



# MONTHLY NEWSLETTER

The Law Desk

May 2022 / TLD-14

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**WRIT TO LIE AGAINST ORDER  
PASSED BY NATIONAL  
COMMISSION ON APPELLATE  
SIDE: SUPREME COURT OR HIGH  
COURT?**  
- TANMAY MANGAL**INTRODUCTION**

The controversy w.r.t. jurisdiction of the forum to entertain an appeal against the order passed by the National Commission against State Commission's Order was long pending as unlike the Consumer Protection Act, 1986, the Consumer Protection Act, 2019 (*Hereinafter referred as 'Act of 2019' for the sake of brevity*) is silent about the remedy available to a person disgruntled by National Commission's Order passed while exercising its Appellate Jurisdiction.

Recently, the Hon'ble Supreme Court has settled the conundrum w.r.t. the above stated issue by passing an order in the case titled Ibrat Faizan v. Omaxe Buildhome Private Limited<sup>1</sup> whereby it held that under Article 227 of the Constitution, a High Court has the jurisdiction to adjudicate a Writ Petition filed against the Order passed by the National Commission in an Appeal against the State Commission's Order.

<sup>1</sup> Civil Appeal No. 3072 of 2022, dated 13.05.2022, accessible at [https://www.livelaw.in/pdf\\_upload/4665202211150235860judgement13-may-2022-417497.pdf](https://www.livelaw.in/pdf_upload/4665202211150235860judgement13-may-2022-417497.pdf).

The issue has gained significance as the aggrieved party has to choose between a Special Leave Petition under Article 136 OR a Writ Petition under Article 227 of the Constitution, in case he is dissatisfied by the order passed by the National Commission in an Appeal against State Commission's Order.

**FACTUAL BACKGROUND**

The Original Complainant had filed a Consumer Complaint before the State Commission against the Respondent Builder alleging deficiency of service and unfair trade practice for non-handing over the possession of flat on due date. The State Commission allowed the Complaint and directed the Respondent-Builders to hand over the possession and pay interest for delayed hand over. Aggrieved by the same, the Respondent-Builders filed an Appeal before the National Commission wherein it was granted interim stay on the operation of the order passed by the State Commission with the direction to the Respondent-Builders to deposit the entire cost of the flat with the Commission along with the interest. Aggrieved and dissatisfied with the interim order passed by the National Commission, Respondent-Builders filed a Writ Petition wherein the Hon'ble Delhi High Court stayed the Interim Order. In the meanwhile, the National Commission passed the final order upholding the order passed by the State

Commission. Aggrieved by the final order, the Respondent-Builder filed a Writ Petition under Article 227 of the Constitution assailing the Order passed by the National Commission while exercising its Appellate Jurisdiction. The Hon'ble High Court held that it has the jurisdiction to adjudicate the order passed by the National Commission where the same has been passed in an appeal challenging the State Commission's Order. Feeling disgruntled by the order passed by the Hon'ble High Court, the Original Complainant filed Appeal before the Hon'ble Apex Court.

### ISSUE UNDER CONSIDERATION

The prime issue under consideration before the Court was whether the High Court has the jurisdiction to entertain a Writ Petition under Article 227 of the Constitution against the order passed by the National Commission in its Appellate side.

### LAW UNDER CONSIDERATION

It is a settled principle that right to file an appeal is a statutory right. Section 67 of the Act of 2019 provides for right to file an appeal before the Hon'ble Supreme Court against the Order passed by the National Commission on its original side only i.e. where in an unfair contract or otherwise, the value of consideration for sale of goods or services

exceeds ten crores. As such, unlike Section 27A of the Consumer Protection Act, 1986, the Act of 2019 does not specifically provide any right to file an appeal before the Supreme Court against the order passed National Commission under Section 58(1)(a)(iii) of the Act of 2019 when an appeal is filed assailing the order passed by State Commission. However, on the other hand, Article 227 grants every High Court, power of superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction.

### VERDICT

The Hon'ble Apex Court held that against the order passed by the National Commission under Section 58(1)(a)(iii) of the Act of 2019, a Writ Petition can be filed before the jurisdictional High Court, however, the said High Court while passing the order, is subject to the rigour of Article 227 of the Constitution.

While defining the boundaries of a High Court under Article 227 of the Constitution, the Hon'ble Court referred to its earlier decisions in the matter titled Estralla Rubber v. Dass Estate (P) Ltd.<sup>2</sup> and Garment Craft v. Prakash Chand

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<sup>2</sup>Estralla Rubber v. DassEstate (P) Ltd., 2001 (8) SCC 9, dated 12.09.2001, available at <https://indiankanoon.org/doc/1833459>



Coe<sup>3</sup> which limits the High Courts' jurisdiction under Article 227 of the Constitution. The said cases clearly prescribe that High Court under Article 227 can interfere with the orders of the tribunal only in cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice remains uncorrected. As such, the power of superintendence under [Article 227](#) cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court under [Article 227](#) cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal.

The Court has further observed that the remedy against the order passed by the National Commission under Article 136 of the Constitution as against the option to approach the High Court would be expensive, inaccessible, ineffective and unreal. Therefore, in furtherance of the right of access of justice, the Appellant to approach the High Court at the lower cost rather than to seek a Special Leave from the Hon'ble Court under Article 136 of the Constitution.

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<sup>3</sup>Garment Craft v. Prakash Chand Goel, 2022 SCC Online SC 29), dated 11.01.2021, available at [https://www.livelaw.in/pdf\\_upload/19042202144150132472judgement11-jan-2022-407488.pdf](https://www.livelaw.in/pdf_upload/19042202144150132472judgement11-jan-2022-407488.pdf).

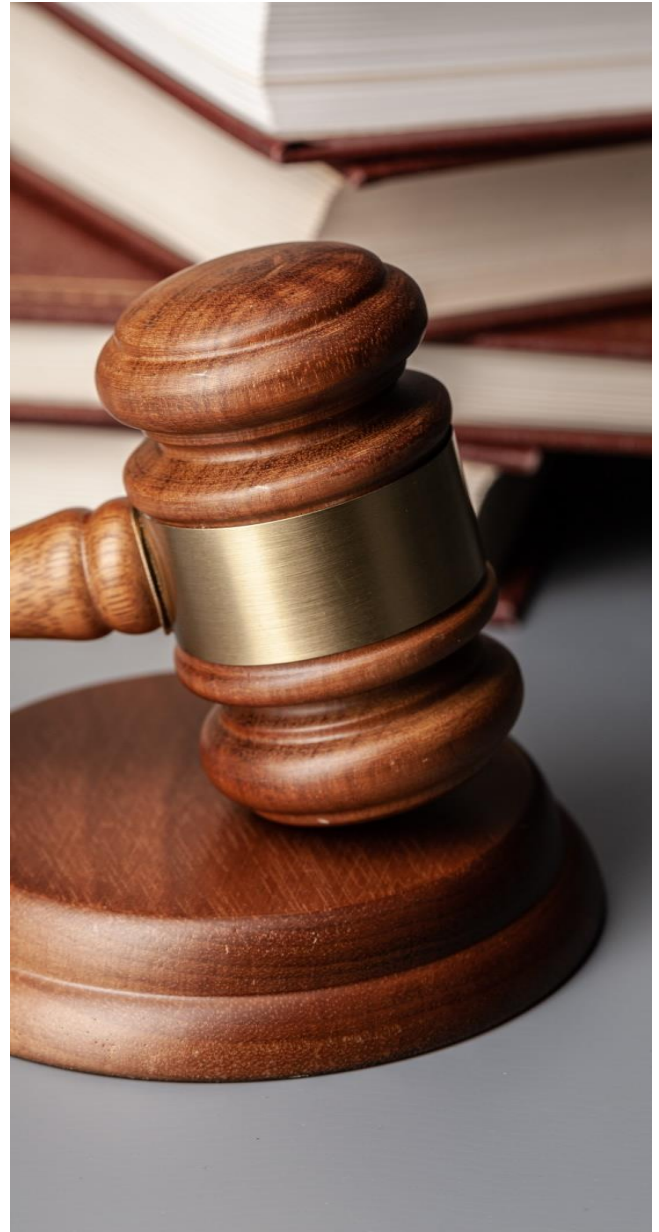


## ANALYSIS

The decision has on the one hand cleared the air w.r.t. the remedy available to an aggrieved person dissatisfied with the National Commission Order passed in its Appellate Side, however, on the other hand has allowed an additional remedy in form of a Writ Petition under Article 227 of the Constitution, moreso, when the same person can further approach the Supreme Court by filing a Special Leave Petition under Article 136 in case he is not satisfied with the decision of the concerned high Court. The order passed by the Court is a welcoming step towards effective and inexpensive administration of justice especially in cases where a person merely due to financial constraints is restricted to approach the Supreme Court accessible only to elites. However, on the contrary, already over-burdened High Courts will face a huge challenge as large number of decision of the National Commission will now be challenged before the High Courts which was otherwise less prevalent in the previous regime.

On the other hand, the Apex Court also warned the High Courts in exercising its power under Article 227 has to be vigilant and use the same

sparingly with due caution so as to not act as an Appellate Court.





include an importer under Section 2(26) of the Customs Act, 1962.

## FACTS

M/S. Mohit Minerals Private Limited<sup>4</sup> is involved in the import of non-cooking coal for domestic industries from Indonesia, South Africa and the U.S. by ocean on a Cost-Insurance Freight (CIF) basis. It is pertinent to state that in a transaction involving a CIF contract, the cost of insurance and freight are borne/ paid by the Exporter/Seller, whereas in a transaction involving an FOB (Free on Board) contract, the cost of insurance and freight are paid by the Importer/Buyer.

Post the implementation of Goods and Services Tax (GST), two notifications were issued by the Central Government subsequently. The former levied an integrated rate of 5% on the transportation of goods in vessels from a place outside India to the customs station of clearance in India while the latter categorized the recipient of services of supply of goods by a person in a non-taxable territory by a vessel to



As a result of the above notifications issued by the Central Government on the recommendations of the GST Council, the importer paying Integrated Goods and Services Tax (IGST) on the transaction value of goods

<sup>4</sup> Union of India & Anr. Versus Mohit Minerals Pvt. Limited through Director, Civil Appeal No. 1390 of 2022.

(which includes the value of Ocean Freight as well) under Section 5(1) of the IGST Act and Section 3(7) and 3(8) of the Customs Tariff Act, would again be made to pay an additional tax on the supply of service (freight portion).

A petition was filed under Article 226 of the Gujarat High Court challenging the constitutional validity of the above-mentioned notifications issued by the Central Government. The high court of Gujarat allowed the petition and held that the notifications are ultra-vires the provisions of the GST. The Union of India filed an appeal against the judgement of the Gujarat High Court.

### **ISSUES INVOLVED**

1. It was contended by the Union of India that the notifications issued by the Central Government are not unconstitutional as taxes were levied on two different aspects of the transaction, that is, the Supply of service and the Import of Goods.
2. It was also contended by the Union Government that notifications were issued on the recommendations made by the GST council which is empowered to decide on every aspect of the GST law and the recommendations made by the council are binding in nature.

### **HELD**

Supreme Court held that when an Indian importer is paying Integrated goods and services tax on the composite supply (on the supply of goods and on the supply of services of transportation, insurance, etc) in a CIF contract, a separate levy on them for the supply of services by the shipping line would be in violation of the provisions of Central goods and services Tax Act.

The Apex Court further held that the recommendations of the GST Council are not binding on the Centre and the States as they are not based on a unanimous decision but on Three fourth majority of the members present and voting where the Union's vote count as one third, while States' votes both have a weightage of two-thirds of the total votes cast and not having an equal power share in the GST council might disrupt the federal structure of our democratic system.

### **ANALYSIS**

The ruling of the Apex Court is a significant one as it not only dealt with the aspect of double taxation but also analyzed the scope, limitation and power of the GST council.

The GST Council being a Constitutional body was constituted with the aim of providing



advice and recommendations on the matters concerning Goods and Services Tax.

The ruling of the Apex Court that the Council's recommendations have mere persuasive value re-enforces the very purpose for which the GST Council was constituted which is to work on the principle of Cooperative federalism.

Making the recommendations of the GST council binding would displace/dislodge the fine balance of the Federal Structure of our Constitution. Also, an important aspect of the judgment is acknowledgement of the fact that Indian Federalism is a continuous dialogue between Cooperative and uncooperative Federalism and that contestation is as much a part of this dialogue as co-operation.





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### DISCRETIONARY POWER OF ARBITRAL TRIBUNAL IS SUBJECT TO AGREEMENT BETWEEN THE PARTIES RULES APEX COURT - NIKITA AUDICH

The Hon'ble Supreme Court in **Delhi Airport Metro Express Pvt Ltd v. Delhi Metro Rail Corporation**<sup>5</sup> ruled that the arbitral tribunal's ability to award interest is contingent on the parties agreeing otherwise. The Court concluded that if the parties have agreed otherwise, the tribunal cannot award interest. In view of the specific agreement between the parties which determines the issue of interest, in such instances, the arbitrator will lose its discretion and will be guided by the agreement between the parties. The Court adjudged that –

- The arbitrator's power is discretionary.
- The arbitrator has the authority to grant interest on any portion of the claim.
- The tribunal can award interest for any time between when the cause of action began and when the award is issued, or it can refuse to award any interest at all.

- Further, the arbitrator has full authority to award any rate of interest as it deems fit.
- The Court constructed that party autonomy forms the basis of the Arbitration and Conciliation Act, 1996 and that Arbitrator's discretion would be nullified if the parties exercised their Autonomy under Section 31(7) (a) of the Act.



<sup>5</sup> Delhi Airport Metro Express Pvt. Ltd. V. Delhi Metro Rail Corporation (Civil Appeal No. 3657 of 2022) arising from SLP (Civil) No. 4901 of 2022.

Generally, the total sum awarded on which future interest is to be given, includes the principal amount and the amount awarded as interest *Pendente Lite*. Section 31 (7) (a) of the Arbitration & Conciliation Act (hereinafter referred to as the A&C, Act) includes both the things in the word 'sum', that is, the principal and the interest on which such claims are based subject to the discretion of the Arbitrator.

### FACTUAL MATRIX

A Concession Agreement was entered between the Appellant- Delhi Airport Metro Express Pvt Ltd (DAMEPL) and the Respondent-Delhi Metro Rail Corporation (DMRC). On the basis of the said agreement, the Respondent was to carry out civil work. After a dispute between the parties, the matter was referred to Arbitration wherein the claim of the Appellant was partly allowed.

The Appellant filed an application for the execution of the award and requested future interest on the entire amount of the Arbitrator's judgment. The executing court dismissed the Appellant's argument, stating that the Arbitrator only authorized future interest on the principal amount.

Aggrieved by the said rejection, the Appellant preferred an appeal before the Hon'ble Supreme Court.

- Appellant relied on the judgment of the Supreme Court in ***Hyder Consulting v. Governor, State Of Orissa***<sup>6</sup> where it was contended that the tribunal can allow future interest on the sum of the award that also includes the interest allowed on the principal amount, whereas the Respondent asserted that the Arbitrator's ability to award the interest is contingent on the parties' agreement to the contrary. If the Agreement precludes interest in it, the Learned Arbitrator cannot allow the interest on its own.

### COURT'S OBSERVATION

According to the court, the Arbitrator has the authority to allow future interest on the *Pendente Lite* interest and for the future interest, the Court determined that the sum of the award would include both the Principal amount and the Interest component.

However, the Arbitrator's Authority is contingent on the consent of the parties. The Court concluded that party autonomy is the cornerstone of the A&C Act and that if the

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<sup>6</sup> (MANU SC 0744/2015)

parties have used their autonomy under Section 31(7) (a) of the Act, the arbitrator's discretion would be nullified.

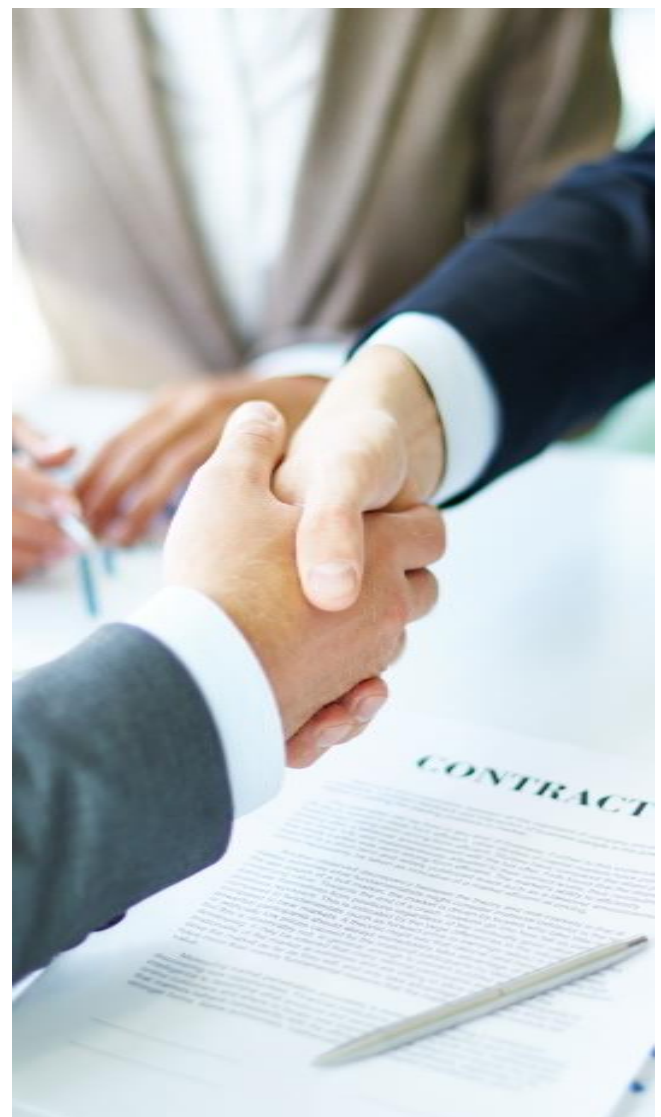
Further, the court held that the word *'unless otherwise agreed by the party must be interpreted in a way that, if the parties have an agreement on the issue of interest, the Arbitrator is bound by such an Agreement.'*

The Court found no error in the impugned order of the Arbitrator, rejecting the Petitioner's claim to include the component of *Pendente Lite* interest in the sum of the award because the parties have an agreement covering the issue of the interest. The Court held that because the Arbitrator's power is discretionary, there is no obligation on the Arbitrator to award the interest. The Arbitrator has the option of awarding interest on any component for the duration of the contract or for none at all.

## ANALYSIS

This ruling has made it crystalline that every word and phrase mentioned in the provision will have to be given effect and the same must be interpreted in Toto. This ensures that the statutes are construed in a way that the very purpose of the statute is given effect and the object of the same is served.

This will result in thoroughly analyzing the agreement to which the parties are bound, and the court will ensure to rely on that document in every possible way and to guide the parties by its principles, resulting in no interest to be paid other than that mentioned in the agreement.



## 4 APEX COURT PUTS SEDITION LAW IN SUSPENDED ANIMATION; PENDING CASES STAYED, NO FRESH CASES TILL ADJUDICATION - MEGHA JOSHI

Recently the Supreme Court in the judgment of *S.G. Vombatkere versus Union of India*<sup>7</sup> has put a hold on the draconian sedition law enshrined under Section 124A of the Indian Penal Code, 1960 ("IPC" for brevity) till the central government is reconsidering it. The Court further directed the Central Government and State Government to refrain from registering FIRs or continuing investigations or taking any coercive measures under Section 124A while the said provision is being reviewed.

### KEY OBSERVATIONS OF THE COURT

As per the order of the Apex Court, until the central government is in the process of re-examination of the sedition law, no case will be registered under Section 124A, nor will any investigation be taken up under this provision. This includes filing any fresh FIRs, conducting investigation and taking any other coercive measures.

The Supreme Court has also said that those who are already booked under the sedition law,

and are in jail, could approach courts for appropriate relief and granting of bail.

It was further directed by the Apex Court that the reliefs that are to be granted to the accused by courts would continue. The court fixed the third week of July for hearing pleas challenging the validity of the provision. By then, the Central government has the time to undertake and thereby complete the exercise of re-examination of the said provision of the Indian Penal Code.

The Apex Court further directed that the concerned provision would remain suspended indefinitely.

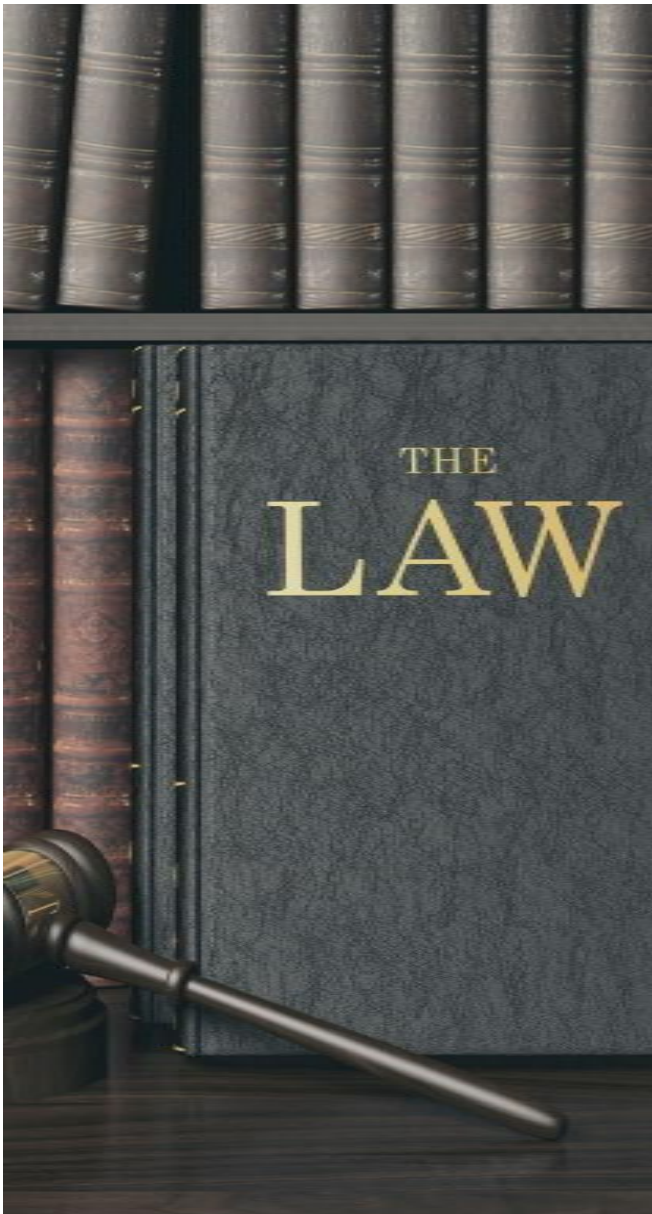
Lastly, the Apex Court further directed that the Central government is free to issue additional directions to the states with regards to the stay of sedition law in the states. This is because the Supreme Court has suggested the centre and states to not file any new FIRs relating to sedition law.

### ANALYSIS

The Supreme Court has made its intention clear about releasing people on bail after the said order. However, the same is easier said than done. When law enforcement agencies charge a person for an offence, more often than not, it applies similar provisions and sections of various other statutes.

<sup>7</sup> 2022 SCC Online SC 609





In case of Section 124A, the offence is significantly similar to provisions of Unlawful Activities Prevention Act, 1967 (hereinafter, 'UAPA') which are Non-Bailable. Both of these involve a challenge to the sovereignty and integrity of the nation. Therefore, when an

offence is committed against the security and integrity of the country, the law enforcement agencies simultaneously invoke Section 124A along with other offences such as Section 13, 15, and 16 of the UAPA.

Furthermore, there are reasons to believe that the above proposition is true in light of statistics and data collated by the National Crime Records Bureau (hereinafter, 'NCRB'). According to NCRB data, there was a 165% increase in the number of people charged under UAPA since 2016 in 2019. Although the recent data suggests a dip in number of cases registered, the number is still high enough to be concerning. Additionally, the conviction rate has also seen a decline for the said period.

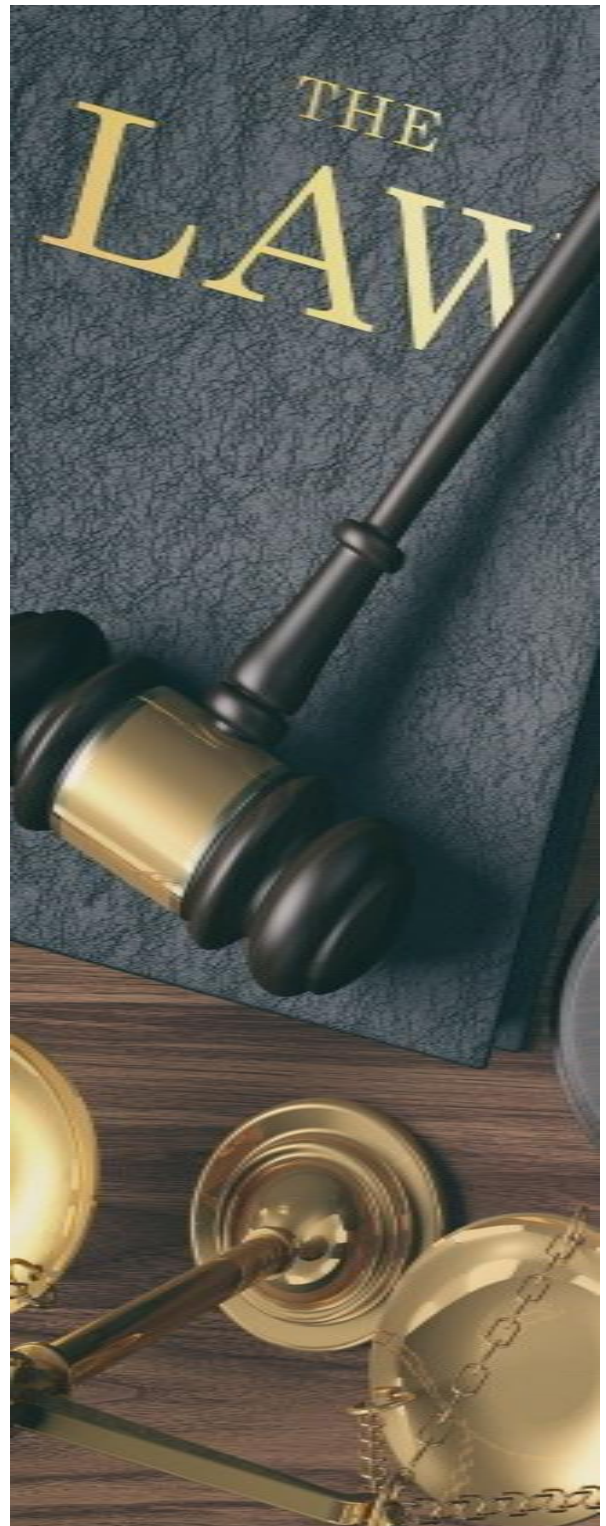
The threat to free speech will not end even if the sedition law is dissolved by the Central Government. The government has similar provisions in various statutes to resort to. Apart from UAPA, as already mentioned above, statutes like National Security Act, 1980 and the Armed Forces Special Powers Act, 1958 are in place which can be misused in a similar fashion.

Hence, the Supreme Court's decision on putting a hold on the sedition law is welcome judgement as it sets a precedent but the same cannot be enough in light of other statutes that are still at the government's disposal.

## 5

LEGAL NEWS AND  
UPDATES

1. Justices Sudhanshu Dhulia & JB Pardiwala Take Oath as Supreme Court Judges; SC Gets Full Strength of 34 Judges, but only for a few days.
2. Delhi Government v. LG: Constitution Bench of the Supreme Court of India will now hear the issue of control over services.
3. Supreme Court will hear all the challenges to the Tribunal Reforms Act, 2021 for full and final disposal in July after vacation.
4. The Madras High Court declares “Mother Nature” or the environment as a legal person, capable of enforcing rights and duties.
5. A PIL was filed before Supreme Court challenging the divorce through Talaq-e-Hasan; the SC however rejects urgent listing of the matter.
6. No one can be forced to get vaccinated but bodily autonomy can be regulated: Supreme Court has declared while upholding the vaccination policy.

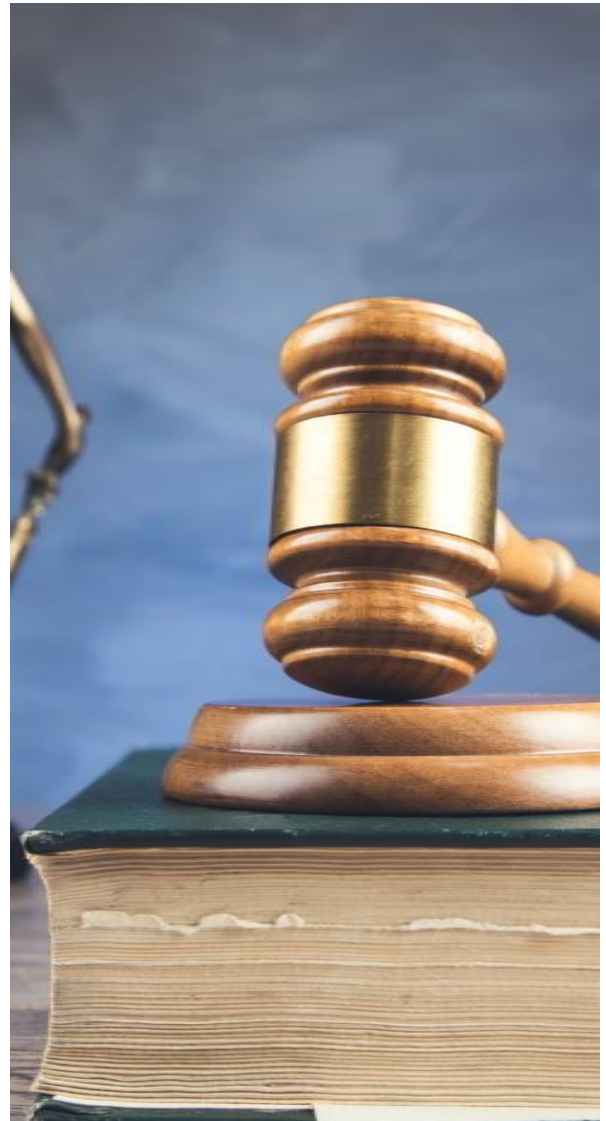




7. SC has set AG Perarivalan free after 32 years of incarceration in the Rajeev Gandhi Assassination Case.
8. Supreme Court upholds constitutionality of NGT Act and holds that case load on NGT is low; Hence, there is no need to set up Benches in every State.
9. Division Bench of Delhi HC delivers a split verdict on the issue of legality of marital rape; question remains unresolved.
10. SC Collegium recommends transfer of Chief Justice of Satish Chandra Sharma of Telangana HC to Delhi HC.
11. SC has enhanced Navjot Singh Sidhu's punishment on a plea from the victim's family and sentenced the former Cricketer to a year's rigorous imprisonment.
12. Supreme Court holds that proceedings under SARFAESI Act cannot be continued once Corporate Insolvency Resolution Process (CIRP) has been initiated.
13. Supreme Court dismissed the review petition filed by Shapoorji Pallonji Group challenging the order dated 26.03.2021, wherein the Apex Court allowed TATA Son's Appeal against the NCLAT order to re-instate the ousted Chairman Cyrus Mistry.



14. The Supreme Court has recognized prostitution as a profession and has further held that unless the police find that a sex-worker is being forced or coerced, the police cannot take any action against the sex-workers. It was also held by the Apex Court that sex workers have right to dignity and equal legal protection.
15. Yasin Malik, Kashmiri separatist leader and Chairman of Jammu and Kashmir Liberation Front, has been sentenced to Life Imprisonment by the Hon'ble High Court of Delhi in a terror funding case.
16. The Supreme Court has directed all the High Courts of the country to decide on all the petitions pertaining to Section 11(6) of the Arbitration and Conciliation Act, 1996 which are pending for more than a year within a span of 6 months. The said provision pertains to the procedure for appointment of Arbitrators by the parties.







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