JOTI JOURNAL

Silver Jubilee Edition (BI-MONTHLY)

APRIL 2020

Silver Jubilee Year 1994-2019

MADHYA PRADESH STATE JUDICIAL ACADEMY

HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

JOTI JOURNAL APRIL - 2020

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EDITORIAL

Esteemed Readers,

When we presented the early 2020 issue of the JOTI Journal, no one comprehended what the outbreak of the novel Corona Virus pandemic that has spawned the COVID-19 respiratory disease throughout the country in the weeks to come. A couple of months later, life as we know, fundamentally changed. The *mantras* of today are 'stay at home, stay safe' and 'social distancing'. It has significantly impacted the man's affairs. State authorities banned individual free movement and gathering of people. Territorial borders are closed. Normal social life and work has come to a screeching halt. Consequently, we are compelled by this nature's anarchic to postpone our educational programmes scheduled in the months of April and May this year.

Not to mention that, to avoid the conglomeration of participants in the venues in abidance with the preventative directions issued by the Government, we suspended not just the major events of the Academy but also some other regular activities including the primary one, that is, First Phase Institutional Induction Training Course for the newly appointed 155 Civil Judges (Entry Level) after completion of their initial field training. Similarly, specialized training programmes on Negotiable Instruments Act, which were to be conducted at regional levels at Guna and Ujjain were also postponed. Eduational Programmes at Forensic Science Laboratory, Sagar and Medico Legal Institute, Bhopal were also deferred. The training courses for ministerial staff conducted at district level are also affected.

This COVID-19 has not only crippled the academic calendar, but thwarted our jubilation too. As we all know that the Academy, as a part of its Silver Jubilee celebration, had planned a programme of Directors' Retreat that was to be held on 21st & 22nd March at Jabalpur and was also set to feature the Hon'ble President of India had kind enough to accept our invitation to inaugurate the function. With the persistent efforts of our Hon'ble Chief Justice, the preparations were well underway for this one-of-a-kind event, but this viral epidemic stopped us to make history.

We are collectively in a situation in which we have no experience and for which we have limited preparation. How we were able to accomplish the tasks of the Academy despite such times of grave danger is surely

going to be lauded in the coming years, but it is not without its losses that bring a little sorrow to us. We are looking at viable alternate methods to keep the Academy functional despite everything that is trying to slow it down. We will come up with a plan for conducting the induction courses and other educational programmes keeping in mind that it is at the least at par with the traditional methods of the functions of this Academy if not better.

To say that, we are disappointed in how events turned out would be an understatement. However, the entire nation felt the tremors and the immediate aftershocks of the mass pandemic, the Judiciary had never seen such a slowdown in forever. Functioning of all the Courts was suspended which caused a massive setback to our bandwagon of Justice Dispensation System which slowed it down exponentially. But it is nature of a juggernaut that once you get it moving, it is very difficult to slow it down. Granted, we are currently in one of the most perplexing times the world collectively is facing, but we will get back on track very soon, and the only reason I believe so, is because humans are relentless in their pursuit of survival and will end up finding one way or another to restore normalcy in the bleakest and the most difficult of situations.

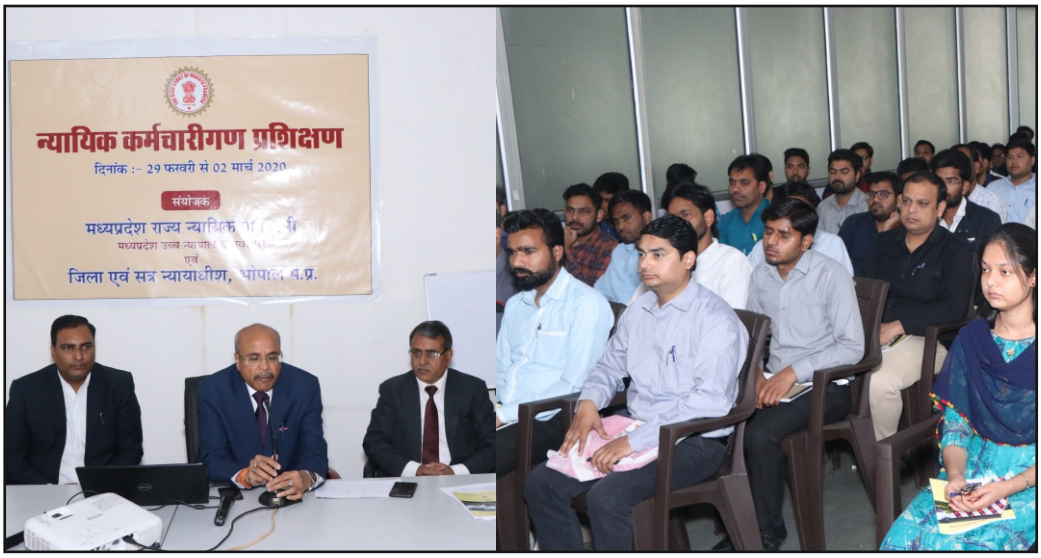
Amidst this lock-down, that may be for the period unbeknownst, a lot of things has stagnated from progressing. But, there is a wide range of information and knowledge available all around us. That list should not contain our scope of knowledge. We have a lot of time on our hands at this point, so it may be utilized by focussing all of it at various sources of knowledge at one's disposal.

Lastly, this Journal is only as good as long as we receive constructive criticism and feedback on its previous iterations. Which means that this Journal is not a one sided effort, but a collaborative task between the author and the reader. Feedback from the esteemed readers is of preponderating value to us. Kindly drop in a comment or suggestion and we would like to integrate it into our next issue of this Bi-monthly.

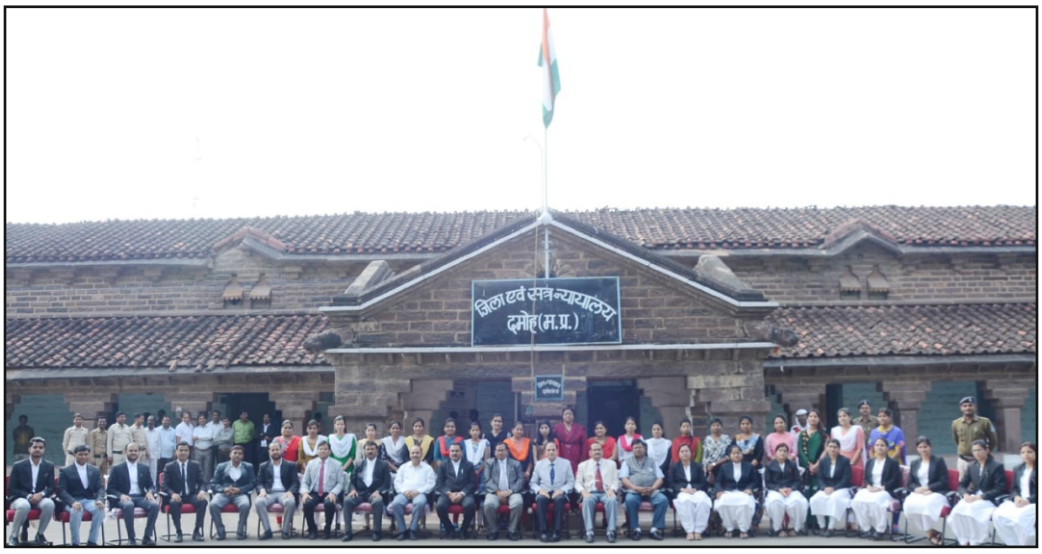
I hope all of you are doing well. In these testing times, I expect each one of you is taking good care of yourself and the people around you.

Ramkumar Choubey
Director

MADHYA PRADESH STATE JUDICIAL ACADEMY,
HIGH COURT OF M.P., JABALPUR



Training Programme for Ministerial Staff of District Court, Bhopal
(29.02.2020 to 02.03.2020)



Training Programme for Ministerial Staff of District Court, Damoh
(29.02.2020 to 02.03.2020)

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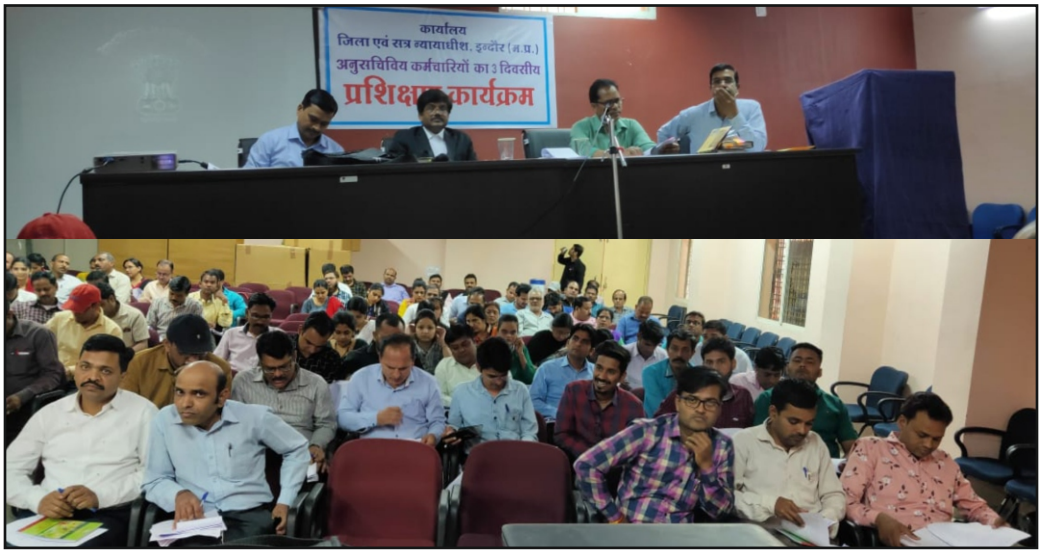
Training Programme for Ministerial Staff of District Court, Khandwa
(29.02.2020 to 02.03.2020)

Training Programme for Ministerial Staff of District Court, Rewa
(02.03.2020 to 04.03.2020)

MADHYA PRADESH STATE JUDICIAL ACADEMY,
HIGH COURT OF M.P., JABALPUR

Training Programme for Ministerial Staff of District Court, Anuppur
(03.03.2020 to 05.03.2020)



Training Programme for Ministerial Staff of District Court, Indore
(05.03.2020 to 07.03.2020)

MADHYA PRADESH STATE JUDICIAL ACADEMY,
HIGH COURT OF M.P., JABALPUR

Training Programme for Ministerial Staff of District Court, Mandla
(14.03.2020 to 16.03.2020)

Training Programme for Ministerial Staff of District Court, Singrauli
(14.03.2020 to 16.03.2020)

PART - I

JUDICIAL ETHICS, NORMS AND BEHAVIOUR*

Justice Sujoy Paul
Judge, High Court of Madhya Pradesh

सर्वप्रथम मैं आप सभी को भारत की न्याय व्यवस्था का अंग बनने पर बधाईयाँ और शुभकामनायें प्रेषित करता हूँ। आज हम आपके दायित्व व अधिकारों के विषय में चर्चा करेंगे।

जब युद्ध होता है तो युद्ध का परिणाम सम्पत्ति एवं प्राण–प्रतिष्ठा की हानि के रूप में हो सकता है। एक मुकदमे का अन्त भी सम्पत्ति, प्रतिष्ठा या प्राण की हानि के रूप में हो सकता है। जो युद्ध होता है वह दो राष्ट्रों व दो सेनाओं के बीच होता है लेकिन जो मुकदमा होता है, वह दो व्यक्तियों या दो पक्षकारों के बीच में होता है। युद्ध में और प्रकरण में फर्क यह है कि युद्ध का फैसला करने के लिये कोई अलग से न्यायाधीश या एम्पायर नहीं होता है, प्राणों की हानि/सम्पत्ति की हानि या किसी एक सेना के घुटने टेक देने से आमतौर पर किसी युद्ध का अन्त होता है लेकिन एक प्रकरण का अन्त आपके द्वारा किये गये फैसले से होता है जिससे किसी की प्रतिष्ठा, जिससे किसी की सम्पत्ति, भूमि या प्राणों की भी हानि हो सकती है तो यह एक बड़ा संवेदनशील कार्य है जिसका दायित्व आप पर दिया गया है। यह कहा जाता है कि न्यायाधीश का कार्य आमतौर पर दूसरों से भिन्न इसलिये भी है कि न्यायाधीश आमतौर पर वो काम रोज करते हैं जिसे करने से दूसरे लोग आमतौर पर परहेज करते हैं। वह काम है निर्णय लेना, फैसला लेना। लोग निर्णय लेने से आमतौर पर कतराते हैं और यह हमारा रोजमर्रा का कार्य है कि हमको किसी न किसी विषय पर रोज निर्णय लेना है तो एक महती जिम्मेदारी आपके कंधों पर है। आपके career की शुरुआत है, आपके पास बहुत सारी शक्तियाँ होंगी, आपके बहुत सारे दायित्व होंगे। इन शक्तियों और दायित्वों का कैसा निर्वहन करना है ये हमारा आज का प्रश्न है – Judicial ethics and norms के बारे में। विषय पर आने से ठीक पहले मैं यह सोचता हूँ कि जो न्याय की अवधारणा है हमारे देश में उसके बारे में थोड़ा आपका ध्यान आकर्षित करूं। न्याय की जो अवधारणा हमारे ग्रंथों में अगर हम जायें पुरातन भारत के तो एक बहुत पुरातन ग्रंथ 'नारद स्मृति' में यह लिखा है कि;

> ''न्यायालय, न्यायालय नहीं है अगर उसमें प्रबुद्धजन नहीं हैं, प्रबुद्धजन, प्रबुद्धजन नहीं हैं अगर वे धर्म का पालन नहीं करते। धर्म, धर्म नहीं है अगर, वह सत्य का पालन नहीं करता और सत्य, सत्य नहीं है अगर उसमें मिश्रण किया जाता है।''

अगर आप 'शान्ति पर्व' में राजा–वेणा को जो शपथ दिलाई गई उसको पढ़ें तो पहले मैं यहाँ आपको विराम देकर याद दिलाना चाहता हूँ कि उस काल में जो राजा होता था वह न्यायाधीश का कार्य भी करता था। राजा–वेणा को यह शपथ दिलाई गई कि तुम अपनी जनता की उसी तरह रक्षा करोगे और उनसे ठीक उसी प्रकार से व्यवहार करोगे जिस तरह का व्यवहार कोई सृजन करने वाला अपने द्वारा सृजित की गई वस्तु के साथ करता है। तुम दण्ड नीति के हिसाब से लोगों को दण्ड दोगे

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* Edited script of the recorded lecture delivered by His Lordship on the topic "Judicial Ethics, Norms and Behaviour" on 07.09.2019 during First Phase Induction Course for Civil Judges Class-II (2019 Batch) in the Academy.

न कि अपने मनमाने ढंग से। आमतौर पर हम यह समझते हैं कि राजा निरंकुश होते थे लेकिन जो राजा उस समय चक्रवर्ती सम्राट होते थे या उनसे ऊपर कोई अंकुश नहीं होता था उस पर भी धर्म का अंकुश लगाया गया था कि आप जो भी दण्ड अधिरोपित करोगे वह न्याय के अनुसार करोगे। अशोक के समय भी इसके शिलालेख मिलते हैं, हमारी स्मृतियों में भी इसका जिक्र है। जो अगला उद्धरण है वह एक और ग्रंथ 'कामान्डाख्या नीति शास्त्र' का है जिसमें कहा गया कि;

''न्यायाधीश का काम कुटिल अधिकारी, चोर, राजशत्रु, राज परिवार के सदस्य और राजा तक के लोभ से लोगों की रक्षा करना है।''

अगर हम इसको ऐतिहासिक और पुरातन संदर्भ में देखें तो हमारे यहाँ जो न्याय की धारणा है वह यह है कि न्याय न्यायाधीश का धर्म है और न्याय सर्वोपरि है। आमतौर पर जो यूरोपियन अवधारणा है कि king can do no wrong, राजा से कोई त्रुटि नहीं होती है, यह धारणा भारत में कभी भी नहीं रही। राजा से भी यह अपेक्षा की गई कि वह धर्म का पालन करेगा तो आज हम और आप जो चर्चा करने जा रहे हैं वह चर्चा मूलतः इस धर्म के बारे में है।

अगर हम ऐतिहासिक और पुरातन संदर्भ में, धर्म के बारे में सोचें, तो धर्म का एक दूसरा अर्थ था। आज उसको बहुत संकीर्ण करके संप्रदाय के रूप में माना जाने लगा है कि धर्म याने किसी संप्रदाय से उसका आशय है, लेकिन धर्म को हमारे पुरातन भारत में गुण, धर्म या लक्षण के रूप में माना जाता था कि किसी का गुण क्या है उसको उसका धर्म कहा जाता था। जैसे यह कहा जाता था कि अग्नि का धर्म है जलाना, बर्फ का धर्म है शीतल करना, पानी का धर्म है तृष्णा मिटाना, सैनिक का धर्म है प्राण देकर भी राष्ट्र की रक्षा करना, चिकित्सक का धर्म है कि वह सर्वोत्तम ढंग से अपने मरीज का उपचार करे, न्यायाधीश का धर्म है कि वह प्रकरण के गुण–दोषों पर आधारित होकर और अन्य किसी भी बात से पूरी तरह से विरक्त होकर प्रकरण का फैसला करे। यह 'धर्म' हमारी जो quality है, जो हमारी प्रकृति या लक्षण है उससे संबंधित था। अगर चिकित्सक किसी रोगी की वह चिकित्सा कर दे जो उसका मर्ज ही नहीं। वह दवा के कमीशन के लिए उसको वह दवाईयाँ दे दे जिसकी उसको आवश्यकता ही नहीं। सैनिक शत्रु से मिल जाये, न्यायाधीश किसी पक्षकार से मिल जायें, तो यह अनीति और अधर्म का कार्य होगा और हम सारे लोग एक व्यक्ति के रूप में, एक न्यायाधीश के रूप में, एक व्यक्तिगत नागरिक के रूप में अपने–अपने धर्म का पालन किस प्रकार से करते हैं, मेरे मत में इससे हमारे व्यक्तित्व या चरित्र का निर्धारण होता है। हमारी संस्था के बहुसंख्यक सदस्य किस प्रकार से इस धर्म का पालन करते हैं इससे हमारी संस्था के चरित्र का निर्धारण होता है, institutional behavior के बारे में लोगों की धारणा बनती है। मैं आपको एक छोटा सा उदाहरण देना चाहता हूँ। हमारे देश के एक प्रदेश में जहाँ बहुत ऊहापोह की स्थिति बनी रही वहाँ के वीडियो और समाचार आपने देखे होंगे कि लोग मुँह पर पट्टियाँ बांधे हुये हैं, वहाँ खड़े हुये सैनिक को गालियॉ दे रहे हैं, गोलियां चला रहे हैं, और उन कठिन परिस्थितियों में भी वह सैनिक जिसके हाथ में एक ऐसी बन्दूक है, एक ऐसा हथियार है कि वह पाँच मिनिट में पांच सौ लोगों की जान ले सकता है, वह अपनी समता नहीं खोता है, वह अपनी equanimity नहीं खोता है। वह क्रोध को कर्तव्य पर हावी नहीं होने देता है। वह अपने धर्म का पालन करने से नहीं चूकता है। वह सारी गालियों और गोलियों के बीच में निस्पृह भाव से खड़ा रहता है और उसी प्रदेश में जब बारिश होती है, बाढ़ आती है तो वह लोगों को घरों

से निकालता है, उनके प्राणों की रक्षा करता है, उनको भोजन पहुँचाता है, उनको औषधि पहुँचाता है तो इस तरह से जो वह धर्म का निर्वहन करता है और पूरी संस्था में जिस तरह से बहुसंख्यक सैनिक उस धर्म का निर्वाह करते हैं उससे सेना का institutional behaviour तय होता है और इसीलिये लोग श्रद्धा करते हैं। कर्फ्यू लगता है तो लोग कहते हैं कि सेना आ गई है, अब कोई दिक्कत नहीं होगी। हमारे सामने दो चुनौतियाँ हैं, पहला अपने खुद के धर्म का पालन करना जो हमारे व्यक्तित्व और चरित्र को निखारेगा और उसका निर्धारण करेगा और दूसरा कि हम सारे लोग किस प्रकार से धर्म का पालन करते हैं उससे वो institution जिसका आप हिस्सा बनने जा रहे हैं उसके बारे में लोगों की धारणा बनेगी। आप सब पर निजी और सामूहिक तौर पर, मैं इसमें अपने आपको भी शामिल करता हूँ, जिम्मेदारी है कि हम इस institutional behaviour और इस institutional character को strengthen करें, इसको मजबूती दें।

थोड़ा सा विषयान्तर करते हुये जो बिल्कुल अप्रासंगिक भी नहीं है, मैं यह कहना चाहता हूँ कि किसी देश की ताकत, उसकी शक्ति, उसमें मौजूद पर्वत श्रृंखलाओं की ऊंचाई, समुद्र की गहराई, खनिज पदार्थो की संख्या, जलाशयों की प्रचुरता से तय नहीं होती। किसी राष्ट्र की ताकत उसके नागरिकों के चरित्र से तय होती है। कोई देश जो प्राकृतिक संपदाओं से परिपूर्ण हो पर उसके नागरिकों का चरित्र खोखला हो तो इतिहास हमें यह बताता है कि उस देश का हमेशा शोषण किया गया। इसलिये आज हमारे सामने एक बहुत बड़ी चुनौती है कि हम as a judge and as a citizen of India किस तरह से अपने character या चरित्र को strengthen करें।

मेरा एक बड़ा प्रिय वाक्य है, जिसका मैं अक्सर जिक्र करता हूँ, उद्धरित करता हूँ। जब 1949 में भारत के संविधान की रचना के लिये चिन्तन मंथन हो रहा था सभी के मन में एक प्रश्न था कि हमारा संविधान ऐसा बनना चाहिये कि उसमें कोई त्रुटि न हो। पूरे दुनिया के देशों के संविधान खंगाले जा रहे थे, उनके सर्वोत्तम प्रावधानों को किस तरह से समाहित किया जाए इस पर चर्चा हो रही थी। आप सभी जानते हैं कि संविधान सभा में बी.एन. राव, डॉ. अम्बेडकर जैसे बड़े–बड़े विधिवेत्ता थे। बी.एन. राव ने तो अनेक देशों के संविधान विशेषज्ञों से बात करने के लिये पूरी दुनिया की यात्रा भी की। बी.एन. राव जब कनाडा और अमेरिका गये तो अमेरिकन Supreme Court के चीफ जस्टिस से उन्होंने चर्चा की। जब वह वहाँ से लौटकर आये तो अमेरिका के राष्ट्रपति ने अमेरिका के चीफ जस्टिस से पूछा कि आप अमेरिका के Supreme Court के लिये किसी Judge का नाम recommend करिए। चीफ जस्टिस ने यह कहा कि अगर मेरे वश में होता तो मैं हिन्दुस्तान के jurist बी.एन. राव का नाम अमेरिकन Supreme Court के Judge के लिये recommend करता क्योंकि उनको अमेरिकन Supreme Court और अमेरिकन संविधान की इतनी समझ है जितनी हमारे यहाँ भी कम लोगों को है। ये मैं सिर्फ इस उद्देश्य से बता रहा हूँ कि इस प्रतिभा व मेघा के लोग संविधान सभा में थे। संविधान सभा में जब चर्चा हुई कि कैसा संविधान होना चाहिये तो डॉ. अम्बेडकर ने एक बड़ा अद्भुत जवाब दिया मैं उसको उद्धरित करना चाहूंगा। डॉ. अम्बेडकर ने कहा कि अगर हम एक बहुत अच्छा संविधान भी बना लें पर उस संविधान को अमल में लाने वाली शक्तियाँ अगर दुर्बल और चरित्रहीन होंगी तो हमें अच्छे परिणाम नहीं मिलेंगे। हमने अगर थोड़ा कमजोर संविधान भी बना लिया पर उसको अमल में लाने वाली शक्तियाँ अगर चरित्रवान और समर्पित होंगी तो हमको बहुत अच्छे नतीजे आयेंगे क्योंकि संविधान स्वयं कोई कार्य नहीं करता ये उसको अमल में लाने वाली शक्तियों

की integrity और devotion पर निर्भर करता है कि हमको कैसे परिणाम मिलेंगे। यह statement आज भी उतना ही प्रासंगिक है।

हम आप जो इस judiciary का हिस्सा बन गये हैं तो हम उस स्तंभ का हिस्सा हैं, जिसका दायित्व संविधान की रक्षा करना है। हर नागरिक का दायित्व है पर judiciary का खास तौर पर है। Judiciary के members पर इस बात का दायित्व है कि हम किस प्रकार से इस धर्म का पालन करते हैं। थोड़े बदले हुये संदर्भ के साथ Supreme Court ने एक नया doctrine develop किया। उन्होंने कहा constitutional morality. इस संवैधानिक नैतिकता के विषय में Supreme Court ने कहा कि आप के ऊपर देश के कानून और संविधान ने, देश के संवैधानिक धर्म ने जो जिम्मेदारी दी है, हम उसका किस प्रकार से निर्वाह करते हैं यह हमारी constitutional morality हमारी strength पर निर्भर करता है।

हमारे देश की judiciary का इतिहास आप पढ़ेंगे तो पायेंगे कि एक उज्जवल इतिहास है। भारत की Supreme Court दुनिया की उन सबसे ताकतवर Supreme Courts में शामिल है, जिसने लोगों की constitutional, fundamental और human rights की हमेशा रक्षा की है। Article 14, 16 और fundamental rights की इस तरह से व्याख्या की है कि लगभग हर क्षेत्र को उसमें उन्होंने शामिल कर दिया है। उन्होंने environment, principles of natural justice को, arbitrariness को scope of judicial review में ला दिया है और ऐसा नहीं है कि आप लोग जो अभी lower Judiciary से अपनी यात्रा शुरू कर रहे हैं, इस संविधान का आपके लिये कोई अर्थ नहीं है। आप किसी को जमानत देंगे अथवा नहीं देगें, आप किसी को रिमाण्ड पर देगें, नहीं देगें, आप किसी को डिक्री देंगे नहीं देंगे, आप किसी का फैसला जल्दी करेंगे उसको रोक के रखेंगे, विलम्ब करेंगे, हर बात में उस व्यक्ति का कोई न कोई मौलिक या संवैधानिक अधिकार समाहित है तो आपका हर action भारत के संविधान से प्रत्यक्ष या अप्रत्यक्ष रूप से जुड़ा हुआ है इसको समझने की जरूरत है। इस Constitutional philosophy को समझने की जरूरत है। आप एक रोजमर्रा का routine काम नहीं कर रहे है जो एक कम्प्यूटर भी कर सकता है। आप constitutional philosophy के हिसाब से judicial review कर रहे है; किसी action का या किसी क्लेम का। इस परिप्रेक्ष्य में हमको सारी चीजों को देखने की जरुरत है।

जिस समृद्ध इतिहास की बात मैं कर रहा था, उस संबंध में दो छोटे–छोटे उदाहरण आपको देना चाहता हूँ। एक हमारे संविधान से पहले का है, 18वीं शताब्दी का। उस समय जो न्यायाधीश की नियुक्ति होती थी वह राजा की मर्जी से होती थी, राजा नियुक्त करते थे। एक पेशवा ने रामशास्त्री नाम के व्यक्ति को प्रधान न्यायाधीश नियुक्त किया। राजा के परिवार में सत्ता को लेकर संघर्ष हुआ और उसमें जो सत्ता के दावेदार थे, उनकी राज परिवार के लोगों ने हत्या कर दी। रामशास्त्री जी के सामने उसकी trial चली और राम शास्त्री ने उस परिवार के लोगों को दोषी करार दिया। अपने फैसले में कहा कि हत्या राजपरिवार के लोगों ने की है। 18वीं शताब्दी में, जब उनकी खुद की नियुक्ति राजा द्वारा की गई थी लेकिन उस समय के कानूनी प्रावधानों के अनुसार दण्ड को अधिरोपित करने का अधिकार राजा के पास होता था, इसलिये राजा ने उस दण्ड को अधिरोपित नहीं किया। रामशास्त्री अपने पद से त्याग पत्र देकर अपने गांव चले गये लेकिन जनता इस बात से इतनी असंतुष्ट हुई कि उसमें विद्रोह हो गया और राजा को अपना पद त्यागना पड़ा।

दूसरा फैसला हम सबके लिये इसलिये भी गर्व का विषय है कि वो फैसला मध्यप्रदेश उच्च न्यायालय से उद्भूत हुआ। A.D.M. Jabalpur/Habeaus Corpus case के बारे में सब जानते हैं कि हिन्दुस्तान की नौ High Courts ने ये कहा था कि जो fundamental rights हैं वो emergency में अगर suspend हो भी जावें तब भी भारत के संविधान के अनुच्छेद 226 में जो extraordinary power है उसके तहत, High Court emergency के दौरान भी सरकार से पूछ सकती है कि आखिर इस citizen को क्यों निरुद्ध कर रखा है, detain कर रखा है। ये फैसले Supreme Court के सामने चुनौती का विषय बने और Supreme Court ने अपने majority decision से उस फैसले को उलट दिया। उस फैसले में एक असहमति का नोट है। जिसे आप सभी जानते है कि Hon'ble Justice H.R. Khanna का है जिनका नाम आज सबकी जबान पर है। आप शायद यह नहीं बता पायेंगे कि जो majority view था इसमें कौन–कौन Judges थे लेकिन एक Judge जो human rights, fundamental rights, constitutional value के लिये खड़े हुये, उनका नाम सबकी जबान पर है। Justice H.R. Khanna ने अपनी आत्मकथा 'Neither Roses nor Throns' में एक घटना का जिक्र किया है कि जब वह फैसला लिख रहे थे और अपने परिवार के साथ हरिद्वार में नदी के तट पर अवकाश के दिन बैठे थे तो उन्होंने अपनी बहिन से कहा कि संतोष मैं एक फैसला लिख रहा हूँ जिसकी कीमत हो सकता है मुझे भारत के मुख्य न्यायाधिपति के पद से वंचित होकर चुकानी पड़े। आपको सबको मालूम है कि उसके बाद वह supersede हुए। मैं recommend करूंगा कि आप सबको उस किताब को अवश्य पढ़ना चाहिये। जस्टिस एच.आर. खन्ना के उस असहमति के फैसले को आप सभी जानते हैं कि बाद में Supreme Court ने माना कि वह view सही था। ADM Jabalpur का फैसला जबलपुर से गया और जस्टिस खन्ना ने, जो एक डेढ़ महीने बाद Chief Justice of India बनने वाले थे उन्होंने अपने पद का, अपने कैरियर का ध्यान न रख कर Constitution के favour में, fundamental rights के favour में फैसला दिया। हम सब, आप सब उस परम्परा के वाहक हैं। मैं बल देकर आप से कहना चाहता हूँ कि हम सब, आप सब उस परम्परा के वाहक हैं और इसलिये हर क्षण जब आप as a Judge काम करते हैं या जब आप समाज में रहते हैं तो इस बात का ध्यान रखना है कि हम Judge हैं। हम 24x7 Judge हैं, 365 दिन Judge हैं। हम जब robes धारण करते हैं और अपने डायस पर बैठते हैं या उससे उतर जाते हैं सिर्फ तब Judge नहीं हैं। हम 24 घण्टे, सातों दिन, 365 दिन Judge हैं। जब तक हम Judge के पद को धारण करते हैं, हमारा conduct हमेशा public gaze में है, सब लोगों की नजरों में है, और लोग आपसे एक बिल्कुल भिन्न तरह के आचरण की अपेक्षा करते हैं। बहुत सारी चीजें जो हो सकता है कि यूं, पूरी तरह से अनैतिक न कही जा सकें, परन्तु Judge से एक अलग अपेक्षा की जाती है क्योंकि आपको इसी समाज में लोगों को न्याय देना है, इसलिये लोगों का विश्वास आपके conduct से हमेशा बना रहे, ये एक बड़ी महत्वपूर्ण बात है।

विराम लेते हुए मैं एक बड़ा रोचक उदाहरण आपको देना चाहता हूँ यहां पर, कि जब लोकप्रिय सीरियल रामायण चलता था और उसको लोग इतनी बड़ी तादाद में देखते थे कि जिस समय वह चलता था तो ऐसा लगता था कि नगर में कर्फ्यू लग गया है। उसमें राम की भूमिका अरूण गोविल नाम के एक अभिनेता निभा रहे थे। जब शूटिंग हुई और दो scene के बीच में समय था तो अरूण गोविल बैक स्टेज पर चले गये और चाय और सिगरेट पी रहे थे। वहाँ जितने cameraman, technician

Spotmen थे वो सब लोग आ गये और उन्होंने कहा कि आप राम की वेशभूषा में है, यह शोभा नहीं देता आपको कि आप सिगरेट पी रहे हैं। वह बोले कि भाई मैं अरूण गोविल हूँ मैं राम तो हूँ नहीं। लोग बोले लेकिन अभी आप राम की भूमिका में हैं, आप मर्यादा पुरूषोत्तम की भूमिका में हैं, इसलिये आप सिगरेट नहीं पी सकते। मैं सिर्फ आपको यह कहना चाहता हूँ कि अगर आप इसे बिल्कुल technical रूप से देखेंगे तो आपको लगेगा कि सिगरेट पी ली तो ऐसा कौन सा अनैतिक कार्य कर लिया है तो वह अरूण गोविल ही है मगर आप जिस भूमिका का निर्वाह कर रहे हैं वो भूमिका Judge की है और आप जब डायस पर नहीं भी हैं तो लोग आपको Judge की निगाहों से देखते हैं। इसको 24 घण्टे, सातों दिन, इसको पूरे कॅरियर में याद रखिये अपने हर conduct के लिये।

अभी तक मैं जो बातें आप से कर रहा था, आपको लग सकता है कि कुछ दार्शनिक या सैद्धांतिक बातें हैं पर मैं आपसे कहना चाहता हूँ कि ये सैद्धांतिक बातें नहीं हैं ये एक physical reality है, एक वास्तविक सच्चाई। इसको सिर्फ महसूस करने की जरूरत है। मैं एक आध्यात्मिक चिन्तक को पढ़ रहा था। उन्होंने एक बड़ा अच्छा उदाहरण दिया कि हम जो वायु उत्सर्जित करते हैं, अपने श्वांस के जरिये, exhale करते हैं, वो कार्बनडायऑक्साईड होती है और वायु जो हम exhale करते है, उसको वृक्ष inhale करते हैं और वह बदले में हमें ऑक्सीजन देते हैं। इस तरह से ये एक परस्पर निर्भरता है और यह क्रम चलता रहता है कि जिस दूषित वायु को हम उत्सर्जित करते हैं, उसे वह शुद्ध करके हमको वापस कर देते हैं। इसको अगर हम अनुभूति के स्तर पर महसूस करें तो क्या हम को ये पाठ्यक्रम में पढ़ाने की आवश्यकता है कि वृक्ष मत काटिये, वृक्ष लगाईये, प्रकृति की रक्षा करिये क्योंकि हम इसको अनुभूति के स्तर पर नहीं महसूस करते इसलिये हमको लगता है यह कोई principle हमको पढ़ाया जा रहा है। उसी तरह मैं आपको कहना चाह रहा हूँ कि ये जो बाते धर्म के बारे में मैं कह रहा था, यह कोई principle की बात नहीं है, ये धर्म की बात है। धर्म यानि आपकी प्रकृति, आपका मूल लक्षण या गुण। क्या आप किसी ऐसे चिकित्सक को चिकित्सक के रूप में देखना चाहेंगे जो आपकी वो चिकित्सा कर दे जो आपका मर्ज़ ही नहीं। क्या आप किसी ऐसे व्यक्ति को सैनिक नियुक्त करना चाहेगें जिसके किसी दूसरे देश से मिल जाने की संभावना हो। क्या आप किसी को ऐसा शासक देखना चाहेंगे जो देश में व्यवस्था कायम करने की बजाए देश में अव्यवस्था पैदा करने वालों की शरणस्थली बन जाये। आप नहीं देखना चाहेंगे। यह एक physical reality है तो इसको हम कैसे जीते हैं, इससे यह तय होगा कि हम किस प्रकृति के Judge हैं और हम अपने institution के development के लिये, कैसे काम करते हैं लोगों में उसके बारे में क्या धारणा बनाते हैं।

अब यह जो पक्ष मैंने आपके सामने रखा, यह नैतिक पक्ष था। इस ethical पक्ष को किस तरह से अमल में लाया जाये, कैसे इसको अमली जामा पहनाया जाये इसके लिये norms बनाये गये हैं। पूरी दुनिया के Supreme Court Judges ने Bangalore में एक Declaration पारित किया। सभी Judges उसके बारे में जानते ही हैं जिसे Bangalore Declaration के रूप में पूरे विश्व में जाना जाता है और पूरे विश्व की judiciary से ये अपेक्षा की जाती है कि वह Bangalore Declaration का पालन करें। मैं इसको पढ़ना नहीं चाहूँगा। मैं इसके important points के बारे में थोड़ा आपसे चर्चा करना चाहूँगा। First point जो आपके सामने स्क्रीन पर हैं इसमें जो सबसे महत्वपूर्ण चीज है वो behaviour है। इस वाक्य पर बहुत जोर दिया गया है कि "Justice must

not merely be done but it must also be seen to be done". यह न्यायालय में आपके व्यवहार और आचरण के विषय में है। ये कहा गया है कि 'न्याय होना ही नहीं चाहिये बल्कि न्याय होते हुए दिखना भी चाहिये'।

दूसरा बहुत important पक्ष है उस पर आने से पहले मैं आपसे प्रश्न करना चाहता हूँ कि judiciary की सबसे बड़ी ताकत क्या है? Correct answer is the faith of people, trust of the people on you. यह कहा जाता है कि judiciary does not have a sword or a purse. हमारे पास न तलवार है और न बटुआ है, यानि हमारे पास कोई कोष नहीं है, हमारे पास कोई treasury नहीं है। हमारे पास जो सबसे बड़ी ताकत है, वह है लोगों का भरोसा। लोगों का न्याय व्यवस्था पर विश्वास हमारी सबसे बड़ी पूँजी है। हमारी ताकत, हमारे बारे में लोगों का सम्मान इस पर निर्भर करेगा कि लोगों का हमारे system पर कितने दिनों तक और कितना विश्वास बना रहता है। इस भरोसे को बनाये रखने के लिये निजी तौर पर और सामूहिक तौर पर सबको प्रयास करने की जरूरत है। यहाँ पर विराम लेते हुए मैं आपको बता दूँ कि इसमें Supreme Court और High Court जरूर लिखा हुआ है लेकिन यह सभी न्यायाधीशों पर लागू है।

ये सामान्य norms हैं, आप देख सकते हैं कि you are not suppose to contest any election of the club, society or association etc. Close association with individual members of the bar particularly those who practice in your court is to be eschewed. You should practice a degree of aloofness disassociated. आपके परिवार के लोग आपके पति–पत्नी, पुत्र–पुत्रियाँ और नज़दीकी रिश्तेदार हैं, वो आपके सामने appear न हों या किसी भी तरह से आप उनको favour न करें। आपका जो Official Bungalow है उसका कोई भी relative, legal या professional work के लिए इस्तेमाल न करें। ये बड़ा महत्वपूर्ण है कि आपको एक 'degree of aloofness' बना कर रखना चाहिये। इसको बड़े सोचे–समझे ढंग से, बड़े मंथन के बाद इस्तेमाल किया गया। A Judge should practice a 'degree of aloofness', क्योंकि हम सब लोग Judge होने के बावजूद भी सामाजिक प्राणी हैं। हम 100 प्रतिशत अलग–थलग नहीं रह सकते हैं।

हम लोगों को भी शादी ब्याह में जाना पड़ता है, हमको भी जन्मदिन समारोह आदि में जाना पड़ता है लेकिन 'degree of aloofness' है वो बड़ा important expression है कि जब आप किसी social function में भी जाते हैं तो भी आपका जो व्यवहार होता है उसमें किस प्रकार से आप aloofness को maintain करते हैं। हमको किसी अहंकार से भर जाने की जरूरत नहीं है कि कोई हमारा बचपन का मित्र आये तो भी हम उससे हाथ भी न मिलायें, लेकिन यह सब करते हुए भी हमारे व्यवहार में, हमारे व्यक्तित्व में एक इस तरह का भाव होना चाहिये कि हमारा जो न्यायिक काम है, हमारे माता–पिता को और हमारी संतान के मन में भी यह विचार नहीं आना चाहिये कि हम इनसे न्यायिक कार्य में किसी किस्म का लाभ या favour ले सकते हैं। आप उनकी पूरी सेवा करिये, आप उनसे पूरी मित्रता निभाईये, मगर अपने व्यक्तित्व से, अपने चरित्र से, अपने व्यवहार से धीरे–धीरे, समय लगेगा लेकिन उनमें ये भावना ये समझ धीरे–धीरे विकसित हो जाएगी कि judicial work के मामले में आप uncompromising हैं, आप impeccable हैं। उसमें आपसे कोई किसी किस्म के लाभ की, favour की उम्मीद नहीं की जा सकती। अगर ये आप अपने व्यक्तित्व में ले आते हैं, aloofness

अपने आप maintain हो जाती है। आप अपने अनुभव से यह पायेंगे कि बहुत सारे लोग आपसे निकटता सिर्फ इसलिये बनाना चाहते हैं या वे अपने आपको आपका प्रशंसक बताते हैं और प्रशंसा आमतौर पर सभी को अच्छी लगती है क्योंकि वे आपसे कोई favour लेना चाहते हैं। उस स्थिति में हम अपने व्यवहार से, कितनी दृढ़ता से धीरे–धीरे लोगों में यह संदेश देते हैं, बिना अपनी विनम्रता को खोये कि अपने judicial work के बारे में हम uncompromising हैं यह आपकी छवि के निर्माण में मूल कारक होगा।

आज के संदर्भ में यह बहुत महत्वपूर्ण है– "A Judge shall not enter into the public debate or express his views in public on political matters or on matters that are pending or are likly to arise for judicial determination." आज हममें से ज्यादातर लोग किसी whatsapp group में, Facebook आदि से जुड़े हुए हैं। बहुत सारे मुद्दे ऐसे हैं जिस पर social media में comments होते हैं। Facebook पर comments होते हैं। कई बार जानते हुए और कई बार अनजाने में हम उस पर कोई comment कर देते हैं। अगर आप judicial history उठाकर देखेंगे तो आप पायेंगे कि इस तरह के comments करने पर litigation हुआ है। Judge ने किसी Rotary के function में या किसी debate में, किसी विषय पर कोई view express कर दिया और बाद में coincidently उस विषय से जुड़ा हुआ कोई litigation उसकी court में आया तो एक application आती है कि since you have already expressed your view इसलिये हमें आपके न्यायालय से न्याय होने की अपेक्षा नहीं है। आज आप जिस शहर में पदस्थ हैं, वहाँ हो सकता है कि, कोई बड़ा ही heinous child rape का incident हो जाए और आपका कोई family member आपको एक मैसेज भेज दे कि आरोपी को फाँसी पर लटका देना चाहिये। अभी trial शुरू भी नहीं हुई हैं। आप टिप्पणी करते हैं – "yes I agree" या सहमति सूचक अंगूठे का चिन्ह भेजते हैं। This comment आज के दिनों में जिसके बारे में प्रोफेसर हेरारी कहते है कि ''निजता'' अतीत का विषय बन गई है। आप आज artificial intelligence के दौर में हैं। मैं आपको सावधान करना चाहता हूँ कि हम जिस दौर में आगे बढ़ रह रहे हैं और जिस तेजी में artificial intelligence or cyber bullying और ये चीजें बढ़ रह रही हैं, कोई बड़ी बात नहीं है कि आपका ये comment भी कहीं से किसी के domain में आ जाये और वह कल आपकी court में आपके खिलाफ इस्तेमाल हो। मैं एक छोटा सा उदाहरण देना चाहता हूँ, जिससे आप पता लगा सकते है कि artificial intelligence की ताकत कितनी तेजी से बढ़ रही है। 1997 में बोरिस कास्पारोव विश्व शतरंज विजेता थे उनको कम्प्यूटर ने हरा दिया। मानव जाति जो शतरंज को अपना सर्वश्रेष्ठ बुद्धि का खेल समझती थी और उस पर अपना एकाधिकार समझती थी उसके विश्व चैम्पियन ने 1997 में पराजय हासिल की। उस कम्प्यूटर को जिसने बोरिस कास्पारोव को हराया था उसको एक और कम्प्यूटर ने हरा दिया। पहले कम्प्यूटर की जो ताकत थी, वह 80,000 move per minutes की थी, और जिस कम्प्यूटर ने उस को हराया उसकी ताकत थी, 40 लाख moves per minutes, और interestingly, इस कम्प्यूटर को हाल ही में एक तीसरे कम्प्यूटर ने हरा दिया जिसकी ताकत है 80 लाख movements per minutes है और इसको हराने के लिये उसे कुछ प्रशिक्षण नहीं देना पड़ा। दोनों कम्प्यूटरों को आमने–सामने रखा गया। उनमें से एक ने अपनी artificial intelligence से ये क्षमता दो घन्टे में हासिल की। Judges से मैं खासतौर पर ये कहना चाहता हूँ कि हमको यह ध्यान रखना चाहिये कि

ये जो technology है ये हमारे लक्ष्य को प्राप्त करने का साधन होना चाहिये हमारी research का औजार होना चाहिये, हमारी ज्ञान वृद्धि का जरिया होना चाहिये। ये कोई हमारे लिए नशा न हो जाए। हम addict न हो जायें। इतना कि हमको अपने आप पर ये अंकुश ही नहीं रह जाये कि हम उसमें क्या लिख रहे हैं, हम किसको like कर रहे, किसको क्या forward कर रहे हैं।

अगर ये जरूरी सावधानियाँ हम नहीं अपनायेंगे तो बहुत सारी दिक्कतें हमारे सामने आ सकती हैं। यह तो एक पक्ष हुआ जिसमें आपके न्यायालय में ये अर्जी लग सकती है कि इस प्रकरण को आप न सुनें, इसके अलावा ये अर्जी भी लग सकती है कि जिसने अभी ट्राईल होने से पहले ही ये धारणा बना ली कि इस आदमी को फांसी की सजा होनी है वह Judge होने योग्य ही नहीं है। आप ने किसी caste issue पर कोई comment कर दिया सोशल मीडिया में और आपसे यह अपेक्षा की जाती है कि आप भारत के संविधान की रक्षा करेंगे तो आपके खिलाफ शिकायत हो सकती है। वह शिकायत बाद में प्रमाणित हो या न हो आप अपने उपर एक प्रश्न चिन्ह लगाने का मौका अपनी असावधानी से उसको दे देंगे। आज के दौर में मैं इसको बहुत महत्वपूर्ण समझता हूँ कि political matters में और जो matters कभी आपके सामने आ सकते है या judiciary के सामने आ सकते हैं, publicly बात करते समय सावधानी रखें। Public platforms पर बात करते समय सावधानी रखिए कि आप अन्ततः Judge है। एक बहुत famous quote है कि judges speak through their judgments. मीडिया में जाकर अपनी बात कहने की जरूरत नहीं है और इसे बहुत अच्छा नहीं माना जाता।

आखिर में perks, आपको आपके system ने जो भी सुविधायें उपलब्ध कराई हैं, मसलन आपको घर में एक नौकर की सुविधा है या आपको अपनी कार पार्किंग के लिये एक गैरिज की सुविधा है या आपको अपनी कार के लिये 50 लीटर ईंधन की सुविधा है तो ये भी आपके judicial conduct का हिस्सा है कि आप जितनी सुविधा आपको दी गई है, कानून के द्वारा उससे ज्यादा की अपेक्षा न करें और इस बात से कभी भी प्रभावित न हों कि हमारे system का अमुक व्यक्ति तो दो नौकर रखे हुऐ है, या अमुक के घर में तो दो गैरेज बने हुए हैं। हम सब लोग जिन पर एक ऐसी व्यवस्था का पालन करने का दायित्व दिया गया है कि कुछ भी हो, विधि का शासन हो तो विधि ने जो हमारे लिए निर्धारित किया है अगर हम ही उसका पालन नहीं करेंगे तो हमारे निर्णयों का और हमारे सिस्टम का कौन सम्मान करेगा। मैं एक साधारण सी कहानी से अपनी बात कहना चाहता हूँ जिसमें एक असाधारण संदेश छिपा हुआ है। एक छोटा बच्चा था जिसकी एक बड़ी बुरी आदत थी कि वह बहुत ज्यादा गुड़ खाता था। उसको बहुत सारे चिकित्सकों और मनोचिकित्सकों को भी दिखाया गया कि आखिर क्या समस्या है। कहीं भी फायदा नहीं हुआ और वह चोरी छिपे गुड़ चुराकर खा ही लेता था। उसकी माँ बहुत परेशान रहती थी। उसे पता चला कि कोई एक संत आये हैं और उनके आशीर्वाद से वह ठीक हो सकता है। वे संत के पास गये। उन्होंने पूछा कि क्या दिक्कत है इस बच्चे को? मां ने कहा यह गुड़ बहुत खाता है, इसका स्वयं पर कोई नियंत्रण नहीं है। संत विचार में डूब गये और फिर उन्होंने कहा कि बेटा तुम इसको लेकर सात दिन बाद आना। महिला ने सोचा गुड़ खाने के बारे में ऐसी क्या बात है कि सात दिन बाद फिर आना पड़ेगा पर संत का कहना था तो वह सात दिन के बाद फिर से गई संत के पास और संत ने कहा कि बेटा अभी तुम और सात दिनों के बाद मेरे पास आना। सात दिनों के बाद जब वह फिर गई तो उससे फिर ये कहा गया कि तुम और सात दिनों के बाद आना। जब 21वें दिन वह पहुँची तो संत ने पूछा हाँ बताओ बच्चे को क्या दिक्कत है। बताया

गया स्वामी जी यह गुड़ बहुत खाता है। स्वामी जी ने उसकी ओर देखकर कहा कि बेटा तुम गुड़ खाना छोड़ दो। महिला ने तो सिर पर हाथ ही मार लिया कि ये कहने के लिये आपने 21 दिन का समय लिया गुरूदेव। ये तो हम लोग इसको कब से कह रहे हैं। संत बोले यह बात नहीं है। बात यह है कि जब तुम पहले दिन इसको लेकर आई थी, मुझे यह कहने का नैतिक अधिकार नहीं था क्योंकि मैं खुद भी बहुत गुड़ खाता था। पहले सात दिन में इसे मैं छोड़ नहीं पाया, इसलिये और सात–सात दिन का समय लिया। अब मैं गुड़ से पूरी तरह से निवृत्त हो गया हूँ, अब मैं इसको पूरे अधिकार से कह सकता हूँ कि गुड़ खाना छोड़ दो। यह उद्‌गार सुनके बालक उनके चरणों में गिर गया। उसने कहा कि मैं आज से गुड़ नहीं खाउँगा। जो असाधारण संदेश इस कथा में है, वह यह है कि हमारी जो सबसे बड़ी problem है वह यह है कि हम एक ऐसे देश में है जहाँ पर ज्ञान की कोई कमी नहीं है। सुबह Whatsapp ही खोल लीजिये तो कितना ज्ञान बरसता है, सारी दिक्कत उसको अमली जामा पहनाने की है। इसलिये अम्बेडकरजी की ओर मैं आपका ध्यान दिलाना चाह रहा था कि अच्छा संविधान बना लेने से कुछ नहीं होगा। हम अपने आचरण से उसको कैसे अमली जामा पहनाते हैं, इस पर सब कुछ निर्भर करेगा। हम Prevention of Corruption Act का मुकदमा सुनें और उसमें यह तय करें कि जनाब आपकी हैसियत तो एक मोटर साईकल खरीदने की थी आपने कारें कैसे खरीद लीं और आपकी तो दो कमरे का मकान बनाने की हैसियत थी आपने चार मंजिल का मकान कैसे तान लिया। लेकिन हम अपने खुद के व्यवहार में यह उम्मीद करें कि भले हमारी पात्रता एक गैरेज की हो, हमको किसी तरह से पी.डब्ल्यू.डी. को प्रभाव में डालकर या कलेक्टर से बात करके या किसी भी दूसरे तरीके से, हमको दो गैरेज का मकान मिल जाये। धर्म का पालन हम तब कर पायेंगे जब हम उसको जिएंगे। हम सब अपनी भावना में, आत्मा में, आचरण में उसको अमली जामा पहनाएंगे। Bangalore declaration is only a road map. It is a path of rightous behaviour. जो हमारा होना चाहिये। लेकिन इसको समझने के लिए हमको आपको इसे पूरी totality में इसको देखना पड़ेगा।

अब जो अगला पक्ष है वो ethics और norms के बाद behaviour का है। यह उम्मीद की जाती है कि Judge के आचरण में intergrity हो और वह impartial हो। intergrity के बारे में लगभग हम लोगों ने हाल में जो बात की उसमें काफी हद तक यह बिन्दु शामिल है। ये 'impartial' word जो है, वह बहुत व्यापक है। Impartial होना बहुत आसान नहीं है। हम partial सिर्फ तब नहीं हो जाते जब हम सोचे समझे ढंग से किसी को favour करते हैं अपने आचरण से हम अचेतन में भी अगर किसी को favour करते हैं तो भी हम impartial नहीं रहते हैं। मैं बात आपसे 'bias' की कर रहा हूँ। जिसके बारे में Supreme Court ने कहा है कि 'bias is an attitude of mind'. यह हमारी सोच है। हमको भी नहीं मालूम कि हमारी सोच है क्योंकि हम उन आँखों से देख रहे हैं, जिन आँखों ने bias का चश्मा पहना हुआ है। हमारा विश्लेषण उन आँखों से हो रहा है, उस मन से हो रहा है, जिस पर bias की परत चढ़ी हुई है। इसको थोड़ा तफसील से मैं आपसे discuss करना चाहता हूँ। हम में से कोई भी ईमानदारी से ये claim नहीं कर सकता है कि हममें किसी किस्म का कोई bias नहीं है। समाज की विभिन्न भाषाओं से, जातियों से, धर्मों से, भिन्न–भिन्न सामाजिक पृष्ठ भूमियों से हम आते हैं अतः भिन्न–भिन्न धारणायें हमारे मन में होती हैं। कल आपके सामने एक पक्षकार कोई बहुत बड़ी राजनैतिक पार्टी का बहुत दमदार/ताकतवर नेता होगा और दूसरी ओर से एक गरीब इंसान होगा या कोई बहुत ताकतवर शहर का ठेकेदार होगा और दूसरी ओर एक ऐसा आदमी होगा

जिसको उसका फ्लैट नहीं दिया गया है, तो ठेकेदार (कान्ट्रेक्टर) की ओर से जो वकील आयेगा वो बहुत अच्छे वस्त्र धारण किये होगा, बहुत नफीस अंग्रेजी बोल रहा होगा और उसको आपको खुश करने के सारे गुर आते होंगे। Judgment भी प्रस्तुत करेगा पर पहले कहेगा Hon'ble I am not required to cite these judgment because your honour is already aware about it. Whether or not you are aware about it, you will feel happy. "Yes" यह कह रहा है कि हमको सब पता है तो ठीक ही कह रहा है। मैं अपने अनुभव से आपको कहना चाह रहा हूँ कि आपको एक आत्म शोधन यंत्र अपने भीतर लगाने की जरूरत है। हर दिन हर समय आपको लोग यह बोलेंगे कि आपको पहले से ही पता है। कहेंगे कि You have delivered a fantastic Judgment. Your Judgment is marvelous, master piece. अगर हम इस भावना में बह गये, हमको यह पता भी नहीं चलेगा कि कब अंहकार की एक परत हमारे मन और मस्तिष्क पर चढ़ गयी है। हम क्या हैं, हमसे बेहतर हमको कोई नहीं जानता। इसलिए आपको हर दिन अपना परिशोधन करना है। आपको शाम को बैठकर एक बार यह सोचना पड़ेगा कि आज इस case में जो मैंने litigant के साथ या counsel के साथ जो व्यवहार किया, क्या मैं उसको और बेहतर ढंग से नहीं कर सकता था? क्या इससे कहीं यह संदेश तो नहीं गया कि मैंने एक सीनियर एडवोकेट को तो बहुत देर तक सुना पर एक जूनियर एडवोकेट को पूरा समय नहीं दिया? कहीं इसमें यह संदेश तो नहीं गया कि मैं जिस जाति का हूँ उसी जाति का अभिभाषक था या पक्षकार था इसलिये उस प्रकरण को मैंने बड़ी तवज्जो के साथ सुना या फैसला दिया? क्योंकि यह procedural impropriety का जो question है, procedural fairness का question है, उसमें हो सकता है कि दोनों पक्षकारों को पूरी तरह से सुनने के बाद भी आप का निर्णय वही हो जो उनको बिना सुने प्रकरण पढ़ते ही आपके मन में आ गया था। हो सकता है आप इतने होशियार हों, हो सकता है कि वह बिन्दु इस तरह का हो कि पहली बार में ही आपके मन में जो विचार आया, पूरा सुनने के बाद भी वही विचार कायम रहा। परन्तु अगर आप ये कह दें कि सब बकवास है, no-no you have no point Mr. Counsel, what is your next point. वो अभी अपना point आपके सामने रख ही नहीं पा रहा है, वह develop ही नहीं कर पा रहा है और आप उसको कह रहे है no substance .....yes what is your next point? आपकी न्यायालय में बैठे लोग वकील और जो दूसरे हैं, उनके मन मे एक धारणा न्यायालय के प्रति बनेगी कि या तो आप बहुत जल्दबाजी में हैं या आपको सुनने का धैर्य ही नहीं है। आपमें Judge का वह गुण व्यक्तित्व ही नहीं है कि जिसको patiently सुनना है। Socrates ने कितने पहले कहा था कि Judge should hear patiently, तो आपको patiently सुनना है। इसका ये मतलब भी नहीं हैं कि आप कोई रबड़ के पुतले हैं और वहाँ पर वकील जो भी बहस करेगा वह सारी बहस सुनने के लिए आप बाध्य है। You have to maintained a delicate balance. जहाँ वह track से बाहर जा रहे हों, वहाँ बहुत ही संयमित ढंग से कि ''वकील साहब I think this is not the point. You are traveling beyond the brief''. आप दो बार आप interrupt करेंगे तो वह अपने आप brief में आ जायेगें ''yes, I am ready to hear you on any relevant point and for any period of time provided you are on the issue". किस तरह से हम इसे regulate करते हैं कि हमारे न्यायालय में उपस्थित लोगों में यह संदेश जाए कि यहाँ पर जब तक आखिरी शब्द नहीं सुना जाता तब तक फैसला नहीं लिखा जाता। लोगों का आपकी कोर्ट के प्रति faith बढ़े। लोग आयें तो उनको

लगे कि उस कोर्ट का vibration ऐसा है। इसलिये आप किस तरह से कोर्ट को conduct करते हैं, उससे litigant का faith आपके बारे में जो बनता है। आप यह देखेंगे कि किसी पक्षकार ने आपके साथ अभद्रता की, अगर आप उसको carry नहीं करते हैं और उससे अगले प्रकरण में भी उतनी ही समता के साथ, equanimity के साथ behave करते हैं, तो आप पायेंगे कि कुछ दिनों के बाद वह व्यक्ति बदल गया है। मैं एक असाधारण उदाहरण आपको देना चाहता हूँ। आप सभी ने Justice M.C. Chagla का नाम सुना होगा जो Chief Justice बॉम्बे High Court थे। हम Judiciary में उनको बहुत सम्मान के साथ देखते हैं। बॉम्बे High Court के Judges की पार्किंग के सामने High Court ने एक बोर्ड लगा दिया था कि ''parking is reserved for Judges vehicle; No parking for others". वहां के एक बहुत chronic वकील ने एक civil suit file किया declaration के लिये कि ये जो बोर्ड High Court ने लगाया है, उसे High Court को लगाने का कोई jurisdiction नहीं है। यह Municipal Corporation की भूमि है, इसलिये घोषित किया जाये, कि ये Municipal Corporation की भूमि है। High Court से बोर्ड हटाने को कहा जाए। साक्ष्य अंकित करने के लिये Justice M.C. Chagla, the sitting Chief Justice was summoned. पूरी रजिस्ट्री में आप समझ ही सकते हैं कि कैसा हाहाकार मचा होगा, जब उनको समंन करने की बात हुई होगी। Justice M.C. Chagla, the sitting Chief Justice entered the witness box and he was subjected to a brutal and lengthy cross examination. He could withstand the cross-examination and matter हो गया। वह वकील एक महिने बाद Justice M.C. Chagla की कोर्ट में appear हुआ। जब उसकी cause list बार में एक दिन पहले देखी गई तो लोगों को बडा कौतूहल हुआ कि अब कल इनका नम्बर है देखें क्या होने वाला है। यह record पर है, अगर आप 'Legends in Law' पुस्तक पढ़ें, मैं heavily recommend करूँगा सारे Judges को। यूनिर्वसल ने किताब छापी है 'Legends in Law' इसमें आपको इसका जिक्र मिलेगा। मैं इस किताब को इसलिये भी recommend करूँगा कि हम वक्त के किसी दौर में कभी–कभी ऐसा होता है कि हमारे सामने बहुत icons नहीं होते हैं और उस दौर में कभी–कभी हमको history से icons trace करने पड़ते हैं और उनसे ताकत लेनी पड़ती है तो Justice Chagla के सामने जब वो उपस्थित हुआ तो उसको complete patient hearing मिली और there was not a single trace of that incidence in the conduct of Justice Chagla and the Judgment was deliver in his favor in the open court. आप सोचिये उनके बारे में क्या संदेश गया होगा। अगर उन्होंने उसको कह दिया होता कि No, there is no point and you are a fool of first order and I will draw contempt against you, this and that तो क्या धारणा बनी होती। यही कि उस दिन का प्रतिशोध लिया जा रहा है, जो Judge के चरित्र से, धर्म से अपेक्षा नहीं की जाती है। ये बड़ा नाजुक मामला है। ये करना इतना आसान नहीं है। जितना हम सुन रहे हैं तो हमको लगता है। एक वकील जब पहले case में misbehave करता है फिर वो दूसरे case में आता है, तो लग सकता है कि तुमने हमसे misbehave किया था इसलिए दूसरा case injunction देने लायक है तो भी हम नहीं देगें। But this is the thing which we have to develop in our-self कि हम उस चीज को करें। Accountability और simplicity का उदाहरण Justice M.C. Chagla खुद हैं।

Punctuality is also a very important thing और अगर वह गुड़ वाली बात से मैं अपने आपको trace करूं तो किसी अहंकार के रूप में नहीं, एक बड़े भाई के रूप में मैं आपसे अधिकार के साथ कह सकता हूँ कि मैं मई 2011 में Judge बना, आज सितम्बर, 2019 है, मैं सिर्फ चार दिन लेट हुआ जिसमें तीन दिन में दो मिनिट लेट हुआ क्योंकि एक बहुत urgent meeting थी Hon'ble Chief Justice के साथ जो थोड़ी ज्यादा चल गई और एक दिन मैं दो घण्टे लेट हुआ क्योंकि मुझे जिस शहर से आना था उसकी ट्रेन लेट हो गई। आप मेरी कोर्ट में आकर घड़ी मिला सकते हैं, मेरी court के बैठने के time से। मैं यह कोई अहंकार के रूप में नहीं कह रहा हूँ। मैं यह कह रहा हूँ कि punctuality is a very important issue जो लोगों में एक विश्वास पैदा करती है। दूसरा आप पक्षकार या एडवोकेट के angle से उसको देखेंगे कि जब केस लगता है तो किसी व्यक्ति का 3 नम्बर पर case है, किसी का 8 नम्बर पर case है, किसी का 15 नम्बर पर case है, तो वकील और पक्षकार यह सोचते हैं कि पहले मैं 3 नम्बर वाला करूँगा और फिर 8 नम्बर में जाउँगा, फिर मैं 12 नम्बर में जाउँगा। अब 3 नम्बर वाले अगर बैठे ही नहीं समय पर, तो उसका जो पूरा routine है, timetable है वह बिगड़ जाता है। This is very important. अगर आपको पांच मिनिट की देरी हो रही है आने में, तो पांच मिनिट पहले उठिये। सुबह 10 मिनिट पहले उठिये बहुत ज्यादा फर्क नहीं पड़ेगा स्वास्थ्य पर। लेकिन इसको habbit में डाल लीजिये। ये सारी चीजें ऐसी हैं जो मैं अपने अनुभव से आपसे कह सकता हूँ कि कोई व्यक्ति अपने career के शुरू के तीन चार–साल में जैसा अपने को ढाल लेता है, उसकी गाड़ी फिर वैसी ही चलती है। मैंने अभी तक नहीं पाया किसी को कि जिसकी पढ़ने लिखने की आदत ही नहीं थी वह दस साल बाद अचानक पढ़ने लिखने लगा। कुछ अपवाद हो सकते हैं पर मैंने तो नहीं पाए।

दूसरा question है, competence और excellence का। यह तो सब हो गया कि हम समय पर बैठेंगे। हम सबके साथ एक जैसा व्यवहार करेंगे। मगर हमको अपने विषय की दक्षता कितनी है। ये competence का question है। To achieve excellence का question है। इसकी केवल Judges से उम्मीद नहीं की गई है। आपमें से कोई बता सकता है कि excellence के बारे में जो उम्मीद संविधान में की गई है वो कहां की गई है? Fundamental duties! हर citizen से यह उम्मीद करती है कि आप अपने field में excellence को achieve करें। तो उस fundamental duty के लिहाज से भी अगर हम देखें तो हमको excellence को achieve करना है। अब इसमें हमारा क्या tradition है इसके मैं उदाहरण आपको देना चाहता हूँ। भारत के संविधान के बारे में एक बड़ी famous पुस्तक है आप सभी ने पढ़ी होगी, Shorter Constitution of India. इसके लेखक का नाम डी.डी. बसू है। Shorter Constitution तो उनकी एक तरह की student edition है वरना जो Constitution की उनकी book है वह लगभग 10–11 volumes में है। आपको शायद न पता हो कि अगर जस्टिस दुर्गादास बसु का बॉयोडॉटा पढ़ेंगे तो पढ़ते ही चले जायेंगे कि Law की डिग्री, संस्कृत की डिग्री, फिर व्याकरण की डिग्री, योग की डिग्री किस विषय के वे विद्वान नहीं थे। वो बार से नहीं आये थे, वो बेंच से आये थे। जब 1950 में भारत का संविधान बना उसके एक–दो साल बाद Cheif Justice बी.के. मुखर्जी थे, जो अपनी विद्वता और अपनी भलमनसाहत के लिये जाने जाते हैं। जस्टिस बी.के. मुखर्जी से डी.डी.बसु साहब ने appointment लिया और वो उनके पास गये। चीफ जस्टिस ने उनसे पूछा yes, gentleman. तो बसु बोले– I am D.D. Basu. I am Munsif in

कूचबिहार District of West Bengal. सबसे छोटी, Judiciary की, first/ initial post. D.D. Basu ने कहा, सर I have written a commentary on the Constitution of India and I came here to give it to you. जस्टिस मुखर्जी ने उन्हें सिर से पैर तक देखा कि ये मुंसिफ है जो चीफ जस्टिस ऑफ इंण्डिया को, Constitution जिसे बने दो साल हुये है, की commentary लिखकर लाये हैं। But Justice B.K. Mukharji a thorough gentleman, said- very well, you leave it. D.D. Basu ने कहा, ''Sir I want some comments also on this from you". तो चीफ जस्टिस मुखर्जी ने कहा you just note down your phone number. I will go through this and if necessary, I will give you a trunk call. उस समय trunk call का जमाना था। एक महीने बाद उनको trunk call मिला कि Chief Justice of India आपको याद कर रहे हैं। डी.डी. बसु जब पहुंचे तो उन्होंने उठकर उनसे हाथ मिलाया और कहा कि you have written a marvelous book. We are hearing a matter in the constitution bench and I was Perturbed about a question but I got answer in your book. मैं आपसे सिर्फ यह बताना चाह रहा हूँ कि इससे कोई फर्क नहीं पड़ता कि आप किस गाँव में पदस्थ है, किस पद पर पदस्थ हैं। it is your urge to achieve the excellence which matters. आज हमारे ये खिलाड़ी हिमादास और अन्य सब निकलकर आ रहे हैं, ये कौन metros और कौन Astroturf में खेल कर आये हैं। टपरों में रहने वाले बच्चे थे। यह इनकी fire है जो इनके भीतर है जो इनको यहाँ लेकर आती है। कोई भी बिना fire के आगे नहीं पहुँच सकता। कोई भी पेड़ बड़ा नहीं हो सकता जब तक उसकी जड़ें गहरी न हो। दूसरा जो उदाहरण है, वह डॉक्टर आशुतोष मुखर्जी का है जो कलकत्ता High Court के Judge थे। उस किताब में आपको इनका भी जिक्र मिलेगा। डॉ. आशुतोष मुखर्जी पहले mathematics पढ़ने लन्दन गये। उन्होंने गणित के सवाल हल करने में वह महारथ दिखाई कि आज भी कुछ थ्योरम्स को आशुतोष मुखर्जी थ्योरम्स कहा जाता है। वहाँ से आये, कलकत्ता यूनिवर्सिटी के Vice Chancellor हुऐ। सी.वी. रमन जिनको नोबल पुरस्कार मिला, उनको उन्होंने कलकत्ता यूनिवर्सिटी में induct किया। आशुतोष मुखर्जी कलकत्ता High Court के Judge बने। उनके classmate थे जिनका नाम नरेन्द्रनाथ दत्त था। वह स्वामी विवेकानंद के रूप में प्रसिद्ध हुए। उनके सामने एक matter आया जिसमें will थी जो Arabic में लिखी हुई थी और दोनों sides में जो उसके अनुवाद (तरजुमा) फाईल किये थे match नहीं हो रहे थे तो यह difficult था पता लगाना कि इन दोनों में से कौन सा तरजुमा सही है। हाईकोर्ट में कोई Arabic जानने वाला नहीं था। उन्होंने इस केस को adjourn कर दिया। उन्होंने Arabic टीचर लगाया। Arabic country से किताबें हासिल कीं और दो महिने बाद Arabic सीखने के बाद उसका फैसला किया। हो सकता है कि pressure of work आज जितना है, उससे कम रहा हो। लेकिन बात उस अंदर की तड़प की है और न्याय देने की जो मन्शा है उसकी है, कि कैसे उन्होंने कोशिश की। अब जो pressure of work की बात है तो यह भी मुझे लगता है कि कुछ हद तक हमने इसको काल्पनिक तौर पर अपने ऊपर हावी कर लिया है। cases निःसंदेह ज्यादा हैं, pendency ज्यादा है, मगर मिस्टर चौबे डायरेक्टर यहाँ बैठे हैं, चौबे जी जब induct हुऐ होगें Judge के रूप में तो हो सकता है कि स्कूटर से आते हों। कोई Petrol allowance न हो। कोई official quarter नहीं मिलता हो। High Court के Judges पहले एक कार को share करते थे, चार Judges को कार लेकर आती थी। उनकी starting

salary कुछ 4500–8500 ऐसी कुछ होती थी। आज बहुत सारा glamour जुड़ गया है Judiciary के साथ। बहुत सारी facilities भी हैं। वे गैर जरूरी हैं, ऐसा मैं नहीं कहता। लेकिन आप यह देखें कि आप जिन सुविधाओं के साथ रह रहे हैं, आपकी पहले की generation ने उसकी कल्पना भी नहीं की थी। दूसरी बात कि आपको अपना legal काम करने के लिये जो सुविधा उपलब्ध है, वो तो कभी किसी ने कल्पना ही नहीं की थी। हम लोग जब वकालत में आये, तो यह जो कह रहा हूँ इसमें कोई अतिरंजना नहीं है कि हमारे सीनियर हमसे कहते थे कि इस बिन्दु पर एक फैसला ढूंढो तो हम लोग एक तरफ से हर साल का डाइजेस्ट खंगालना शुरू करते थे। करते–करते जब 1994 का एक फैसला मिल जाता था तो उसी तरह की खुशी होती थी जिस तरह से आर्कमिडीज को नहाते समय हुई होगी लेकिन जब लेकर सीनियर के पास जाते थे वे कहते इसके आगे तो देखो इसका क्या हाल है। फिर अगले सालों के yearly digests देखते थे तो पता लगता था कि ये तो 1998 में overrule हो गया। आज आप एक फैसले को कम्प्यूटर में क्लिक करते हैं वो उसकी पूरी जन्म कुण्डली बता देता है। कब ये distinguish हुआ, कब ये follow हुआ, कब ये overrule हुआ, कब ये larger bench को refer हुआ। यहाँ पर जो एक बहुत जरूरी प्रश्न है उसको अपने मन में रखिये कि आज हमारे पास जितना law है, analysis के लिए, आज आपको जो software दिया गया है, उसमें Research इतनी आसान है। तब हमको अपने भीतर झाँकने की जरूरत है लगातार कि जब आज हमारे पास विश्लेषण का इतना material है, इतनी बडी library है। क्या हमारे Judgment हमारे पूर्वजों के Judgment से बेहतर हैं। क्या मध्यप्रदेश High Court के हम जैसे Judge अपने judgment को जस्टिस G.P. Singh के judgment के साथ compare कर सकते हैं। उनके पास tools नहीं थे लेकिन उनमें urge थी। आज हमारे ऊपर work pressure है। प्रश्न यह है कि, जो 100 प्रतिशत क्षमता ईश्वर ने हमको दी है उसमें हममें, आपमें, मुझमें, जस्टिस G.P. Singh में फर्क हो सकता है, पर क्या उस 100 प्रतिशत क्षमता का हम पूरी तरह से इस्तेमाल कर रहे हैं। या हम सिर्फ कट–कॉपी–पेस्ट कर रहे हैं। क्या हम विश्लेषण भी कर रहे हैं क्योंकि यह technology दोधारी तलवार है। इसमें एक सतहीकरण का खतरा भी मैं देखता हूँ। आपने देखा कि second marriage का कोई point है, आपने type किया second marriage साफ्टवेयर ने 20 judgment निकाल कर दे दिए। आपने उसका head-note देखा आपको लगा कि यह judgment सही है आपने वो head-note कट–कॉपी–पेस्ट किया, न उसके facts देखे न उसका argument देखा, न उसका analysis देखा, और आपका judgment तैयार! आज 400 पेज का judgment 40 मिनिट में लिखा जा सकता है। उसमें 1950 से लेकर अभी तक के Judgments एक बिन्दु पर आप cut, copy करते जाइये और last में एक पैराग्राफ में लिख दीजिये कि after analyzing this, I am of the view कि this is the principle and therefore case is allowed or dismiss. आप अगर excellence को achieve करना चाहते हैं तो यह प्रश्न सदैव स्वयं से पूछिये कि क्या जितनी सुविधाएं हमको आज मिली हैं, क्या हमारे judgment में वो clarity है कि क्या हमारे judgment में जो analysis दिख रही है, क्या उससे हमारे judgment को पढ़ कर जो पक्षकार हैं, हमारे सीनियर हैं, जो higher courts है, उनको लगेगा कि Yes यह जज हमारे institution के लिए एक asset है। Technology का इस्तेमाल करते समय हमेशा इस बात का ध्यान रखिये।

हम सब, और यह खास तौर पर सिर्फ Judges का ही नहीं मनुष्य का स्वभाव है, कि कुछ दिन बाद एक स्वभाव शिकंजे में फँस जाते हैं। हम 10 बजे कोर्ट जाते हैं, 5–6 बजे कोर्ट से आ जाते हैं, उसके बाद हम टी.वी. देखते हैं, चाय पीते हैं, थोड़ी देर पढ़ते हैं फिर अपना judgment लिखाते हैं और जब थोड़ा बहुत हमको विषय के बारे में पता लगने लगता है, तो फिर धीरे धीरे हमको यह लगता है कि हमको तो सब पता चल गया है। हमारी field का जितना ज्ञान है, हमको सारा ज्ञान मिल गया है और Advocate रोजाना आपको बताते हैं कि you have delivered an excellence judgment and it is better than a High Court's judgment. धीरे धीरे हमारा अहंकार और पुष्ट होता जाता है और हम पढ़ना धीरे धीरे छोड़ देते हैं। एक आदत या एक रोजमर्रा का भाव हम पर हावी होता जाता है और बेहतर भी अगर हम कर सकते हैं, तो वो करने की भावना हमारे भीतर खत्म होने लगती है। मेरी एक बड़ी प्रिय कविता है उसके दो पैराग्राफ मैं आपको सुनाना चाहता हूँ। कवि कहता है कि :–

''सबसे खतरनाक होता है मुर्दा शांति से भर जाना,
न होना तड़प का, सब कुछ सहन कर जाना,
घर से निकलना, काम पर, और घर से और लौट कर घर आ जाना,
सबसे खतरनाक होता है, हमारे सपनों का मर जाना।
सबसे खतरनाक वो आँख होती है, जो सब कुछ देखती हुई भी जमी बर्फ होती है,
जिसकी नजर दुनिया को मोहब्बत से चूमना भूल जाती है।
जो चीजों से उठती, अंधेपन की भाप पर ढुलक जाती है,
जो रोजमर्रा के क्रम को पीती हुई, एक लक्ष्यहीन दोहराव के उलटफेर में खो जाती है।
सबसे खतरनाक वो दिशा होती है, जिसमें आत्मा का सूरज डूब जाये,
और उसकी मुर्दा धूप का कोई टुकड़ा, आपके जिस्म के पूर्व में चुभ जाये।''

जो बातें मैनें आपसे अब तक कही इन सब चीजों को govern करने वाली अंततः एक चीज है जिसको मैं कहता हूँ कि वो law of nature है और law of nature ऐसा है कि मैं अगर आप से पूछूं कि कोई अगर हिंसा करता है तो उसका मुख्य कारण क्या है? यदि कोई रिश्वत लेता है, तो उसका क्या कारण हो सकता है? जब कोई व्यभिचार करता है तो उसका कारण क्या है? अब मैं पूछता हूँ कि क्या कभी कोई हिंसा हो सकती है जब तक किसी के मन में द्वेष या क्रोध आये ही नहीं? क्या व्यभिचार हो सकता है जब वासना उत्पन्न ही न हो? क्या रिश्वत ली जा सकती है? बिना लोभ के आये?

सबसे पहले हमारे मन में एक भावना का उदय होता है, क्रोध का या द्वेष का या जो हिंसा के रूप में manifest होती है, परिलक्षित होती है। सबसे पहले हमारे मन में कोई लोभ आता है जो रिश्वत या दूसरे रूप में परिलक्षित होती है। हमारे मन में वासना आती है जो व्यभिचार के रूप में प्रकट होती है। हमारे मन में अहंकार आता है, जो दुर्व्यवहार के रूप में परिलक्षित होता है और यह law of nature है। मन में आया विकार, विचार और आचार (Conduct) के रूप में प्रकट होता है। आप भारतीय हो अफ्रीकी हों, आप इस संविधान को मानते हों, उस संविधान को मानते हों, इस नागरिकता, इस जाति से, इस धर्म को मानते हों, सबको law of nature एक तरह से govern करता है। अगर आपमें क्रोध आयेगा हिंसा का मन होगा, वासना आयेगी तो व्यभिचार का मन होगा, लोभ आयेगा तो परिणाम

भ्रष्टाचार होगा। ये जो विकार है, वह सबसे पहले हमारे मन में पैदा होते हैं और इसको कोई outside agency नहीं पढ़ सकती, इसलिये इसको पढ़ने का काम सबसे ज्यादा हमें करना है। इसलिये मैंने कहा था कि आपको नियमित आत्मशोधन करना है। अपने हर conduct को, खुद को Judge करने का क्योंकि हम दूसरों के लिऐ तो बहुत अच्छे Judge हैं, अपने लिये advocate हैं। तो यह एक निरन्तर प्रक्रिया है, अपने आचरण में कुछ सुधारने की, अपने को बेहतर Judge बनाने की, अपने को legally और ज्यादा सक्षम करने की। आपमें से बहुत सारे लोगों ने एन.सी.सी. की होगी। एक ही स्थान पर खड़े होकर पैर चलाते रहने को 'कदम–ताल' कहते हैं। जिन्दगी में कभी कदम–ताल नहीं होता, आप या तो आगे जाते है या आप पीछे छूट जाते हैं। अगर हर दिन आपने अपने आपको और बेहतर इंसान, और बेहतर Judge, और ज्यादा पढ़ने वाला Judge, नहीं बनाया तो आप ज्ञान में, जानकारी में, पिछड़ते चले जायेंगे। हर दिन आपको और आगे बढ़ते चले जाना है। हमारे देश में मानव को चार श्रेणियों में बाँटा गया है। पहले वे व्यक्ति हैं, जो अंधकार से प्रकाश की ओर बढ़ रहे हैं। दूसरे, उस तरह के व्यक्ति हैं जो प्रकाश से अंधकार की ओर चल रहे हैं। तीसरे, वे हैं जो अंधकार से और अंधकार की ओर बढ़ रहे हैं। चौथे वह हैं जो प्रकाश से प्रकाश, रोशनी से और रोशनी की तरफ बढ़ रहे हैं। कोई कहीं 'कदम ताल' नहीं करता। अगर आप अंधेरे में हैं तो आप और अंधेरे की ओर बढ़ते जायेगें, अगर आप उजाले की ओर यात्रा शुरू नहीं करते। मेरा अकादमी में आप सबसे अनुरोध है कि अंधेरे से उजाले की ओर यात्रा शुरू करिये, उजाले से और उजाले की और यात्रा शुरू करिये। इसको हमारे यहाँ कहा गया है कि 'तमसो मां ज्योतिर्गमय'।

आखिर में मैं अपनी प्रिय कहानी के साथ अपनी बात समाप्त करना चाहता हूँ। गौतम बुद्ध जैतवन नाम की एक जगह पर अपनी 30 दिन लम्बी एक प्रवचन श्रृंखला को संबोधित कर रहे थे। लगभग तीन सप्ताह बाद एक युवा उनके पास पहुंचा और उसने कहा कि तथागत मैं पिछले वर्ष भी आपकी प्रवचन श्रृंखला में उपस्थित था और इस वर्ष भी मैं पिछले तीन सप्ताह से इस प्रवचन श्रृंखला में प्रतिभागी हूँ, मेरे साथ के लोग अध्यात्म के पथ पर, जीवन के पथ पर मुझसे बहुत आगे निकल गये हैं, पर मैं वहीं का वहीं हूँ। इसका कारण क्या है? गौतम बुद्ध ने उससे पूछा कि तुम्हारी बोली से ऐसा लगता है कि तुम यहाँ के निवासी नहीं हो। उसने कहा आप ठीक कहते हैं, मैं श्रावस्ती नाम के एक नगर का निवासी हूँ। गौतम बुद्ध ने उससे पूछा कि जब तुम्हारे मित्र–परिजन श्रावस्ती जाते हैं, तो तुम उनको मार्ग बताते हो? उसने कहा कि हाँ, मैं बहुत विस्तार से बताता हूँ कि गंगा के किनारे–किनारे जाना है, फिर अमुक पर्वत श्रृंखला आयेगी फिर उत्तर दिशा में जाओगे तो वहां श्रावस्ती नगर मिलेगा। बुद्ध ने अपनी दिव्य मुस्कान के साथ उससे अगला प्रश्न पूछा कि क्या वे तुम्हारे मार्ग बताने से श्रावस्ती पहुँच जाते हैं। उसने कहा तथागत ऐसा कैसे होगा जब तक वे उस मार्ग पर चलेंगे नहीं। बुद्ध ने कहा कि मैं तुमसे यही कहना चाहता हूँ कि मैं तो सिर्फ मार्ग बताता हूँ, चलना तो तुमको ही पड़ेगा। इसको उस समय प्रचलित पाली भाषा में बुद्ध ने कहा, ''तुम्हे हि किच्चं आतप्पं आक्खातारो तथागत''। यह ऐकेडमी, हमारे सीनियर और हम जिस परम्परा के वाहक हैं, वे हमको मार्ग बताते हैं, पर चलना तो हम सबको खुद ही पड़ेगा। मैं ये आशा करता हूँ कि, आप सब लोग जो अपने career की शुरूआत कर रहे हैं इस मार्ग पर चलेंगे और वो न्याय व्यवस्था जिस पर हम सबको अभिमान है और लोगों को विश्वास है उसको सुदृढ़ करेंगे।

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CONTRADICTION AND OMISSION: NATURE AND MODE OF PROOF IN CRIMINAL TRIALS

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In criminal trials, to act upon on the oral testimony of witness it is required to inspire the confidence of the court. To shake the veracity or credibility of the witnesses, contradiction and omission are an effective tool in the hands of the adversary party. Only duly proved contradictions and omissions can shake the credibility of a witness. Therefore, it is necessary that contradictions and omissions are properly brought on record and lawfully proved during the course of recording of evidence, otherwise it will lose its significance and will be of no value. It is therefore imperative to know the exact lawful method of recording contradiction and omission so that at the time of appreciation of evidence on record, it becomes easier to discard unproven contradiction and omission and to decide whether or not particular contradiction and omission satisfies the requirement of law, which could turn the fate of the case and also to ensure that accused is not prejudiced in his defence by wrongful method of recording contradiction and omission.

What is Contradiction

Contradiction according to the Oxford Dictionary means "to affirm the contrary". Generally, contradiction implies a set of statements which are opposed to one another. But in our legal context, contradiction means stating two versions by same person at two different points of time. If the statement before the police officer and the statement in the evidence before the court are so inconsistent or irreconcilable with each other that both of them cannot co-exist, then it may be said that one contradicts the other. It is also a case of contradiction when a witness submits differently and turns over by his previous statement before police.

Example -'A' stated to the police that accused 'B' abused him and gave him one blow of *'lathi'* and thereby caused hurt but before the court 'A' deposed during his examination in chief that accused 'B' abused him and beat him by 'iron rod'. Here in this example 'A' turned from his police statement and deposed that he suffered injury by the iron rod. It is contradiction because witness stated two versions regarding how did he suffer injury and turned over from police statement. It is also a contradiction because in the given example, 'A' either got injury by lathi or by iron rod thereby, meaning to say that both versions cannot co-exist because only single blow is alleged in the prosecution case.

What is omission

According to the Oxford Dictionary, omission means "someone or something that has been left out or excluded". In other words, meaning of "omission" is

"omitting or being omitted". In simple words, "omission" means missing to state something from earlier statement or to skip something from the earlier statement. In our legal context, if witness has deposed in examination-in-chief certain things, which he has omitted to state before the police in his statement, is called omission.

Example- 'A' stated to the police that when he was crossing Bridge Square, he saw that two men were abducting a women. But before the court, the during examination-in-chief, 'A' deposed that when he was crossing Bridge Square by his car along with his friend 'B', at that time Rohan and Sohan were abducting the woman and he happened to be the witness of the crime. Here in this example, 'A' has omitted to state before the police that he was crossing Bridge Square by his car alongwith his friend and also omitted to state the name of the accused.

Use of previous statement

"Previous" means earlier or before than the witness is deposing in the court. Contradiction and omission relate to the previous statement made during investigation by a prosecution witness before the police or investigating officer which is commonly known as case diary statement. The use of that previous statement is governed and controlled by section 162 Cr.P.C. Previous statement is not a substantive piece of evidence, but it is only admissible for the purpose mentioned in section 145 of the Evidence Act, 1872 as provided in section 162 Cr.P.C.

In ***Kehar Singh v. State of Delhi Administration, AIR 1988 SC 1883,*** Hon'ble the Apex Court has held that perusal of Sections 145, 155 and 157 of the Evidence Act clearly indicates that there are two purposes for which a previous statement can be used. One is for cross-examination and contradiction and the other is for corroboration. When the defense wants to use the previous statement of a witness, it could be used only to contradict and not to corroborate.

Which statement can be used for contradiction

In the case of ***Jagdish Chamriya Barela v. State of M.P., 2002 (2) MPLJ 448*** it was held that use of previous statement for contradicting a witness during cross-examination is not limited to statement recorded u/s 162 Cr.P.C., other previous statement may also be used.

Significant omissions as contradiction

Section 162 Cr.P.C. describes two kinds of contradictions namely, direct contradiction and contradiction by way of omission. "Direct contradiction" means a contradiction which is directly apparent from the comparison of previous statement and statement before the court, whereas omission is also used to contradict the statement made in the witness box. Explanation to section 162 says that an omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. From perusal of the aforesaid

explanation, it is clear that every omission is not contradiction – only those omissions which are material, takes the place or shape of contradictions and called contradiction by way of omission.

Who may contradict

Generally, at trial when prosecution witness deposes before the court and there is some inconsistency in his previous statement and the statement before the court then the accused or his counsel may contradict him during cross-examination by confronting him with those portions of the statement which are inconsistent with the present version. But there are cases when a witness does not speak in favor of the party who calls him. In such a situation, where prosecution witness does not support prosecution story, he may be contradicted as per the provision of section 145 of the Evidence Act with the permission of the court by virtue of provision of section 155 of the Evidence Act. Thus, a witness may be contradicted by his previous statement by the accused and by the prosecution as well or in other words, by the party who calls him and also by the adverse party.

Procedure to contradict a witness and method of proving it during trial

In this regard, rules of evidence laid down in sections 145 and 155(3) of the Evidence Act are of paramount importance. Section 145 provides the manner in which witness can be cross-examined as to previous statement and the second part deals with a situation where the cross-examination is intended for contradiction. Accordingly, it indicates the manner in which contradiction can be brought out. Further, section 155(3) provides a method to impeach the credibility of a witness by proof of former statements inconsistent with any part of his evidence, which is liable to be contradicted. Thus, the proof is in two stages; first stage, contradiction is brought on record in the manner as prescribed u/s 145 of the Evidence Act r/w/s 162 Cr.P.C. and the second stage is when contradiction still needs to be proved and the witness has not admitted the contradiction. It will continue with examining the police officer who has recorded the statements under section 161 Cr.P.C. If this is not done, the contradictions brought on record will have no effect at all.

How a contradiction is to be recorded has been elaborately discussed in the classic judgment of ***Tahsildar Singh and anr. v. State of U.P., AIR 1959 SC 1012.*** Hon'ble the Supreme Court has held that:

> " … The procedure prescribed for contradicting a witness by his previous statement made during investigation, is that, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to section 162 of the Code only enables the accused to make use of such statement to contradict a witness in the manner provided by section

> 145 of the Evidence Act. The second part of section 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate: 'A' says in the witness-box that 'B' stabbed 'C'; before the police he had stated that 'D' stabbed 'C'. His attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness-box. If he admits his previous statement, no further proof is necessary; if he does not admit, the practice generally followed is to admit it subject to proof by the police officer. On the other hand, if the witness is asked "did you say before the police officer that you saw a gas light?" and he answers "yes", and then the statement which does not contain such recitals is put to him as contradiction, the procedure involves two fallacies; one is, it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a record of a witness's statement, his entire statement could be brought on record. This procedure, therefore, contravenes the express provision of section 162 of the Code. The second fallacy is that there is no self-contradiction of the primary statement made in the witness-box for the witness has yet not made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness-box and what he stated before the police-officer, and not between what he said and stated before the police officer and what he actually made before him".

Hon'ble the Apex Court has in a very lucid language explained the procedure of bringing contradictions and omissions on record in a recent verdict of ***V.K. Mishra and anr. v. State of Uttarakhand and anr., AIR 2015 SC 3043*** which reads thus;

> "... Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him,

> it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process, the contradiction is merely brought on record, but it is yet to be proved. Thereafter, when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defense wanted to contradict him, then the court cannot *suo motu* make use of statements to police not proved in compliance with section 145 of Evidence Act that is by drawing attention to the parts intended for contradiction."

Example – Let us take an example of trial where accused person is being prosecuted for causing grievous hurt to one 'A' with an axe. During prosecution evidence, witness stated that accused assaulted him with an axe in such a way that the metallic head of the axe came into contact with his arm causing fracture, and if in course of the investigation he has stated in his statement recorded under section 161 Cr.P.C. that accused has beaten him by the stick portion of the axe. In such a situation, to contradict witness, exact passage occurring in his statement under section 161 should be read out and put to the witness whether witness admits having made such a statement before investigating officer. The exact statement which was read out to the witness should be marked within inverted commas and whole statement should be exhibited and thereafter, it should be incorporated *verbatim* in deposition. If the witness admits having made that statement there is no need to further proof of contradiction. If, on the other hand, witness denies having made such a statement, thereupon, it should be mentioned in the deposition itself. By this process contradiction is only brought on record. Thereafter, when investigating officer who has recorded the statement is examined in court the passage marked for the purpose of contradiction should be read out to him and he should be asked if the witness had stated as mentioned in that exhibit. It is only when investigating officer answers in affirmative that the exhibit can be deemed to have been properly proved. Procedure to prove material omission is same as procedure to prove contradiction.

Deemed statement: permissible for contradiction

Generally, unrecorded statement is completely excluded. But it was held in ***Tahsildar Singh's*** case (supra) that though a particular statement is not expressly recorded, a statement that can be deemed to be part of that expressly recorded can be used for contradiction, not because it is an omission strictly so-called but because it is deemed to form part of the recorded statement. Such a fiction is permissible only in the following three cases:

a. When a recital is necessarily implied from the recital or recitals found in the statement.

Illustration – In a statement before the police, the witness states that he saw 'A' stabbing 'B' at a particular point of time, but in the court he says that he saw 'A' and 'C' stabbing 'B' at the same point of time. In the statement before the police, the word 'only' can be implied.

b. A negative aspect of positive recital found in statement.

Illustration – In a statement before the police, the witness says that a dark man stabbed 'B'. But in the court, he says that a fair man stabbed 'B'. The earlier statement must be deemed to contain the recital not only that the culprit was a dark complexioned man but also that he was not of fair complexion.

c. When the previous statement and statement before the court cannot stand together.

Illustration – The witness says in the statement before the police that 'A' after stabbing 'B' ran away by northern lane, but in the court, he says that immediately after stabbing he ran away towards the southern lane; as he could not have run away immediately after the stabbing i.e. at the same point of time, towards the northern lane as well as towards the southern lane. If one statement is true, the other must necessarily be false.

A witness can only be contradicted with his own previous statement

Section 145 of the Evidence Act applies only to cases where the same person makes two contradictory statements either in different proceedings or in two different stages of the same proceeding. If the maker of a statement is sought to be contradicted, his attention should be drawn to his previous statement. In other words, where the statement made by a person or witness is not confronted by his own statement but by the statement of another prosecution witness, the question of the application of section 145 does not arise. If it is assumed that a statement of a witness is contradicted by another, the former witness should be cross-examined to explain the contradiction. Thus, it will be extremely difficult for an accused or a party to rely on the *inter se* contradiction of various witnesses and every time when the contradiction is made, the previous witness will have to be recalled for the purpose of contradiction. This is neither the purport nor the object of section 145 as laid down in ***Mohan Lal Gangaram Gehani v. State of Maharashtra, AIR 1982 SC 839***. It is not permissible in law to draw adverse inference because of alleged contradictions between one prosecution witness *vis-a-vis* statement of other witnesses. Section 145 has no

application where a witness is sought to be contradicted not by his own statement but by the statement of another witness. Section 145 of the Evidence Act applies when same person makes two contradictory statements. [See also ***Chaudhary Ramjibhai Narasanbhai v. State of Gujarat, AIR 2004 SC 313.***]

Previous statement recorded in a CD (compact disk)

Previous statement recorded in a CD (compact disk) during an interview taken by a local correspondent of a news paper, immediately after the incident, permission to contradict the evidence given by the witness in the court with reference to his previous statement recorded in C.D. It has been held by the Division Bench of Hon'ble High Court of Madhya Pradesh in ***Dilip Takhtani v. State of M.P., ILR (2011) 1082*** that, CD can be used for the purpose, if the CD fulfills the necessary requirement of being a primary evidence.

Use of statement made by a witness before commission constituted under Commission of Enquiries Act

Statement made by a witness before the commission constituted under the Commission of Enquiries Act cannot be used to subject the witness to any civil or criminal proceeding, nor it can be used against him in any civil or criminal proceeding the exception being that he can be prosecuted for giving false evidence. In ***Kehar Singh v. State (Delhi Admn.), AIR 1988 SC 1883,*** the Apex Court observed that considering the restrictions contained in section 6 of the Commission of Enquiries Act, the statement made by a witness before a commission cannot be used in a criminal trial either for the purposes of cross-examination to contradict the witness or to impeach his credibility.

However, evidence taken on commission (other than Commission appointed under the Commission of Enquiries Act) even if it is not read as evidence in suit, it would be available as previous statement for the purposes of section 145 of the Evidence Act. [See ***Mir Abdul Sovan and ors. v. Rafikan Bibi and ors., AIR 1972 ORISSA 213***.]

Statements recorded by police officer can be used in civil proceedings

This question was specifically dealt in the case of ***Malakala Surya Rao and ors. v. Gundapuneedi Janakamma, 1964 (1) CriLJ 504*** and ***Ranjit Satardekar v. Joe Mathias, 2006 CriLJ 2237*** and was observed that statements of witnesses recorded by a police officer under section 161 Cr.P.C. and reduced to writing can be used in civil proceeding for the purpose of section 145 of the Evidence Act. A statement made before the police during the course of investigation of an offence can be used in civil proceedings.

Police case diary of another case can be summoned for the purpose of contradiction and omission

It is the right of a party in a trial to use the previous statement of a witness either for the purpose of establishing a contradiction in his evidence or for the purpose of impeaching the credibility of the witness. If the court comes to the

conclusion that the production of such document is necessary or desirable then, the court is entitled to summon the case diary of another case u/s 91 Cr.P.C. *dehors* the provisions of section 172 Cr.P.C. for the purpose of using the statement made in the said diary, for contradicting a witness. When a case diary, as stated above, is summoned u/s 91(1) Cr.P.C. then the restrictions imposed under sub-sections (2) and (3) of section 172 Cr.P.C. would not apply to the use of such case diary but while using a previous statement recorded in the said diary, the court should bear in mind the restrictions imposed u/s 162 Cr.P.C. and section 145 of the Evidence Act because what is sought to be used from the case diary so produced, are the previous statements recorded u/s 161 of the Code. In this view of the matter, a case diary of another case, not pertaining to the trial in hand, can be summoned if the court trying the case considers that production of such a case diary is necessary or desirable for the purpose of trial. [See ***State of Kerala v. Babu and ors., AIR 1999 SC 2161***.]

Effect of duly proved contradiction and omission

In order to understand the value of contradiction and omission and how it affects the credibility of a witness; prepositions laid down by Hon'ble the Supreme Court in the following cases may usefully be referred:

Sohrab and anr. v. The State of M.P., AIR 1972 SC 2020: It is only after exercising caution and care and shifting the evidence to separate the truth from falsehood, exaggeration, embellishments and improvement, the court comes to the conclusion that what can be accepted implicates the accused, it will convict him. This court has held that *falsus in uno falsus in omnibus* is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments.

Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, AIR 1983 SC 753: Too much importance cannot be attached to minor discrepancies. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, cannot be annexed with undue importance. More so when all important probabilities-factor echoes in favor of the version narrated by the witnesses.

State of U.P. v. M.K. Anthony, AIR 1985 SC 48: In appreciation of evidence, the approach must be whether the evidence of the witness read as a whole, appears to have a ring of truth. Once that impression is formed, the court should scrutinize the evidence keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole.

Shamsuddin v. State of M.P., (2003)12 SCC 693: The core of the evidence has to be seen and not any borderline aspect. Minor variations which do not have any effect on the credibility of the evidence, cannot be the basis to discard intrinsic value of the evidence.

State of U.P. v. Nagesh, 2011 CriLJ 2162 SC: Unless discrepancies, contradictions and inconsistencies affect the core of the prosecution case, they cannot be the basis to reject their evidence. Normal discrepancies are bound to

occur in the depositions of witnesses due to errors of observations, errors of memory due to mental disposition at the time of the occurrence.

Waman v. State of Maharshtra, AIR 2011 SC 3327: Contradictions minor in nature and not related to major overt act attributed to each accused, would not discredit their testimony, more so, when all the prosecution witnesses hail from an agriculture family and are villagers, cannot be expected to state minute details in their earlier statements and before the court.

Arjun and ors. v. State of Rajasthan, AIR 1994 SC 2507: Trivial discrepancy, as is well known, should be ignored. Under circumstantial variety, the usual character of human testimony is substantially true. Similarly, innocuous omission is inconsequential.

C. Muniappan and ors. v. State of T.N., AIR 2010 SC 3718: Even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded.

State of Rajasthan v. Rajendra Singh, (2009) 11 SCC 106: Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witnesses is also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence.

Sunil Kumar Shambhudayal Gupta and ors. v. State of Maharashtra, (2010) 13 SCC 657: Omissions which amount to contradictions in material particulars and go to the root of the case and materially affect the core of the prosecution case, render the testimony of the witness liable to be discredited.

The credibility of witness does not stand impeached merely by proving contradiction on record. The court has to see whether or not witness emerge as a truthful witness whose evidence has a ring of truth despite the discrepancies, omissions and contradictions. The court has to form its opinion about the credibility of the witness and find out as to whether their depositions inspire the confidence or not.

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PART - II

NOTES ON IMPORTANT JUDGMENTS

***61. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 34 and 37**
Arbitrability of dispute – Arbitrability of a dispute must be assessed by interpreting terms of arbitration clause and correspondences exchanged between the parties – Acceptance of commission by agent, issuance of letter of credit in favour of agent by customer, several correspondences between principal and agent relating to the transaction and admission of dispute are clear to hold that the dispute between principal and agent is arbitrable.

माध्यस्थम् एवं सुलह अधिनियम, 1996 – धाराएं 34 एवं 37

मध्यस्थता योग्य विवाद – विवाद के मध्यस्थता योग्य होने का निर्धारण मध्यस्थता खण्ड की शर्तों के निर्वचन एवं पक्षकारों के बीच किए गए पत्राचार की व्याख्या करके किया जाना चाहिए – अभिकर्ता द्वारा कमीशन की स्वीकृति, ग्राहक के द्वारा अभिकर्ता के पक्ष में ऋण पत्र जारी करना, स्वामी एवं अभिकर्ता के मध्य संव्यवहार से संबंधित कई पत्राचार और विवाद की स्वीकृति से स्पष्ट है कि स्वामी एवं अभिकर्ता का विवाद मध्यस्थता योग्य है।

MMTC Ltd. v. M/s Vedanta Ltd.
Judgment dated 18.02.2019 passed by the Supreme Court in Civil Appeal No. 1862 of 2014, reported in AIR 2019 SC 1168

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62. CIVIL PROCEDURE CODE, 1908 – Section 96 and Order 41 Rule 23
LIMITATION ACT, 1963 – Section 5
Appeal – Bar of limitation – Whether an appeal admitted for final hearing without any objection as to delay may be rejected being barred by limitation without giving an opportunity to the appellant? Held, no – Proper course would be to give an opportunity to the appellant to file an application for condonation of delay u/s 5 of the Limitation Act.

सिविल प्रक्रिया संहिता, 1908 – धारा 96 एवं आदेश 41 नियम 23
परिसीमा अधिनियम, 1963 – धारा 5

अपील – परिसीमा काल का वर्जन – क्या अपील को विलंब की किसी आपत्ति के बिना अंतिम सुनवाई के लिए स्वीकार कर लिए जाने के बाद अपीलार्थी को कोई अवसर दिए बिना परिसीमा काल के वर्जन के आधार पर खारिज किया जा सकता है? अभिनिर्धारित, नहीं – उचित कार्यपद्धति अपीलार्थी को परिसीमा अधिनियम की धारा 5 के अधीन विलंब क्षमा करने के लिए आवेदन प्रस्तुत करने का एक अवसर देना होगा।

Man Khan v. Dr. Keshav Kishore and ors.

Judgment dated 05.02.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Second Appeal No. 2043 of 2018, reported in 2019 (4) MPLJ 166

Relevant extracts from the judgment:

I have gone through the entire order sheets of the Appellate Court and it appears that no objection was ever taken by the Appellate Court with regard to delay in filing the appeal. It appears that while deciding the appeal filed by the appellant, the Appellate Court must have noticed that the appeal filed by the appellant was barred by limitation. Under these circumstances, where the Court itself had not taken any objection with regard to delay in filing the appeal at the earliest and considering the fact that non-filing of application for condonation of delay is a curable defect and the appellant can be permitted to file an application for condonation of delay at a later stage as well as the fact that until and unless the delay in filing the appeal is condoned, it cannot be said that there was any appeal in the eyes of law, this Court is of the view that the Appellate Court after having noticed that the appeal is barred by limitation, should have granted an opportunity to the appellant to file an application under Section 5 of the Limitation Act.

My view is fortified by the judgment passed by this Court in the case of ***Premchand Soni since deceased LRs. Janki Bai and others v. Harish Chand, 2012 (1) MPLJ 65***.

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63. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11 and Order 8 Rule 6A

(i) Rejection of plaint – Bar of limitation – Whether a plaint can be rejected on the ground of limitation under Order 7 Rule 11 CPC? Held, Yes – Under a given set of circumstances, question of limitation may be a mixed question of fact and law and under some other set of circumstances, it can be a pure question of law.

(ii) Counter-claim – What constitutes? Whether counter claim can be treated as clarificatory or supplementary in nature to the written statement? Whether written statement can be equated with counter claim? Held, No – Whenever, a relief is sought against plaintiff and court fees is paid, it can be said that defendant has filed counter claim.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11 एवं आदेश 8 नियम 6क

(i) वादपत्र नामंजूर किया जाना – परिसीमा काल का वर्जन – क्या आदेश 7 नियम 11 सि.प्र.सं. के अधीन कोई वाद परिसीमा काल के आधार पर नामंजूर किया जा सकता है? अभिनिर्धारित, हाँ – दी गई परिस्थितियों में परिसीमा का प्रश्न तथ्य

एवं विधि का मिश्रित प्रश्न हो सकता है और कुछ अन्य परिस्थितियों में, यह विधि का एक शुद्ध प्रश्न भी हो सकता है।

(ii) प्रतिदावा – क्या होता है? क्या प्रतिदावा को लिखित कथन का स्पष्टीकरण या अनुपूरक माना जा सकता है? क्या लिखित कथन और प्रतिदावा को एक समान माना जा सकता है? अभिनिर्धारित, नहीं – जब भी वादी के विरुद्ध अनुतोष मांगा जाता है और न्यायालय शुल्क का भुगतान किया जाता है, तो यह कहा जा सकता है कि प्रतिवादी ने प्रतिदावा प्रस्तुत किया है।

Jamil Khan and ors. v. State of M.P. and ors.

Judgment dated 27.02.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Appeal No. 930 of 2014, reported in 2019 (4) MPLJ 156

Relevant extracts from the judgment:

So far as the question that whether the question of limitation is a mixed question of fact and law and whether a suit can be rejected under Order 7 Rule 11 of CPC on the ground of limitation are concerned, this Court is of the considered opinion that under a given set of circumstances, the question of limitation can be a mixed question of fact and law and under some set of circumstances, it can be a pure question of law. A suit can also be dismissed under Order 7 Rule 11 of CPC on the ground that it is barred by limitation.

The Supreme Court in the case of ***Hardesh Ores Pvt. Ltd. v. M/s. Hede & Co., 2007 AIR SCW 3456*** has held as under:-

> "21. The language of Order VII Rule 11, CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent

grammatical sense. As observed earlier, the language of clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this court in ***Liverpool & London S.P. & I. Association Ltd. v. M.V. Sea Success I and another, 2004 9 SCC 512 and Popat and Kotecha Property v. State Bank of India Staff Association, 2005 7 SCC 510.***"

x x x

So far as the reasoning given by the court below that the counter-claim was nothing but it was a mere clarification/supplementary to the written statement because the contents of both the documents are identical is concerned, the same cannot be accepted. The counter-claim is always treated as a suit and even if the suit filed by the plaintiffs is dismissed because of any default or even if it is withdrawn, then the counter-claim is still required to be adjudicated, whereas, the written statement cannot be treated as a plaint under any circumstance. Furthermore, in the counter-claim the defendant is also required to seek relief and he is also required to make payment of court fees. Counter-claim is a claim opposing the claim of the plaintiff and also seeking further relief against the plaintiff. Merely by refuting the claim of the plaintiff, it cannot be said that the defendant has filed his counter-claim. Whenever, a relief is sought against the plaintiff, only then it can be said that the defendant has filed his counter-claim. Written statement containing the similar pleadings without any claim cannot be termed as counter-claim. Thus, unless and until, a claim is made against the plaintiff, the written statement cannot be equated with counter-claim. It is well established principle of law that if the court fees is not paid, then the suit is not maintainable. Under these circumstances, the reason assigned by the court below that the counter-claim can be treated as clarificatory or supplementary in nature to the written statement and since the written statement was filed within the period of three years from the date of first cause of action, therefore, the counter-claim was also within limitation, cannot be allowed to stand. Accordingly, it is held that the counter-claim filed by defendant no.7 was barred by time and if the subsequent cause of action is taken into consideration, then it is clear that counter-claim was not maintainable as the cause of action had arisen after the written statement was filed.

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64. CIVIL PROCEDURE CODE, 1908 – Order 22 Rules 1 to 5

Substitution of legal representatives in matrimonial disputes – When the marital status of a party remains an issue even after death of the other party, then in such cases, cause of action continues to subsist and substitution of legal representatives in place of deceased party is permissible in matrimonial cases.

सिविल प्रक्रिया संहिता, 1908 – आदेश 22 नियम 1 से 5

वैवाहिक मामलों में विधिक प्रतिनिधियों का प्रतिस्थापन – जब एक पक्ष की वैवाहिक स्थिति दूसरे पक्ष की मृत्यु के बाद भी एक विवाद्यक बनी रहे, तब इस प्रकार के मामलों

में, वाद हेतुक लगातार अस्तित्व में रहता है और ऐसी परिस्थितियों में मृत पक्षकार के स्थान पर विधिक प्रतिनिधियों का प्रतिस्थापन वैवाहिक मामलों में अनुज्ञेय है।

Ravinder Kaur v. Manjeet Singh (dead) through Legal Representatives

Judgment dated 21.08.2019 passed by the Supreme Court in Civil Appeal No. 2021 of 2010, reported in (2019) 8 SCC 308

Relevant extracts from the judgment:

The appellant herein is the wife of the original respondent who died during the pendency of this appeal. Since the order impugned passed by the High Court of Punjab and Haryana dated ***23.08.2006*** in ***F.A.O. No. 101 M of 1999*** had allowed the appeal and dissolved the marriage, the marital status of the appellant is in issue notwithstanding the death of respondent. As such, the cause of action has continued to subsist and the legal representatives namely, the daughter and sons of the deceased respondent were allowed to be brought on record by this Court through the order dated ***05.09.2014*** passed in ***IA No.3 of 2012***. In that light, the instant appeal was heard in that backdrop. In that situation the reference made during the course of the order to the respondent would in effect refer to the original respondent, namely the deceased husband of the appellant.

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65. CIVIL PROCEDURE CODE, 1908 – Order 22 Rule 3
LAND REVENUE CODE, 1959 (M.P.) – Section 178
Legal representatives – Right to claim relief in suit – Bringing legal representatives on record does not itself entitle them to any right to property which is subject matter of suit – They have to establish their right over suit property independently – Determination of question as to legal representative is only for the purpose of conduction of legal proceedings.

सिविल प्रक्रिया संहिता, 1908 – आदेश 22 नियम 3
भू–राजस्व संहिता, 1959 (म.प्र.) – धारा 178
विधिक प्रतिनिधि – वाद में अनुतोष का दावा करने का अधिकार – विधिक प्रतिनिधियों को अभिलेख पर लाने से उन्हें वादोक्त संपत्ति में कोई भी अधिकार प्राप्त नहीं होता है – उन्हें वादोक्त संपत्ति पर अपना अधिकार स्वतंत्र रूप से स्थापित करना होगा – विधिक प्रतिनिधि होने के प्रश्न का निर्धारण मात्र विधिक कार्यवाही के संचालन के उद्देश्य से किया जाता है।

Sheela D/o Ramibai and anr. v. Bhagudibai and anr.

Judgment dated 19.03.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 356 of 2016, reported in 2019 (4) MPLJ 150

Relevant extracts from the judgment:

The Apex Court in the case of ***Jaladi Suguna (dead) through L.Rs. v. Satya Sai Central Trust & ors. AIR 2008 SC 2866*** has held that the determination as to who is the legal representative under Order 22 Rule 5 will be for the limited purpose of representation of the estate of the deceased for objection of that case. Such determination for such limited purpose will not confer on the person held to be a legal representative, any right to the property which is subject matter of the suit.

In case of ***Suresh Kumar Bansal v. Krishna Bansal and anr., (2010) 2 SCC 162,*** the Apex Court has held that the determination of question as to who is legal representative of deceased plaintiff or defendant under Order 22 Rule 5 of the CPC is only for the purpose of bringing legal representative on record for conducting those legal proceedings only and does not operate as *res judicata* in an *inter se* dispute between the rival legal representative.

In a recent judgment in the case of ***Mahanth Satyanand @ Ramjee Singh v. Shyam Lal Chauhan and ors., (2018) 18 SCC 485*** passed in Civil Appeal No. 6318/ 2010, the Apex Court has also held that the determination by the Court would be limited to the question, as to who should be brought on record in place of deceased for the purpose of continuing the suit alone and nothing beyond that. The inquiry under Order 22 Rule 5 of CPC is summary in nature and for limited purpose.

In view of the above, it is clear that the present appellants/plaintiffs were brought on record as legal representatives of Late Rami Bai by virtue of will, but after become a party, they ought to have established their right over the suit property. Execution of will in favour of plaintiff No. 1 and marriage of Rami Bai with PW/2 were specifically denied by the defendant No. 2 by way of reply to the application filed under Order 22 Rule 3 of CPC. The suit property was a joint property of plaintiff Late Rami Bai and defendant No.1 and after death of one co-owner, Bhagudi Bai being a real sister has become the exclusive owner of the suit property until and unless the will is proved by the plaintiffs. Therefore, both the Courts below have not committed any error while dismissing the suit on the ground that the present appellants are not entitled to claim any relief in the suit.

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66. CIVIL PROCEDURE CODE, 1908 – Order 33 Rule 1

(i) Indigent person – Determination of indigency – Property which cannot be taken into consideration – Property exempted from attachment in execution of decree and property which is subject matter of suit – Property which is to be taken into consideration – Property acquired after presentation of application but before its decision.

(ii) Indigent person; appeal by – Whether a person who was not permitted to sue as an indigent person in trial Court can file an application to seek permission from appellate Court to file appeal as an indigent person? Held, Yes.

सिविल प्रक्रिया संहिता, 1908 – आदेश 33 नियम 1

(i) निर्धन व्यक्ति – निर्धनता का निर्धारण – संपत्ति जिसे विचार में नहीं लिया जा सकता है – आज्ञप्ति के निष्पादन में कुर्की से मुक्त संपत्ति एवं ऐसी संपत्ति जो कि वाद की विषयवस्तु है – संपत्ति जिसे विचार में रखा जाना है – ऐसी संपत्ति जो आवेदन की प्रस्तुति के पश्चात् परन्तु उसके निराकरण के पूर्व अर्जित की गई हों।

(ii) निर्धन व्यक्ति द्वारा अपील – क्या एक व्यक्ति जिसे विचारण न्यायालय में निर्धन व्यक्ति के रूप में वाद संस्थित करने की अनुमति नहीं दी गई थी, निर्धन व्यक्ति के रूप में अपील प्रस्तुत करने के लिए आवेदन कर सकता है? अभिर्धारित, हाँ।

Sushil Thomas Abraham v. Skyline Build Through its Partner and ors.

Judgment dated 07.01.2019 passed by the Supreme Court in Civil Appeal No. 117 of 2019, reported in 2019 (4) MPLJ 13

Relevant extracts from the judgment:

While examining this question, the Court cannot take into consideration the two properties. First, the property, which is exempted from the attachment in execution of a decree and the second, which is subject-matter of the suit. In other words, the aforementioned two properties cannot be regarded as "possessed" by the person concerned for determining his financial capacity to pay the requisite court fees on his claim in the suit.

Similarly, if the person concerned acquires any property after presentation of the application for grant of permission to sue as indigent person but before the decision is given on his application, such acquired property has to be taken into consideration for deciding the question as to whether he is an indigent person or not.

Though the appellant (plaintiff) was not allowed by the trial court/High Court in the earlier round of litigation to institute a suit as an indigent person under Order 33 Rule 1 of the Code, yet in our considered opinion, he was entitled to file an application/appeal under Order 44 Rule 1 of the Code and seek permission from the appellate court to allow him to file an appeal as an indigent person.

In our view, the dismissal of application made under Order 33 Rule 1 of the Code by the trial court in the earlier round of litigation is not a bar against the plaintiff to file an application/appeal under Order 44 Rule 1 of the Code before the appellate court. The grant and rejection of such prayer by the trial court is confined only up to the disposal of the suit. This is clear from the reading of Rules 3(1) and 3(2) of Order 44, which contemplate holding of an inquiry again

into the question at the appellate stage as to whether the applicant is an indigent person or not since the date from the decree appealed from.

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67. CONTRACT ACT, 1872 – Sections 70, 73 and 74

Breach of contract – Remedies for – Where the contract between the parties itself limit quantum of liquidated damages, a higher figure as damages cannot be awarded – Section 74 of the Act applies.

संविदा अधिनियम, 1872 – धाराएं 70, 73 एवं 74

संविदा भंग – उपचार – जहां पक्षकारों की संविदा ही नगद क्षति की मात्रा को सीमित करती हो, वहां क्षतिपूर्ति के रूप में इससे अधिक राशि नहीं दिलाई जा सकती है – यहां अधिनियम की धारा 74 लागू होगी।

Mahanagar Telephone Nigam Ltd. v. Tata Communications Ltd.
Judgment dated 27.02.2019 passed by the Supreme Court in Civil Appeal No. 1766 of 2019, reported in AIR 2019 SC 1233

Relevant extracts from the judgment:

In the present case, clauses 16.2 to 16.4 are relevant, and are set out as under:

"16.2 (a) ***For delivery of stores***: Should the supplier fail to deliver the store/ services or any consignment thereof within the period prescribed for delivery, the purchaser shall be entitled to recover 0.5% of the value of the delayed supply for each week of delay or part thereof for a period up to 10 (TEN) weeks and thereafter at the rate of 0.7% of the value of the delayed supply for each week of delay or part thereof for another TEN weeks of delay. In the case of package supply where the delayed portion of the supply materially hampers installation and commissioning of the systems, L/D charges shall be levied as above on the total value of the concerned package of the Purchase Order. However, when supply is made within 21 days of QA clearance in the extended delivery period, the consignee may accept the stores and in such cases the LD shall be levied upto the date of QA clearance.

16.2 (b) ***For installation and commissioning***: Should the supplier fail to install and commission the project within the stipulated time the purchaser shall be entitled to recover 0.5% of the value of the purchase order for each week of delay or part thereof for a period upto 10 (TEN) weeks and thereafter @ 0.7% of the value of purchase order for each week of delay or part thereof for another 10 (TEN) weeks of delay. In cases, where the delay affects installation/commissioning of part of the project and part of the equipment is already in commercial use, then in such cases, LD shall be levied on the affected part of the project.

16.2 (c). The Liquidated Damages, as per Clause 16.2 (a) and 16.2 (b) above shall be limited to a maximum of 12%, even in case the DP extension is given beyond 20 weeks.

16.3. Provisions contained in Clause 16.2(a) shall not be applicable for durations (periods) which attract LD against clause 16.2(b) above.

16.4. Quantum of liquidated damages assessed and levied by the purchaser shall be final and not challengeable by the supplier."

As has been correctly held by the impugned judgment, a maximum of 12% can be levied as liquidated damages under the contract, which sum would amount to a sum of INR 25 lakh. Since this clause governs the relations between the parties, obviously, a higher figure, contractually speaking, cannot be awarded as liquidated damages, which are to be considered as final and not challengeable by the supplier. This being the case, the appellant can claim only this sum. Anything claimed above this sum would have to be refunded to the respondent.

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68. CRIMINAL PROCEDURE CODE, 1973 – Section 145

(i) Revision – Maintainability of – Against the quasi-final or intermediate order – Order of SDM refusing to stay proceeding u/s 145 Cr.P.C. – If reversed, the proceedings will remain subject to result of the suit – It is not purely interlocutory in nature but quasi-final or intermediate order – Revision against such order is maintainable.

(ii) Section 145 Cr.P.C. – Only deals with factum of possession – Proceeding u/s 145 Cr.P.C. be stayed only when factum of possession is subjudice in the civil suit. (*Ramsumer Puri Mahant v. State of U.P., AIR 1985 SC 472,* relied on)

दण्ड प्रक्रिया संहिता, 1973 – धारा 145

(i) पुनरीक्षण – प्रचलनशीलता – अर्द्धअंतिम अथवा मध्यवर्ती आदेश के विरूद्ध – द.प्र.सं. की धारा 145 के अधीन कार्यवाही को स्थगित करने से अस्वीकृति सम्बन्धी एसडीएम का आदेश – यदि पलट दिया जाता है तो कार्यवाहियाँ वाद के परिणाम के अधीन रहेगी – यह शुद्ध रूप से अंतर्वर्ती प्रकृति का नहीं है अपितु अर्द्धअंतिम अथवा मध्यवर्ती आदेश है।

(ii) धारा 145 द.प्र.सं. – मात्र आधिपत्य सम्बन्धी तथ्य का निर्धारण करती है – धारा 145 के अधीन कार्यवाही मात्र तब स्थगित की जा सकती है जब सिविल वाद में आधिपत्य का तथ्य न्यायाधीन हो (*रामसुमेर पुरी महंत वि. उ.प्र. राज्य, एआईआर 1985 एससी 472,* अवलंबित)

Kirit v. Smt. Sawarna

Order dated 08.04.2019 passed by the High Court of Madhya Pradesh in Criminal Revision No. 1007 of 2017, reported in 2019 CriLJ 3219

Relevant extracts from the order:

The first issue raised before this Court by the petitioner's counsel regarding maintainability of this petition. From perusal of order dated 08.08.2016, passed by Sub Divisional Magistrate, Burhanpur, it appears that the same is looking as intermediate or quasi-final order. There are some order which are neither interlocutory nor final in nature. They are termed as intermediate order or quasi-final order. If the order passed by the SDM, is reversed by the revisional Court then the further proceedings shall be proceeded according to civil suit and there will be nothing remains with the proceedings of Section 145 of Cr.P.C. Therefore, it can be said that the order passed by the learned SDM is not interlocutory in nature purely. Accordingly, revision petition is maintainable.

x x x

Having read the judgments of ***Ramsumer Puri Mahant v. State of U.P., AIR 1985 SC 472*** and ***Jhummamal alias Devandas v. State of M.P., AIR 1988 SC 1973***, it is manifested that an order made under Section 145 of Cr.P.C. deals only with the factum of possession of the party as on a particular day. In the present case petitioner has initiated the proceedings of Section 145 of Cr.P.C. in respect of disputed land bearing block No. 45 plot No. 98/2 ad measuring area 2128 sq. ft. and during the pendency of the same, he has preferred a civil suit in respect of the same land by seeking relief for declaring the Will null and void executed by one Magan Lal Patel, by which the respondent has expressed her right. In his reply, petitioner categorically stated that the suit filed by him is not for declaration of title and possession. From perusal of averments made in the plaint of civil suit, filed by the petitioner, it appears that the petitioner is seeking primary relief to declare the Will null and void. As the principle has already been established that an order made under Section 145 of Cr.P.C. deals only with the factum of possession, therefore, proceedings of section 145 of Cr.P.C. made by the Magistrate can not be set at naught merely because the petitioner who has initiated the proceedings of 145 of Cr.P.C. has approached the Civil Court for seeking declaration of Will null and void.

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69. CRIMINAL PROCEDURE CODE, 1973 – Sections 173(2) and 190 Closure Report – Closure which can be adopted by Magistrate – Explained – Held, Magistrate cannot direct police to file charge-sheet.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 173(2) एवं 190

खात्मा रिपोर्ट – कौन सा खात्मा मजिस्ट्रेट द्वारा स्वीकार किया जा सकता है – व्याख्या की गई – अभिनिर्धारित, मजिस्ट्रेट पुलिस को चार्जशीट प्रस्तुत करने का निर्देश नहीं दे सकता है।

Ramswaroop Soni v. State of Madhya Pradesh and anr.
Judgment dated 08.04.2019 passed by the Supreme Court in Criminal Appeal No. 614 of 2019, reported in 2019 CriLJ 4245 (SC)

Relevant extracts from the judgment:

The law is well-settled that in case a final report is filed under Section 173(2) Cr.P.C. stating that no offence is made out against the accused, any of the following courses can be adopted by the Magistrate:

(a) He may accept the report which was filed by the police in which case the proceedings would stand closed.

(b) He may not accept the report and may take cognizance in the matter on the basis of such final report which was presented by the police.

(c) If he is not satisfied by the investigation so undertaken by the police, he may direct further investigation in the matter.

The law is further well-settled that the judicial discretion to be used by the Magistrate at such stage has to fall in either of the three aforesaid categories.

In the present matter, the magistrate has issued directions directing the police to file charge-sheet under Sections 326 and 294 IPC and also the provision of Section 3(1) and 10 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Such a direction is wholly unsustainable.

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70. CRIMINAL PROCEDURE CODE, 1973 – Sections 225 and 301
Sessions trial – Whether counsel engaged by victim/*de-facto* complainant may be permitted to cross-examine defence witness after cross-examination by public prosecutor? Held, No – There exists possibility of conflicting answers with such permission – Victim or *de-facto* complainant has right only to assist Public Prosecutor and not to conduct prosecution.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 225 एवं 301

सत्र विचारण – क्या पीड़ित या वास्तविक परिवादी द्वारा नियुक्त अधिवक्ता को लोक अभियोजक के द्वारा बचाव साक्षी का प्रतिपरीक्षण कर लिये जाने के पश्चात् उसी साक्षी से प्रतिपरीक्षण करने की अनुमति दी जा सकती है? अभिनिर्धारित, नहीं – ऐसी अनुमति के साथ परस्पर विरोधी जवाब की संभावना विद्यमान होती है – पीड़ित/वास्तविक परिवादी को मात्र लोक अभियोजन की सहायता करने का अधिकार है और अभियोजन संचालन का अधिकार नहीं है।

Rekha Murarka v. State of West Bengal and anr.
Judgment dated 29.07.2019 passed by the High Court of Calcutta in Criminal Revision No. 2357 of 2018, reported in 2019 CriLJ 3986

Relevant extracts from the judgment:

The petitioner has sought for permission to put question to defence witness after cross-examination of the Public Prosecutor. An offence is a crime against the State. Public prosecutor is conducting the case on behalf of the State. If the Advocate of the *de-facto* complainant or victim is allowed to cross-examine the defence witness after the cross-examination of the prosecution, then there is every possibility of conflicting answers which may damage the prosecution case. During examination and cross-examination of prosecution and defence witnesses, the Advocate engaged by victim or *de-facto* complainant may assist the public prosecutor. That is why the legislature has used the term to assist the prosecution not to conduct the prosecution. The relief sought for by the petitioner before the learned Trial Court cannot be granted to her as it is contrary to the statutory provision. The right of the victim to engage private pleader to assist the prosecution is based on the principle that the public prosecutor who is conducting the trial of the session case may get proper assistance from the Advocate engaged by victim/de-facto complainant both on facts and law, if so required. This does not mean that the lawyer engaged by the private party will examine the prosecution witnesses or cross-examine the defence witnesses.

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***71. CRIMINAL PROCEDURE CODE, 1973 – Section 227**
Discharge; application for – Consideration of – Court should not start appreciating the evidence by finding out inconsistency in the statements of the witnesses at this stage.

दण्ड प्रक्रिया संहिता, 1973 – धारा 227

उन्मोचन के लिए आवेदन – विचार – न्यायालय को इस स्तर पर साक्षियों के कथनों में असंगतता का पता लगाकर साक्ष्य का विवेचन नहीं करना चाहिए।

State Represented by the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Tamil Nadu v. J. Doraiswamy etc.
Judgment dated 07.03.2019 passed by the Supreme Court in Criminal Appeal No. 445 of 2019, reported in AIR 2019 SC 1518

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***72. CRIMINAL PROCEDURE CODE, 1973 – Section 228**
INDIAN PENAL CODE, 1860 – Sections 409, 420 and 511
Framing of charges – Offences of cheating and criminal breach of trust by public servant – Allegations against accused that being Secretary of Gram Panchayat, he cheated and misappropriated fund of Government under MNREGA Scheme as well as issued forged work completion certificate – However, no such work completion certificate issued by accused – Neither case diary nor petition provided any document showing that accused was not performing his duties as Secretary – Merely because accused is a responsible person for functioning the system of Gram Panchayat, does not

mean that he would not have participated in alleged offence – Possibility of involvement of accused in alleged crime as conspirator, not ruled out – Charges framed against accused, u/ss 420 and 409 read with Section 511 of IPC not proper – Matter remitted back for framing of proper charges.

दण्ड प्रक्रिया संहिता, 1973 – धारा 228

भारतीय दण्ड संहिता, 1860 – धाराएं 409, 420 एवं 511

आरोपों की विरचना – लोक सेवक द्वारा न्यास का आपराधिक भंग एवं छल के अपराध – अभियुक्त के विरूद्ध अभियोग कि ग्राम पंचायत का सचिव रहते हुए, उसने छल किया और मनरेगा योजना के अंतर्गत शासन की निधि का दुर्विनियोग किया, साथ ही कूटरचित कार्य संपूर्णता प्रमाण पत्र जारी किया – यद्यपि ऐसा कोई कार्य पूर्णता प्रमाण पत्र अभियुक्त के द्वारा जारी नहीं किया गया – न तो केस डायरी और ना ही याचिका में ऐसा कोई दस्तावेज उपलब्ध है जो यह दर्शित करता हो कि अभियुक्त के द्वारा सचिव के रूप में कर्तव्य का निर्वहन नहीं किया गया – मात्र इसलिए कि ग्राम पंचायत के तंत्र के क्रियान्वयन के लिए अभियुक्त एक जिम्मेदार व्यक्ति है, यह तात्पर्य नहीं होगा कि, वह अभिकथित अपराध में सहभागी नहीं होगा – आक्षेपित अपराध में षडयंत्रकारी के रूप में अभियुक्त की संलिप्तता की संभावना, समाप्त नहीं होती है – अभियुक्त के विरूद्ध विरचित आरोप, अन्तर्गत धारा 420 एवं 409 सहपठित धारा 511, भा.द.स. उचित नहीं – उचित आरोप विरचित करने के लिए प्रकरण प्रतिप्रेषित किया गया।

Rajesh Sharma v. State of M.P.

Order dated 05.09.2019 passed by the High Court of Madhya Pradesh in Criminal Revision No. 3925 of 2018, reported in 2019 CriLJ 4852

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***73. CRIMINAL PROCEDURE CODE, 1973 – Section 309(2)(c)**

Cross-examination of witness – Right was closed by Trial Court – Held, cross-examination is a valuable right of accused – One opportunity given by the High Court subject to payment of cost.

दण्ड प्रक्रिया संहिता, 1973 – धारा 309(2)(ग)

साक्षी का प्रतिपरीक्षण – विचारण न्यायालय द्वारा अधिकार समाप्त कर दिया गया – अभिनिर्धारित, प्रतिपरीक्षण अभियुक्त का मूल्यवान अधिकार है – उच्च न्यायालय द्वारा परिव्यय के संदाय के अध्यधीन एक अवसर प्रदान किया गया।

Omprakash Bhargava v. Hotam Singh Kushwah

Order dated 12.07.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Criminal Case No. 25668 of 2019, reported in 2019 CriLJ 4131

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***74. CRIMINAL PROCEDURE CODE, 1973 – Section 311**

Recalling of witnesses; on the ground of incompetency of previous lawyer – Witnesses cannot be recalled merely because subsequently engaged lawyer is of the view that previous lawyer has not performed his duties efficiently or is inefficient lawyer or that he is guilty of professional misconduct.

दण्ड प्रक्रिया संहिता, 1973 – धारा 311

साक्षियों को पुनः बुलाया जाना; पूर्व अधिवक्ता की अक्षमता के आधार पर – साक्षियों को पुनः मात्र इसलिए नहीं बुलाया जा सकता क्योंकि पश्चातवर्ती नियुक्त अधिवक्ता का दृष्टिकोण यह है कि पूर्ववर्ती अधिवक्ता ने दक्षतापूर्वक अपने कर्तव्य का निर्वहन नहीं किया या वह अक्षम अधिवक्ता है या वह व्यवसायिक कदाचरण का दोषी है।

Ballu Khan alias Ballu Kha alias Jahoor Shah v. State of M.P.

Order dated 16.04.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Criminal Case No. 15756 of 2019, reported in 2019 CriLJ 4579

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75. CRIMINAL PROCEDURE CODE, 1973 – Section 313

Examination of accused – The accused's attention should be drawn to every inculpatory material so as to enable him to explain it – Accused did not get fair chance to defend himself since Court not putting incriminating material before accused – Examination of accused thus rendered perfunctory.

दण्ड प्रक्रिया संहिता, 1973 – धारा 313

अभियुक्त परीक्षण – आरोपी का ध्यान प्रत्येक अभियोगात्मक तत्वों की ओर आकर्षित किया जाना चाहिए जिससे उसे उन्हें स्पष्ट करने का अवसर उपलब्ध हो सके – अभियुक्त को स्वयं की प्रतिरक्षा का निष्पक्ष अवसर प्राप्त नहीं हुआ क्योंकि न्यायालय द्वारा समस्त अभियोगात्मक तत्वों को अभियुक्त के समक्ष नहीं रखा गया – अतः अभियुक्त का परीक्षण लापरवाहीपूर्वक है।

Samsul Haque v. State of Assam

Judgment dated 26.08.2019 passed by the Supreme Court in Criminal Appeal No. 1905 of 2009 with 246 of 2011, reported in AIR 2019 SC 4163

Relevant extracts from the judgment:

The third limb of the submission of the learned Senior Counsel is based on the statement of accused No.9, recorded under Section 313 of the Cr.P.C. It was argued that the questions asked did not really put the case of the prosecution to the accused as was mandatory. Only two questions were put in the said statement, which are as under:

> "Question: PW4 Sohrab Ali has averred in evidence that at about 7 a.m. on 17.3.97, you said, "Kill Keramat Ali." What is your reply?
>
> Ans : I was not there in the place of occurrence. My house is at a distance of 4 or 5 kilometers from there.
>
> Question : PW6 has stated that you asked the other accused to kill Keramat. What do you say?
>
> Ans : No I was not present at the place of occurrence. A civil suit is pending over the complainant's purchasing a plot of land. I was one witness to (the execution of) the sale deed. Out of that grudge they filed a false case against me."

The case of PW-3 was, thus, not even put to the accused.

In the aforesaid context learned senior counsel has referred to the judgment of this Court in ***Sharad Birdichand Sarda v. State of Maharashtra, (1984) 4 SCC 116*** to contend that if the circumstances are not put to the accused in his statement under Section 313 of the Cr.P.C., they must be completely excluded from consideration because the accused did not have any chance to explain them. This is stated to be the consistent view of this Court starting from 1953 in the case of ***Hate Singh Bhagat Singh v. State of Madhya Bharat, AIR 1953 SC 468.*** Learned Senior Counsel also referred to the judgment in ***Sujit Biswas v. State of Assam, (2013) 12 SCC 406*** for the proposition that the very purpose of examining the accused persons under Section 313 of the Cr.P.C. is to meet the requirement of the principles of natural justice, i.e., *audi alteram partem*. The accused, thus, must be given an opportunity to explain the incriminating material that has surfaced against him and the circumstances which are not put to the accused in his examination under Section 313 of the Cr.P.C. cannot be used against him and must be excluded from consideration.

The most vital aspect, in our view, and what drives the nail in the coffin in the case of the prosecution is the manner in which the court put the case to accused No. 9, and the statement recorded under Section 313 of the Cr.P.C. To say the least it is perfunctory.

It is trite to say that, in view of the judgments referred to by the learned Senior Counsel, aforesaid, the incriminating material is to be put to the accused so that the accused gets a fair chance to defend himself. This is in recognition of the principles of *audi alteram partem*. Apart from the judgments referred to aforesaid by the learned Senior Counsel, we may usefully refer to the judgment of this Court in ***Asraf Ali v. State of Assam, (2008) 16 SCC 328***. The relevant observations are in the following paragraphs:

> "21. Section 313 of the Code casts a duty on the Court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as

necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

22. The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial Court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed similar view in ***S. Harnam Singh v. The State, AIR 1976 SC 2140,*** while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non-indication of inculpatory material in its relevant facets by the trial Court to the accused adds to vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise."

While making the aforesaid observations, this Court also referred to its earlier judgment of the three Judge Bench in ***Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793*** which considered the fall out of the omission to put to the accused a question on a vital circumstance appearing against him in the prosecution evidence, and the requirement that the accused's attention should be drawn to every inculpatory material so as to enable him to explain it. Ordinarily, in such a situation, such material as not put to the accused must be eschewed. No doubt, it is recognized, that where there is a perfunctory examination under Section 313 of the Cr.P.C., the matter is capable of being remitted to the trial court, with the direction to retry from the stage at which the prosecution was closed [***Shivaji Sahabrao Bobade v. State of Maharashtra*** (supra)].

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76. CRIMINAL PROCEDURE CODE, 1973 – Section 313
EVIDENCE ACT, 1872 – Section 3, 65B and 106
INDIAN PENAL CODE, 1860 – Section 120B and 302
APPRECIATION OF EVIDENCE:

(i) Criminal conspiracy – Elements constituting –

1. A criminal object;

2. A plan or scheme embodying means to accomplish that object;

3. **An agreement or understanding between two or more people to cooperate for the accomplishment of such object.**

(ii) **Examination of accused – Admission made during – use of – Held, such admissions or statements may be used as an aid to lend credence to evidence led by prosecution.**

(iii) **Circumstantial evidence – Last seen theory – Does not by itself lead to an inference about guilt of accused – There must be something more to establish a connection between accused and crime – Such an example is close proximity between event of last seen and factum of death – It persuades Court to seek explanation from accused – Upon failure of accused to offer any explanation as to how he parted company with deceased, Court can consider it as a link which complete the chain of incriminating circumstances.**

(iv) **Electronic evidence, admissibility of – Whether objections as to admissibility of electronic evidence for want of certificate u/s 65B of Evidence Act; Once waived at the time of recording of evidence can be raised during appeal? Held, no – Such objections relate to mode and method of proof cannot be taken at appellate stage for the first time – Even appellate Court cannot itself refuse to rely on such electronic evidence for want of such certificate.**

दण्ड प्रक्रिया संहिता, 1973 – धारा 313

साक्ष्य अधिनियम, 1872 – धाराएं 3, 65ख एवं 106

भारतीय दण्ड संहिता, 1860 – धाराएं 120ख एवं 302

साक्ष्य का मूल्यांकनः

(i) आपराधिक षड़यंत्र – आवश्यक तत्व

1. आपराधिक उद्देश्य;
2. उक्त उद्देश्य की प्राप्ति हेतु साधनों को समेकित करने वाली स्कीम या योजना;
3. दो या अधिक लोगों का उस उद्देश्य की प्राप्ति हेतु सहयोग करने का अनुबंध या समझौता।

(ii) अभियुक्त का परीक्षण – इस दौरान की गई स्वीकृति का उपयोग – अभिनिर्धारित, ऐसी स्वीकृतियों या कथनों का उपयोग अभियोजन द्वारा प्रस्तुत की गई साक्ष्य को विश्वसनीयता प्रदान करने के लिए किया जा सकता है।

(iii) परिस्थितिजन्य साक्ष्य – अंतिम बार साथ देखे जाने का सिद्धांत – स्वयमेव अभियुक्त की दोषिता के संबंध में अनुमान को इंगित नहीं करता है – वहां अभियुक्त और अपराध के मध्य संबंध स्थापित करने के लिए कुछ अतिरिक्त होना भी आवश्यक है – ऐसा एक उदाहरण अंतिम बार साथ देखे जाने और मृत्यु के तथ्य के मध्य निकट संबद्धता है – यह न्यायालय को अभियुक्त से स्पष्टीकरण

प्राप्त करने के लिए प्रेरित करती है – अभियुक्त मृतक के साथ से कैसे पृथक हुआ, इस संबंध में कोई भी स्पष्टीकरण देने में असफलता को न्यायालय एक ऐसी कड़ी के रूप में मान सकती है जो दोषिता की परिस्थितियों की श्रृंखला को पूरा करती हो।

(iv) इलेक्ट्रोनिक साक्ष्य, ग्राह्यता – क्या साक्ष्य अधिनियम की धारा 65बी के अंतर्गत प्रमाण पत्र के अभाव में इलेक्ट्रोनिक साक्ष्य की ग्राह्यता की आपत्ति, एक बार साक्ष्य अभिलिखन के स्तर पर परित्यक्त कर दिए जाने के उपरांत अपील के स्तर पर उठाई जा सकती है? अभिनिर्धारित नहीं – ऐसी आपत्ति साबित करने के तरीके और माध्यम से संबंधित है जो प्रथम बार अपीलीय स्तर पर नहीं ली जा सकती है – अपीलीय न्यायालय भी ऐसी इलेक्ट्रोनिक साक्ष्य पर ऐसे प्रमाण पत्र के अभाव में स्वयं विश्वास करने से इंकार नहीं कर सकता है।

Rajender alias Rajesh alias Raju and ors. v. State (NCT of Delhi)

Judgment dated 24.10.2019 passed by the Supreme Court in Criminal Appeal No. 1889 of 2010, reported in (2019) 10 SCC 623

Relevant extracts from the judgment:

It is well-settled that in cases where the prosecution relies on circumstantial evidence to establish its case, such circumstances should be duly proved and the chain of circumstances so proved should be complete. This means that the chain formed must unerringly point towards the guilt of the accused and not leave any missing links for the accused to escape from the clutches of law. Further, with respect to conspiracy, it is trite law that the existence of three elements must be shown– a criminal object, a plan or a scheme embodying means to accomplish that object, and an agreement or understanding between two or more people to cooperate for the accomplishment of such object.

x x x

During her examination under Section 313 of the Code of Criminal Procedure (hereinafter 'Cr.P.C.'), Sharda Jain (A-1) has admitted that the deceased was present with her till the afternoon of 24.08.2002. The law on the point is very clear. A statement made by an accused under Section 313, Cr.P.C. can be used as an aid to lend credence to the evidence led by the prosecution. Therefore, in light of the testimonies of PW-18, PW-17 and PW-11, as well as the statement of Sharda Jain, we find that the prosecution has proved that the deceased was present with Sharda Jain (A-1) in the afternoon of 24.08.2002 and was not seen alive by anyone after such time.

Having observed so, it is crucial to note that the reasonableness of the explanation offered by the accused as to how and when he/she parted company with the deceased has a bearing on the effect of the last seen in a case. Section 106 of the Indian Evidence Act, 1872 provides that the burden of proof for any fact that is especially within the knowledge of a person lies upon such person. Thus, if a person is last seen with the deceased, he must offer an explanation

as to how and when he parted company with the deceased. In other words, he must furnish an explanation that appears to the Court to be probable and satisfactory, and if he fails to offer such an explanation on the basis of facts within his special knowledge, the burden cast upon him under Section 106 is not discharged. Particularly in cases resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, such failure by itself can provide an additional link in the chain of circumstances proved against him. This, however, does not mean that Section 106 shifts the burden of proof of a criminal trial on the accused. Such burden always rests on the prosecution. Section 106 only lays down the rule that when the accused does not throw any light upon facts which are specially within his/her knowledge and which cannot support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce an explanation as an additional link which completes the chain of incriminating circumstances.

Notably, a circumstance of last seen does not, by itself, necessarily lead to an inference that the accused committed the crime. There must be something more that establishes a connection between the accused and the crime. For instance, there may be cases where close proximity between the event of last seen and the factum of death may persuade a rational mind to reach the irresistible conclusion that the last seen of the deceased is material and merits an explanation from the accused.

In the instant case, there is proximity between the time of last seen of the deceased with Sharda Jain and the time of his death. As mentioned supra, it is proved that the deceased was last seen with Sharda Jain on 24.08.2002. It has also been shown that the deceased expired on 24.08.2002, as indicated in the testimony of Dr. S.K. Aggarwal (PW-21) who conducted the post-mortem examination of the deceased at 2.30 p.m. on 31.08.2002. He has deposed that the probable date of death of the deceased was about a week prior to the post-mortem examination, i.e. on 24.08.2002. Thus, the proximity between the time of last seen and the time of death of the deceased is established. This, in turn, connects the accused to the crime in question.

This is also supported by the mobile records of Sharda Jain, which show that she visited Ghaziabad on 24.08.2002. Though the High Court has held that these records have not been proved, as no certificate was issued in terms of Section 65-B(4) of the Indian Evidence Act, 1872, we find that these records can be relied upon. This is because an objection relating to the non-production of a certificate under Section 65-B(4) relates to the mode and method of proof and cannot be raised at the appellate stage as has been held by this Court in ***Sonu v. State of Haryana, (2017) 8 SCC 570***. In that case, an objection regarding the mode/method of proof of call detail records (CDRs) of mobile phones recovered from the accused was raised for the first time before the Supreme Court. Drawing a distinction between objections relating to admissibility or relevance of facts and objections as to the mode or method of proof of facts, the Court observed as follows:

> "32. It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the trial court without a certificate as required by Section 65-B(4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies. The learned Senior Counsel for the State referred to statements under Section 161 CrPC, 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65-B(4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof."

Applying this to the instant case, we find that the objection as to the reliability of the call records of Sharda Jain on account of non-compliance with the procedure under Section 65-B(4) was raised for the first time before the High Court. Since no such objection was raised at the time of marking of these records before the Trial Court, we find that these records can be considered.

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***77. CRIMINAL PROCEDURE CODE, 1973 – Section 319**
Summoning of additional accused – Role ascribed to appellant that he came at spot with country made revolver – Neither FIR nor testimony of informant mentioning that appellant fired upon deceased and injured with an intention to kill him – Name of appellant not mentioned in charge-sheet – Order of High Court

summoning appellant merely on ground that power u/s 319 is available even if person is not named in FIR or the charge-sheet, erroneous.

दण्ड प्रक्रिया संहिता, 1973 – धारा 319

अतिरिक्त अभियुक्त को आहूत करना – अपीलार्थी की भूमिका यह बताई गई कि, वह देशी रिवॉल्वर के साथ स्थल पर आया था – न तो प्रथम सूचना प्रतिवेदन और न ही सूचनाकर्ता की अभिसाक्ष्य में यह वर्णित है कि अपीलार्थी ने अभियुक्त पर अग्नायुध चलाया था और उसे मारने के आशय से आहत किया था – अभियोग पत्र में अपीलार्थी का नाम उल्लिखित नहीं है – उच्च न्यायालय का अपीलार्थी को आहूत करने का मात्र इस आधार पर आदेश कि प्रथम सूचना प्रतिवेदन या अभियोग पत्र में नामित न किए गए व्यक्ति को आहूत करने की शक्ति धारा 319 के अंतर्गत उपलब्ध है, त्रुटिपूर्ण है।

Shishupal Singh v. State of Uttar Pradesh and anr.
Judgment dated 03.09.2019 passed by the Supreme Court in Criminal Appeal No. 1327 of 2019, reported in 2019 CriLJ 4715 (SC)

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***78. CRIMINAL PROCEDURE CODE, 1973 – Section 319**
Order of summoning – Exercise of power u/s 319 – Test to be applied – Reiterated – More than prima facia case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction.

दण्ड प्रक्रिया संहिता, 1973 – धारा 319

समन करने का आदेश – धारा 319 के अंतर्गत शक्ति का उपयोग – परीक्षण की कसौटी – दोहराई गई – आरोप विचरना के लिए आवश्यक प्रथम दृष्टया मामले से अधिक, परन्तु इस सीमा तक संतुष्टि से कुछ कम कि अखण्डित रहने पर दोषसिद्धि का आधार हो।

Mani Pushpak Joshi v. State of Uttarakhand and anr.
Judgment dated 17.10.2019 passed by the Supreme Court in Criminal Appeal No. 1517 of 2019, reported in (2019) 9 SCC 805

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79. CRIMINAL PROCEDURE CODE, 1973 – Section 372
CONSTITUTION OF INDIA – Article 136
CRIMINAL PRACTICE:

(i) Appeal against conviction – Whether appellate Court while hearing an appeal against conviction, can convict accused for offences under which they were acquitted by the trial Court? Held, No – Without an appeal against acquittal and without giving any notice for enhancement of sentence, such conviction is erroneous.

(ii) Illegal order – Challenged by only one of several accused – Whether non-appealing accused can be benefitted by setting aside such illegal order? Held, Yes – An order once held illegal by superior Court at the instance of one accused, cannot be allowed to stand against other non-appealing co-accused persons.

दण्ड प्रक्रिया संहिता, 1973 – धारा 372

भारत का संविधान – अनुच्छेद 136

आपराधिक प्रथाः

(i) दोषसिद्धि के विरूद्ध अपील – क्या दोषसिद्धि के विरूद्ध अपील पर सुनवाई करते हुए अपीलीय न्यायालय, उन अपराधों के लिए अभियुक्त को दोषसिद्ध कर सकती है जिनमें वे विचारण न्यायालय द्वारा दोषमुक्त किए गए थे ? अभिनिर्धारित, नहीं – दोषमुक्ति के विरूद्ध अपील के बिना और दण्ड बढ़ाने के लिए कोई सूचना दिए बिना, ऐसी दोषसिद्धि त्रुटिपूर्ण है।

(ii) अवैध आदेश – कई अभियुक्तगण में से केवल एक द्वारा चुनौती दी गई – क्या ऐसे अवैध आदेश को अपास्त करते हुए अपील न करने वाले अभियुक्तगण को भी लाभान्वित किया जा सकता है? अभिनिर्धारित, हां – एक अभियुक्त के सापेक्ष वरिष्ठ न्यायालय द्वारा अवैध ठहराए गए आदेश को अन्य अपील न करने वाले सह–अभियुक्तगण के विरूद्ध स्थिर रहने की अनुमति नहीं दी जा सकती है।

Deep Narayan Chourasia v. State of Bihar

Judgment dated 25.02.2019 passed by the Supreme Court in Criminal Appeal No. 180 of 2019, reported in AIR 2019 SC 1148

Relevant extracts from the judgment:

The first error was that the High Court proceeded on wrong factual premise that all the five accused have suffered conviction under Section 302/149 IPC read with Section 27 of the Arms Act by the Additional Sessions Judge. It was not so.

The second error was that the appellant (Deep Narayan Chourasia) along with other three accused (Lukho Prasad Chourasia, Birendra Prasad Chourasia and Binod Prasad Chourasia) were acquitted from the charge of commission of offence under Section 302/149 IPC by the Additional Sessions Judge but were convicted only under Section 27 of the Arms Act and were sentenced to undergo rigorous imprisonment for five years. However, as a result of the High Court's order, they were convicted under Section 302/149 IPC without there being any appeal filed by the State against the order of their acquittal and without there being any notice of enhancement of their sentence issued by the High Court *suo motu* to these four accused.

In other words and as mentioned above, the question before the High Court was whether the appellant herein (Deep Narayan Chourasia) and other three

accused were rightly convicted and sentenced to undergo rigorous imprisonment for five years under Section 27 of the Arms Act by the Additional Sessions Judge or not. Instead of recording any finding of affirmation of the conviction or acquittal, as the case may be, the High Court convicted all the four accused under Section 302/149 IPC also.

It will be a travesty of justice delivery system where an accused, who is convicted of a lesser offence (Section 27 of the Arms Act alone) and was acquitted of a graver offence (Section 302/149 IPC) is made to suffer conviction for commission of a graver offence (Section 302/149 IPC) without affording him of any opportunity to defend such charge at any stage of the appellate proceedings.

In our view, an order, which is based entirely on wrong factual premise once held illegal by a superior Court at the instance of one accused, cannot be allowed to stand against other non-appealing accused persons also.

It is a fundamental principle of law that an illegality committed by a Court cannot be allowed to be perpetuated against a person to a *lis* merely because he did not bring such illegality to the notice of the Court and instead other person similarly placed in the *lis* brought such illegality to the Court's notice and succeed in his challenge.

Needless to say, if the other four accused had filed the appeals in this Court, they too would have got the benefit of this order. A *fortiori*, merely because they did not file the appeals and the case is now remanded for rehearing of the appeal at the instance of one accused, the benefit of rehearing of the appeal cannot be denied to other co-accused. In other words, the non-appealing co-accused are also entitled to get benefit of the order of this Court and are, therefore, entitled for rehearing of their appeals along with the present appellant.

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***80. CRIMINAL PROCEDURE CODE, 1973 – Sections 437 and 439**
JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – Sections 8, 10 and 12
Bail to juvenile – Applicability of Sections 437 and 439 to the bail application of Juvenile – Held, grant of bail to a juvenile is required to be dealt with u/s 12 of JJ Act – Section 437 or 439 of CrPC has no application – Court of Sessions and High Court in their appellate and revisional powers, are also governed by the provisions of Section 12 of JJ Act.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 437 एवं 439
किशोर न्याय (बालकों की देखरेख एवं संरक्षण) अधिनियम, 2015 – धाराएं 8, 10 एवं 12
किशोर की जमानत – किशोर के जमानत आवेदन पर धाराएं 437 और 439 का लागू होना – अभिनिर्धारित, किशोर का जमानत आवेदन किशोर न्याय अधिनियम की धारा 12 के अनुसार निराकृत किया जाना चाहिए – दण्ड प्रक्रिया संहिता की धारा 437

या 439 लागू नहीं होती है – सत्र न्यायालय और उच्च न्यायालय भी उनके अपीलीय या पुनरीक्षण अधिकारिता में किशोर न्याय अधिनियम की धारा 12 से ही शासित होते है।

X v. State of Chhattisgarh

Judgment dated 05.04.2019 passed by the High Court of Chhattisgarh in Miscellaneous Criminal Case No. 8523 of 2016, reported in 2019 CriLJ 4017 (DB)

Note : ***The name of child in conflict with law is delibrately not published.***

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81. CRIMINAL TRIAL:

APPRECIATION OF EVIDENCE:

Appreciation of Evidence and sentence of capital punishment –

(i) A criminal case cannot be decided on presumptions, conjectures and assumptions.

(ii) Absence of any explanation about "last seen" theory leads towards adverse inference against accused.

(iii) The Courts must consider the aspect of possibility of reforms or rehabilitation of the accused before awarding capital punishment.

आपराधिक विचारणः

साक्ष्य का मूल्यांकनः

साक्ष्य का मूल्यांकन एवं मृत्यु का दण्डादेश –

(i) कोई आपराधिक प्रकरण उपधारणाओं, अनुमानों एवं धारणाओं पर निर्णीत नहीं किया जा सकता।

(ii) ''अंतिम बार देखा गया'' के सिद्धांत के बारे में किसी स्पष्टीकरण का अभाव अभियुक्त के विरूद्ध प्रतिकूल अनुमान देता है।

(iii) न्यायालयों को मृत्युदण्ड अधिनिर्णीत करने के पूर्व अभियुक्त के सुधार या पुनर्वास की संभावनाओं के पहलू पर विचार अवश्य करना चाहिए।

Parsuram v. State of Madhya Pradesh

Order dated 19.02.2019 passed by the Supreme Court in Criminal Appeal No. 314 of 2013, reported in (2019) 8 SCC 382

Relevant extracts from the order:

The learned senior counsel of the appellant submitted that the foreign object thrust into the vagina of the victim was not male genitalia but a stem of the mustard plant, since the offence took place in a mustard field. Such argument advanced by the learned senior counsel of the appellant deserves to be rejected inasmuch as a criminal case cannot be decided on presumptions, conjectures and assumptions, more particularly in the light of the clear evidence of the doctor, PW2, and the post-mortem report against the accused, which indicates that it is a clear case of rape.

All the aforesaid witnesses have consistently and cogently deposed about seeing the victim last with the accused and about the accused running away from the spot immediately after the incident. Absolutely no explanation, much less any plausible explanation, is forthcoming from the accused as to when he parted with the company of the victim. In the absence of any explanation, adverse inference needs to be drawn against the accused. Having regard to the totality of the facts and circumstances of the case, there is no need to interfere with the judgment and order of conviction of the Trial Court as well as the High Court.

However, in our considered opinion, in the facts and circumstances of the case, the instant case may not fall under the category of the "rarest of rare" cases. The accused had no criminal history and he was a B.Sc. student at the time of the incident. The courts below have not considered the aspect of possibility of reform or rehabilitation of the accused. It is the duty of the State to show that there is no possibility of reform or rehabilitation of the accused to seek for capital punishment. We may hasten to add that the aggravating circumstance in this case is that the accused took advantage of his position in the victim's family for committing the offences of rape and murder, inasmuch as the family of the victim had trusted the accused and sent the child along with him. However, the probability that the accused would commit criminal acts of violence in the future is not forthcoming from the record. Undoubtedly, the offence committed by the appellant-accused deserves serious condemnation and is the most heinous crime, but on considering the cumulative facts and circumstances of the case, we do not think that the instant case falls in the category of the "rarest of rare" cases, and we feel somewhat reluctant in endorsing the death sentence. Nevertheless, having regard to the nature of the crime, the Court strongly feels that the sentence of life imprisonment subject to remission which normally works out to 16 years (based on the remission rules framed by Madhya Pradesh) is disproportionate and inadequate for the instant offence. In our considered opinion, the sentence to be imposed on the appellant-accused should be between 16 years and imprisonment until death. We have kept in mind the mitigating and aggravating circumstances of this case while concluding so.

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82. CRIMINAL TRIAL:

Blood stains – Forensic examination; proof of – Benefit of doubt –

(i) When recovery of blood stained articles is proved beyond reasonable doubt by the prosecution and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the article is of human origin even though the blood group is not proved because of disintegration of blood.

(ii) When credibility of investigation and prosecution evidence does not create any reasonable doubt and even when the serologist is unable to detect the origin of the blood due to

disintegration of the serum or insufficiency of blood stains or haemotological changes, etc. – Benefit of doubt to the accused can be denied.

आपराधिक विचारण :

खून के धब्बे – फोरेंसिक परीक्षण; प्रमाण–संदेह का लाभ –

(i) जब अभियोजन पक्ष द्वारा रक्तरंजित वस्तुओं की बरामदगी को युक्तियुक्त संदेह से परे साबित कर दिया जाता है और यदि अन्वेषण दूषित नहीं पाया जाता है, तब अभियोजन पक्ष द्वारा यह साबित कर दिया जाना पर्याप्त है कि वस्तुओं पर पाया गया रक्त, मानव रक्त है भले ही रक्त के विघटन के कारण उसका रक्त समूह साबित न किया जा सका हो।

(ii) जब अन्वेषण एवं अभियोजन साक्ष्य की विश्वसनीयता पर कोई युक्तियुक्त संदेह उत्पन्न न हो और यहां तक कि सीरम विज्ञानी भी सीरम के विघटन या रक्त के धब्बों की कमी या रक्त संबंधी बदलावों के कारण रक्त की उत्पत्ति का पता लगाने में असमर्थ हो, तब भी अभियुक्त को संदेह का लाभ प्रदान करने से इंकार किया जा सकता है।

Balwan Singh v. State of Chhattisgarh and anr.

Judgment dated 06.08.2019 passed by the Supreme Court in Criminal Appeal No. 727 of 2015, reported in (2019) 7 SCC 781 (3 Judge Bench)

Relevant extracts from the judgment:

We are also conscious of the fact that, at times, it may be very difficult for the serologist to detect the origin of the blood due to the disintegration of the serum, or insufficiency of blood-stains, or haematological changes etc. In such situations, the Court, using its judicious mind, may deny the benefit of doubt to the accused, depending on the facts and circumstances of each case, if other evidence of the prosecution is credible and if reasonable doubt does not arise in the mind of the Court about the investigation.

From the aforementioned discussion, in the cases of ***R. Shaji v. State of Kerala, (2013) 14 SCC 266, Gura Singh v. State of Rajasthan, (2001) 2 SCC 205, Jagroop Singh v. State of Punjab, (2012) 11 SCC 768, State of Rajasthan v. Teja Ram and others, (1999) 3 SCC 507, John Pandian v. State Represented by Inspector of Police, Tamil Nadu, (2010) 14 SCC 129*** and ***Prabhu Dayal v. State of Rajasthan, (2018) 8 SCC 127*** we can summarise that if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin though, even though the blood group is not proved because of disintegration of blood. The Court will have to come to the conclusion based on the facts and circumstances of each case, and there cannot be any fixed formula that the prosecution has to prove, or need not prove, that the blood groups match.

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83. EVIDENCE ACT, 1872 – Sections 3 and 32

(i) Multiple dying declarations –

(a) No certificate by the Doctor certifying that the patient was conscious or that the patient was mentally or physically fit to give the declaration.

(b) Absence of the certificate by a Doctor is not fatal to act upon a dying declaration – However, the requirement remains that the person who records the dying declaration must ensure that the patient was in a fit condition, both mentally and physically, to give the declaration.

(ii) Multiple dying declarations; Appreciation of – When there are divergent dying declarations – It is not the law that the court must invariably prefer the statement which is incriminatory and must reject the statement which does not implicate the accused – The real point is to ascertain which contains the truth.

(iii) Multiple dying declarations – Presence of family members while making dying declaration – It is a double-edged sword – On the one hand, if the Police Officer recording the statement was to call somebody else as witness, when the mother and the other relatives are near at hand, it can be challenged on the ground that it is unnatural – On the other hand, if such close relatives are made witnesses and it turns out later on that a case is set up that they had an interest in the declaration being made in a particular manner, again, the prosecution would be in trouble.

साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 32

(i) एकाधिक मृत्युकालिक कथन –

(अ) चिकित्सक का ऐसा कोई प्रमाण पत्र नहीं था कि मरीज सचेत था या मरीज शारीरिक अथवा मानसिक रूप से कथन देने के लिए सक्षम था।

(ब) चिकित्सक के प्रमाण पत्र का अभाव मृत्युकालिक कथन पर विश्वास करने के लिए घातक नहीं है – हालांकि, यह आवश्यकता होती है कि जो मृत्युकालिक कथन अभिलिखित करता है वह यह सुनिश्चित करें कि मरीज घोषणा करने हेतु शारीरिक एवं मानसिक दोनों रूप से सक्षम अवस्था में था।

(ii) एकाधिक मृत्युकालिक कथन की विवेचना – जहां भिन्न मृत्युकालिक कथन हो – ऐसा कानून नहीं है कि न्यायालय को सर्वदा अभियोगात्मक कथन को अधिमान्यता देनी चाहिए और वह कथन अस्वीकार करना चाहिए जो अपराधी को संलिप्त न करता हो – वास्तविक बिन्दु किसमें सत्यता समाविष्ट है, उसका निर्धारण है।

(iii) एकाधिक मृत्युकालिक कथन – मृत्युकालीन कथन देते समय परिवार के सदस्यों की उपस्थिति – यह दो धारी तलवार है – एक ओर, यदि पुलिस अधिकारी द्वारा माता तथा अन्य रिश्तेदार के पास होते हुए भी अन्य गवाह को बुलाता है तो इसे अप्राकृतिक बताते हुए चुनौती दी जा सकती है – दूसरी ओर, ऐसे निकट रिश्तेदारों को गवाह बनाया जाता है और बाद में प्रकरण इस तरह चलता है कि उन गवाहों का उक्त कथन विनिर्दिष्ट प्रकार से दिए जाने में कोई हित है, तब अभियोजन मुश्किल में होगा।

Jagbir Singh v. State (N.C.T. of Delhi)

Judgment dated 04.09.2019 passed by the Supreme Court in Criminal Appeal No. 967 of 2015, reported in AIR 2019 SC 4321

Relevant extracts from the judgment:

We have noticed the contents of the MLC concerning the deceased. Her condition was characterized as critical. She had suffered deep burns. The injuries were understood as dangerous. The patient, no doubt, died only on 02.02.2008, i.e., on the ninth day after admission on 24.01.2008.

As far as the dying declaration made on 27.01.2008 is concerned, particularly, when Doctors were near at hand, the Investigating Officer ought to have taken the caution of obtaining a certificate after the Doctor put questions to the patient for ascertaining her condition. It is equally true that a declaration does not appear to be preceded by questions put by the Investigating Officer to the deceased from which he could ascertain details from which he could have received verification about her condition.

The first question, one must bear in mind, is whether the deceased was in a physical and mental condition to make a dying declaration. It is not in dispute that in the dying declaration dated 27.01.2008, there is no certificate by the Doctor certifying that the patient was conscious or that the patient was mentally or physically fit to give the declaration. The patient was, in fact, admittedly lying in the hospital. Even in the narrative of the dying declaration, there are no questions seen put by PW 29 to ascertain her condition. Undoubtedly, it is true that the certificate by a Doctor about the patient being conscious and fit to give a dying declaration would go a long way in inspiring confidence of the court. However, the Constitution Bench in ***Laxman v. State of Maharashtra, (2002) 6 SCC 710,*** has held as follows:

> ".....Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

We can proceed on the basis that even absence of the certificate by a Doctor is not fatal to act upon a dying declaration. However, the requirement remains that the person who records the dying declaration must ensure that the patient was in a fit condition, both mentally and physically, to give the declaration.

x x x

We are not much impressed by the contention of the State that the statements made at the hospital on 24.01.2008 and to the Police Officer on 25.01.2008, are not dying declarations. Under Section 32 of the Evidence Act any statement made by a person as to the cause of his death or to any circumstance of the transaction which resulted in his death would be relevant. Once it is proved that such statement is made by the deceased then it cannot be brushed aside on the basis that it is not elaborate or that it was not recorded in a particular fashion. We have already noted that the principle that the statement is brief, would not detract from it being reliable. Equally, when there are divergent dying declarations it is not the law that the court must invariably prefer the statement which is incriminatory and must reject the statement which does not implicate the accused. The real point is to ascertain which contains the truth.

x x x

Coming to tutoring and prompting, there is no doubt that it is on PW 1- the co-brother of the appellant informing the Police Officer, the Police Officer - PW 29 came on 27.01.2008 and took down the declaration. It is true that the presence of PW1 and PW7, at the time of making the dying declaration, cannot be doubted. Their proximity with the deceased, before PW 29 came to take the declaration, can be easily assumed.

It is a double-edged sword. On the one hand, if the Police Officer recording the statement was to call somebody else as witness, when the mother and the other relatives are near at hand, it can be challenged on the ground that it is unnatural. On the other hand, if such close relatives are made witnesses and it turns out later on that a case is set up that they had an interest in the declaration being made in a particular manner, again, the prosecution would be in trouble. In this case, however, the nature of the case set up by the appellant to bring the dying declaration under a cloud, on account of the interest shown by PW 1, is the conspiracy theory mainly to prevent the appellant from succeeding to the property. We have already dealt with the same and found that the said version is totally unacceptable. If that be so, in the facts of this case, we cannot read much into the presence of PW1 playing a role he did, namely, calling the Police Officer and being a witness in the dying declaration. PWs 1 and 7 were witnesses to the dying declaration. They have spoken about the dying declaration and about it being recorded by PW 29.

The question then arises about the fact of the previous statements which have been attributed to the deceased contained in the MLC dated 24.01.2008 and in the statement of the deceased recorded on 25.01.2008. The view taken

by the courts is that the deceased and the appellant were admitted in the same hospital, the presence of the appellant would have come in the way of the deceased speaking of the truth.

We are of the view that the courts below were not in error in disregarding the statement attributed to the deceased in the MLC dated 24.01.2008 and the statement taken on the next day, i.e., on 25.01.2008. The incident, admittedly, took place towards in the evening of 24.01.2008. The appellant and the deceased were taken by the Police in the PCR vehicle to the hospital. It is the proximity of the appellant, which apparently stood in the way of the deceased, disclosing the truth of the matter. The appellant and the deceased continued to be in the same hospital on 25.01.2008 also. In this regard, in the dying declaration, relied upon by the prosecution, the deceased has stated that as the appellant had extended threat to her, she could not give a statement on the very same day. Apparently, this means that she has proceeded on the basis that the declaration made on 27.01.2008 is the first dying declaration which she is making. She has, in other words, not treated the statement made on 24.01.2008 at the time when she was admitted, as a declaration. So also, the statement made on 25.01.2008, she was operating under the threat extended by her husband.

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***84. EVIDENCE ACT, 1872 – Sections 30 and 114 Ill. (b)**

Confession recorded in custody (assumed to be admissible in present case u/s 67 of NDPS Act) – Confession of co-accused – Evidentiary value – A confession, recorded when accused is in custody, even when admissible, is a weak piece of evidence and there must be some corroborative evidence – Moreover, evidence of co-accused is also a very weak type of evidence which needs to be corroborated by some other evidence – No such corroborative evidence has been led in present case – Even if confession is admissible, Court has to be satisfied that it is a voluntary statement, free from any pressure and also that accused was apprised of his rights before recording confession – No such material has been brought on record – Conviction reversed.

Note : ***The issue, whether a statement recorded u/s 67 of the NDPS Act can be construed as a confessional statement even if the officer who has recorded such statement was not to be treated as Police Officer, has been referred to a larger Bench in Tofan Singh v. State of T.N., (2013) 16 SCC 31.***

साक्ष्य अधिनियम, 1872 – धाराएं 30 एवं 114 दृष्टांत (ख)

अभिरक्षा में अभिलिखित संस्वीकृति (स्वापक औषधि एवं मनः प्रभावी पदार्थ अधिनियम की धारा 67 के अन्तर्गत प्रस्तुत मामले में ग्राह्य मानी गई) – सह–अभियुक्त की संस्वीकृति – साक्ष्यिक मूल्य – अभियुक्त के अभिरक्षा में रहने के दौरान अभिलिखित संस्वीकृति, यदि वह ग्राह्य भी है, तब भी एक कमजोर साक्ष्य है और वहां कतिपय

संपोषक साक्ष्य होना आवश्यक है – इसके अतिरिक्त सह–अभियुक्त की साक्ष्य भी एक बहुत ही कमजोर प्रकृति की साक्ष्य है जिसका किसी अन्य साक्ष्य से सम्पोषण आवश्यक है – ऐसी कोई संपोषक साक्ष्य प्रस्तुत प्रकरण में नहीं दी गई है – यदि संस्वीकृति ग्राह्य है, तब भी न्यायालय को संतुष्ट होना होगा कि यह एक स्वैच्छिक कथन है, किसी भी दबाव से मुक्त है और संस्वीकृति अभिलिखित किये जाने के पूर्व अभियुक्त को उसके अधिकारों से अवगत कराया गया था – ऐसी कोई साक्ष्य अभिलेख पर नहीं लाई गई है – दोषसिद्धि अपास्त की गई।

नोट : *यह प्रश्न कि क्या स्वापक औषधि एवं मनःप्रभावी पदार्थ अधिनियम की धारा 67 के अंतर्गत एक ऐसे अधिकारी जिसे पुलिस अधिकारी नहीं माना गया था, द्वारा अभिलिखित कथन को संस्वीकृति के रूप में समझा जा सकता है, तोफान सिंह विरूद्ध स्टेट ऑफ तमिलनाडु राज्य (2013) 16 एससीसी 31 में एक वृहद पीठ को निर्दिष्ट किया गया है।*

Mohammed Fasrin v. State Represented by the Intelligence Officer

Judgment dated 04.09.2019 passed by the Supreme Court in Criminal Appeal No. 296 of 2014, reported in (2019) 8 SCC 811

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***85. HINDU SUCCESSION ACT, 1956 – Section 30**
EVIDENCE ACT, 1872 – Section 68

(i) Testamentary succession – Gift deed in favour of stranger – The Burden of proof that the property was ancestral was on the plaintiffs alone – It was for them to prove that the Will of Ashabhai intended to convey the property for the benefit of the family so as to be treated as ancestral property – In the absence of any such averment or proof, the property in the hands of Donor has to be treated as self-acquired property – Once the property in the hands of Donor is held to be self-acquired property, he was competent to deal with his property in such a manner he considers as proper including by executing a gift deed in favour of a stranger to the family.

(ii) Gift deed – Examination of attesting witness – When there is no specific denial of the execution of gift deed – It is not mandatory to call attesting witness for proving the gift deed.

हिन्दू उत्तराधिकार अधिनियम, 1956 – धारा 30

साक्ष्य अधिनियम, 1872 – धारा 68

(i) वसीयती उत्तराधिकार – गैर के पक्ष में दानपत्र – यह प्रमाणित करने का भार की सम्पत्ति पैतृक थी अकेले वादी पर है – यह उन्हें प्रमाणित करना है कि आशाबाई की वसीयत का आशय सम्पत्ति को परिवार के हित के लिए हस्तांरित

करना था जिसे पैतृक सम्पत्ति माना जावे – ऐसे किसी तत्व अथवा प्रमाण के अभाव में दानकर्ता के पास की सम्पत्ति उसकी स्व–अर्जित सम्पत्ति मानी जाएगी – एक बार दानकर्ता के पास की सम्पत्ति स्व–अर्जित मानी जाती है तो वह उस सम्पत्ति के साथ जैसा चाहे वैसा बर्ताव कर सकता है जिसमें गैर के पक्ष में दानपत्र का निष्पादन भी सम्मिलित है।

(ii) दानपत्र – अनुप्रमाणक साक्षी की परीक्षा – जहां दानपत्र के निष्पादन का कोई विनिर्दिष्ट खण्डन न हो – वहां दानपत्र को प्रमाणित करने के लिए अनुप्रमाणक साक्षीगण को बुलाना आवश्यक नहीं है।

Govindbhai Chhotabhai Patel and ors. v. Patel Ramanbhai Mathurbhai

Judgment dated 23.09.2019 passed by the Supreme Court in Civil Appeal No. 7528 of 2019, reported in AIR 2019 SC 4822

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***86. INDIAN PENAL CODE, 1860 – Sections 34, 300 Exception 4, 302 and 304 Part I**

EVIDENCE ACT, 1872 – Section 3

Murder or culpable homicide not amounting to murder – Sudden quarrel – Strained relationship between parties and pendency of civil suit on account of land dispute between them – Concurrent finding of lower Court that verbal duel followed by scuffle between parties culminated in injuries to deceased – Failure of police to explain the reason for not investigating complaint lodged by accused regarding same incident – Suppression of injury report of accused by the prosecution, doubtful – Failure of prosecution to act fairly and place all relevant materials before Court enabling it to take just and fair decision, has caused serious prejudice to accused – Alteration of conviction u/s 302 to that of Section 304 Part I, proper.

भारतीय दण्ड संहिता, 1860 – धाराएं 34, 300 अपवाद 4, 302 एवं 304 भाग–एक

साक्ष्य अधिनियम, 1872 – धारा 3

हत्या या आपराधिक मानव वध जो हत्या नहीं है – अचानक लड़ाई – पक्षकारों के बीच तनावपूर्ण संबंध और भूमि विवाद के संबंध में उनके बीच सिविल वाद का लंबित होना – अधीनस्थ न्यायालय के समवर्ती निष्कर्ष कि पक्षकारों के मध्य मौखिक विवाद तदोपरांत हाथापाई ही मृतक की उपहतियों का मूल कारण था – समान घटना के संबंध में अभियुक्त द्वारा की गई शिकायत पर अन्वेषण नहीं करने के लिये पुलिस के स्पष्टीकरण का अभाव – अभियोजन द्वारा अभियुक्त के उपहति प्रतिवेदन को छिपाया जाना, संदेहास्पद – न्याय संगत और निष्पक्ष निर्णय लेने के लिये न्यायालय के समक्ष समस्त सुसंगत सामग्री प्रस्तुत करने और निष्पक्ष कार्य करने में अभियोजन की

असफलता, अभियुक्त पर गंभीर प्रतिकूल प्रभाव रखती है – धारा 302 के अन्तर्गत दोषसिद्धि को धारा 304 भाग – एक में परिवर्तित किया जाना, उचित पाया गया।

Anand Ramachandra Chougule v. Sidarai Laxman Chougala and ors.

Judgment dated 06.08.2019 passed by the Supreme Court in Criminal Appeal No. 1006 of 2010, reported in AIR 2019 SC 3871

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87. INDIAN PENAL CODE, 1860 – Sections 34 and 304-B
EVIDENCE ACT, 1872 – Sections 3 and 113-B

(i) Dowry death – Elements to be established –

(a) Within 7 years of the marriage, there must happen the death of a woman (the wife).

(b) The death must be caused by any burns or bodily injury or the death must occur otherwise than under normal circumstances.

(c) It must be established that soon before her death, she was subjected to cruelty or harassment.

(d) The cruelty or harassment may be by her husband or any relative of her husband.

(e) The cruelty or harassment by the husband or relative of the husband must be for, or in connection with demand for dowry.

(ii) Presumption – Before presumption is raised, it must be established that the woman was subjected to cruelty or harassment by husband or any relative of her husband – It is not any cruelty that becomes the subject-matter of the provision but it is the cruelty or harassment for or in connection with, demand for dowry.

भारतीय दण्ड संहिता, 1860 – धाराएं 34 एवं 304–(ख)

साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 113–(ख)

(i) दहेज हत्या – स्थापित करने हेतु तत्व –

(अ) महिला (पत्नी) की मृत्यु विवाह के सात वर्ष के भीतर होना चाहिए।

(ब) ऐसी मृत्यु किसी दाह अथवा शारीरिक क्षति के परिणाम स्वरूप होना चाहिए या मृत्यु सामान्य परिस्थितियों से अन्यथा होना चाहिए।

(स) यह स्थापित किया जाना चाहिए कि मृत्यु के शीघ्र पूर्व उसके साथ क्रूरता एवं उत्पीड़न किया गया था।

(द) ऐसी क्रूरता तथा उत्पीड़न उसके पति या पति के नातेदार द्वारा किया जाना चाहिए।

(इ) ऐसी क्रूरता तथा उत्पीड़न उसके पति अथवा पति के नातेदार द्वारा दहेज की मांग अथवा उसके संबंध में किया जाना चाहिए।

(ii) उपधारणा – उपधारणा करने के पूर्व यह स्थापित किया जाना चाहिए कि उक्त महिला के साथ पति अथवा पति के नातेदार द्वारा क्रूरता एवं उत्पीड़न किया गया था – कोई भी क्रूरता उक्त प्रावधान की विषयवस्तु नहीं हो सकती है परन्तु यह ऐसी क्रूरता या उत्पीड़न है जो दहेज की मांग के लिए या उसके संबंध में कारित की गई हो।

Girish Singh v. State of Uttarakhand

Judgment dated 23.07.2019 passed by the Supreme Court in Criminal Appeal No. 1475 of 2009, reported in 2019 AIR SC 4529

Relevant extracts from the Judgment:

The offence created by Section 304B requires the following elements to be present in order that it may apply:

I. Within 7 years of the marriage, there must happen the death of a woman (the wife).

II. The death must be caused by any burns or bodily injury.

OR The death must occur otherwise than under normal circumstances.

III. It must be established that soon before her death, she was subjected to cruelty or harassment.

IV. The cruelty or harassment may be by her husband or any relative of her husband.

V. The cruelty or harassment by the husband or relative of the husband must be for, or in connection with, any demand for dowry.

Section 304B treats this as a dowry death. Therefore, in such circumstances, it further provides that husband or relative shall be deemed to have caused her death. Section 113B of the Indian Evidence Act, 1872 provides for presumption as to dowry death. It provides that when the question is whether the dowry death, namely, the death contemplated under Section 304B of the IPC, has been committed by a person, if it is shown that soon before her death, the woman was subjected by such person to cruelty or harassment, for in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. It is no doubt a rebuttable presumption and it is open to the husband and his relatives to show the absence of the elements of Section 304B.

The foremost aspect to be established by the prosecution is that there was reliable evidence to show that the woman was subjected to cruelty or harassment by her husband or his relatives which must be for or in connection with any demand for dowry, soon before her death. Before the presumption is raised, it must be established that the woman was subjected by such person to cruelty or harassment and it is not any cruelty that becomes the subject matter of the provision but it is the cruelty or harassment for or in connection with, demand for dowry.

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88. INDIAN PENAL CODE, 1860 – Sections 53, 302 and 304 Part II APPRECIATION OF EVIDENCE:

(i) Sentence; awarding of – Objectives explained – Awarding just and adequate punishment is the duty of Court – Gravity of crime, attending circumstances, protection of society, responding to society's call for justice are factors to be taken into account – Proportion between crime and punishment has to be maintained.

(ii) Aggravating and mitigating circumstances – Balance of – Held, any one factor, whether aggravating or mitigating cannot by itself be decisive of question of sentencing – Wherever mitigating circumstances are suggested by accused, Court cannot lose sight of other factors relating to nature of crime, its impact on social order and public interest.

(iii) Whether passage of time is a mitigating circumstance in awarding sentence? Held, No – Mere passage of time is not a clinching factor – But in appropriate cases, it may be of some bearing alongwith other factors.

(iv) Mitigating circumstances – Evaluation of – Whether factors like age of convict (26 years) and incident happened in spur of moment are mitigating to reduce the sentence u/s 304 Part II IPC to less than four months? Held, No – Incident happened in spur of moment was the basic reason to convict accused u/s 304 Part II instead of Section 302 – Age of accused had been the basic reason for awarding 3 years RI which is comparatively lower than what could be awarded (10 years) – Accused convicted for killing his own father – Object of deterrence and protection of society cannot be lost sight of – Three years RI, held proper.

भारतीय दण्ड संहिता, 1860 – धाराएं 53, 302 एवं 304 भाग–दो साक्ष्य का मूल्यांकनः

(i) दण्डादेश अधिनिर्णीत किया जाना – उद्देश्य वर्णित किये गये – न्यायोचित तथा पर्याप्त दण्ड अधिनिर्णीत करना न्यायालय का कर्तव्य है – अपराध की गंभीरता, विद्यमान परिस्थितियां, समाज की सुरक्षा, समाज द्वारा न्याय की मांग की प्रतिक्रिया जैसे कारकों को ध्यान में रखा जाना चाहिए – अपराध तथा दण्ड के बीच एक अनुपात बनाये रखना चाहिए।

(ii) गंभीरता बढ़ाने एवं कम करने वाली परिस्थितियां – सामंजस्य स्थापित करना – अभिनिर्धारित, कोई भी एक कारक चाहे गंभीरता बढ़ाने अथवा कम करने वाला हो, स्वतः में दण्ड के प्रश्न को विनिश्चित नहीं कर सकता – जब भी अभियुक्त द्वारा गंभीरता कम करने वाली परिस्थितियां प्रकट की जाती है तो न्यायालय अपराध की प्रकृति, सामाजिक व्यवस्था पर इसके प्रभाव तथा लोकहित से संबंधित कारकों को अनदेखा नहीं कर सकता।

(iii) क्या समय का व्यतीत हो जाना दण्ड के अधिनिर्णयन में गंभीरता कम करने वाली परिस्थिति है? अभिनिर्धारित, नहीं – मात्र समय का व्यतीत होना कोई सुदृढ़ कारक नहीं है – किन्तु युक्तियुक्त मामलों में अन्य कारकों के साथ इसे ध्यान में रखा जा सकता है।

(iv) गंभीरता कम करने वाली परिस्थितियां – निर्धारण – क्या दोषी की आयु (26 वर्ष) तथा क्षणिक आवेश में घटित घटना जैसे कारक भारतीय दण्ड संहिता की धारा 304 भाग–दो के अंतर्गत दण्ड को चार माह से कम करने के लिए गंभीरता कम करने वाली परिस्थिति हो सकती हैं? अभिनिर्धारित, नहीं – क्षणिक आवेश में घटना का होना ही अभियुक्त को धारा 302 के स्थान पर धारा 304 भाग–दो में दण्डित करने का मुख्य कारण था – अभियुक्त की आयु ही 3 वर्ष का सश्रम कारावास अधिनिर्णीत करने का मुख्य कारण था जो इस अपराध में अधिनिर्णीत योग्य (10 वर्ष) कारावास अवधि से कहीं न्यूनतर है – अभियुक्त को उसके पिता की मृत्यु कारित करने के लिये दोषसिद्ध किया गया – निवारण के उद्देश्य तथा समाज की सुरक्षा को अनदेखा नहीं किया जा सकता – तीन वर्ष के सश्रम कारावास को उचित ठहराया गया।

State of Madhya Pradesh v. Suresh

Judgment dated 20.02.2019 passed by the Supreme Court in Criminal Appeal No. 319 of 2019, reported in AIR 2019 SC 1377

Relevant extracts from the judgment:

Awarding of just and adequate punishment to the wrong doer in case of proven crime remains a part of duty of the Court. The punishment to be awarded in a case has to be commensurate with the gravity of crime as also with the relevant facts and attending circumstances. Of course, the task is of striking a delicate balance between the mitigating and aggravating circumstances. At the same time, the avowed objects of law, of protection of society and responding to the society's call for justice, need to be kept in mind while taking up the question of sentencing in any given case. In the ultimate analysis, the proportion between the crime and punishment has to be maintained while further balancing the rights of the wrong doer as also of the victim of the crime and the society at large. No strait jacket formula for sentencing is available but the requirement of taking a holistic view of the matter cannot be forgotten.

In the process of sentencing, any one factor, whether of extenuating circumstance or aggravating, cannot, by itself, be decisive of the matter. In the same sequence, we may observe that mere passage of time, by itself, cannot be a clinching factor though, in an appropriate case, it may be of some bearing, along with other relevant factors. Moreover, when certain extenuating or mitigating circumstances are suggested on behalf of the convict, the other factors relating to the nature of crime and its impact on the social order and public interest cannot be lost sight of.

So far the mitigating factors, as taken into consideration by the High Court are concerned, noticeable it is that the same had already gone into consideration when the Trial Court awarded a comparatively lesser punishment of 3 years' imprisonment for the offence punishable with imprisonment for a term that may extend to 10 years, or with fine, or with both. In fact, the factor that the incident had happened at the 'spur of moment' had been the basic reason for the respondent having been convicted for the offence of culpable homicide not amounting to murder under Section 304 Part II IPC though he was charged for the offence of murder under Section 302 IPC. This factor could not have resulted in awarding just a symbolic punishment. Then, the factor that the respondent was 26 years of age had been the basic reason for awarding comparatively lower punishment of 3 years' imprisonment. This factor has no further impelling characteristics which would justify yet further reduction of the punishment than that awarded by the Trial Court. Moreover, the third factor, of the respondent himself taking his father to hospital, carries with it the elements of pretence as also deception on the part of the respondent, particularly when he falsely stated that the victim sustained injury due to the fall. Therefore, all the aforementioned factors could not have resulted in further reduction of the sentence as awarded by the Trial Court.

The High Court also appears to have omitted to consider the requirement of balancing the mitigating and aggravating factors while dealing with the question of awarding just and adequate punishment. The facts and the surrounding factors of this case make it clear that, the offending act in question had been of respondent assaulting his father with a blunt object which resulted in the fracture of skull of the victim at parietal region. Then, the respondent attempted to cover up the crime by taking his father to hospital and suggesting as if the victim sustained injury because of fall from the roof. Thus, the acts and deeds of the respondent had been of killing his own father and then, of furnishing false information. The homicidal act of the respondent had, in fact, been of patricide; killing of one's own father. In such a case, there was no further scope for leniency on the question of punishment than what had already been shown by the Trial Court; and the High Court was not justified in reducing the sentence to an abysmally inadequate period of less than 4 months. The observations of the High Court that no useful purpose would be served by detention of the accused cannot be approved in this case for the reason that the objects of deterrence as also protection of society are not lost with mere passage of time.

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89. INDIAN PENAL CODE, 1860 – Sections 53, 302, 376 and 376-A CRIMINAL PROCEDURE CODE, 1973 – Section 354

(i) Death sentence; award of – Cases based on circumstantial evidence – Whether death sentence can never be awarded in cases based on circumstantial evidence? Held, no – There is no absolute principle of law that no death sentence can be awarded in a case where conviction is based on circumstantial evidence.

(ii) Death sentence – Doctrine of "residual doubt" – Explained – Residual doubt is any remaining or lingering doubt about accused's guilt which might remain at the sentencing stage – Residual doubts are not relevant for conviction but acts as a mitigating circumstance while considering "rarest of rare" category.

भारतीय दण्ड संहिता, 1860 – धाराएं 53, 302, 376 एवं 376–ए दण्ड प्रक्रिया संहिता, 1973 – धारा 354

(i) मृत्युदण्ड अधिरोपित किया जाना – परिस्थितिजन्य साक्ष्य पर आधारित मामले – क्या परिस्थितिजन्य साक्ष्य पर आधारित मामलों में मृत्युदण्ड कभी नहीं दिया जा सकता है? अभिनिर्धारित, नहीं – विधि का ऐसा कोई मानक सिद्धांत नहीं है कि परिस्थितिजन्य साक्ष्य पर आधारित मामलों में मुत्युदण्ड अधिरोपित नहीं किया जा सकता है।

(ii) मुत्युदण्ड – ''अवशिष्ट संदेह'' का सिद्धांत – व्याख्या की गई – अवशिष्ट संदेह अभियुक्त की दोषिता के बारे में कोई शेष या बचा हुआ संदेह है जो दण्डादेश के प्रक्रम पर बना रह सकता है – अवशिष्ट संदेह दोषसिद्धि के लिए प्रासंगिक नहीं होता है, परन्तु ''विरल से भी विरलतम'' श्रेणी का मामला होने का विचार करते समय एक गंभीरता कम करने वाली परिस्थिति के रूप में कार्य करता है।

Ravishankar @ Baba Vishwakarma v. State of M.P.

Judgment dated 03.10.2019 passed by the Supreme Court in Criminal Appeal No. 1523 of 2019, reported in (2019) 9 SCC 689 (Three Judge Bench)

Relevant extracts from the judgment:

On a detailed examination of precedents, it appears to us that it would be totally imprudent to lay down an absolute principle of law that no death sentence can be awarded in a case where conviction is based on circumstantial evidence. Such a standard would be ripe for abuse by seasoned criminals who always make sure to destroy direct evidence. Further in many cases of rape and murder of children, the victims owing to their tender age can put up no resistance. In such cases it is extremely likely that there would be no ocular evidence. It cannot, therefore, be said that in every such case notwithstanding that the prosecution has proved the case beyond reasonable doubt, the Court must not award capital punishment for the mere reason that the offender has not been seen committing the crime by an eye-witness. Such a reasoning, if applied uniformly and mechanically will have devastating effects on the society which is a dominant stakeholder in the administration of our criminal justice system.

Further, another nascent evolution in the theory of death sentencing can be distilled. This Court has increasingly become cognizant of "residual doubt" in many recent cases which effectively create a higher standard of proof over and above the "beyond reasonable doubt" standard used at the stage of conviction,

as a safeguard against routine capital sentencing, keeping in mind the irreversibility of death.

Ashok Debbarma v. State of Tripura, (2014) 4 SCC 747 drew a distinction between a "residual doubt", which is any remaining or lingering doubt about the defendant's guilt which might remain at the sentencing stage despite satisfaction of the "beyond a reasonable doubt" standard during conviction, and reasonable doubts which as defined in ***Krishnan v. State, (2003) 7 SCC 56*** are "actual and substantive, and not merely imaginary, trivial or merely possible". These "residual doubts" although not relevant for conviction, would tilt towards mitigating circumstance to be taken note of whilst considering whether the case falls under the "rarest of rare" category.

In the present case, there are some residual doubts in our mind. A crucial witness for constructing the last seen theory, PW 5 is partly inconsistent in cross-examination and quickly jumps from one statement to the other. Two other witnesses, PW 6 and PW 7 had seen the appellant feeding biscuits to the deceased one year before the incident and their long delay in reporting the same fails to inspire confidence. The mother of the deceased has deposed that the wife and daughter of the appellant came to her house and demanded the return of the money which she had borrowed from them but failed to mention that she suspected the appellant of committing the crime initially. Ligature marks on the neck evidencing throttling were noted by PW 20 and PW 12 and in the post-mortem report, but find no mention in the panchnama prepared by the police. Viscera samples sent for chemical testing were spoilt and hence remained unexamined. Although nails' scrapings of the accused were collected, no report has been produced to show that DNA of the deceased was present. Another initial suspect, Baba alias Ashok Kaurav absconded during investigation, hence, gave rise to the possibility of involvement of more than one person. All these factors of course have no impact in formation of the chain of evidence and are wholly insufficient to create reasonable doubt to earn acquittal.

We are thus of the considered view that the present case falls short of the "rarest of rare" cases where the death sentence alone deserves to be awarded to the appellant. It appears to us in the light of all the cumulative circumstances that the cause of justice will be effectively served by invoking the concept of special sentencing theory as evolved by this Court in ***Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 and approved in Union of India v. V. Sriharan, (2016) 7 SCC 1***.

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90. INDIAN PENAL CODE, 1860 – Sections 96, 203 and 304 Part II APPRECIATION OF EVIDENCE:
Right of private defence – Extent of causing death – Forest Range Officer charged for causing death of deceased by firing – Deceased party comprising four persons – All surviving members of deceased party turned hostile – Accused pleaded right of private defence –

He immediately lodged FIR and produced two members of deceased party before police – Fire was from official gun – Defence projected that deceased party was smuggling sandalwood – One country made gun and 276 kgs of sandalwood found in vehicle of deceased party – Prosecution story was that accused planted sandalwood and gun in deceased party's vehicle – No evidence brought by prosecution that how accused got such quantity of sandalwood and gun for planting – Held, right of private defence was established – Accused being Forest Range Officer, had duty to protect forests – He intercepted deceased party's vehicle at around 06:30 a.m. while patrolling – Deceased party started pelting stones on accused – They were four in number while accused was only with his driver – Deceased party became aggressor and accused had reasonable apprehension that either death or grievous hurt would be cause to him.

भारतीय दण्ड संहिता, 1860 – धाराएं 96, 203 एवं 304 भाग–दो साक्ष्य का मूल्यांकनः

निज प्रतिरक्षा का अधिकार – मृत्यु कारित करने तक विस्तार – वन परिक्षेत्र अधिकारी को मृतक की गोली मारकर हत्या कारित करने के लिये आरोपित किया गया – मृतक पक्ष में चार व्यक्ति थे – मृतक पक्ष के सभी जीवित सदस्य पक्षद्रोही हो गये – अभियुक्त द्वारा निज प्रतिरक्षा का बचाव लिया गया – उसने तत्काल प्रथम सूचना रिपोर्ट दर्ज कराई तथा मृतक पक्ष के दो सदस्यों को पुलिस के समक्ष प्रस्तुत किया – गोली शासकीय बंदूक से चलाई गई थी – बचाव लिया गया कि मृतक पक्ष चंदन की लकड़ी की तस्करी कर रहा था – मृतक पक्ष के वाहन में एक देशी बंदूक तथा 276 किलोग्राम चंदन की लकड़ी पाई गई – अभियोजन कहानी यह थी कि अभियुक्त ने ही मृतक के वाहन में बंदूक तथा चंदन की लकड़ी रखी थी – अभियोजन द्वारा ऐसी कोई साक्ष्य प्रस्तुत नहीं की गई कि अभियुक्त को इतनी मात्रा में चंदन की लकड़ी तथा बंदूक रखने के लिए कैसे प्राप्त हुई – अभिनिर्धारित, निज प्रतिरक्षा का अधिकार स्थापित होता है – अभियुक्त का वन परिक्षेत्र अधिकारी होने के नाते वन को सुरक्षित रखने का कर्तव्य था – उसने प्रातः लगभग 06:30 बजे गश्ती के दौरान मृतक पक्ष के वाहन को रोका – मृतक पक्ष ने अभियुक्त पर पत्थर बरसाना शुरू कर दिया – वे संख्या में चार थे जबकि अभियुक्त मात्र अपने ड्राईवर के साथ था – मृतक पक्ष के उग्र हो जाने से अभियुक्त को युक्तियुक्त आशंका हो गई थी कि उसे या तो मृत्यु या घोर उपहति कारित हो सकती है।

Sukumaran v. State Represented by the Inspector of Police
Judgment dated 07.03.2019 passed by the Supreme Court in Criminal Appeal No. 5 of 2009, reported in AIR 2019 SC 1389

Relevant extracts from the judgment:

This Court examined this question in the case of ***Darshan Singh v. State of Punjab and anr., (2010) 2 SCC 333*** and laid down the following 10 principles after analyzing Sections 96 to 106 IPC which read as under:

> "(i) Self-preservation is the basic human instinct and is duly recognised by the criminal jurisprudence of all civilised countries. All free, democratic and civilised countries recognise the right of private defence within certain reasonable limits.
>
> (ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.
>
> (iii) A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.
>
> (iv) The right of private defence commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension.
>
> (v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.
>
> (vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.
>
> (vii) It is well-settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.
>
> (viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.
>
> (ix) The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.
>
> (x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened."

Reading the contents of the FIR (Ex.P9) coupled with the appellant's evidence (DW1), we find that firstly, there is a variation in the prosecution version and the appellant's version on the manner in which the incident in question

occurred. However, having perused the FIR (Ex.P9) lodged by the appellant and his evidence as DW1, we are inclined to accept the version of the appellant on the manner in which the incident occurred.

In other words, having regard to the manner in which the incident occurred, the appellant, in our view, was entitled to exercise his right of private defence against the deceased party inasmuch as it was established on the basis of the factual scenario on the spot that the appellant had reasonable grounds for apprehending that either death or grievous hurt would be caused to him or to his driver (A2). It is clear from the following facts and the reasoning detailed infra.

First, when the incident occurred in the early morning at around 6.30 a.m., the appellant was patrolling in the forest in official vehicle with his driver (A2) since overnight; Second, by virtue of his post, he was given Jeep and the gun for the protection of forest area, forest produce, his own body and the body of others on duty with him; Third, the deceased party having seen that the appellant was chasing their lorry made attempt to flee from the place in the first instance but after some time stopped and got down from their lorry and started pelting stones on the appellant's jeep which suffered damage; Fourth, the deceased party consisted of four persons with weapon-Gun with them whereas the appellant and his driver (A2) were two.

Fifth, there is no evidence to show as to why the deceased party was roaming in the forest area in their lorry in such early hours. Sixth, it is not in dispute that the forest in question is known for producing sandalwoods and sandalwood being an expensive commodity for sale in the market, the people were indulging in its smuggling at a large scale in the forest area; Seventh, the appellant had noticed that the deceased party was trying to become aggressor in an encounter between him and the deceased party because the deceased party had started pelting stones on them so that the appellant is not able to apprehend them. Eighth, the deceased party not only was pelting the stones but also shouting "fire them".

Ninth, the appellant, in such scenario, had rightly formed a reasonable apprehension that either death or grievous hurt may cause to him or/and to his driver (A2). Tenth, in these circumstances, it was enough for the appellant to also react in his self defence against the deceased party and fire from his gun towards the deceased party to save him and his driver (A2); Eleventh, the appellant having seen the suspicious movements of the deceased party in the forest area rightly formed an opinion that the deceased party was moving around in the forest to smuggle the sandalwoods. The appellant was, therefore, entitled to chase the deceased party and apprehend them for being prosecuted for commission of offence punishable under the forest laws. Indeed, that was his duty; Twelfth, there was no motive attributed to the appellant towards any member of the deceased party; Thirteenth, the appellant and A2 rightly caught hold of PWs 1 and 2 and brought them to the police station; and lastly, the appellant promptly filed a complaint (Ex.P8/9) in the police station narrating therein the

entire incident and the manner in which it occurred and also surrendered the gun recovered from the deceased party and his own gun.

The High Court, in our view, failed to appreciate that firstly, the appellant had every reason to believe that due to suspicious movement of the deceased party in the forest, they were trying to smuggle the sandalwood from the forest. Secondly, the deceased party was aggressor because, as held above, they first pelted the stones and damaged the appellant's vehicle shouting "fire them". Thirdly, the appellant's duty was to apprehend the culprits who were involved in the activity of smuggling sandalwoods and at the same time to protect himself and his driver in case of any eventuality arising while apprehending the culprits.

Having seen the incident in this perspective, we are of the opinion that firing the gun shot by the appellant towards the deceased party cannot be said to be in any way unjustified. In fact, the appellant while firing the gun shot did not target any particular person out of four as such but fired to resist their aggression towards him and his driver (A2). If the appellant had not fired, the deceased party having said "fire them" could either use their gun in shooting the appellant or A2 or would have run away from the spot to avoid their arrest. It is not in dispute that one gun was seized from the deceased party on their arrest which was deposited by the appellant along with his own gun in the police station while registering the FIR (EX.P9).

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***91. INDIAN PENAL CODE, 1860 – Sections 120B, 409 and 477A**
EVIDENCE ACT, 1872 – Section 3
APPRECIATION OF EVIDENCE:
FIR (initial complaint) and charge sheet – Difference in quantity of items misappropriate or amount falsified; effect of – Held, merely because less quantity or amount was mentioned in initial complaint, Court cannot ignore the quantity or amount mentioned in charge sheet which is revealed after investigation.

भारतीय दण्ड संहिता, 1860 – धाराएं 120ख, 409 एवं 477क

साक्ष्य अधिनियम, 1872 – धारा 3

साक्ष्य का मूल्यांकनः

प्रथम सूचना प्रतिवेदन (प्रारंभिक शिकायत) और आरोप पत्र – दुर्विनियोजित संपत्ति की मात्रा एवं खाते में असत्य प्रविष्टि की राशि की मात्रा में भिन्नता; प्रभाव – अभिनिर्धारित, मात्र इस कारण कि प्रारंभिक शिकायत में कम मात्रा या राशि का उल्लेख किया गया था, न्यायालय अनुसंधान के पश्चात् प्रकट एवं आरोप पत्र में उल्लेखित मात्रा या राशि को नजर अंदाज नहीं कर सकती है।

Shiv Shankar Prasad Singh v. State of Bihar
Judgment dated 28.02.2019 passed by the Supreme Court in Criminal Appeal No. 1804 of 2011, reported in AIR 2019 SC 1190

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***92. INDIAN PENAL CODE, 1860 – Sections 120-B, 420, 467, 468, 471 and 477-A**

EVIDENCE ACT, 1872 – Sections 3 and 45

Falsification of account, cheating, forgery and criminal conspiracy – Proof – Allegations of opening and operating fictitious bank accounts by accused persons, employees of bank – Fact that they gave their specimen writing and signature during investigation, proved – Writings on receipt of pass book and cheque book from Bank Record and signatures on cheques presented to withdraw cash from fictitious bank account, are in handwriting of accused persons impersonating fictitious account holder – Report of hand writing experts relied upon by prosecution remained unchallenged – Conspiracy, established – Conviction of accused persons, proper.

भारतीय दण्ड संहिता, 1860 – धाराएं 120–ख, 420, 467, 468, 471 एवं 477–क

साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 45

खाते का मिथ्याकरण, छल, कूटरचना और अपराधिक षड़यंत्र – सबूत – अभियुक्त व्यक्तियों, बैंक के कर्मचारियों द्वारा काल्पनिक बैंक खाते खोलने व संचालित करने का अभियोग – तथ्य कि उनके द्वारा नमूना हस्तलेख एवं हस्ताक्षर अन्वेषण के दौरान दिये गये थे, साबित – पासबुक रसीद पर लेख और बैंक अभिलेखों की चेकबुक और काल्पनिक खातों से राशि आहरित करने हेतु प्रस्तुत चेकों पर हस्ताक्षर, धारक का प्रतिरूपण करते हुए अभियुक्त व्यक्तियों की हस्तलिपि में है – अभियोजन द्वारा अवलंबित हस्तलेख विशेषज्ञ का प्रतिवेदन चुनौतीहीन रहा है – षड़यंत्र, स्थापित – अभियुक्त व्यक्तियों की दोषसिद्धि, उचित पाई गई।

Ram Gopal v. Central Bureau of Investigation, Dehradun

Judgment dated 22.07.2019 passed by the Supreme Court in Criminal Appeal No. 1085 of 2019, reported in AIR 2019 SC 3635

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93. INDIAN PENAL CODE, 1860 – Sections 300, 302 and 304 Part II

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Section 3(2)(v)

(i) Culpable homicide not amounting to murder – Where the occurrence took place suddenly and there was no premeditation on the part of the accused, it falls under Exception 4 to Section 300 IPC.

(ii) The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste or Scheduled Tribe.

भारतीय दण्ड संहिता, 1860 – धाराएं 300, 302 एवं 304 भाग–दो अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 – धारा 3(2)(v)

(i) हत्या की कोटि में न आने वाला मानव वध – जहां घटना अभियुक्त के भाग पर पूर्व चिंतन के बिना तथा अचानक होती है, वह भा.दं.सं की धारा 300 के अपवाद क्रमांक 4 के अंतर्गत आता है।

(ii) अपराध किसी व्यक्ति के विरूद्ध इस आधार पर किया जाना चाहिए कि वह व्यक्ति अनुसूचित जाति या अनुसूचित जनजाति का सदस्य है।

Khuman Singh v. State of Madhya Pradesh

Judgment dated 27.08.2019 passed by the Supreme Court in Criminal Appeal No. 1283 of 2019, reported in AIR 2019 SC 4030

Relevant extracts from the judgment:

The question falling for consideration is whether the appellant-accused intentionally caused the death of deceased Veer Singh? The entire incident occurred when the appellant had taken his buffaloes for grazing in the field of deceased for which the deceased objected and drove all the buffaloes out of his field. It is in these circumstances, the appellant became furious and abused the deceased and caused injuries on his head in a sudden fight with axe. There was no premeditation for the occurrence and because of the grazing of the cattle, in a sudden fight, the occurrence had taken place.

The question to be considered is whether the act of the appellant-accused would fall under Exception 4 to Section 300 IPC? Exception 4 to Section 300 IPC can be invoked if death is caused:- (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. In the present case, the appellant-accused and the deceased exchanged wordy abuses on which, appellant gave the deceased blows on his head causing six head injuries. Where the occurrence took place suddenly and there was no premeditation on the part of the accused, it falls under Exception 4 to Section 300 IPC.

As discussed earlier, the entire incident was in a sudden fight in which the appellant-accused caused head injuries on the deceased with an axe. There was no prior deliberation or determination to fight. The sudden quarrel arose between the parties due to trivial issue of grazing the buffaloes of the appellant for which, the deceased raised objection. In a sudden fight, the appellant had inflicted blows on the head of the deceased with an axe which caused six head injuries. Though the weapon used by the appellant was axe and the injuries were inflicted on the vital part of the body viz. head, knowledge is attributable to the appellant-accused that the injuries are likely to cause death. Considering the fact that the occurrence was in a sudden fight, in our view, the occurrence would fall under Exception 4 to Section 300 IPC. The conviction of the

appellant-accused under Section 302 IPC is therefore to be modified as conviction under Section 304 Part II IPC.

x x x

The next question falling for consideration is whether the conviction under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act can be sustained? Deceased belongs to "Khangar" Caste and in a wordy altercation, appellant-accused is said to have called the deceased by his caste name "Khangar" and attacked him with an axe. Calling of the deceased by his Caste name is admittedly in the field when there was a sudden quarrel regarding grazing of the buffaloes.

From the evidence and other materials on record, there is nothing to suggest that the offence was committed by the appellant only because the deceased belonged to a Scheduled Caste. Both the trial court and the High Court recorded the finding that the appellant-accused scolded the deceased Veer Singh that he belongs to "Khangar" Caste and how he could drive away the cattle of the person belonging to "Thakur" Caste and therefore, the appellant-accused has committed the offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Section 3 of the said Act deals with the punishments for offences of atrocities committed under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Section 3(2)(v) of the Act reads as under:-

> "Section 3 – Punishments for offences of atrocities – (1) ... (2) Whoever, not being a member of a Scheduled Caste or a Schedule Tribe, - ... (v) commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine."

The object of Section 3(2)(v) of the Act is to provide for enhanced punishment with regard to the offences under the Indian Penal Code punishable with imprisonment for a term often years or more against a person or property knowing that the victim is a member of a Scheduled Caste or a Scheduled Tribe.

In ***Dinesh alias Buddha v. State of Rajasthan, (2006) 3 SCC 771,*** the Supreme Court held as under:-

> "15. *Sine qua non* for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of

evidence to that effect, Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.

As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to "Khangar"- Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable.

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94. INDIAN PENAL CODE, 1860 – Section 302
EVIDENCE ACT, 1872 – Sections 3 and 45
CRIMINAL PROCEDURE CODE, 1973 – Section 154
APPRECIATION OF EVIDENCE:

(i) Contradiction and inconsistencies in evidence of eye-witnesses; effect of – There were contradiction and inconsistencies amongst eye-witnesses with respect to nature of *lathi* blows given to the deceased, part of body where the bullet was shot (left eye and face) and distance from which bullet was shot (two eye-witnesses said shot from very close and one said from 1-2 yards) – Held, these contradictions are minor and does not shake the trustworthiness of eye-witnesses – Power of observation differs from person to person – Prime event of attack and weapon were common among testimony of eye-witnesses – Their evidence cannot be doubted for minor contradictions.

(ii) Eye-witness; credibility of – Eye-witness had criminal antecedents and had inimical terms with accused persons – Held, this cannot be a ground to doubt his testimony.

(iii) FIR and inquest report – Mention of inquest number in FIR; effect of – Held, inquest being done at the spot and FIR being registered at the Police Station, merely because FIR contains inquest number, it cannot be said that FIR was registered subsequent to inquest.

(iv) Medical vs. ocular evidence – Inconsistencies; effect of – Post-mortem suggested that cornea and remaining part of left eye of deceased was completely missing and bullet was found near cerebellum – Medical expert opined that bullet must have been shot from very close distance of about one feet. One eye-witness stated that bullet was shot from a distance of about 1-2 yards – Held, oral evidence has to be given primacy and medical evidence is basically opinionative – It is only when

the medical evidence is specifically ruled out the injury claimed in oral evidence, Court has to draw adverse inference.

(v) Expert evidence – Indecisive opinion – FSL report; effect of – In FSL report, expert opined that the barrel marks found on the cartridge were not sufficient for decisive matching with the recovered pistol – Held, when prosecution case is based on eye-witnesses, indecisive opinion of experts would not affect the prosecution case.

भारतीय दण्ड संहिता, 1860 – धारा 302

साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 45

दण्ड प्रक्रिया संहिता, 1973 – धारा 154

साक्ष्य का मूल्यांकनः

(i) चक्षुदर्शी साक्षियों की साक्ष्य में विरोधाभास और विसंगतियाँ – प्रभाव – मृतक को लाठी से कारित वारों की प्रकृति और शरीर के किस हिस्से पर गोली लगी थी (बाईं आंख और चेहरा) और जिस दूरी से गोली मारी गई थी (दो चक्षुदर्शी साक्षियों ने बहुत पास से मारा बताया और एक ने 1–2 गज की दूरी से कहा) के संबंध में चक्षुदर्शी साक्षियों में विरोधाभास और विसंगतियां थी – अभिनिर्धारित, यह विरोधाभास तुच्छ है और चक्षुदर्शी साक्षियों की विश्वसनीयता को विचलित नहीं करते है – प्रत्येक व्यक्ति की अवलोकन शक्ति भिन्न होती है – प्रहार की मुख्य घटना और हथियार चक्षुदर्शी साक्षियों की साक्ष्य में समरूप है – मामूली विरोधाभास के कारण उनकी साक्ष्य पर संदेह नहीं किया जा सकता है।

(ii) चक्षुदर्शी साक्षी की विश्वसनीयता – चक्षुदर्शी साक्षी का आपराधिक आचरण है और अभियुक्त व्यक्तियों के साथ विद्वेषपूर्ण संबंध थे – अभिनिर्धारित, यह उसकी साक्ष्य पर संदेह करने का आधार नहीं है।

(iii) प्रथम सूचना प्रतिवेदन और मृत्यु समीक्षा प्रतिवेदन – प्रथम सूचना प्रतिवेदन में मृत्यु समीक्षा नंबर का उल्लेख – प्रभाव – अभिनिर्धारित, मृत्यु समीक्षा मौके पर की गई और प्रथम सूचना प्रतिवेदन पुलिस थाने पर दर्ज की गई – मात्र इस आधार पर कि प्रथम सूचना प्रतिवेदन में मृत्यु समीक्षा प्रतिवेदन का नंबर है, यह नहीं कहा जा सकता कि प्रथम सूचना प्रतिवेदन मृत्यु समीक्षा प्रतिवेदन के बाद दर्ज की गई है।

(iv) चिकित्सीय विरूद्ध मौखिक साक्ष्य – विसंगतियाँ – प्रभाव – शव परीक्षण के अनुसार मृतक की बांई आंख का कार्निया और शेष हिस्सा पूरी तरह से गायब था और कैरिबैलम के पास गोली पाई गई थी – चिकित्सक ने राय दी कि गोली बहुत पास से लगभग एक फिट की दूरी से चलाई गई होगी – एक चक्षुदर्शी साक्षी ने कहा कि गोली 1–2 गज की दूरी से चलाई गई थी – अभिनिर्धारित, मौखिक साक्ष्य को प्रधानता दी जानी चाहिए और चिकित्सीय साक्ष्य मूल रूप से

राय है – जब चिकित्सीय साक्ष्य विशेष रूप से मौखिक साक्ष्य में दावा की गई चोट से इंकार करती है, तब ही न्यायालय को प्रतिकूल निष्कर्ष निकालना चाहिए।

(v) विशेषज्ञ साक्ष्य – एफ.एस.एल. रिपोर्ट में अनिर्णायक राय का प्रभाव – विशेषज्ञ ने दावा किया कि कारतूस पर पाए गए बैरल के निशान बरामद पिस्तौल के साथ निर्णायक मिलान के लिए पर्याप्त नहीं थे – अभिनिर्धारित, जब अभियोजन का मामला चक्षुदर्शी साक्षियों पर आधारित है, विशेषज्ञ की अनिर्णायक राय अभियोजन के मामले को प्रभावित नहीं करती है।

Balvir Singh and ors. v. State of Madhya Pradesh

Judgment dated 19.02.2019 passed by the Supreme Court in Criminal Appeal No. 1115 of 2010, reported in 2019 CriLJ 4100 (SC)

Relevant extracts from the judgment:

Re: Contention - Inconsistency between the Medical Evidence and Oral Evidence – In his evidence, PW-2 has stated that Harnam Singh fired shot at Mohan's face and PWs 3 and 13 stated that Harnam Singh fired at the left eye of Mohan. As pointed out earlier, in his evidence, Dr. P.K. Jain (PW-9) stated that the cornea and remaining part of the left eye was completely missing and a bullet was found near the cerebellum. Gun powder was found present in the eyes of the deceased. PW-9 opined that the cause of death was due to damage of brain centre present in the skull due to injuries caused by the cartridge which resulted in stoppage of heart beat and respiration. As per the opinion of Dr. Jain (PW-9), death was caused mainly due to bullet hit in the brain. On being questioned, PW-9 stated that the fire was from a close distance as seen from the presence of gun powder in the left eye of the deceased. Dr. Jain has opined that since there were marks of gunshot around the left eye, the shot must have been fired from very close distance of about one foot.

Contention of the appellant is that PW-2 in his evidence stated that Harnam Singh was about 1-2 yards away from deceased Mohan at the time when the bullet was fired. It was therefore contended that the contradictions regarding the distance from which the accused Harnam Singh fired at Mohan raises serious doubts about the prosecution case.

Of course, PW-2 has stated that when Harnam Singh fired, he was at a distance of 1-2 yards away from Mohan; but PWs 3 and 13 have clearly stated that the deceased was held by appellants Balvir Singh and Bhav Singh and Harnam Singh fired at the deceased from a close distance. As pointed out earlier, accused Balvir Singh and Bhav Singh were said to be holding the hands of the deceased and it is possible that the gun shot hit at the eyes of Mohan. All three eye witnesses have consistently stated that Harnam Singh fired the gunshot at the face of Mohan. The variation in the evidence of PW-2 as to the distance from which the bullet was fired cannot be said to be fatal affecting the prosecution case.

It is well settled that the oral evidence has to get primacy since medical evidence is basically opinionative. In ***Ramanand Yadav v. Prabhu Nath Jha and others, (2003) 12 SCC 606,*** the Supreme Court held as under:-

> "17. So far as the alleged variance between medical evidence and ocular evidence is concerned, it is trite law that oral evidence has to get primacy and medical evidence is basically opinionative. It is only when the medical evidence specifically rules out the injury as is claimed to have been inflicted as per the oral testimony, then only in a given case the court has to draw adverse inference."

The same principle was reiterated in ***State of U.P. v. Krishna Gopal and another, (1988) 4 SCC 302,*** where the Supreme Court held "that eye-witnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility."

The inconsistencies pointed out in the evidence of eye-witnesses *inter se* and the alleged inconsistencies between the evidence of eye-witnesses and that of the medical evidence are minor contradictions and they do not shake the prosecution case. The evidence of eye witnesses are the eyes and ears of justice. The consistent version of PWs 2, 3 and 13 cannot be decided on the touchstone of medical evidence.

Ext.-P30 is the FSL report as per which the pistol (Article 'A') is a country made pistol which was found to be in operative condition and the testing was successfully done. The bullet recovered from the body of deceased Mohan was marked as EB1. In the FSL report, expert opined that the barrel marks found on the cartridge were not sufficient for decisive matching. The FSL report reads as under:-

> "Exhibit A1 is one Country Made Pistol, which is made to fire 0.315" bore Cartridge. It is in working condition. It's Barrel is found to have remnants of firing. It is not possible to say with scientific certainty the last time this was fired. It can be fired to cause injury likely to cause death.
>
> Exhibit EB1 is one 0.315" bore cartridge like bullet. It is copper jacketed/of soft point and is partially damaged. It does not have marks of regular firing. It has barrel marks which are not sufficient. Thus in absence of matching it is not possible to say whether this is fired from Exhibit A1 or any other similar pistol like Exhibit A1."

From the FSL report (Ext.-P30), it is made clear that the pistol recovered from accused Harnam Singh was in working condition and that the fatal-injuries could be caused from using the said country made pistol (Article 'A') recovered from appellant-Harnam Singh.

Learned counsel appearing for the appellant-Harnam Singh submitted that as per the FSL report, the experts could not give a definite opinion that whether the bullet has been fired from the country made pistol recovered from appellant-Harnam Singh or any other similar pistol like the said pistol. It was therefore, submitted that the prosecution has failed to prove that the recovered bullet from the body of deceased has been fired from the pistol (Article 'A') and therefore, the overt-act of firing cannot be attributed to appellant-Harnam Singh. In the FSL report, it is stated that bullet was "a fired and partially damaged Copper Cartridge/Soft Point Bullet with blood like substance on the same". The FSL report further states that the cartridge does not have marks of regular rifling and the barrel marks found are not sufficient for decisive matching. All that the FSL report states is that the barrel marks are not sufficient to give decisive matching. When the case of the prosecution is based on the eye-witnesses, the indecisive opinion given by the experts would not affect the prosecution case.

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***95. INDIAN PENAL CODE, 1860 – Section 302**
EVIDENCE ACT, 1872 – Section 32
Dying declaration – Reliability of – A tutored-free dying declaration inspires the confidence of the Court – Mere fact that the patient suffered 92% burn injuries would not stand in the way of patient giving a dying declaration.

भारतीय दण्ड संहिता, 1860 – धारा 302

साक्ष्य अधिनियम, 1872 – धारा 32

मृत्युकालिक कथन – विश्वसनीयता – बिना सिखाया मृत्युकालिक कथन न्यायालय के विश्वास को प्रेरित करता है – मात्र यह तथ्य कि आहत को 92 प्रतिशत जली उपहतियां थी, आहत के मृत्युकालिक कथन देने में बाधा उत्पन्न नहीं करता है।

Bhagwan v. State of Maharashtra through Secretary Home, Mumbai, Maharashtra
Judgment dated 07.08.2019 passed by the Supreme Court in Criminal Appeal No. 385 of 2010, reported in (2019) 8 SCC 95

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96. INDIAN PENAL CODE, 1860 – Sections 302 and 304 Part II
Murder or culpable homicide not amounting to murder – Accused was abusing his wife when deceased and others came there to pacify the matter – Being annoyed, accused inflicted a knife blow on lower side of neck of deceased – There was no intention or preparation or premeditation of mind – Accused had neither taken any undue advantage nor acted in a cruel manner – Held, incident occured in a fit of rage – Conviction converted from section 302 to 304 part II.

भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 304 भाग–दो

हत्या या हत्या की कोटि में न आने वाला आपराधिक मानव वध – अभियुक्त अपनी पत्नी के साथ दुर्व्यवहार कर रहा था जब मृतक और अन्य लोग मामले को शांत करने के लिए वहां आए थे – नाराज होने के कारण अभियुक्त ने मृतक की गर्दन के निचले हिस्से पर चाकू से वार किया – उसका कोई आशय या तैयारी या पूर्व विचार नहीं था – अभियुक्त ने कोई अनुचित लाभ नहीं उठाया था और न ही क्रूर तरीके से कार्य किया था – अभिनिर्धारित, घटना तात्कालीक आवेश में हुई थी – दोषसिद्धी धारा 302 से धारा 304 भाग दो में परिवर्तित की गई।

Hardas Khamsingh Tadvi v. State of Madhya Pradesh

Judgment dated 10.05.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 564 of 2011, reported in 2019 CriLJ 4075 (M.P.) (DB)

Relevant extracts from the judgment:

In the case in hand, the accused/appellant and the deceased are close relatives. The accused was hurling abuses to his second wife Epubai at that time Mangibai, sister of Epubai with her husband - Sardar as well as their son - Vikram and son-in-law Govind came there to pacify the matter and they asked him to stop hurling abuses and being annoyed with this, accused-Hardas pulled out a knife from his pocket and inflicted blow on the lower side of neck and above chest of Sardar, as a result of which, he fell down and died on the spot. From the said incident, it reveals that the injury caused by the appellant due to sudden provocation and there was no intention, preparation or premeditation for the crime. The incident occurred suddenly only on the ground that the deceased has tried to pacify the matter. The injury has been caused in the heated spur of moment. The appellant suddenly assaulted Sardar (deceased) with the help of knife on his neck and above chest. He did not repeat nor even tried to repeat the blow, though he was having full opportunity. He did not take any undue advantage of the situation. It does not appear from the evidence that his intention was to kill the deceased. On the contrary, it appears that only in a fit of rage, he suddenly gave a knife blow, which caused injury on the neck of the deceased and unfortunately, proved fatal for his life. Therefore, we are also in consensus that the case of the appellant qualifies all parameters i.e. it was a sudden fight; there was no premeditation; the act was done in a heat of passion; and, the assailant had not taken any undue advantage or acted in a cruel manner and, therefore, does not fall under the purview of the offence punishable under Section 302 of the IPC, but falls under the purview of offence punishable under Section 304 Part II of IPC.

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***97. INDIAN PENAL CODE, 1860 – Sections 304-B and 498-A**
EVIDENCE ACT, 1872 – Section 32

(i) Dowry death and cruelty – Dying declaration – Wife dying one and half year after marriage due to burn injuries – In first dying declaration, wife stated that kerosene jerrycan kept above the gas stove accidently fell on her, resulting in her catching fire – In subsequent dying declaration, she alleged that her husband and in-laws set her ablaze – Investigating Officer could not justify recording of second dying declaration – Naib Tehsildar having knowledge about first dying declaration, recorded second dying declaration on receiving letter from Police – However, said letter not produced before Court – Second dying declaration recorded after about 30 hours of incident – First dying declaration not produced by Police along with charge-sheet – Subsequent dying declaration, not reliable – Accused entitled to acquittal.

(ii) Dowry death and cruelty – Dying declaration – Death due to burn injuries within one and half years of marriage – No occasion for accused to keep jerrycan of kerosene in its proper place after pouring kerosene on deceased – Chance fingerprints found on button of jerrycan, which is impossible if jerrycan is kept on floor – Contradictory statements made by victim in both the dying declarations – No reason for accused to harass victim for motorcycle – Delay of about 20 days in recording police statement of witnesses despite their presence at spot since time of incident – No material on record that victim was harassed by accused, soon before her death – Accused entitled to acquittal.

भारतीय दण्ड संहिता, 1860 – धाराएं 304–ख एवं 498–क
साक्ष्य अधिनियम, 1872 – धारा 32

(i) दहेज मृत्यु एवं क्रूरता – मृत्युकालीन कथन – विवाह पश्चात् डेढ़ वर्ष में दाह्य क्षतियों के कारण पत्नी की मृत्यु – प्रथम मृत्युकालीन कथन में, पत्नी का कथन था कि गैस स्टोव के ऊपर रखे हुए कैरोसीन के डिब्बे के अचानक गिरने के परिणामस्वरूप उसे आग ने पकड़ लिया – पश्चात्वर्ती मृत्युकालीन कथन में उसने अभिकथित किया कि, उसके पति और ससुराल वालों ने उसे आग से जला दिया – द्वितीय मृत्युकालीन कथन के अभिलिखित किये जाने हेतु अन्वेषण अधिकारी न्यायसंगत कारण प्रकट नहीं कर सका – प्रथम मृत्युकालीन कथन के बारे में नायब तहसीलदार ने जानकारी होते हुए, पुलिस से पत्र अभिप्राप्त करने पर द्वितीय मृत्युकालीन कथन अभिलिखित किया – यद्यपि उक्त पत्र को न्यायालय के समक्ष प्रस्तुत नहीं किया गया – घटना के लगभग 30 घंटे पश्चात् द्वितीय मृत्युकालीन कथन अभिलिखित किया गया – अभियोग पत्र के साथ

पुलिस द्वारा प्रथम मृत्युकालीन कथन प्रस्तुत नहीं किया गया – पश्चातवर्ती मृत्युकालीन कथन, विश्वसनीय नहीं – अभियुक्त, दोषमुक्ति का पात्र है।

(ii) दहेज मृत्यु एवं क्रूरता – मृत्युकालीन कथन – दाह्य क्षतियों के कारण विवाह पश्चात् डेढ़ वर्ष में पत्नी की मृत्यु – आहत पर कैरोसीन डालने के पश्चात् कैरोसीन के जरीकेन को उसके उचित स्थान में रखने का कोई अवसर अभियुक्त के लिए नहीं था – जरीकेन के तल पर संयोगी अंगुली चिन्ह पाया जाना, जो कि असंभव है यदि जरीकेन को फर्श पर रखा गया है – दोनों मृत्युकालीन कथनों में आहत द्वारा विरोधाभाषी कथन किए गए है – अभियुक्त द्वारा मोटर साईकिल के लिए आहत को प्रपीड़ित करने का कोई कारण नहीं है – दुर्घटना के समय से स्थल पर साक्षियों की उपस्थिति के बावजूद लगभग 20 दिवस के विलंब से पुलिस कथन अभिलिखित किए गए – मृत्यु के ठीक पूर्व, अभियुक्त द्वारा आहत को प्रपीड़ित किए जाने संबंधी कोई सामग्री अभिलेख पर नहीं है – अभियुक्त, दोषमुक्ति का पात्र है।

Geetabhai and ors. v. State of M.P.
Judgment dated 20.08.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 868 of 2012, reported in 2019 CriLJ 4560 (M.P.) (DB)

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98. INDIAN PENAL CODE, 1860 – Section 364-A
EVIDENCE ACT, 1872 – Sections 3 and 106
Kidnapping for ransom – Circumstantial evidence – Non-recovery of dead body – Effect – Accused allegedly after kidnapping minor victim, killed him and buried corpse in bed of river – Being acquainted with accused, father of victim identified voice of accused on phone – Owner of liquor shop, restaurant and classmate of victim saw the accused last with the victim – School bag with School diary and copies inside, bearing name of victim recovered from house of accused – Recovered items identified by father of victim – Failure of police to recover dead body is not of much consequence in absence of any explanation by accused regarding last seen coupled with recovery of belongings of deceased from his house – Conviction, proper. [*Rama Nand & ors. v. State of Himachal Pradesh, (1981) 1 SCC 511* and *Sevaka Perumal and anr. v. State Tamil Nadu, (1991) 3 SCC 471*, relied on]

भारतीय दण्ड संहिता, 1860 – धारा 364–क

साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 106

मुक्तिधन के लिये व्यपहरण – परिस्थितिजन्य साक्ष्य – शव का बरामद नहीं होना – प्रभाव – अभियुक्त पर अप्राप्तवय पीड़ित का व्यपहरण करने के पश्चात् उसकी हत्या करने और नदी के तल में शव को दफन करने का आरोप – अभियुक्त का परिचित

होने से, अप्राप्तवय के पिता ने फोन पर अभियुक्त की आवाज की पहचान की – शराब दुकान एवं रेस्तरां के स्वामी और पीड़ित के सहपाठियों ने अभियुक्त को पीड़ित के साथ अन्तिम बार देखा – अभियुक्त के आवास से पीड़ित का विद्यालय बस्ता जिसमें पाई गई विद्यालय दैनन्दनी और पुस्तिकाओं में पीड़ित का नाम उल्लेखित था अभिग्रहित किया गया – पीड़ित के पिता द्वारा अभिग्रहित वस्तुओं की पहचान की गई – अभियुक्त के निवास से मृतक की वस्तुओं के अधिग्रहण के साथ अन्तिम बार साथ देखे जाने के संबंध में अभियुक्त द्वारा कोई स्पष्टीकरण के अभाव में मृत शरीर के अभिग्रहण की पुलिस की असफलता बहुत महत्व की नहीं है – दोषसिद्धि, उचित। [*रामानंद एवं अन्य विरूद्ध हिमाचल प्रदेश राज्य, (1981) 1 एससीसी 511* एवं *सेवक पैरूमल एवं अन्य विरूद्ध तमिलनाडु राज्य, (1991) 3 एससीसी 471* अवलंबित]

Sanjay Rajak v. State of Bihar

Judgment dated 22.07.2019 passed by the Supreme Court in Criminal Appeal No. 1070 of 2017, reported in AIR 2019 SC 3524

Relevant extracts from the judgment:

It is not an invariable rule of criminal jurisprudence that the failure of the police to recover the *corpus delicti* will render the prosecution case doubtful entitling the accused to acquittal on benefit of doubt. It is only one of the relevant factors to be considered along with all other attendant facts and circumstances to arrive at a finding based on reason ability and probability based on normal human prudence and behavior. In the facts and circumstances of the present case, the failure of the police to recover the dead body is not much of consequence in the absence of any explanation by the appellant both with regard to the victim last being seen with him coupled with the recovery from his house of the belongings of the deceased. ***Rama Nand and ors. v. State of Himachal Pradesh, (1981) 1 SCC 511,*** was a case of circumstantial evidence where the *corpus delicti* was not found. This Court upholding the conviction observed:

> "But in those times when execution was the only punishment for murder, the need for adhering to this cautionary Rule was greater. Discovery of the dead body of the victim bearing physical evidence of violence, has never been considered as the only mode of proving the *corpus delicti* in murder. Indeed, very many cases are of such a nature where the discovery of the dead body is impossible. A blind adherence to this old "body" doctrine would open the door wide open for many a heinous murderer to escape with impunity simply because they were cunning and clever enough to destroy the body of their victim. In the context of our law, Sir Hale's enunciation has to be interpreted no more than emphasising that where the dead body of the victim in a murder case is not found, other cogent and satisfactory

> proof of the homicidal death of the victim must be adduced by the prosecution. Such proof may be by the direct ocular account of an eye-witness, or by circumstantial evidence, or by both. But where the fact of *corpus delicti* i.e. ‘‘homicidal death” is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. Even so, this principle of caution cannot be pushed too far as requiring absolute proof. Perfect proof is seldom to be had in this imperfect world, and absolute certainty is a myth. That is why under Section 3 of the Evidence Act, a fact is said to be “proved”, if the court considering the matters before it, considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The *corpus delicti* or the fact of homicidal death, therefore, can be proved by telling and inculpating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the Accused concerned.

Sevaka Perumal and anr. v. State of Tamil Nadu, (1991) 3 SCC 471, was also a case where the *corpus delicti* was not found yet conviction was upheld observing:

> In a trial for murder it is not an absolute necessity or an essential ingredient to establish *corpus delicti*. The fact of death of the deceased must be established like any other fact. *Corpus delicti* in some cases may not be possible to be traced or recovered. Take for instance that a murder was committed and the dead body was thrown into flowing tidal river or stream or burnt out. It is unlikely that the dead body may be recovered. If recovery of the dead body, therefore, is an absolute necessity to convict an accused, in many a case the accused would manage to see that the dead body is destroyed etc. and would afford a complete immunity to the guilty from being punished and would escape even when the offence of murder is proved. What, therefore, is required to base a conviction for an offence of murder is that there should be reliable and acceptable evidence that the offence of murder, like any other factum of death was committed and it must be proved by direct or circumstantial evidence, although the dead body may not be traced...”

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***99. INDIAN PENAL CODE, 1860 – Section 376(2)(1) (Prior to Amendment 2013)**
EVIDENCE ACT, 1872 – Section 3
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Section 4
Rape – Appreciation of evidence – Accused allegedly committed rape on prosecutrix aged 8 years – Prosecutrix deposing that on pretext of giving money, accused raped her – Mother of prosecutrix and other witness saw accused running away from spot – Testimony of prosecutrix corroborated by medical evidence as well as FSL report – FSL report establishing presence of human sperms on vaginal slide and vaginal swab of prosecutrix – Injuries, rupture of hymen and presence of human sperms, clearly establishing that prosecutrix was subjected to rape – Guilt of accused established beyond reasonable doubt – Conviction, proper.

भारतीय दण्ड संहिता, 1860 – धारा 376(2)(1) (संशोधन 2013 के पूर्व)
साक्ष्य अधिनियम 1872 – धारा 3
लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धारा 4
बलात्कार – साक्ष्य का मूल्यांकन – अभियुक्त पर 8 वर्षीय अभियोक्त्री पर बलात्कार करने का आक्षेप – अभियोक्त्री ने परिसाक्ष्य दी कि धन देने के बहाने, अभियुक्त ने उसका बलात्कार किया – अभियोक्त्री की माता और अन्य साक्षियों ने देखा कि, स्थल से अभियुक्त भाग रहा था – अभियोक्त्री की परिसाक्ष्य का संपोषण चिकित्सीय साक्ष्य के साथ–साथ न्यायालयिक विज्ञान प्रयोगशाला के प्रतिवेदन द्वारा होता है – न्यायालयिक विज्ञान प्रयोगशाला प्रतिवेदन स्थापित करता है कि अभियोक्त्री के वैजाइनल स्वाब एवं वैजाइनल स्लाइड पर मानव शुक्राणु की उपस्थिति है – क्षतियां, हाइमन का फटना और मानव शुक्राणु की उपस्थिति स्पष्टतया स्थापित करती है कि अभियोक्त्री से बलात्कार किया गया है – अभियुक्त की दोषिता युक्तियुक्त संदेह से परे स्थापित – दोषसिद्धि उचित।

Vimal v. State of Madhya Pradesh
Judgment dated 14.08.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Appeal No. 120 of 2016, reported in 2019 CriLJ 4785

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***100. INDIAN PENAL CODE, 1860 – Section 494**
Bigamy – Whether applies to male belonging to Muslim community? Held, No – A Muslim male may have as many as four wives at the same time – Even the fifth marriage is not void, but irregular – Offence u/s 494 IPC does not attract against person belonging to Muslim Community.

भारतीय दण्ड संहिता, 1860 – धारा 494

द्विविवाह – क्या मुस्लिम समुदाय से संबंध रखने वाले पुरूष पर लागू होती है? अभिनिर्धारित, नहीं – मुस्लिम एक साथ चार पत्नियाँ रख सकता है – यहां तक कि पांचवाँ विवाह भी शून्य नहीं है बल्कि अनियमित है – धारा 494 भा.दं.सं. के अंतर्गत अपराध मुस्लिम समुदाय से संबंध रखने वाले व्यक्ति के विरूद्ध आकर्षित नहीं होती।

Smt. Sayna Bee v. Israr Ahmad

Order dated 27.03.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Revision No. 101 of 2017, reported in 2019 CriLJ 3128

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***101. INDIAN PENAL CODE, 1860 – Sections 304-B and 498-A**

Cruelty and Dowry Death – Presumption – Allegations that accused husband and in-laws harassed victim for dowry and killed her by setting her on fire – Evidence of father of victim not indicating direct knowledge of dowry – No evidence showing victim was subjected to cruelty or harassment soon before her death in connection with any demand of dowry – Acquittal of accused, proper.

भारतीय दण्ड संहिता, 1860 – धाराएं 304–ख एवं 498–क

क्रूरता एवं दहेज मृत्यु – उपधारणा – अभियोग कि अभियुक्त पति एवं ससुराल वालों ने दहेज के लिये पीड़ित को तंग किया और उसे जलाकर मार डाला – पीड़ित के पिता की साक्ष्य दहेज के प्रत्यक्ष ज्ञान को इंगित नहीं करती है – यह दर्शित करने के लिये कोई साक्ष्य नहीं कि किसी दहेज की मांग के संबंध में उसकी मृत्यु के ठीक पूर्व उसके प्रति क्रूरता की गई थी या उसे तंग किया गया था – अभियुक्त की दोषमुक्ति, उचित पाई गई।

State of Haryana v. Angoori Devi and anr.

Judgment dated 13.06.2019 passed by the Supreme Court in Criminal Appeal No. 1801 of 2013, reported in AIR 2019 SC 3647

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***102. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – Sections 58 and 59**

ADOPTION REGULATIONS, 2017 – Regulations 21 and 41

Adoption – Change in citizenship during pendency of application; effect of – Application for adoption made by couple as Indian prospective adoptive parents when only husband was Indian citizen – During pendency of application, he acquired US citizenship – Couple filed another application for inter-country adoption – Whether their seniority for adoption would be reckoned from first application or later? Held, right of couple for adoption as resident Indian losts after husband acquired US citizenship – Bonafide or competence of couple cannot

override the statutory procedure and regime – Their seniority shall be reckoned from the second application.

किशोर न्याय (बालकों की देखरेख एवं संरक्षण) अधिनियम, 2015 – धाराएं 58 एवं 59

दत्तकग्रहण विनियमन, 2017 – विनियमन 21 एवं 41

दत्तक ग्रहण – आवेदन के लंबित रहने के दौरान नागरिकता में परिवर्तन; प्रभाव – दंपत्ति द्वारा दत्तक ग्रहण हेतु आवेदन भावी भारतीय दत्तक माता–पिता के रूप में किया गया जबकि मात्र पति भारतीय नागरिक था – आवेदन के लंबित रहने के दौरान उसने संयुक्त राज्य (अमेरिका) की नागरिकता प्राप्त कर ली – दंपत्ति द्वारा अंतर्देशीय दत्तक ग्रहण हेतु एक अन्य आवेदन प्रस्तुत किया गया – दत्तक ग्रहण हेतु उनकी वरिष्ठता की गणना प्रथम आवेदन से की जायेगी अथवा पश्चात्वर्ती आवेदन से? अभिनिर्धारित, दंपत्ति का भारतीय निवासी के रूप में दत्तक ग्रहण का अधिकार पति द्वारा संयुक्त राज्य की नागरिकता प्राप्त करने के पश्चात् ही समाप्त हो गया – दंपत्ति की सद्भाविकता अथवा सक्षमता कानूनी प्रक्रिया एवं पद्धति पर अभिभावी नहीं हो सकती है – उनकी वरिष्ठता की गणना द्वितीय आवेदन दिनांक से की जायेगी।

Union of India and anr. v. Ankur Gupta and ors.

Judgment dated 25.02.2019 passed by the Supreme Court in Civil Appeal No. 2017 of 2019, reported in AIR 2019 SC 1316

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***103. LAND ACQUISITION ACT, 1894 – Section 23**

Compensation – Determination of – Annual increase method – Lands in vicinity of subjected lands acquired in 1986 – Subjected lands acquired in 1992 and 1995 – There was a steep increase in price of land in 1990s – Secretariat and commercial complexes came up just opposite to acquired land – Held, 12% annual cumulative increase on the market price of 1986 till acquisition is just and reasonable.

भू–अर्जन अधिनियम, 1894 – धारा 23

प्रतिकर – निर्धारण – वार्षिक वृद्धि पद्धति – प्रश्नगत भूमियों के आस–पास की भूमियों का अर्जन सन् 1986 में किया गया – प्रश्नगत भूमियां सन् 1992 एवं 1995 में अर्जित की गई – 1990 के दशक में भूमि के मूल्य में तीव्र वृद्धि हुई – अर्जित भूमि के ठीक सामने सचिवालय तथा वाणिज्यिक कॉम्पलेक्स निर्मित हुये – अभिनिर्धारित, 1986 के बाजार मूल्य पर अर्जन की तिथि तक 12 प्रतिशत वार्षिक संचित वृद्धि न्यायोचित तथा युक्तियुक्त है।

Balwant Singh (D) through LRs. Gurbinder Singh v. State of Haryana and ors. etc.

Judgment dated 11.03.2019 passed by the Supreme Court in Civil Appeal No. 2736 of 2019, reported in AIR 2019 SC 1325

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104. LIMITATION ACT, 1963 – Section 27

Adverse possession; meaning, nature and ingredients of – Reiterated – Necessary factors to be proved for claim of adverse possession – Person pleading adverse possession has no equities in his favour as he is trying to defeat rights of true owner – Hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession.

परिसीमा अधिनियम, 1963 – धारा 27

प्रतिकूल कब्जा; अर्थ, प्रकृति और तत्व, दोहराए गए – प्रतिकूल आधिपत्य के दावे के लिये साबित किए जाने वाले आवश्यक घटक – प्रतिकूल आधिपत्य का अभिवचन करने वाले व्यक्ति के पक्ष में साम्या नहीं होती है क्योंकि वह सही स्वामी के अधिकारों को पराजित करने का प्रयत्न करता है – अतः यह उस पर है कि वह प्रतिकूल आधिपत्य को स्थापित करने के लिये समस्त आवश्यक तथ्यों का स्पष्टतः अभिवयन करे तथा स्थापित करे।

Brijesh Kumar and anr. v. Shardabai (Dead) by Legal Representatives and ors.

Judgment dated 01.10.2019 passed by the Supreme Court in Civil Appeal No. 1090 of 2008, reported in (2019) 9 SCC 369

Relevant extracts from the judgment:

Adverse possession is hostile possession by assertion of a hostile title in denial of the title of the true owner as held in ***M. Venkatesh v. BDA, (2015) 17 SCC 1***. The respondent had failed to establish peaceful, open and continuous possession demonstrating a wrongful ouster of the rightful owner. It thus involved question of facts and law. The onus lay on the respondent to establish when and how he came into possession, the nature of his possession, the factum of possession known and hostile to the other parties, continuous possession over 12 years which was open and undisturbed. The respondent was seeking to deny the rights of the true owner. The onus therefore lay upon the respondent to establish possession as a fact coupled with that it was open, hostile and continuous to the knowledge of the true owner. The respondent–plaintiff failed to discharge the onus. Reference may also be made to ***Chatti Konati Rao v. Palle Venkata Subba Rao, (2010) 14 SCC 316,*** on adverse possession observing as follows:

> "15. *Animus possidendi* as is well known is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession

was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights. The plea of adverse possession is not a pure question of law but a blended one of fact and law."

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***105. LIMITATION ACT, 1963 – Section 27 and Article 58**
REGISTRATION ACT, 1908 – Section 49

(i) Adverse possession – Possession given under invalid sale deed and suit for restoration of possession not filed within 12 years, the title of the purchaser perfected by adverse possession.

(ii) Different causes of action accrue on different dates – Article 58 would govern only the suit for the relief of declaration and it will not cover other reliefs governed by other articles of the Limitation Act – If other relief based on different cause of action, the suit can be brought on the basis of right to sue accrues later on for those reliefs only.

(iii) Unregistered sale deed – Declaration of title – The registration of the sale deed is must as per the provisions of the Indian Registration Act – In absence of the registrations in view of the provisions of Section 49 of the said Act, the transfer of title cannot be effected, hence, on the basis of the aforesaid unregistered sale deed, the plaintiffs/respondents cannot claim the title and no title can be declared on the basis of such unregistered sale deed.

परिसीमा अधिनियम, 1963 – धारा 27 एवं अनुच्छेद 58
रजिस्ट्रीकरण अधिनियम, 1908 – धारा 49

(i) प्रतिकूल आधिपत्य – अविधिमान्य विक्रय विलेख के आधार पर कब्जा प्रदान किया गया और आधिपत्य के प्रत्युद्धरण के लिए 12 वर्ष की अवधि में दावा प्रस्तुत नहीं किया गया, प्रतिकूल आधिपत्य के आधार पर क्रेता का स्वत्व परिपक्व हो चुका है।

(ii) भिन्न वाद कारण भिन्न दिनांकों को प्रोद्भुत हुए – अनुच्छेद 58 से केवल घोषणा की सहायता के लिए प्रस्तुत वाद शासित होगा और यह परिसीमा अधिनियम के अन्य अनुच्छेदों से शासित होने वाली सहायता पर आच्छादित नहीं होगा – यदि अन्य सहायता भिन्न वाद हेतुक पर आधारित है तो वाद पश्चात्वर्ती प्रोद्भुत वाद हेतुक के आधार पर मात्र उन सहायताओं के संबंध में प्रस्तुत किया जा सकता है।

(iii) अपंजीकृत विक्रय विलेख – स्वत्व घोषणा – भारतीय रजिस्ट्रीकरण अधिनियम के उपबंधों के अनुसार विक्रय विलेख का पंजीयन अनिवार्य है – पंजीयन के अभाव में उक्त अधिनियम की धारा 49 की दृष्टि में स्वत्व का अंतरण नहीं होगा – इसलिए पूर्वोक्त अपंजीकृत विक्रय विलेख के आधार पर वादीगण/प्रत्यर्थीगण स्वत्व का दावा नहीं कर सकते है और ऐसे अपंजीकृत विक्रय विलेख के आधार पर स्वत्व की घोषणा नहीं की जा सकती है।

Ramayan Prasad (since deceased) through LRs. Smt. Sumitra and ors. v. Indrakali and ors.

Judgment dated 30.07.2019 passed by the High Court of Madhya Pradesh in Second Appeal No. 451 of 1993, reported in 2019 (3) MPLJ 729

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***106. MOTOR VEHICLES ACT, 1988 – Sections 2(30) and 168**

Motor accident claim – Liability of Government to pay compensation – Death of victim due to rash and negligent driving of bus of State Road Transport – Bus taken on lease by Corporation – Corporation was in control and possession of offending bus and therefore, they were "owners" of said bus – Held, Corporation would be liable to pay compensation to claimants on account of death of deceased.

मोटर यान अधिनियम, 1988 – धाराएं 2(30) एवं 168

मोटर दुर्घटना दावा – मुआवजे के भुगतान का सरकार का दायित्व – राज्य सड़क परिवहन की बस को उपेक्षापूर्वक और लापरवाही से चलाने के कारण पीड़ित की मृत्यु – बस निगम द्वारा लीज/पट्टे पर ली गई थी – निगम त्रुटि करने वाली बस के आधिपत्य और नियंत्रण में था और इसलिए वह उक्त बस का स्वामी था – अभिनिर्धारित, मृतक की मृत्यु के कारण दावेदारों को मुआवजे का भुगतान करने के लिए निगम उत्तरदायी होगा।

Madhya Pradesh Sadak Parivahan Nigam v. Pratima Sharma and ors.

Judgment dated 26.02.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Appeal No. 1045 of 2009, reported in 2019 (3) MPLJ 651

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***107. MOTOR VEHICLES ACT, 1988 – Section 166**

(i) Compensation – Enhancement – Injury claim – Claimants are young children who suffered permanent disability on account of injuries sustained in accident – Considering respective age of claimants and keeping in view that compensation has been awarded on all requisite heads by High Court – Compensation awarded to claimants, adequate and need not be enhanced.

(ii) **Liability of insurer – Principle of pay and recover – Claimants, gratuitous passengers in goods vehicle – Insurance of vehicle, though as a goods vehicle, not disputed by parties. On facts and circumstances, principle of pay and recover directed to be invoked – Insurer directed to pay amount of compensation to claimants and recover same from insured.**

मोटर यान अधिनियम, 1988 – धारा 166

(i) क्षतिपूर्ति – वृद्धि – उपहति दावा – दावाकर्ता युवा बच्चे हैं जो दुर्घटना में कारित उपहतियों के कारण स्थाई निर्योग्यता भुगत रहे हैं – दावाकर्ताओं की संबंधित आयु पर विचार करते हुए और यह दृष्टिगत रखते हुये कि उच्च न्यायालय द्वारा सभी अपेक्षित मदों पर क्षतिपूर्ति अधिनिर्णय दिया गया है – दावाकर्ताओं को अधिनिर्णित क्षतिपूर्ति, यथेष्ठ है और वृद्धि किए जाने की आवश्यकता नहीं।

(ii) बीमाकर्ता का दायित्व – भुगतान एवं वसूली का सिद्धांत – दावाकर्तागण, माल वाहन में आनुग्रहिक यात्री – वाहन का बीमा, यद्यपि एक माल वाहक के रूप में, पक्षकारों द्वारा विवादित नहीं – तथ्यों एवं परिस्थितियों पर भुगतान एवं वसूली का सिद्धांत आलंबित किये जाने का निर्देश दिया गया – बीमाकर्ता को निर्देशित किया गया कि दावाकर्तागण को क्षतिपूर्ति की राशि का भुगतान करे और उसकी वसूली बीमाकृत से करें।

Anu Bhanvara Etc. v. IFFCO Tokio General Insurance Company Limited and ors.

Judgment dated 09.08.2019 passed by the Supreme Court in Civil Appeal No. 6231 of 2019, reported in AIR 2019 SC 3934

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***108.MOTOR VEHICLES ACT, 1988 – Sections 166 and 168**

(i) **Whether a driver who has a license to drive a light motor vehicle and is driving a transport vehicle of that class is required to additionally obtain an endorsement to drive a transport vehicle? Held, No.**

(ii) **In claim before MACT, a finding of fact was recorded to the effect that deceased driver had license to drive four wheel vehicles up to the capacity of 7500 kg and same was valid from 16.08.1994 to 18.05.2013 for light motor vehicle – Definition of 'light motor vehicle' u/s 2(21) of the Act covers transport vehicle whose gross weight does not exceed 7500 kg – The effect of amendment of form 4 by insertion of 'transport vehicle' is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving license for transport vehicle of class of 'light motor vehicle' continues to be the same as it was and has not been changed**

and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect. (*Mukund Dewangan v. Oriental Insurance Co. Ltd., 2017 ACJ 2011* relied on)

मोटर यान अधिनियम, 1988 – धाराएं 166 एवं 168

(i) क्या एक चालक जिसके पास एक हल्का मोटर वाहन, चलाने की अनुज्ञप्ति है और उसी वर्ग का परिवहन वाहन चला रहा है, के लिए अतिरिक्त रूप से परिवहन वाहन चलाने का पृष्ठांकन प्राप्त करना आवश्यक है? अभिनिर्धारित – नहीं।

(ii) मोटर दुर्घटना दावा अधिकरण के समक्ष दावे में तथ्य का यह निष्कर्ष अभिलिखित किया गया कि मृतक चालक के पास 7500 किलोग्राम क्षमता तक के चार पहियाँ वाहन को चलाने की अनुज्ञप्ति थी और वह हल्के मोटर वाहन के लिए दिनांक 16.08.1994 से 18.05.2013 तक वैध थी – धारा 2 (21) के अन्तर्गत 'हल्के मोटर वाहन' की परिभाषा उन परिवहन वाहनों को सम्मिलित करती है जिनका सकल वजन 7500 किलोग्राम से अनधिक है – फार्म 4 में 'परिवहन वाहन' जोड़ते हुए किए गए संशोधन का प्रभाव मात्र वर्ष 1994 में प्रतिस्थापित प्रवर्ग से संबंधित है ओर 'हल्के मोटर वाहन' वर्ग के वाहन के लिए अनुज्ञप्ति प्राप्त करने की प्रक्रिया वही है जो पहले थी और परिवर्तित नहीं हुई है और परिवहन वाहन को चलाने के लिए पृथक से पृष्ठांकन प्राप्त करने की कोई आवश्यकता नहीं है और यदि चालक हल्के मोटर वाहन का वैध अनुज्ञप्तिधारी है, तो वह ऐसे वर्ग के परिवहन वाहन को बिना किसी पृष्ठांकन के भी चला सकता है। (*मुकुन्द देवगन वि. ओरिएन्टल इन्श्योरेन्स कंपनी लिमिटेड, 2017 एसीजे 2011* अनुसरित।)

M.S. Bhati v. National Insurance Co. Ltd.
Judgment dated 29.03.2019 passed by the Supreme Court of India in Civil Appeal No. 3322 of 2019, reported in 2019 ACJ 2385

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109. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 139
Dishonour of cheque – Presumption – Once the cheque is issued by the drawer, a presumption u/s 139 of the Act in favour of the holder would be attracted – Section 139 of the Act creates a statutory presumption that a cheque received in the nature referred to u/s 138 of the Act is for the discharge in whole or in part of any debt or other liability – The initial burden lies upon the complainant to prove the circumstances under which the cheque was issued in his favour and that the same was issued in discharge of a legally enforceable debt.

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 एवं 139

चेक का अनादरण – उपधारणा – जब लेखीवाल के द्वारा एक चेक जारी कर दिया जाता है, तब धारक के पक्ष में अधिनियम की धारा 139 अंतर्गत एक उपधारणा आकर्षित होती है – धारा 139 विधिक उपधारणा का निर्माण करती है कि धारा 138 के अंतर्गत जो चेक प्राप्त किया गया है वह किसी ऋण अथवा दायित्व के पूर्णतः या भागतः उन्मोचन के लिए जारी किया गया है – जिन परिस्थितियों के अंतर्गत परिवादी के पक्ष में चेक जारी किया गया था उसे साबित करने का प्रारंभिक भार परिवादी पर है और यह कि उक्त चेक किसी विधिक रूप से निष्पादन योग्य ऋण के उन्मोचन के लिए जारी किया गया था।

M/s Shree Daneshwari Traders v. Sanjay Jain and anr.

Judgment dated 21.08.2019 passed by the Supreme Court in Criminal Appeal No. 61 of 2011, reported in AIR 2019 SC 4003

Relevant extracts from the judgment:

Under Section 138 of the Negotiable Instruments Act, once the cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act in favour of the holder would be attracted. Section 139 creates a statutory presumption that a cheque received in the nature referred to under Section 138 of the Negotiable Instruments Act is for the discharge in whole or in part of any debt or other liability. The initial burden lies upon the complainant to prove the circumstances under which the cheque was issued in his favour and that the same was issued in discharge of a legally enforceable debt.

It is for the accused to adduce evidence of such facts and circumstances to rebut the presumption that such debt does not exist or that the cheques are not supported by consideration. Considering the scope of the presumption to be raised under Section 139 of the Act and the nature of evidence to be adduced by the accused to rebut the presumption, in ***Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513,*** the Supreme Court in paras (14-15) and paras (18 & 19) held as under:-

> "14. Section 139 of the Act provides that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.
>
> 15. Presumptions are devices by use of which the courts are enabled and entitled to pronounce on an issue not withstanding that there is no evidence or insufficient evidence. Under the Evidence Act all presumptions must come under one or the other class of the three classes mentioned in the Act, namely, (1) "may presume" (rebuttable), (2) "shall presume" (rebuttable), and

(3)“conclusive presumptions” (irrebuttable). The term “presumption” is used to designate an inference, affirmative or disaffirmative of the existence of a fact, conveniently called the “presumed fact” drawn by a judicial tribunal, by a process of probable reasoning from some matter of fact, either judicially noticed or admitted or established by legal evidence to the satisfaction of the tribunal. Presumption literally means “taking as true without examination or proof.”

x x x

18. Applying the definition of the word “proved” in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.

19. The use of the phrase “until the contrary is proved” in Section118 of the Act and use of the words “unless the contrary is proved” in Section 139 of the Act read with definitions of “may presume” and “shall presume” as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.

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***110. REGISTRATION ACT, 1908 – Section 47**

Registered document – Time of commencement of operation – A registered document operates from the date of execution and not from the date of its registration.

रजिस्ट्रेशन अधिनियम, 1908 – धारा 47

पंजीकृत दस्तावेज – प्रभावी संचालन होने का समय – एक पंजीकृत दस्तावेज निष्पादन की तिथि से प्रभावी होता है न कि उसके पंजीयन की तिथि से।

Sanjay Bhargava @ Raju Bhargava v. Munni Devi and ors.

Judgment dated 01.04.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition No. 702 of 2019, reported in 2019 (4) MPLJ 84

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***111. SPECIFIC RELIEF ACT, 1963 – Section 5**

EVIDENCE ACT, 1872 – Section 83

(i) Recovery of possession of encroached upon land – Dispute as to boundaries – Encroachment of adjoining land – Matters to be established – Map drawn by Revenue Authorities validating claim of plaintiffs as to ownership of disputed strip of land – Presumption as to accuracy of said map u/s 83 of the Evidence Act, 1872, could not be rebutted by defendant, even before Supreme Court as none of its arguments found to be tenable – Decree for handing over of possession of disputed land to plaintiffs, passed concurrently by three courts below, confirmed.

(ii) Presumption of accuracy of map once it is drawn/prepared by Revenue Authorities even when appellate authority sets aside direction for preparation/drawing of such map.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 5

साक्ष्य अधिनियम, 1872 – धारा 83

(i) अतिक्रमित भूमि के कब्जे का प्रत्युद्धरण – सीमा का विवाद – संलग्न भूमि का अतिक्रमण – स्थापित किये जाने वाले तथ्य – भूमि की विवादित पट्टी के स्वामित्व के लिये वादी के दावे को राजस्व प्राधिकारी द्वारा तैयार नक्शा विधि मान्य करता है – साक्ष्य अधिनियम, 1872 की धारा 83 के अन्तर्गत उक्त नक्शे की शुद्धता की उपधारणा का प्रतिवादी द्वारा खण्डन नहीं किया जा सका, यहाँ तक कि सर्वोच्च न्यायालय के समक्ष भी नहीं क्योंकि उनका कोई भी तर्क मान्य नहीं पाया गया – वादीगण को विवादित भूमि के आधिपत्य सौंपे जाने की तीन निचली अदालतों द्वारा पारित समवर्ती आज्ञप्ति की सम्पुष्टी की गई।

(ii) राजस्व प्राधिकारियों द्वारा एक बार तैयार किये गये नक्शे की शुद्धता की उपधारणा – यहाँ तक कि जब अपीलीय प्राधिकारी ऐसे नक्शे को तैयार किये जाने के दिशा निर्देश अपास्त भी कर दे।

Rambhau Ganpati Nagpure v. Ganesh Nathuji Warbe and ors.
Judgment dated 17.09.2019 passed by the Supreme Court in Civil Appeal No. 2452 of 2010, reported in (2019) 9 SCC 202

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112. SPECIFIC RELIEF ACT, 1963 – Section 16(c)
CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 17
Amendment of pleadings – At appellate stage – Suit for specific performance of contract – Averments as to readiness and willingness of plaintiff to perform his part of contract lacking – No statement in his evidence too as to readiness and willingness – Amendment application filed in first appeal after objection raised by defendant – Held, this is an attempt to fill up the lacuna – Order rejecting amendment application is proper.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 16(ग)
सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 17
अभिवचनों का संशोधन – अपील के स्तर पर – संविदा के विनिर्दिष्ट अनुपालन का वाद – अनुबंध के अपने भाग का अनुपालन करने के लिए वादी के तत्पर और इच्छुक होने के अभिवचन का अभाव था – वादी की साक्ष्य में भी तत्पर और इच्छुक होने का कथन नहीं था – संशोधन आवेदन प्रतिवादी द्वारा आपत्ति किए जाने के बाद पहली बार प्रथम अपील में प्रस्तुत – अभिनिर्धारित, यह कमी को पूरा करने का एक प्रयास है – संशोधन आवेदन को खारिज करने का आदेश उचित ठहराया गया।

Mehboob-Ur-Rehman (Dead) through L.Rs. v. Ahsanul Ghani
Judgment dated 15.02.2019 passed by the Supreme Court in Civil Appeal No. 8199 of 2009, reported in AIR 2019 SC 1178

Relevant extracts from the judgment:

So far as the proposition for amendment of the plaint is concerned, we are unable to find any illegality on the part of the First Appellate Court and the High Court in rejecting the prayer belatedly made by the plaintiff. As noticed, the averment and proof on readiness and willingness to perform his part of the contract has been the threshold requirement for a plaintiff who seeks the relief of specific performance. The principle that the requirement of such averment had not been a matter of form, applied equally to the proposition for amendment at the late stage whereby, the plaintiff only attempted to somehow improve upon the form of the plaint and insert only the phraseology of his readiness and willingness. In such a suit for specific performance, the Court would be, and had always been, looking at the substance of the matter if the plaintiff, by his conduct,

has established that he is unquestionably standing with the contract and is not wanting in preparedness as also willingness to perform everything required of him before he could be granted a relief whereby, the performance of other part of the contract could be enjoined upon the defendant. In the present case, the plaintiff-appellant had failed to aver and prove his readiness and willingness to perform his part of the contract. The Trial Court made a rather assumptive observation that he had proved such readiness and willingness. Thereafter, the plaintiff sought leave to amend the plaint only when the ground to that effect was taken in the first appeal by the defendant. In the facts and circumstances of the present case, in our view, it was too late in the day for the plaintiff to fill up such a lacuna in his case only at the appellate stage. In other words, the late attempt to improve upon the pleadings of the plaint at the appellate stage was only an exercise in futility in the present case.

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113. SPECIFIC RELIEF ACT, 1963 – Section 16(c)
LIMITATION ACT, 1963 – Article 54

(i) Specific performance of contract – Limitation to file suit – Specific date fixed for execution of sale deed in agreement – Further stipulation that defendants were required to get the permission from Land and Development Office for transfer of property – Plaintiffs were given right to get sale deed executed through Court if defendants fail to execute sale deed by fixed date – Held, period of limitation to file suit commenced from the date fixed for execution of sale deed – Vendee cannot claim that cause of action has not arisen on date fixed in the contract on the ground that certain conditions in the contract have not been complied with.

(ii) Specific performance of contract – Readiness and willingness – Failure of plaintiffs to pay monthly installments of sale consideration, not collecting rent from tenants as stipulated in agreement, not paying municipal taxes etc. and not taking action for eviction of tenant – Held, these points show that plaintiffs were not ready and willing to perform their part of contract.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 16(ग)
परिसीमा अधिनियम, 1963 – अनुच्छेद 54

(i) अनुबंध का विनिर्दिष्ट अनुपालन – वाद संस्थित करने का परिसीमा काल – अनुबंध में विक्रय विलेख के निष्पादन की तिथि नियत की गई थी – आगे यह शर्त भी थी कि प्रतिवादी भूमि और विकास कार्यालय से संपत्ति के हस्तांतरण के लिए अनुमति प्राप्त करेंगे – यदि प्रतिवादी नियत दिनांक विक्रय विलेख निष्पादित करने में विफल रहते हैं तो वादी को न्यायालय के माध्यम से विक्रय विलेख

निष्पादित करने का अधिकार दिया गया था – अभिनिर्धारित, वाद संस्थित करने का परिसीमा काल विक्रय विलेख के निष्पादन के लिए निर्धारित तिथि से प्रारंभ होगा – क्रेता यह दावा नहीं कर सकता है कि अनुबंध में निर्धारित तिथि पर वाद–कारण उत्पन्न नहीं हुआ क्योंकि अनुबंध की कुछ शर्तों का अनुपालन नहीं किया गया है।

(ii) अनुबंध का विनिर्दिष्ट अनुपालन – तत्परता और इच्छुकता – विक्रय मूल्य की मासिक किस्तों का भुगतान करने में, अनुबंध के अनुसार किराएदारों से किराया वसूली करने में, नगरपालिक करों का भुगतान करने आदि में वादी की विफलता एवं किरायेदार के निष्कासन के लिए कार्रवाई नहीं करना – अभिनिर्धारित, इन बिन्दुओं से प्रकट होता है कि वादीगण अनुबंध के अपने भाग का अनुपालन करने के लिए तत्पर और इच्छुक नहीं थे।

Urvashi Aggarwal (Since deceased) through L.Rs. and anr. v. Kushagr Ansal (Successor in interest of erstwhile Defendant No. 1 Mrs. Suraj Kumari) and ors.

Judgment dated 06.03.2019 passed by the Supreme Court in Civil Appeal No. 2525 of 2019, reported in AIR 2019 SC 1280

Relevant extracts from the judgment:

There are essentially two points that arise for our consideration in this case. The first relates to limitation. A specific date i.e. 31.03.1975 was fixed for performance of the Agreement, i.e. execution of the sale deed. As per Article 54 of the Schedule to the Limitation Act, when a date is fixed for performance of the contract, the period of limitation is three years from such date. The cause of action has arisen on 31.03.1975 and the suit ought to have been filed within three years from that date. Admittedly, the suit was filed only in the year 1987. However, the submission of the Plaintiffs is that the date fixed for performance of the Agreement stood extended by the conduct of the parties. It was submitted that even after 31.03.1975, the Defendants were pursuing the application filed for permission before the L & DO with the cooperation of the Plaintiffs. The further submission of the Plaintiffs is that without the permission of the L & DO, the sale deed could not have been executed on 31.03.1975. Therefore, the Plaintiffs submit that the date fixed by the agreement for the execution of the sale deed stood extended. It is settled law that the vendee cannot claim that the cause of action for filing the suit has not arisen on the date fixed in the contract on the ground that certain conditions in the contract have not been complied with.

On a detailed consideration of the evidence on record, the Courts below have come to the conclusion that the clauses in the Agreement have neither been amended nor varied. Merely because the Defendants were pursuing the application filed for permission before the L & DO, it cannot be said that the date fixed for performance of the Agreement stood extended. We agree with the

findings of the Courts below that the suit ought to have been filed within three years from 31.03.1975 which was the date that was fixed by the Agreement. The submission made on behalf of the Plaintiffs that part II of Article 54 of the Schedule to the Limitation Act applies to this case and that the suit was filed within limitation as the refusal by the Defendants was only in the year 1987 is not acceptable. Moreover, the Plaintiffs have not performed their part of the Agreement within a reasonable period. As per the Agreement, the Plaintiffs were given the right to get the sale deed executed through the Court in case of failure on the part of the Defendants to execute the sale deed by 31.03.1975. The Plaintiffs filed the suit 12 years after the date fixed for performance. It is relevant to refer to the judgment of this Court in ***K.S. Vidyanadam v. Vairavan, (1997) 3 SCC 1*** wherein it was held as follows:

> "Even where time is not of the essence of the contract, the plaintiffs must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property."

The Courts below have found that the Plaintiffs failed to prove their readiness and willingness to perform their part of the Agreement. The failure on the part of the Plaintiffs in not paying the monthly instalments of Rs. 7,000/-, not collecting the rent from the tenant on the ground floor, not paying the house tax etc., and not taking any action for eviction of the tenant on the ground floor are some of the points held against the Plaintiffs by the Courts below which show that they were not ready and willing to perform their part of the Agreement. There is no compelling reason to re-examine the said findings of fact by the Courts below in exercise of our jurisdiction under Article 136 of the Constitution of India. We are in agreement with the view of the Courts below that the Plaintiffs have not proved their readiness and willingness to perform their part of the Agreement and, therefore, are not entitled to a decree of specific performance.

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114. SPECIFIC RELIEF ACT, 1963 – Sections 16(c) and 20(2)(c)

Suit for specific performance of contract – Readiness and willingness – Vendee was in possession of suit land since the agreement to sale was executed and did not pay any rent even after promised to do so – Vendee enjoying suit land for 55 years without payment of rent leading to non-performance of his part of contract, not entitled to relief claimed.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 16(ग) एवं 20(2)(ग)

संविदा के विनिर्दिष्ट अनुपालन हेतु वाद – तत्परता एवं इच्छुकता – विक्रय का करार निष्पादित होने के समय से क्रेता वादग्रस्त भूमि के आधिपत्य में था और उसने ऐसा करने का वचन देने के उपरांत भी कोई किराया अदा नहीं किया – क्रेता का बिना किराया अदा किए 55 वर्षों से वादग्रस्त सम्पत्ति का उपभोग करना उसके भाग पर

संविदा के अपालन की और अग्रसर करता है, वह वांछित सहायता प्राप्त करने का अधिकारी नहीं है।

Surinder Kaur (D) Through L.R. Jasinderjit Singh (D) Through L.Rs. v. Bahadur Singh (D) Through L.Rs.

Judgment dated 11.09.2019 passed by the Supreme Court in Civil Appeal No. 7424 of 2011, reported in AIR 2019 SC 4194

Relevant extracts from the Judgment:

Explanation (ii) to Section 16(c) of the Specific Relief Act lays down that it is incumbent on the party, who wants to enforce the specific performance of a contract, to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract. This the plaintiff miserably failed to do insofar as payment of rent is concerned.

A perusal of Section 20 of the Specific Relief Act clearly indicates that the relief of specific performance is discretionary. Merely because the plaintiff is legally right, the Court is not bound to grant him the relief. True it is, that the Court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously, the discretion cannot be exercised in an arbitrary or whimsical manner. Sub clause(c) of sub-section (2) of Section 20 provides that even if the contract is otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the Court can refuse to grant such discretionary relief. Explanation (2) to the Section provides that the hardship has to be considered at the time of the contract, unless the hardship is brought in by the action of the plaintiff.

In this case, Bahadur Singh having got possession of the land in the year 1964 did not pay the rent for 13 long years and even when he filed the replication in the year 1978, he denied any liability to pay the customary rent. Therefore, in our opinion, he did not act in a proper manner. Equity is totally against him. In our considered view, he was not entitled to claim the discretionary relief of specific performance of the agreement having not performed his part of the contract even if that part is held to be a distinct part of the agreement to sell. The vendee Bahadur Singh by not paying the rent for 13 long years to the vendor Mohinder Kaur, even when he had been put in possession of the land on payment of less than 18% of the market value, caused undue hardship to her. The land was agricultural land. Bahadur Singh was cultivating the same. He must have been earning a fairly large amount from this land which measured about 9½ acres. He by not paying the rent did not act fairly and, in our opinion, forfeited his right to get the discretionary relief of specific performance.

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115. SPECIFIC RELIEF ACT, 1963 – Section 34

Suit for declaration; maintainability of – Absence of consequential relief – Effect of – Whether it is always necessary to give an opportunity to the plaintiff to amend the plaint for seeking consequential relief before he is non-suited? Held, No.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 34

घोषणा के लिए वाद; पोषणीयता – पारिणामिक अनुतोष का अभाव – प्रभाव – क्या वाद अस्वीकार करने के पूर्व पारिणामिक अनुतोष प्राप्त करने के लिए वादी को वादपत्र में संशोधन करने का अवसर देना सदैव आवश्यक है? अभिनिर्धारित, नहीं।

Sarnam Singh v. Gurmej Singh and ors.

Judgment dated 28.03.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Second Appeal No. 105 of 2011, reported in 2019 (4) MPLJ 75

Relevant extracts from the judgment:

The Supreme Court in the case of ***Mst. Rukhma Bai v. Lala Laxminarayan and ors., AIR 1960 SC 335*** has held that the plea of non-maintainability of suit in absence of consequential relief cannot be allowed to be raised before the Supreme Court for the first time, and this plea should have been raised at the earliest so that the plaintiff can amend the plaint. The defendants had specifically pleaded in their written statement that the plaintiffs are not in possession of the property in dispute. Therefore, the plaintiffs had the choice of either seeking prayer for possession or to go ahead with the suit by taking the risk of dismissal of their suit in view of proviso to Section 34 of Specific Relief Act. As the plaintiffs themselves took the risk, therefore, they cannot say that the Appellate Court should have granted an opportunity to amend the plaint for seeking relief of possession. Even otherwise, the Supreme Court in the case of ***Mst. Rukhma Bai*** (supra) has not held that a plaintiff should not be non-suited in the light of proviso to Section 34 of the Specific Relief Act, and if the plaintiff is not found to be in possession of the suit property, then he should be given an opportunity to amend the plaint.

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***116. TRANSFER OF PROPERTY ACT, 1882 – Section 58(c)**

Mortgage by conditional sale or sale with option to repurchase – The valuation of the property and the transaction value, along with the duration of time for re-conveyance, are important considerations to decide the nature of the agreement – There will have to be a cumulative consideration of these factors, along with the recitals in the agreement, intention of the parties, coupled with other attendant circumstances, considered in a holistic manner – The language used in the agreement may not always be conclusive.

संपत्ति अंतरण अधिनियम, 1882 – धारा 58(ग)

सशर्त विक्रय द्वारा बंधक अथवा पुनः क्रय करने की शर्त के साथ बंधक – संविदा की प्रकृति के निर्धारण हेतु सम्पत्ति का मूल्यांकन और पुनर्हस्तांतरण हेतु समयावधि के साथ संव्यवहार का मूल्य, महत्वपूर्ण घटक हैं – उपरोक्त घटकों का संविदा में आख्यान, पक्षकारों के आशय के साथ अन्य विद्यमान परिस्थितियों के साथ समग्र रूप से विचार किया जाना चाहिए – संविदा में प्रयोग की गई भाषा सदैव निश्चायक नहीं हो सकती है।

Ganpati Babju Alamwar (D) By L.Rs. Ramlu and ors. v. Digambarrao Venkatrao Bhadke and ors.

Judgment dated 12.09.2019 passed by the Supreme Court in Civil Appeal No. 3960 of 2011, reported in AIR 2019 SC 4292

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117. UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 – Sections 38 and 39

Association with terrorist organisation with intention to further its activities is punishable u/s 38 and garnering support for the terrorist organisation is punishable u/s 39 – Held, the scope and field of operation of these two sections are different – Conviction u/s 38 does not render section 39 superfluous.

विधि विरूद्ध गतिविधियां (निवारण) अधिनियम, 1967 – धाराएं 38 एवं 39

आतंकी संगठन के साथ उसकी गतिविधियों को आगे बढ़ाने के आशय से संबद्धता धारा 38 के अंतर्गत दण्डनीय है और आतंकी संगठन के लिए समर्थन प्राप्त करना धारा 39 के अंतर्गत दण्डनीय है – अभिनिर्धारित, इन दोनों धाराओं का कार्यक्षेत्र तथा विस्तार भिन्न है – धारा 38 के अंतर्गत दोषसिद्धी धारा 39 को निरर्थक नहीं बनाती है।

Union of India v. Yasmeen Mohammad Zahid alias Yasmeen

Judgment dated 02.08.2019 passed by the Supreme Court in Criminal Appeal No. 1199 of 2019, reported in 2019 CriLJ 4222 (SC)

Relevant extracts from the judgment:

We must however state that the High Court was not right in observing "if a person is punishable under Section 38, Section 39 becomes superfluous". In our view, the scope of these two Sections and their fields of operation are different. One deals with association with a terrorist organisation with intention to further its activities while the other deals with garnering support for the terrorist organisation, not restricted to provide money; or assisting in arranging or managing meetings; or addressing a meeting for encouraging support for the terrorist organisation.

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PART - III

CIRCULARS/NOTIFICATIONS

NOTIFICATION DATED 09.08.1996 OF DEPARTMENT OF LAW AND LEGISLATIVE AFFAIRS, GOVERNMENT OF MADHYA PRADESH SPECIFYING THE COURT OF SESSION AS HUMAN RIGHTS COURT

F.No. 17(E)34/95/XXI-B(1) :- In exercise of powers conferred by section 30 of the Protection of Human Rights Act, 1993 (No. 10 of 1994) the State Government, with the concurrence of the Chief Justice of the High Court of Madhya Pradesh, hereby specifies Court of Session in each Session Division of the State as a Human Rights Court for the purpose of providing speedy trial of offences arising out of Violation of Human Rights.

By Order and in the name of Governor of Madhya Pradesh
ARVIND KUMAR AWASTHI, DY. Secretary

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किशोर न्याय (बालकों की देखरेख एवं संरक्षण) अधिनियम, 2015 की धारा 49(1) के प्रावधानों के अंतर्गत ''सुरक्षित स्थान'' (Place of safety) घोषित करने संबंधी महिला एवं बाल विकास विभाग, मध्यप्रदेश शासन की अधिसूचना दिनांक 29.03.2016

क्रमांक 840/926/16/50–2 – राज्य शासन एतद् द्वारा महिला एवं बाल विकास विभाग अंतर्गत बालकों हेतु संचालित विशेष गृह सिवनी एवं विशेष गृह इंदौर तथा बालिकाओं हेतु संचालित विशेष गृह इंदौर को किशोर न्याय (बालकों की देखरेख एवं संरक्षण) अधिनियम, 2015 की धारा 49 (1) के प्रावधानों के तहत 16 वर्ष से अधिक आयु के विधि विवादित किशोरों हेतु ''सुरक्षित स्थान'' (Place of safety) घोषित करता है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेश से
उप सचिव,
महिला एवं बाल विकास विभाग

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NOTIFICATION DATED 07.10.2017 OF HOME DEPARTMENT, GOVERNMENT OF MADHYA PRADESH CONFERRING THE POWERS OF ARREST, INVESTIGATION AND PROSECUTION OF PERSONS BEFORE ANY SPECIAL COURT TO ALL THE OFFICERS OF THE RANK OF POLICE INSPECTOR

F.12-99-2017-B-1-two – In exercise of the powers conferred by sub-section (1) of Section 9 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (No 33 of 1989), the State Government upon considering it necessary and expedient so to do for the prevention of and for coping with the offences under the said Act, hereby confers the powers of arrest, investigation and prosecution of persons before any Special Court to all the officers of the rank of Police Inspector, within the State of Madhya Pradesh, with effect from the date of publication of this Notification in the Official Gazette.

By Order and in the name of Governor of Madhya Pradesh
VIVEK SHARMA, Secretary

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NOTIFICATION DATED 08.12.2017 OF DEPARTMENT OF LAW AND LEGISLATIVE AFFAIRS, GOVERNMENT OF MADHYA PRADESH SPECIFYING THE COURT OF SESSION AS A SPECIAL COURT FOR TRIAL OF OFFENCES UNDER THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

F.No. 17(E) 47/2017/21-B(1) 4869/2017 – In exercise of the powers conferred by section 84 of the Rights of Persons with Disabilities Act, 2016 (No 49 of 2016), the State Government, with the concurrence of the Chief Justice of the High Court of Madhya Pradesh, hereby, specifies Court of Session in each Session Division of the State as a Special Court for the purpose of providing speedy trial of offences under the said Act.

By Order and in the name of Governor of Madhya Pradesh
A.M. SAXENA, Pr. Secretary

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ORDER DATED 26.09.2018 OF THE HIGH COURT OF MADHYA PRADESH DESIGNATING GRIEVANCE REDRESSAL OFFICER UNDER THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

No. 1201/Confdl./2018- In exercise of the powers conferred by Section 23 of 'The Rights of Persons with Disabilities Act, 2016' read with Rule 10 of the 'The Rights of Persons with Disabilities Rules, 2017' Hon'ble the Chief Justice of the High Court of Madhya Pradesh hereby designates the below Officers as 'Grievance Redressal Officer' for performing the duties and responsibilities as mentioned in the Act of 2016 and Rules of 2017 -

S.No.	Designated Officer	Place
1.	Deputy Registrar (J-1)	High Court of Madhya Pradesh, Jabalpur
2.	Deputy Registrar	High Court of Madhya Pradesh, Bench at Indore
3.	Deputy Registrar	High Court of Madhya Pradesh, Bench at Gwalior
4.	Deputy Registrar	In all the District Courts of Madhya Pradesh

In absence of officers so designated, the Officer in Charge of such Officers shall perform the duties assigned to the above designated Officers.

By Order of High Court

(ARVIND KUMAR SHUKLA)
REGISTRAR GENERAL

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NOTIFICATION DATED 16.11.2018 REGARDING AMENDMENT IN THE MADHYA PRADESH CIVIL COURTS RULES, 1961

In exercise of the powers conferred by Article 227 of the Constitution of India, read with Section 122 of the Code of Civil Procedure, 1908 and section 23 of the Madhya Pradesh Civil Courts Act, 1958, the High Court of Madhya Pradesh, after obtaining the assent of the State Government, hereby, proposes to make the following further amendment in the "Madhya Pradesh Civil Courts Rules, 1961", namely:-

AMENDMENT

In the said rules,

1. For rule 418, the following rule shall be substituted, namely:-

"418. Subject to any law or rules and notifications issued thereunder regarding payment of court fees, the process fee at the rate per Defendant/Respondent/Non-applicant/Accused prescribed by notification by the High Court, shall be deposited and amalgamated with the Court-fee, at the time of presentation of a main case. No

process fee shall be payable after presentation of the case for any reason whatsoever.''

2. After rule 418, the following rule shall be inserted, namely:-

"418 (A). (1) The process fee for ordinary process shall be payable at the flat rate of Rs. 100/- per main case, irrespective of any number of Defendant/Respondent/Non-Applicant but in case of process by registered post or speed post or courier the postal charges shall be paid by the part.''

3. After sub-rule (1) of rule 418 (A), the following sub-rule shall be inserted, namely:-

"(2) The postal charge for registered post or speed post or courier service shall be paid by the party within the time stipulated in the order, otherwise within seven days from the date of the order.''

REGISTRAR GENERAL
HIGH COURT OF MADHYA PRADESH

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NOTIFICATION DATED 16.11.2018 REGARDING AMENDMENT IN MADHYA PRADESH RULES AND ORDERS (CRIMINAL)

In exercise of the powers conferred by Article 227 of the Constitution of India, read with Section 477 of the Code of Criminal Procedure, 1973 (2 of 1974), the High Court of Madhya Pradesh, after obtaining the assent of the State Government hereby, proposes to make following further amendment in the Madhya Pradesh Rules and Orders (Criminal), namely:-

AMENDMENT

In the said rules,-

1. For Rule 546, the following rule shall be substituted, namely:-

"546. Subject to any law or rules and notifications issued thereunder regarding payment of court fees, the process fee at the rate per Defendant/Respondent/Non-applicant/Accused prescribed by notification by the High Court, shall be deposited and amalgamated with the Court-fee, at the time of presentation of a main case. No process fee shall be payable after presentation of the case for any reason whatsoever".

2. After rule 546, the following rule shall be inserted, namely:-

"546 (A). (1) The process fee for ordinary process shall be payable at the flat rate of Rs. 100/- per main case, irrespective of any number of Respondent/Non-Applicant/Accused/Witness but in case of process by registered post or speed post or courier the postal charges shall be paid by the party".

3. After sub-rule (1) of rule 546 (A), the following sub-rule shall be inserted, namely:-

"(2) The postal charge for registered post or speed post or courier service shall be paid by the party within the time stipulated in the order, otherwise within seven days from the date of the order".

4. For rule 547, the following rule shall be substituted, namely:-

"547. Process-fee must be paid in court-fee stamps or by electronic means but not in cash. The stamps shall be affixed to an application or memorandum, as is appropriate, filed in court. The application or memorandum should include the description of the court, the number of the case, the section and the Act under which the offence is punishable, the value of the court-fee stamps affixed, details of the processes to be issued and full particulars, name and addresses of the persons on whom the processes are to be served. If an application is filed it must in addition to the requisite stamps for the process-fees bear such stamps as are necessary for its own validity. No process for the issue of which payment of a fee is required, shall be drawn up until the fee has been paid".

REGISTRAR GENERAL
HIGH COURT OF MADHYA PRADESH

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समस्त मुख्य चिकित्सा एवं स्वास्थ्य अधिकारियों तथा सिविल सर्जन सह मुख्य अस्पताल अधीक्षकों को मध्यप्रदेश पब्लिक हैल्थ एक्ट, 1949 की धारा 71(2) में प्रावधानित समस्त अधिकर प्रदत्त किये जाने संबंधी लोक स्वास्थ्य एवं परिवार कल्याण विभाग, मध्यप्रदेश शासन की अधिसूचना दिनांक 07.03.2020

क्र. एफ 10–02/2020/सत्रह/मेडि–2:: भारत के विभिन्न भागों में नेवल कोरोना (COVID-19) के संक्रमण से स्वास्थ्य व जीवन की सुरक्षा के खतरे की उत्पन्न हुई स्थिति के परिपेक्ष्य में मध्यप्रदेश में संक्रमण की संभावना को दृष्टिगत रखते हुये प्रदेश के समस्त मुख्य चिकित्सा एवं स्वास्थ्य अधिकारियों तथा सिविल सर्जन सह मुख्य अस्पताल अधीक्षकों को मध्यप्रदेश पब्लिक हैल्थ एक्ट, 1949 के सेक्शन 71 (2) में प्रावधानित समस्त अधिकर प्रदत्त किये जाते है।

उपरोक्त अधिकार आगामी आदेश तक प्रभावी होंगे।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
राजीव चन्द्र दुबे, सचिव

●

मध्यप्रदेश पब्लिक हैल्थ एक्ट, 1949 की धारा 50 के अंतर्गत नोबल कोरोन (COVID-19) को सम्पूर्ण मध्यप्रदेश राज्य के लिये संक्रामक रोग घोषित करने संबंधी लोक स्वास्थ्य एवं परिवार कल्याण विभाग, मध्यप्रदेश शासन की अधिसूचना दिनांक 18.03.2020

क्र. एफ 10–02–2020–सत्रह–मेडि–02.– मध्यप्रदेश पब्लिक हेल्थ एक्ट, 1949 की धारा 50 के अंतर्गत, राज्य सरकार, एतद् द्वारा, नोवल कोरोना (COVID-19) को सम्पूर्ण मध्यप्रदेश राज्य के लिए संक्रामक रोग घोषित करती है तथा उक्त अधिनियम की धारा 51 के अंतर्गत नोवल कोरोना (COVID-19) को संपूर्ण मध्यप्रदेश राज्य के लिए अधिसूचित संक्रामक रोग (Notified Infectious Disease) घोषित करती है।

2. उपरोक्त अधिसूचना आगामी आदेश तक प्रभावी होगी.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
राजीव चन्द्र दुबे, सचिव

●

All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous Judiciary.

ANDREW JACKSON

PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

THE EPIDEMIC DISEASES (AMENDMENT) ORDINANCE, 2020

NO. 5 OF 2020

New Delhi, the 22nd April, 2020

Promulgated by the President in the Seventy-first Year of the Republic of India.

An ordinance further to amend the Epidemic Diseases Act, 1897.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of Article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) **Short title and commencement:** This Ordinance may be called the Epidemic Diseases (Amendment) Ordinance, 2020.

   (2) It shall come into force at once.

2. **Amendment of section 1:** In section 1 of the Epidemic Diseases Act, 1897 (hereinafter referred to as the principal Act), in sub-section (2), the words "except the territories which, immediately before the 1st November, 1956, were comprised in Part B States" shall be omitted.

3. **Insertion of new section IA:** After section 1 of the principal Act, the following section shall be inserted, namely:-

   '1 A. In this Act, unless the context otherwise requires,—

   (a) **"act of violence"** includes any of the following acts committed by any person against a health care service personnel serving during an epidemic, which causes or may cause—

      (i) harassment impacting the living or working conditions of such healthcare service personnel and preventing him from discharging his duties;

      (ii) harm, injury, hurt, intimidation or danger to the life of such healthcare service personnel, either within the premises of a clinical establishment or otherwise;

      (iii) obstruction or hindrance to such healthcare service personnel in the discharge of his duties, either within the premises of a clinical establishment or otherwise; or

(iv) loss or damage to any property or documents in the custody of, or in relation to, such healthcare service personnel;

(b) **"healthcare service personnel"** means a person who while carrying out his duties in relation to epidemic related responsibilities, may come in direct contact with affected patients and thereby is at the risk of being impacted by such disease, and includes —

(i) any public and clinical healthcare provider such as doctor, nurse, paramedical worker and community health worker;

(ii) any other person empowered under the Act to take measures to prevent the outbreak of the disease or spread thereof; and

(iii) any person declared as such by the State Government, by notification in the Official Gazette;

(c) **"property"** includes—

(i) a clinical establishment as defined in the Clinical Establishments (Registration and Regulation) Act, 2010;

(ii) any facility identified for quarantine and isolation of patients during an epidemic;

(iii) a mobile medical unit; and

(iv) any other property in which a healthcare service personnel has direct interest in relation to the epidemic;

(d) the words and expressions used herein and not defined, but defined in the Indian Ports Act, 1908, the Aircraft Act, 1934 or the Land Ports Authority of India Act, 2010, as the case may be, shall have the same meaning as assigned to them in that Act.'.

4. **Amendment of section 2A:** In section 2A of the principal Act, for the portion beginning with the words "the Central Government may take measures" and ending with the words "as may be necessary", the following shall be substituted, namely:—

"the Central Government may take such measures, as it deems fit and prescribe regulations for the inspection of any bus or train or goods vehicle or ship or vessel or aircraft leaving or arriving at any land port or port or aerodrome, as the case may be, in the territories to which this Act extends and for such detention thereof, or of any person intending to travel therein, or arriving thereby, as may be necessary".

5. **Insertion of new section 2B:** After section 2A of the principal Act, the following section shall be inserted, namely:—

"2B. Prohibition of violence against health care service personnel and damage to property– No person shall indulge in any act of violence

against a healthcare service personnel or cause any damage or loss to any property during an epidemic".

6. **Amendment of section 3:** Section 3 of the principal Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:-

"(2) Whoever, —

(i) commits or abets the commission of an act of violence against a healthcare service personnel; or

(ii) abets or causes damage or loss to any property,

shall be punished with imprisonment for a term which shall not be less than three months, but which may extend to five years, and with fine, which shall not be less than fifty thousand rupees, but which may extend to two lakh rupees.

(3) Whoever, while committing an act of violence against a healthcare service personnel, causes grievous hurt as defined in section 320 of the Indian Penal Code to such person, shall be punished with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine, which shall not be less than one lakh rupees, but which may extend to five lakh rupees.".

7. **Insertion of new sections 3A, 3B, 3C, 3D and 3E:** After section 3 of the principal Act, the following sections shall be inserted, namely:—

'3A. Cognizance, investigation and trial of offences: Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

(i) an offence punishable under sub-section (2) or sub-section (3) of section 3 shall be cognizable and non-bailable;

(ii) any case registered under sub-section (2) or sub-section (3) of section 3 shall be investigated by a police officer not below the rank of Inspector;

(iii) investigation of a case under sub-section (2) or sub-section (3) of section 3 shall be completed within a period of thirty days from the date of registration of the First Information Report;

(iv) in every inquiry or trial of a case under sub-section (2) or sub-section (3) of section 3, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded, and an endeavour shall be made to ensure that the inquiry or trial is concluded within a period of one year:

Provided that where the trial is not concluded within the said period, the Judge shall record the reasons for not having done so:

Provided further that the said period may be extended by such further period, for reasons to be recorded in writing, but not exceeding six months at a time.

3B. Composition of certain offences: Where a person is prosecuted for committing an offence punishable under sub-section (2) of section 3, such offence may, with the permission of the Court, be compounded by the person against whom such act of violence is committed.

3C. Presumption as to certain Offences: Where a person is prosecuted for committing an offence punishable under sub-section (3) of section 3, the Court shall presume that such person has committed such offence, unless the contrary is proved.

3D. Presumption of culpable mental state: (1) In any prosecution for an offence under sub-section (3) of section 3 which requires a culpable mental on the part of the accused, the Court shall presume the existence of such mental state, but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.— In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

3E. Compensation for acts of violence: (1) In addition to the punishment provided for an offence under sub-section (2) or sub-section (3) of section 3, the person so convicted shall also be liable to pay, by way of compensation, such amount, as may be determined by the Court for causing hurt or grievous hurt to any healthcare service personnel.

(2) Notwithstanding the composition of an offence under section 3B, in case of damage to any property or loss caused, the compensation payable shall be twice the amount of fair market value of the damaged property or the loss caused, as may be determined by the Court.

(3) Upon failure to pay the compensation awarded under sub-sections (1) and (2), such amount shall be recovered as an arrear of land revenue under the Revenue Recovery Act, 1890.'.

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MADHYA PRADESH EPIDEMIC DISEASES, COVID-19 REGULATIONS, 2020

(Notification dated 23.03.2020 of Government of Madhya Pradesh, Department of Public Health & Family Welfare, Vallabh Bhawan, Bhopal)

No. PS/Health/17/Medi-3/595 – In exercise of the powers conferred under Sections 2, 3 & 4 of the Epidemic Diseases Act, 1897, the Governor of Madhya Pradesh is pleased to issue the following regulations regarding COVID-19 (Corona Virus Disease 2019)

1. These regulations may be called "The Madhya Pradesh Epidemic Diseases, COVID-19 Regulations, 2020''.
2. "Epidemic Disease" in these regulations means COVID-19 (Corona Virus Disease 2019) which has been notified as Notified Epidemic disease and "Notified Infectious Disease" under Madhya Pradesh Public Health Act, 1949 by notification dated 18.03.2020.
3. Authorized persons under this Act are Principal Secretary (Public Health & Family Welfare) at the State Level, District Magistrate, Commissioner of Municipal Corporation, Sub-Divisional Magistrate (SDM), Chief Medical and Health Officer and Civil Surgeon cum Hospital Superintendent in the districts.
4. Staff of all Government Departments and Organization of the concerned area will be at the disposal of the District Magistrate, Sub-Divisional Magistrate (SDM), and officers authorized by the Department of Public Health and Family Welfare, for discharging the duty of containment measures in the districts. If required, District Magistrate may order requisition of services and facilities of any other person/institution.
5. No persons/institution/organization will use any print or electronic or social media for dissemination of any information regarding COVID-19 without ascertaining of facts and prior clearance of the Principal Secretary (Public Health & Family Welfare), Commissioner, Health, Commissioner Medical Education, Director (Public Health & Family Welfare), Director (Medical Education) or the District Magistrate as the case may be. This is necessary to avoid spread of any unauthenticated information and/or rumors regarding COVID-19. If any person/institution/organization is found indulging in such activity, it will be treated as a punishable offence under these Regulations.
6. All hospitals, nursing homes and clinical establishments (government or private) during screening of specified cases shall record the history of travel of the person to any country or area (as per the guidelines issued from time to time by Government of India) where COVID-19 has been reported. The history of contacts with the suspected or

confirmed case of COVID-19 is required to be recorded. Contact tracing for patients (required as per the guidelines issued from time to time) will be conducted by the Health Department or by other identified staff. Information of all such cases must be given to District integrated Disease Surveillance Unit and District Magistrate immediately.

7. If the owner or occupier(s) of any premises or any individual suspected/confirmed with COVID-19, refuses to take measures for prevention or treatment i.e., Home Quarantine/Institutional Quarantine/ Isolation or any such person refuses to co-operate with, render assistance to, or comply with the directions of the Surveillance Personnel, the concerned District Magistrate having jurisdiction specifically in this regard, may pass an appropriate order and may proceed with proceedings under Section 133 of the Code of Criminal Procedure, 1973 (2 of 1974), or take any other coercive action as deemed necessary and expedient for enforcing such cooperation and assistance. In case of a minor, such Order shall be directed to the guardian or any other adult member of the family of the minor.

8. All advisories issued/or to be issued by the Government of India on COVID-19 will ipso facto be treated as directions under the Epidemic Diseases Act, 1897 in the State of Madhya Pradesh.

9. With the concurrence of Health and Family Welfare Department, Madhya Pradesh, District Disaster Management Committee headed by District Magistrate is authorized for planning strategy regarding containment measures for COVID-19 in their respective districts. The District Magistrate may co opt more officers from different departments for District Disaster Management Committee for this activity under these regulations.

10. **Penalty:** Any person/institution/organization found violating any provisions of this regulation shall be deemed to have committed an offence punishable under Section 187/188/269/270/271 of the Indian Penal Code (45 of 1860). District Magistrate of a District may penalize any person/institution/ organization if found violating provisions of these regulation or any further orders issued by the Government under these Regulations.

11. **Protection to persons acting under the Act:** No suit or legal proceedings shall lie against any person for anything done or intended to be done in good faith under this Act unless proved otherwise.

12. These regulations shall come into force immediately and shall remain valid for a period of one year from the date of publication of this notification.

●

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES RULES, 2020

(Notification dated 09.03.2020 of Ministry of Women And Child Development)

G.S.R. 165(E). – In exercise of the powers conferred by section 45 of the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), the Central Government hereby makes the following rules, namely:—

1. (1) **Short title and commencement. –** These rules may be called the Protection of Children from Sexual Offences Rules, 2020.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. – (1) In these rules, unless the context otherwise requires,–

(a) **"Act"** means the Protection of Children from Sexual Offences Act, 2012 (32 of 2012);

(b) **"District Child Protection Unit"** (DCPU) means the District Child Protection Unit established by the State Government under section 106 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016);

(c) **"Expert"** means a person trained in mental health, medicine, child development or other relevant discipline, who may be required to facilitate communication with a child whose ability to communicate has been affected by trauma, disability or any other vulnerability;

(d) **"Special educator"** means a person trained in communication with children with disabilities in a way that addresses the child's individual abilities and needs, which include challenges with learning and communication, emotional and behavioral issues, physical disabilities, and developmental issues.

Explanation.– For the purposes of this clause, the expression "disabilities", shall carry the same meaning as defined in clause (s) of section 2 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016);

(e) **"Person familiar with the manner of communication of the child"** means a parent or family member of a child or a member of child's shared household or any person in whom the child reposes trust and confidence, who is familiar with that child's unique manner of communication, and whose presence may be required for or be conducive to more effective communication with the child;

(f) **"Support person"** means a person assigned by the Child Welfare Committee, in accordance with sub-rule (7) of rule 4, to render assistance to the child through the process of investigation and trial, or any other person assisting the child in the pre-trial or trial process in respect of an offence under the Act;

(2) Words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them under the Act.

3. Awareness generation and capacity building. – (1) The Central Government, or as the case may be, the State Government shall prepare age-appropriate educational material and curriculum for children, informing them about various aspects of personal safety, including—–

(i) measures to protect their physical, and virtual identity; and to safeguard their emotional and mental well-being;

(ii) prevention and protection from sexual offences;

(iii) reporting mechanisms, including Child helpline-1098 services;

(iv) inculcating gender sensitivity, gender equality and gender equity for effective prevention of offences under the Act.

(2) Suitable material and information may be disseminated by the respective Governments in all public places such as panchayat bhavans, community centers, schools and colleges, bus terminals, railway stations, places of congregation, airports, taxi stands, cinema halls and such other prominent places and also be disseminated in suitable form in virtual spaces such as internet and social media.

(3) The Central Government and every State Government shall take all suitable measures to spread awareness about possible risks and vulnerabilities, signs of abuse, information about rights of children under the Act along with access to support and services available for children.

(4) Any institution housing children or coming in regular contact with children including schools, creches, sports academies or any other facility for children must ensure a police verification and background check on periodic basis, of every staff, teaching or non-teaching, regular or contractual, or any other person being an employee of such Institution coming in contact with the child. Such Institution shall also ensure that periodic training is organised for sensitising them on child safety and protection.

(5) The respective Governments shall formulate a child protection policy based on the principle of zero-tolerance to violence against children, which shall be adopted by all institutions, organizations, or any other agency working with, or coming in contact with children.

(6) The Central Government and every State Government shall provide periodic trainings including orientation programmes, sensitization workshops and refresher courses to all persons, whether regular or contractual, coming in contact with the children, to sensitize them about child safety and protection and educate them regarding their

responsibility under the Act. Orientation programme and intensive courses may also be organized for police personnel and forensic experts for building their capacities in their respective roles on a regular basis.

4. Procedure regarding care and protection of child. – (1) Where any Special Juvenile Police Unit (hereafter referred to as "SJPU") or the local police receives any information under sub-section (1) of section 19 of the Act from any person including the child, the SJPU or local police receiving the report of such information shall forthwith disclose to the person making the report, the following details:-

(i) his or her name and designation;

(ii) the address and telephone number;

(iii) the name, designation and contact details of the officer who supervises the officer receiving the information.

(2) If any such information regarding the commission of an offence under the provisions of the Act is received by the child helpline – 1098, the child helpline shall immediately report such information to SJPU or Local Police.

(3) Where an SJPU or the local police, as the case may be, receives information in accordance with the provisions contained under sub-section (1) of section 19 of the Act in respect of an offence that has been committed or attempted or is likely to be committed, the authority concerned shall, where applicable, —

(a) proceed to record and register a First Information Report as per the provisions of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), and furnish a copy thereof free of cost to the person making such report, as per sub-section (2) of section 154 of that Code;

(b) where the child needs emergency medical care as described under sub-section (5) of section 19 of the Act or under these rules, arrange for the child to access such care, in accordance with rule 6;

(c) take the child to the hospital for the medical examination in accordance with section 27 of the Act;

(d) ensure that the samples collected for the purposes of the forensic tests are sent to the forensic laboratory immediately;

(e) inform the child and child's parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief;

(f) inform the child and child's parent or guardian or other person in whom the child has trust and confidence as to the right of the child to legal advice and counsel and the right to be represented by a lawyer, in accordance with section 40 of the Act.

(4) Where the SJPU or the local police receives information under sub-section (1) of section 19 of the Act, and has a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or the child is living in a child care institution and is without parental support, or the child is found to be without any home and parental support, the concerned SJPU, or the local police shall produce the child before the concerned Child Welfare Committee (hereafter referred to as "CWC") within 24 hours of receipt of such report, together with reasons in writing as to whether the child is in need of care and protection under sub-section (5) of section 19 of the Act, and with a request for a detailed assessment by the CWC.

(5) Upon receipt of a report under sub-rule (3), the concerned CWC must proceed, in accordance with its powers under sub-section (1) of section 31 of the Juvenile Justice Act, 2015 (2 of 2016), to make a determination within three days, either on its own or with the assistance of a social worker, as to whether the child needs to be taken out of the custody of child's family or shared household and placed in a children's home or a shelter home.

(6) In making determination under sub-rule (4), the CWC shall take into account any preference or opinion expressed by the child on the matter, together with the best interests of the child, having regard to the following considerations, namely: –

(i) the capacity of the parents, or of either parent, or of any other person in whom the child has trust and confidence, to provide for the immediate care and protection needs of the child, including medical needs and counseling;

(ii) the need for the child to remain in the care of parent's, family and extended family and to maintain a connection with them;

(iii) the child's age and level of maturity, gender, and social and economic background;

(iv) disability of the child, if any;

(v) any chronic illness from which a child may suffer;

(vi) any history of family violence involving the child or a family member of the child; and,

(vii) any other relevant factors that may have a bearing on the best interests of the child:

Provided that prior to making such determination, an inquiry shall be conducted in such a way that the child is not unnecessarily exposed to injury or inconvenience.

(7) The child and child's parent or guardian or any other person in whom the child has trust and confidence and with whom the child has been living, who is affected by such determination, shall be informed that such determination is being considered.

(8) The CWC, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment made under sub-rule (5), and with the consent of the child and child's parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child in all possible manner throughout the process of investigation and trial, and shall immediately inform the SJPU or Local Police about providing a support person to the child.

(9) The support person shall at all times maintain the confidentiality of all information pertaining to the child to which he or she has access and shall keep the child and child's parent or guardian or other person in whom the child has trust and confidence, informed regarding the proceedings of the case, including available assistance, judicial procedures, and potential outcomes. The Support person shall also inform the child of the role the Support person may play in the judicial process and ensure that any concerns that the child may have, regarding child's safety in relation to the accused and the manner in which the Support person would like to provide child's testimony, are conveyed to the relevant authorities.

(10) Where a support person has been provided to the child, the SJPU or the local police shall, within 24 hours of making such assignment, inform the Special Court in writing.

(11) The services of the support person may be terminated by the CWC upon request by the child and child's parent or guardian or person in whom the child has trust and confidence, and the child requesting the termination shall not be required to assign any reason for such request. The Special Court shall be given in writing such information.

(12) The CWC shall also seek monthly reports from support person till the completion of trial, with respect to condition and care of child, including the family situation focusing on the physical, emotional and mental well-being, and progress towards healing from trauma; engage with medical care facilities, in coordination with the support person, to ensure need-based continued medical support to the child, including psychological care and counseling; and shall ensure resumption of education of the child, or continued education of the child, or shifting of the child to a new school, if required.

(13) It shall be the responsibility of the SJPU, or the local police to keep the child and child's parent or guardian or other person in whom the child has trust and confidence, and where a support person has been assigned, such person, informed about the developments, including the arrest of the accused, applications filed and other court proceedings.

(14) SJPU or the local police shall also inform the child and child's parents or guardian or other person in whom the child has trust and confidence about their entitlements and services available to them under the Act or any other law for the time being applicable as per **Form-A**. It shall also complete the Preliminary Assessment Report in **Form-B** within 24 hours of the registration of the First Information Report and submit it to the CWC.

(15) The information to be provided by the SJPU, local police, or support person, to the child and child's parents or guardian or other person in whom the child has trust and confidence, includes but is not limited to the following:-

(i) the availability of public and private emergency and crisis services;

(ii) the procedural steps involved in a criminal prosecution;

(iii) the availability of victim's compensation benefits;

(iv) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;

(v) the arrest of a suspected offender;

(vi) the filing of charges against a suspected offender;

(vii) the schedule of court proceedings that the child is either required to attend or is entitled to attend;

(viii) the bail, release or detention status of an offender or suspected offender;

(ix) the rendering of a verdict after trial; and

(x) the sentence imposed on an offender.

5. Interpreters, translators, special educators, experts and support persons. – (1) In each district, the DCPU shall maintain a register with names, addresses and other contact details of interpreters, translators, experts, special educators and support persons for the purposes of the Act, and this register shall be made available to the SJPU, local police, magistrate or Special Court, as and when required.

(2) The qualifications and experience of the interpreters, translators, special educators, experts and support persons engaged for the purposes of sub-section (4) of section 19, sub-sections (3) and (4) of section 26 and section 38 of the Act, and Rule 4 respectively shall be as indicated in these rules.

(3) Where an interpreter, translator, or special educator is engaged, otherwise than from the list maintained by the DCPU under sub-rule (1), the requirements prescribed under sub-rules (4) and (5) of this rule may be relaxed on evidence of relevant experience or formal education or training or demonstrated proof of fluency in the relevant languages by the interpreter, translator, or special educator, subject to the satisfaction of the DCPU, Special Court or other authority concerned.

(4) Interpreters and translators engaged under sub-rule (1) should have functional familiarity with language spoken by the child as well as the official language of the state, either by virtue of such language being child's mother tongue or medium of instruction at school at least up to primary school level, or by the interpreter or translator having acquired knowledge of such language through child's vocation, profession, or residence in the area where that language is spoken.

(5) Sign language interpreters, special educators and experts entered in the register under sub-rule(1) should have relevant qualifications in sign language or special education, or in the case of an expert, in the relevant discipline, from a recognised University or an institution recognised by the Rehabilitation Council of India.

(6) Support person may be a person or organisation working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child, or a person employed by the DCPU:

Provided that nothing in these rules shall prevent the child and child's parents or guardian or other person in whom the child has trust and confidence from seeking the assistance of any person or organisation for proceedings under the Act.

(7) Payment for the services of an interpreter, translator, special educator, expert or support person whose name is enrolled in the register maintained under sub-rule (1) or otherwise, shall be made by the State Government from the Fund maintained under section 105 of the Juvenile Justice Act, 2015 (2 of 2016), or from other funds placed at the disposal of the DCPU.

(8) Any interpreter, translator, special educator, expert or support person engaged for the purpose of assisting a child under this Act, shall be paid a fee which shall be prescribed by the State Government, but which, shall not be less than the amount prescribed for a skilled worker under the Minimum Wages Act, 1948 (11 of 1948).

(9) Any preference expressed by the child at any stage after information is received under sub-section(1) of section 19 of the Act, as to the gender of the interpreter, translator, special educator, expert or support person, may be taken into consideration, and where necessary, more

than one such person may be engaged in order to facilitate communication with the child.

(10) The interpreter, translator, special educator, expert, support person or person familiar with the manner of communication of the child engaged to provide services for the purposes of the Act shall be unbiased and impartial and shall disclose any real or perceived conflict of interest and shall render a complete and accurate interpretation or translation without any additions or omissions, in accordance with section 282 of the Code of Criminal Procedure, 1973 (2 of 1974).

(11) In proceedings under section 38, the Special Court shall ascertain whether the child speaks the language of the court adequately, and that the engagement of any interpreter, translator, special educator, expert, support person or other person familiar with the manner of communication of the child, who has been engaged to facilitate communication with the child, does not involve any conflict of interest.

(12) Any interpreter, translator, special educator, expert or support person appointed under the Act shall be bound by the rules of confidentiality, as described under section 127 read with section 126 of the Indian Evidence Act, 1872 (1 of 1872).

6. Medical aid and care. – (1) Where an officer of the SJPU, or the local police receives information under section 19 of the Act that an offence under the Act has been committed, and is satisfied that the child against whom an offence has been committed is in need of urgent medical care and protection, such officer, or as the case may be, the local police shall, within 24 hours of receiving such information, arrange to take such child to the nearest hospital or medical care facility center for emergency medical care:

Provided that where an offence has been committed under sections 3, 5, 7 or 9 of the Act, the victim shall be referred to emergency medical care.

(2) Emergency medical care shall be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and confidence.

(3) No medical practitioner, hospital or other medical facility center rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care.

(4) The registered medical practitioner rendering medical care shall attend to the needs of the child, including:

(a) treatment for cuts, bruises, and other injuries including genital injuries, if any;

(b) treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs;

(c) treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts;

(d) possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence; and,

(e) wherever necessary, a referral or consultation for mental or psychological health needs, or other counseling, or drug de-addiction services and programmes should be made.

(5) The registered medical practitioner shall submit the report on the condition of the child within 24 hrs to the SJPU or Local Police.

(6) Any forensic evidence collected in the course of rendering emergency medical care must be collected in accordance with section 27 of the Act.

(7) If the child is found to be pregnant, then the registered medical practitioner shall counsel the child, and her parents or guardians, or support person, regarding the various lawful options available to the child as per the Medical Termination of Pregnancy Act, 1971 and the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016).

(8) If the child is found to have been administered any drugs or other intoxicating substances, access to drug de- addiction programme shall be ensured.

(9) If the child is a divyang (person with disability), suitable measure and care shall be taken as per the provisions of The Rights of Persons with Disabilities Act, 2016 (49 of 2016).

7. Legal aid and assistance. – (1) The CWC shall make a recommendation to District Legal Services Authority (hereafter referred to as "DLSA") for legal aid and assistance.

(2) The legal aid and assistance shall be provided to the child in accordance with the provisions of the Legal Services Authorities Act, 1987 (39 of 1987).

8. Special relief. – (1) For special relief, if any, to be provided for contingencies such as food, clothes, transport and other essential needs, CWC may recommend immediate payment of such amount as it may assess to be required at that stage, to any of the following:-

(i) the DLSA under Section 357A; or;

(ii) the DCPU out of such funds placed at their disposal by state or;

(iii) funds maintained under section 105 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016);

(2) Such immediate payment shall be made within a week of receipt of recommendation from the CWC.

9. Compensation. – (1) The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any.

(2) The Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.

(3) Where the Special Court, under sub-section (8) of section 33 of the Act read with sub-sections (2) and (3) of section 357A of the Code of Criminal Procedure, 1973 (2 of 1974) makes a direction for the award of compensation to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim, including the following:-

(i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;

(ii) the expenditure incurred or likely to be incurred on child's medical treatment for physical or mental health or on both;

(iii) loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;

(iv) loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;

(v) the relationship of the child to the offender, if any;

(vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;

(vii) whether the child became pregnant as a result of the offence;

(viii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;

(ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;

(x) any disability suffered by the child as a result of the offence;

(xi) financial condition of the child against whom the offence has been committed so as to determine such child's need for rehabilitation;

(xii) any other factor that the Special Court may consider to be relevant.

(4) The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure, 1973 or any other law for the time being in force, or, where such fund or scheme does not exist, by the State Government.

(5) The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

(6) Nothing in these rules shall prevent a child or child's parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government.

10. Procedure for imposition of fine and payment thereof. – (1) The CWC shall coordinate with the DLSA to ensure that any amount of fine imposed by the Special Court under the Act which is to be paid to the victim, is in fact paid to the child.

(2) The CWC will also facilitate any procedure for opening a bank account, arranging for identity proofs, etc., with the assistance of DCPU and support person.

11. Reporting of pornographic material involving a child. – (1) Any person who has received any pornographic material involving a child or any information regarding such pornographic material being stored, possessed, distributed, circulated, transmitted, facilitated, propagated or displayed, or is likely to be distributed, facilitated or transmitted in any manner shall report the contents to the SJPU or local police, or as the case may be, cyber-crime portal (cybercrime.gov.in) and upon such receipt of the report, the SJPU or local police or the cyber-crime portal take necessary action as per the directions of the Government issued from time to time.

(2) In case the "person" as mentioned in sub-rule (1) is an "intermediary" as defined in clause (w) of sub-section (1) of section 2 of the Information Technology Act, 2000, such person shall in addition to reporting, as provided under sub-rule (1), also hand over the necessary material including the source from which such material may have originated to the SJPU or local police, or as the case may be, cyber-crime portal (cybercrime.gov.in) and upon such receipt of the said material, the SJPU or local police or the cyber-crime portal take necessary action as per the directions of the Government issued from time to time.

(3) The report shall include the details of the device in which such pornographic content was noticed and the suspected device from which such content was received including the platform on which the content was displayed.

(4) The Central Government and every State Government shall make all endeavors to create widespread awareness about the procedures of making such reports from time to time.

12. Monitoring of implementation of the Act. – (1) The National Commission for the Protection of Child Rights (hereafter referred to as "NCPCR") or the State Commission for the Protection of Child Rights (hereafter referred to as "SCPCR"), as the case may be, shall in addition to the functions assigned to them under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), perform the following functions for implementation of the provisions of the Act—

(a) monitor the designation of Special Courts by State Governments;

(b) monitor the appointment of the Special Public Prosecutors by the State Governments;

(c) monitor the formulation of the guidelines described in section 39 of the Act by the State Governments, for the use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child, and to monitor the application of these guidelines;

(d) monitor the designing and implementation of modules for training police personnel and other concerned persons, including officers of the Centre and State Governments, for the effective discharge of their functions under the Act;

(e) monitor and support the Central Government and State Governments for the dissemination of information relating to the provisions of the Act through media including the television, radio and print media at regular intervals, so as to make the general public, children as well as their parents and guardians aware of the provisions of the Act.

(f) call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC.

(g) collect information and data on its own or from the relevant agencies regarding reported cases of sexual abuse and their disposal under the processes provided under the Act, including information on the following:-

(i) number and details of offences reported under the Act;

(ii) whether the procedures prescribed under the Act and rules were followed, including those regarding time-frames;

(iii) details of arrangements for care and protection of victims of offences under this Act, including arrangements for emergency medical care and medical examination; and,

(iv) details regarding assessment of the need for care and protection of a child by the concerned CWC in any specific case;

(h) use the information so collected to assess the implementation of the provisions of the Act. The report on monitoring of the Act shall be included in a separate chapter in the annual report of the NCPCR or the SCPCR.

(2) The concerned authorities mandated to collect data, under the Act, shall share such data with the Central Government and every State Government, NCPCR and SCPCRs.

13. Repeal. – The Protection of Children from Sexual Offences Rules, 2012 are hereby repealed, except as respects things done or omitted to be done before such repeal.

FORM-A

Entitlement of children who have suffered sexual abuse to receive information and services

1. To receive a copy of the FIR.
2. To receive adequate security and protection by Police.
3. To receive immediate and free medical examination by civil hospital/PHC etc.
4. To receive counseling and consultation for mental and psychological well being.
5. For recording of statement of child by woman police officer at child's home or any other place convenient to child.
6. To be moved to a Child Care Institution where offence was at home or in a shared household, to the custody of a person whom child reposes faith.
7. For immediate aid and assistance on the recommendation of CWC.
8. For being kept away from accused at all times, during trial and otherwise.
9. To have an interpreter or translator, where needed.
10. To have special educator for the child or other specialized person where child is disabled.
11. For Free Legal Aid.
12. For Support Person to be appointed by Child Welfare Committee.
13. To continue with education.
14. To privacy and confidentiality.
15. For list of Important Contact No.'s including that of the District Magistrate and the Superintendent of Police.

Date: **Duty Officer**

I have received a copy of 'Form-A' **(Name & Designation to be mentioned)**

(Signature of Victim/Parent/Guardian)

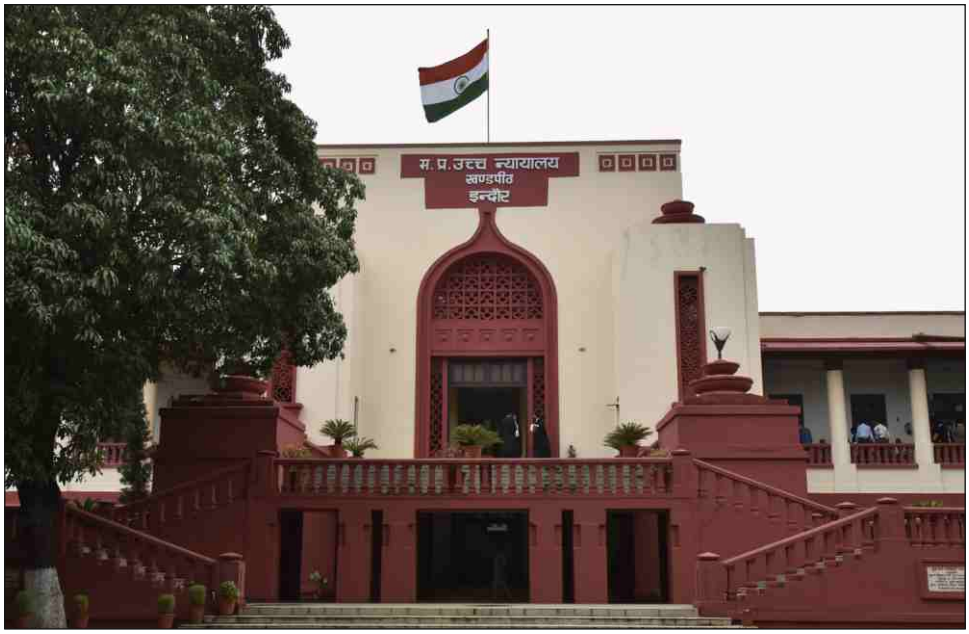
(Note : The form may be converted in local and simple child friendly language)

FORM-B

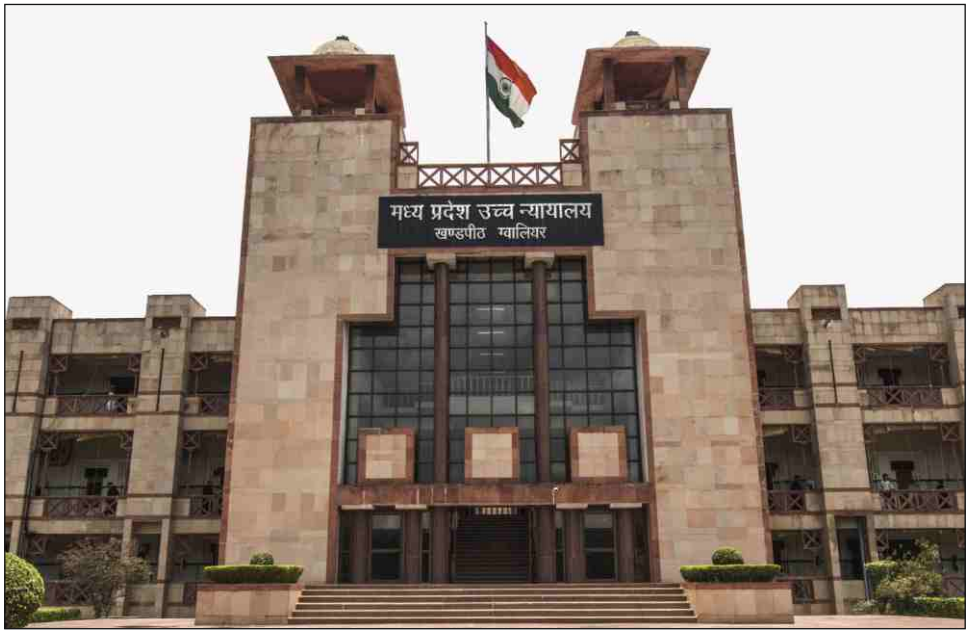
PRELIMINARY ASSESSMENT REPORT

	PARAMETERS	COMMENT
1	Age of the victim	
2	Relationship of child to the offender	
3	Type of abuse and gravity of the offence	
4	Available details and severity of mental and physical harm/injury suffered by the child	
5	Whether the child is disabled (physical, mental or intellectual)	
6	Details regarding economic status of victim's parents, total number of child's family members, occupation of child's parents and monthly family income.	
7	Whether the victim has undergone or is undergoing any medical treatment due to incident of the present case or needs medical treatment on account of offence.	
8	Whether there has been loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial or other reason?	
9	Whether the abuse was a single isolated incident or whether the abuse took place over a period of time?	
10	Whether the parents of victim are undergoing any treatment or have any health issues?	
11	Aadhar No. of the child, if available.	

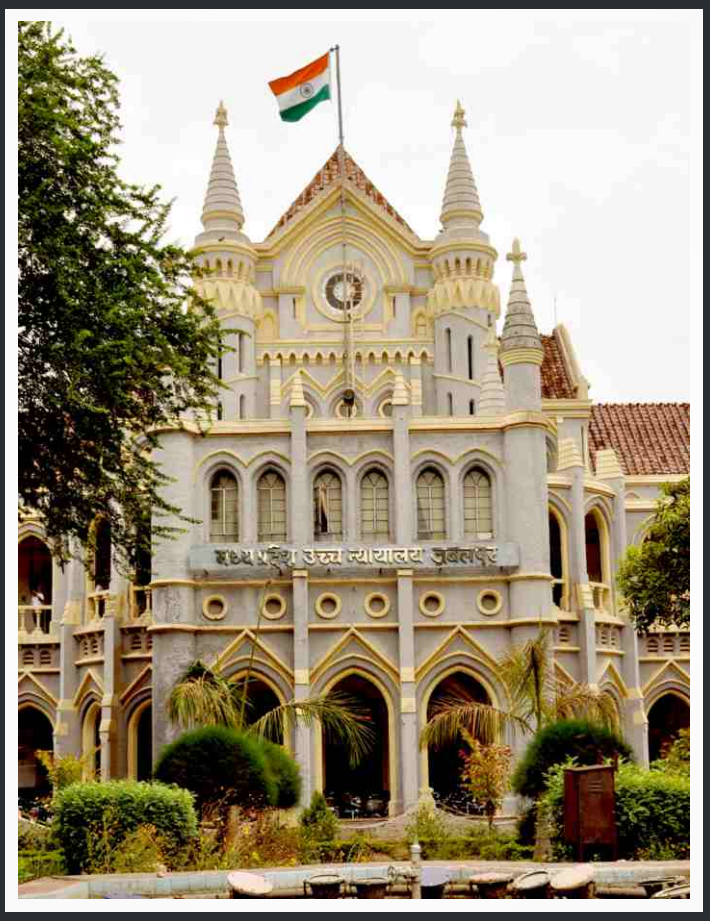
Date: **Station House Officer**



मध्यप्रदेश उच्च न्यायालय, खण्डपीठ इन्दौर



मध्यप्रदेश उच्च न्यायालय, खण्डपीठ ग्वालियर



मध्यप्रदेश उच्च न्यायालय, जबलपुर

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