolvency and Bankruptcy Board of India) include:

- 1.) Model Bye-laws and Governing Board of Insolvency and Professional Agency Regulations, 2016. Copy of the notification is available to read and download at [here](#).
 - 2.) The Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies Regulations), 2016. The same can be accessed at <http://www.mca.gov.in/>
- PF dues to be paid on the day of retirement. Employee Provident Fund Organization (EPFO) has issued a Circular providing for speedy payment of dues of retiring employees. Copy of said Circular is available to read and download at [here](#).
 - PF money remaining idle in provident fund deposits for 36 months or more will now earn interest. The Ministry of Labour and Employment vide its Notification dated 11th November, 2016 modified the definition of "inoperative accounts", lifting the time-frame of 36 months after which the money stuck in PF accounts would stop accruing interest.
 - The Ministry of Corporate Affairs has made amendment in the Para 3 (ii), of Part A of Schedule II (i.e. Useful Lives to Compute Depreciation) to the Companies Act, 2013 vide notification No.

G.S.R. 1075(E) dated 17-11-2016. As per the amendment, for intangible assets, the relevant Indian Accounting Standards shall apply. Where a company is not required to comply with Indian Accounting Standards, it shall comply with relevant accounting standards under the Companies (Accounting Standards) Rules, 2016. This notification is applicable from accounting period commencing on or after 1st April 2016. Copy of said circular is available to read and download at [here](#).

- The Reserve Bank of India, vide circular No. RBI/2016-17/110 A.P. (DIR Series) Circular No. 15 November 07, 2016 issued clarification on hedging of External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency. Vide said circular among other things, RBI has clarified that wherever hedging has been mandated by the RBI, the ECB borrower will be required to cover principal as well as coupon through financial hedges. The financial hedge for all exposures on account of ECB should start from the time of each such exposure (i.e. the day liability is created in the books of the borrower). RBI has also issued clarification on tenor and rollover and natural hedge. Copy of said circular is available [to read and download at here](#).
- Reserve Bank of India, vide circular No. RBI/2016-17/103 A.P. (DIR Series) Circular No. 13 October 27, 2016, issued framework to permit AD Category-I banks to allow Startups to raise ECB. Copy of said circular is available to read and download at [here](#).

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