JOTI JOURNAL

APRIL 2016 (BI-MONTHLY)

मध्य प्रदेश राज्य न्यायिक अकादमी

मध्यप्रदेश उच्च न्यायालय, जबलपुर - 482 007

MADHYA PRADESH STATE JUDICIAL ACADEMY

HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

JOTI JOURNAL APRIL - 2016

SUBJECT- INDEX

PART-I
(ARTICLES & MISC.)

PART-II
(NOTES ON IMPORTANT JUDGMENTS)

/kkjk 13 & बकाया किराये का विवाद निम्न परिस्थितियों में उत्पन्न होता है :

जहां किराये की दर और बकाया किराये की मात्रा का विवाद हो वहां पूरी धारा 13 (1) लागू नहीं होती हैं जब तक की न्यायालय द्वारा धारा 13 (2) के अधीन प्रावधिक मासिक किराया निर्धारित नहीं कर दिया जाता, जो कि धारा 13 (1) अधिनियम के अनुपालन से शासित होता है।

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Hkfe fodkl fu;e] 2012 ¼e-i-½

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flfoy izfØ;k %

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flfoy izfØ;k lafgrk] 1908

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CONSTITUTION OF INDIA
Hkkjr dk lafo/kku

Article 300-A – See Sections 305 and 306 of the Municipal Corporation Act, 1956 (M.P.).

vuqPNn 300&, & देखें नगर पालिक निगम अधिनियम, 1956 (म.प्र.) की धाराएं 305 और 306।

78 148

CONTRACT ACT, 1872
lafonk vf/kfu;e] 1872

Section 65 – ***Maxim "actus curaie neminem gravabit"*** meaning thereby – An Act of the Court shall prejudice no man would apply with full vigour in above facts – A person cannot be penalized for no fault of his – His application cannot be rejected on such technical ground – Application allowed by Hon'ble the Apex Court.

/kkjk 65 & ''एक्टस क्यूरिस नेमीनेम ग्रावाबिट'' अर्थात न्यायालय के कार्य से किसी व्यक्ति को हानि नहीं होगी यह सूत्र वाक्य उक्त तथ्यों पर पूरी तरह लागू होगा – एक व्यक्ति को उसकी कोई गलती नहीं होने पर दंडित नहीं किया जा सकता – उसका आवेदन ऐसे तकनीकी आधारों पर खारिज नहीं किया जा सकता माननीय सर्वोच्च न्यायालय ने आवेदन स्वीकार किया। **119 199**

COURT FEES ACT, 1870
U;k;ky; 'kYd vf/kfu;e] 1870

Section 7 – See Section 8 of the Suits Valuation Act, 1887.

/kkjk 7 & देखें वाद मूल्यांकन अधिनियम, 1887 की धारा 8 विक्रय पत्र को शून्य घोषित करवाने और स्थायी निषेधाज्ञा का वाद। **120* 202**

CRIMINAL PROCEDURE CODE (M.P. AMENDMENT) ACT, 2007
n.M izfØ;k lafgrk] ¼e-i- la'kks/ku½ vf/kfu;e] 2007

Schedule I – See Sections 420, 467, 468 and 471 of the Indian Penal Code, 1860.

izFke vuqlph & देखें भारतीय दण्ड संहिता, 1860 की धाराएं 420, 467, 468 और 471।

101* 178

CRIMINAL PROCEDURE CODE,1973
n.M izfØ;k lafgrk] 1973

Section 125 – Family pension.

/kkjk 125 & फेमिली पेंशन। **79* 150**

Sections 154 and 157 – There was no material on the record to show or suggest that FIR was tampered or fabricated at a later date by antedating it – So, little delay in sending copy of FIR to the concerned Magistrate is not vital.

/kkjk,¡ 154 vkj 157 & अभिलेख पर ऐसी कोई सामग्री नहीं थी जो यह दर्शाती हो या इंगित करती हो कि प्रथम सूचना प्रतिवेदन के साथ छेड़ – छाड़ की गई थी या वह कूटरचित है या बाद में पूर्व दिनांकित की गई है – अतः प्रथम सूचना प्रतिवदेन की प्रतिलिपि संबंधित मजिस्ट्रेट को भेजने में थोड़ा विलंब महत्वपूर्ण नहीं है।

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Sections 161 and 164 – When non-recording of statement of prosecutrix under section 161 or 164 of Cr.P.C. is not fatal for prosecution?

/kkjk,¡ 161 vkj 164 & कब अभियोक्त्री के कथन धारा 161 या 164 दण्ड प्रक्रिया संहिता के अधीन लेखबद्ध न करना अभियोजन के लिये घातक नहीं होता है ? **113 (ii)* 193**

Section 173 (8) – Section 173 (8) CrPC empowers the I.O. to conduct further investigation even after filing of a report under section 173(2) CrPC if he obtains further evidence, oral or documentary

/kkjk 173 ¼8½ & धारा 173(8) दं.प्र.सं. अनुसंधान अधिकारी को धारा 173 (2) दं.प्र.सं. के अधीन प्रतिवेदन फाईल कर देने के बाद भी अतिरिक्त अनुसंधान संचालित करने के लिए सशक्त करती है, यदि उसे मौखिक या दस्तावेजी अन्य साक्ष्य प्राप्त होती है। **80* 150**

Section 197 – Appellants, Medical Officers were discharging their public duties in the Government Hospital – They were performing surgery on the patient in the Government Hospital – Private Complaint under section 304-A IPC was registered against them without the sanction from the State Government – Held, it is not maintainable.

/kkjk 197 & अपीलार्थीगण चिकित्सा अधिकारी उनके लोक कृत्यों का निर्वाहन शासकीय अस्पताल में कर रहे थे – वे शासकीय अस्पताल में मरीज की शल्य क्रिया कर रहे थे – उनके विरूद्ध धारा 304–ए भारतीय दण्ड संहिता का निजी परिवाद राज्य सरकार की अनुमति के बिना पंजीबद्ध किया गया – अभिनिर्धारित किया गया, यह (परिवाद) प्रचलनशील नहीं हैं। **81 151**

Sections 204 and 397 – (i) Revisional jurisdiction – Order of issuance of process, when can be set aside?

(ii) At the stage of issuing processes in a private complaint, the defence of accused cannot be considered.

/kkjk,¡ 204 vkj 397 & (i) पुनरीक्षण का क्षेत्राधिकार – आदेशिका जारी करने का आदेश कब अपास्त किया जा सकता है ?

(ii) एक निजी परिवाद में आदेशिका जारी करने के प्रक्रम पर अभियुक्त का बचाव विचार में नहीं लिया जा सकता है। **82* 153**

Sections 204 (4), 378 and 398 – Complaint has been dismissed under section 204 (4) CrPC – Whether revision is maintainable against that order?

/kkjk,¡ 204 ¼4½] 378 vkj 398 & परिवाद धारा 204 (4) द.प्र.सं. के अधीन खारिज किया गया था – क्या उक्त आदेश के विरूद्ध पुनरीक्षण चलने योग्य है ? **83 154**

CRIMINAL TRIAL:
nkf.Md fopkj.k %

EVIDENCE ACT, 1872

Lkk{; vf/kfu;e] 1872

Section 3 – Appreciation of evidence – Effect of non-examination of independent witnesses.

/kkjk 3 & साक्ष्य का मूल्यांकन – स्वतंत्र गवाहों का परीक्षण न करवाने का प्रभाव।

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Sections 3 and 134 – Appreciation of evidence – Conviction on the basis of sole testimony of the wife of the deceased.

/kkjk,a 3 vkj 134 & साक्ष्य का मूल्यांकन – मृतक की पत्नी की एक मात्र साक्ष्य के आधार पर दोषसिद्धि।

92* 167

Section 3 – See Sections 4, 8 and 3 of the Protection of Children from Sexual Offences Act, 2012 and Sections 161 and 164 of the Criminal Procedure Code, 1973.

/kkjk 3 & देखें लैंगिक अपराध से बालकों का संरक्षण अधिनियम, 2012 की धाराएं 4, 8 और 30 एवं दण्ड प्रक्रिया संहिता, 1973 की धाराएं161 और 164। **113* 193**

Section 3 – Whether Compact Disc is covered under the definition of 'document' as per section 3 of the Evidence Act? Held, Yes.

/kkjk 3 & क्या कॉम्पेक्ट डिस्क धारा 3, साक्ष्य अधिनियम के अनुसार ''दस्तावेज'' की परिभाषा में आती है ? अभिनिर्धारित किया गया, हाँ,। **91(i) 164**

Section 27 – Discovery of new fact on the basis of disclosure statement, which is not in the knowledge of the police, held, admissible.

/kkjk 27 & प्रगटन कथन के आधार पर नये तथ्य का पता लगना जो कि पुलिस के ज्ञान में नहीं था, अभिनिर्धारित किया गया, (साक्ष्य में) ग्राह्य है। **93 168**

Section 56 – See Section 2 of the Power of Attorney Act, 1882.

/kkjk 56 & देखें मुख्तारनामा अधिनियम, 1882 की धारा 2। **73 141**

FAMILY COURTS ACT, 1984

ifjokj U;k;ky; vf/kfu;e] 1984

Section 7 – See Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986

/kkjk 7 & देखें मुस्लिम महिला (विवाह विच्छेद पर अधिकारों का संरक्षण) अधिनियम, 1986 की धारा 3

108* 186

Section 7 (1)(g) – See Section 25 of the Guardians and Wards Act, 1890.

/kkjk 7 ¼1½¼g½ & देखें संरक्षक और प्रतिपाल्य अधिनियम, 1890 की धारा 25।

95* 172

Sections 7 and 8 – Whether decree passed by civil court, prior to establishment of Family Court, be executed by Family Court?

/kkjk,¡ 7 vkj 8 & क्या परिवार न्यायालय के स्थापित होने के पूर्व, सिविल न्यायालय द्वारा पारित आज्ञप्ति का निष्पादन परिवार न्यायालय द्वारा किया जा सकता है ? **94*** **171**

GUARDIANS AND WARDS ACT, 1890
lj{kd vkj ifrikY; vf/kfu;e] 1890

Section 25 – Where a Family Court is constituted for any place, then any suit or proceeding in relation to guardianship or custody of, or access to any minor would be tried by the Family Court .

/kkjk 25 & जहां एक परिवार न्यायालय किसी स्थान के लिये गठित किया गया हैं वहां किसी अवयस्क के संबंध में संरक्षण या अभिरक्षा या उस तक पहुंच का वाद या कार्यवाही का विचारण परिवार न्यायालय द्वार किया जायेगा **95*** **172**

HINDU MARRIAGE ACT, 1955
fgUnw fookg vf/kfu;e] 1955

Sections 9 and 24 – Husband filed a petition under section 9 of the Act – Wife filed written statement and also filed counter–claim to declare the alleged marriage as ab ***initio void*** on account of impotency of the husband – She filed an application under section 24 of the Act for interim alimony.

/kkjk,¡ 9 vkj 24 & पति ने धारा 9 अधिनियम के अधीन एक याचिका प्रस्तुत की – पत्नी ने लिखित कथन प्रस्तुत किया और प्रतिदावा विवाह को पति के नपुसंकता के आधार पर शून्य घोषित करवाने के लिये भी प्रस्तुत किया – उसने (पत्नी ने) धारा 24 अधिनियम के तहत अंतरिम भरण–पोषण के लिये एक आवेदन पत्र प्रस्तुत किया। **96*** **172**

Section 25 – See Sections 7 and 8 of the Family Courts Act, 1984.

/kkjk 25 & देखें परिवार न्यायालय अधिनियम, 1984 की धाराएं 7 और 8। **94*** **171**

HINDU SUCCESSION ACT, 1956
fgUnw mRrjkf/kdkj vf/kfu;e] 1956

Section 14 – Hindu woman, who was having a pre-existing right of maintenance, gets property from her husband by Will, it creates only lifetime interest – The same will become an absolute right by operation of section 14 (1) of the Hindu Succession Act.

/kkjk 14 & हिन्दू स्त्री, जिसे भरण–पोषण का अधिकार पूर्व से था, उसने उसके पति द्वारा की गई वसीयत के आधार पर संपत्ति प्राप्त की, जिसमें उसे जीवन भर के लिए हित सृजित किये थे – (संपत्ति में) ऐसे (सीमित हित) धारा 14(1) हिन्दू उत्तराधिकार अधिनियम लागू होने के बाद पूर्ण अधिकार हो जायेंगे।

97 **173**

INDIAN PENAL CODE, 1860
Hkkjrh; n.M lafgrk] 1860

Sections 149 and 302 – Unlawful assembly – Presence of all the five accused at the place of occurrence is duly proved by the prosecution – Common object was also duly proved with the evidence of injured eye-witnesses – Therefore, mere non-mentioning of two of accused's names in the FIR, held, immaterial.

/kkjk,a 149 vkj 302 & अवैध सभा – सभी पाँच अभियुक्त की घटना स्थल पर उपस्थिति अभियोजन द्वारा सम्यक रूप से प्रमाणित की गई – आहत प्रत्यक्ष साक्षीगण की साक्ष्य से सामान्य उद्देश्य भी सम्यक रूप से प्रमाणित हुआ है अतः दो अभियुक्तगण का नाम प्रथम सूचना प्रतिवेदन में दर्ज न होना अतात्विक होना अभिनिर्धारित किया गया। **98(i)*** **175**

Sections 201 and 302 – Claim of parity – Co-accused was acquitted.
/kkjk,a 201 vkj 302 & समानता का दावा – सह–अभियुक्त दोषमुक्त किया गया था। **99** **176**

Section 306 – Abetment to suicide.
/kkjk 306 & आत्महत्या का दुष्प्रेरण। **86** **157**

Sections 419 and 420 – For taking cognizance of the offence of cheating, Court should bear in mind the difference between cheating and breach of contract.

/kkjk,a 419 vkj 420 & छल के अपराध का प्रसंज्ञान लेने के लिये न्यायालय को छल और संविदा के भंग के बीच अंतर मस्तिष्क में रखना चाहिये। **100** **176**

Sections 420, 467, 468 and 471 – The charge-sheet was filed before JMFC on 12.12.2007 – Charges have been framed on 15.07.2008 – Till 26.06.2014, no prosecution witness has been examined – JMFC committed the case – Whether committal is proper? Held, Yes – ***Ramesh Kumar Soni v. State of Madhya Pradesh, 2013 ILR 714 (SC)*** relied on – ***Rakesh Kumar Dubey v. State of M.P. and another, 2014 (II) MPWN 128*** is not in the line with the principles laid down by the Apex Court in ***Ramesh Kumar Soni's*** case (supra).

/kkjk,a 420] 467] 468 vkj 471 & न्यायिक मजिस्ट्रेट प्रथम श्रेणी के समक्ष 12.12.2007 को अभियोग पत्र प्रस्तुत हुआ था – 15.07.2000 को आरोप विरचित किये गये थे – 26.06.2014 तक किसी अभियोजन साक्षी का परीक्षण नहीं हुआ था – न्यायिक मजिस्ट्रेट प्रथम श्रेणी ने मामला सुपुर्द (या उपार्पित) किया – क्या सुपुर्दगी (या उपार्पण) उचित है ? अभिनिर्धारित किया गया, हाँ – न्यायदृष्टांत रमेश कुमार सोनी विरूद्ध स्टेट ऑफ म.प्र. , 2013 आई.एल.आर. 714 (एससी) पर विश्वास किया गया – न्यायदृष्टांत राकेश कुमार दुबे विरूद्ध स्टेट ऑफ एम.पी. एण्ड अनादर, 2014 (*II*) एम.पी.डब्ल्यु.एन. 128 माननीय सर्वोच्च न्यायालय द्वारा न्यायदृष्टांत रमेश कुमार सोनी के उक्त मामले में अभिनिर्धारित सिद्धांतों के अनुरूप नहीं है। **101*** **178**

LAND ACQUISITION ACT, 1894
Hkfe vf/kxg.k vf/kfu;e] 1894

Sections 4 and 6 – See Section 38 of the Specific Relief Act, 1963.

/kkjk,a 4 vkj 6 & देखें विनिर्दिष्ट अनुतोष अधिनियम, 1963 की धारा 38। **118 197**

LIMITATION ACT, 1963
ifjlhek vf/kfu;e] 1963

Sections 5 and 14 – See Order 9 Rule 13 of the Civil Procedure Code, 1908.

/kkjk,a 5 vkj 14 & देखें सिविल प्रक्रिया संहिता, 1908 का आदेश 9 नियम 13। **74 143**

Articles 64 and 65 – See Section 38 of the Specific Relief Act, 1963.

vuqPNsn 64 vkj 65 & देखें विनिर्दिष्ट अनुतोष अधिनियम, 1963 की धारा 38।

118 197

Article 91(a) – (i) What is the meaning of the term "first learns" as provided under Article 91(a) of the Limitation Act,1963 ?

(ii) If an allegation made in the plaint is not specifically denied in the W.S., it is treated as admitted.

(iii) Whether bond is a movable property ?

vuqPNsn 91 ¼,½ & (i) शब्द ''पहली बार ज्ञात'' जैसा की अनुच्छेद 91 (ए) परिसीमा अधिनियम, 1963 में प्रावधान हैं का क्या अर्थ हैं ?

(ii) यदि वाद पत्र में किये गये एक अभिकथन को लिखित कथन में विनिर्दिष्ट रूप से इंकार नहीं किया जाता है तो इसे स्वीकृत होना माना जाता हैं।

(iii) क्या बांड एक चल संपत्ति है ? **102 179**

Article 112 – Suit by or on behalf of the Central Government - Whether Bharat Sanchar Nigam Ltd. (BSNL) is an instrumentality of the Central Government and is entitled to the protection under Article 112 of the Limitation Act, 1963 which gives limitation of 30 years?

vuqPNsn 112 & केन्द्र सरकार द्वारा या उनकी ओर से वाद – क्या भारत संचार निगम लिमिटेड (बी.एस.एन. एल.) एक केन्द्र सरकार का अभिकरण है और परिसीमा अधिनियम, 1963 के अनुच्छेद 112 का संरक्षण पाने का हकदार हैं जो 30 वर्ष की परिसीमा देता हैं ? **103* 181**

MOTOR VEHICLES ACT, 1988
ekVj;ku vf/kfu;e] 1988

Sections 2 (30), 147 and 157 – Whether in the wake of lease agreement entered into by registered owner with State Road Transport Corporation, the registered owner, insurer and SRTC can be fastened with the liability to make payment of compensation to the

claimant and whether SRTC can recover the amount from registered owner and its entitlement to seek indemnification from insurer?

/kkjk,¡ 2 ¼30½] 147 vkj 157 & क्या पंजीकृत स्वामी द्वारा राज्य सड़क परिवहन निगम के साथ किये गये लीज अनुबंध के परिणाम स्वरूप पंजीकृत स्वामी, बीमाकर्ता और राज्य सड़क परिवहन निगम पर आवेदक को प्रतिकर का भुगतान करने का दायित्व डाला जा सकता है और क्या राज्य सड़क परिवहन निगम उस राशि को पंजीकृत स्वामी से वसूल कर सकती है और बीमाकर्ता से दायित्व मुक्ति की हकदार होने की मांग कर सकता है ? **104*** **182**

Section 166 – Assessment of compensation under the head 'injury case'.

/kkjk 166 & 'सिर की चोट' के मामले में प्रतिकर का निर्धारण। **105*** **182**

Section 166 – Deceased aged 47 years, was agriculturist having 12 acres of agricultural land and also involved in milk business – Tribunal assessed his income as Rs. 2000/- p.m. and awarded Rs. 2,37,500/- but High Court assessed it as 5000/- p.m. and enhanced the award up to Rs. 6,15,000/-.

/kkjk 166 & मृतक उम्र 47 वर्ष एक कृषक था जिसके पास 12 एकड़ कृषि भूमि थी और वह दूध का व्यवसाय भी करता था – अधिकरण ने उसके आमदानी 2,000/– रूपये प्रतिमाह निर्धारित कर 2,37,500/– रूपये अवार्ड किये किन्तु उच्च न्यायालय ने उसकी आमदानी 5,000/– रूपये प्रतिमाह निर्धारित करते हुये अवार्ड में 6,15,000/– रूपये तक वृद्धि की। **106(i)*** **183**

Section 166 – Whether the Tribunal at place 'K' has jurisdiction to decide the claim petition under section 166 of the Act when the accident took place outside the jurisdiction of place 'K' and the claimant also resided outside 'K's' jurisdiction but the Insurance Company carried on business at place 'K'?

/kkjk 166 & क्या स्थान ''के'' की अधिकरण को धारा 166 अधिनियम के अधीन प्रस्तुत क्लेम को निराकृत करने की अधिकारिता है जबकि दुर्घटना ''के'' स्थान के क्षेत्राधिकार के बाहर हुई है और आवेदक भी ''के'' स्थान के क्षेत्राधिकार के बाहर रहता है किन्तु ''के'' स्थान पर बीमा कंपनी अपना कारोबार चलाती है ?

107 **184**

MUNICIPAL CORPORATION ACT, 1956 (M.P.)

uxj ikfyd fuxe vf/kfu;e] 1956 ¼e0i0½

Sections 305 and 306 – (i) Municipal Corporation has neither initiated any proceeding for acquisition of the property for the petitioners nor paid any compensation to them – Therefore, the Corporation cannot be permitted to take possession of the property without acquiring the same and without making payment of compensation.

(ii) The power of 'eminent domain' is in the nature of compulsory purchase of the property of the citizen for the purpose of applying to the public but this power can be exercised subject to the payment of compensation.

/kkjk,¡ 305 vkj 306 & (i) नगर पालिक निगम ने याचिकाकर्ता की संपत्ति अधिग्रहण करने के लिये न तो कोई कार्यवाही प्रारंभ की न ही उनको कोई प्रतिकर भुगतान किया गया – अतः निगम को संपत्ति का आधिपत्य लेने के लिये, बिना उसे अधिग्रहित किये और प्रतिकर का भुगतान किये, अनुमत नहीं किया जा सकता।

(ii) 'एमीनेन्ट डोमेन' की शक्तियाँ किसी नागरिक की संपत्ति को लोक उद्देश्य के लिये बाध्यताकारी क्रय करने की प्रकृति की है किन्तु ऐसी शक्तियों का प्रयोग प्रतिकर के भुगतान के अधीन किया जा सकता हैं। **78 148**

MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986

eqfLye efgyk ¼fookg foPNsn ij vf/kdkjksa dk lajf{k.k½ vf/kfu;e] 1986

Section 3 – Can a Family Court entertain and decide an application under section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986?

/kkjk 3 & क्या एक परिवार न्यायालय धारा 3 मुस्लिम महिला (विवाह विच्छेद पर अधिकारों का संरक्षण) अधिनियम, 1986 के अधीन आवेदन को ग्रहण और निराकृत कर सकती हैं ?

108* 186

N.D.P.S. ACT, 1985

,u-Mh-ih-,l- ,DV] 1985

Sections 15 and 35 – Physical possession of the contraband has been established by the prosecution – Once the physical possession of the contraband by the accused has been proved, presumption under section 35 of the NDPS Act comes into play and the burden shifts on the accused to prove that he was not in conscious possession of the contraband.

/kkjk,¡ 15 vkj 35 & अभियोजन द्वारा निषिद्ध पदार्थ का भौतिक आधिपत्य स्थापित किया – एक बार निषिद्ध पदार्थ का भौतिक आधिपत्य अभियुक्त का होना स्थापित हो जाता है तब धारा 35 एन.डी.पी.एस. एक्ट की उपधारणा लागू होती हैं और अभियुक्त पर यह प्रमाण भार होता है की वह यह प्रमाणित करे की वह निषिद्ध पदार्थ के जागृत आधिपत्य में नहीं था। **90(ii)* 163**

Section 18 – Investigation Officer and complainant are the same persons – Effect of –

/kkjk 18 & अनुसंधान अधिकारी और परिवादी एक ही व्यक्ति है – इसका प्रभाव।

109* 186

NEGOTIABLE INSTRUMENTS ACT, 1881

ijØkE; fy[kr vf/kfu;e] 1881

Section 138 – Cheque in question was issued in respect of settlement taken place in Lok Adalat – Whether it comes under debt or liability as provided under section 138 N.I. Act?

/kkjk 138 & प्रश्नाधीन चैक लोक अदालत में हुये व्यवस्थापन के संदर्भ में जारी किया गया था – क्या यह धारा 138 एन.आई. एक्ट के प्रावधान के अनुसार ऋण या दायित्व के अंतर्गत आता हैं ?
110 **187**

Section 138 – See Sections 204 (4), 378 and 398 of the Criminal Procedure Code, 1973.

/kkjk 138 & देखें दण्ड प्रक्रिया संहिता, 1973 की धाराएं 204(4), 378 और 398। **83** **154**

POLICE ACT, 1861
ifyl vf/kfu;e] 1861

Section 7 – Whether acquittal in criminal case is a ground for non–punishing a police officer in departmental enquiry?

/kkjk 7 & क्या दांडिक प्रकरण में दोषमुक्ति एक पुलिस अधिकारी को विभागीय जाँच में दंडित न करने का एक आधार है ? **111** **190**

POWERS OF ATTORNEY ACT, 1882
Ekq[rkjukek vf/kfu;e] 1882

Section 2 – An agent acting under Power of Attorney always acts, as a general rule, in the name of his principal.

/kkjk 2 & एक अभिकर्ता जो मुख्तारनामा के अधीन कार्य करता है वह एक सामान्य नियम के तहत मूल व्यक्ति के नाम से काम करता है। **72(i)*** **140**

Section 2 – (i) Unregistered General Power of Attorney – Person holding Unregistered Power of Attorney can appear and act on behalf of a party to the proceeding in Court .

(ii) Whether full signature in every page on Power of Attorney is necessary?

/kkjk 2 & (i) अपंजीकृत आम मुख्तारनामा – अपंजीकृत आम मुख्तारनामा धारक पक्षकार की ओर से कार्यवाही में न्यायालय में उपस्थित हो सकता है और कार्य कर सकता है।

(ii) क्या मुख्तारनामा के प्रत्येक पृष्ठ पर पूरे हस्ताक्षर होना आवश्यक है? **73** **141**

PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) ACT, 1994
xHkZ /kkj.k iwo Zkj ilo iwo funku rduhd ¼fyx p;u dk ifr"k/k½ vf/kfu;e] 1994

Section 30 – See Sections 451 and 457 of the Criminal Procedure Code, 1973.

/kkjk 30 & देखें दण्ड प्रक्रिया संहिता, 1973 की धाराएं 451 और 457। **89** **162**

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

ySfxd vijk/k ls cPpksa dk lajf{kr vf/kfu;e] 2012

Sections 4, 8 and 30 – Appreciation of evidence.

/kkjk,a 4] 8 vkSj 30 & साक्ष्य का मूल्यांकन। **113(i) *** **193**

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

?kjsyw fgalk ls efgykvksa dk lajf{kr vf/kfu;e] 2005

Sections 2 (a), 2 (f), 2(g), 3 (iv) and 12 – Whether claim for return of stridhan is maintainable under section 12 of the Act, 2005 though decree of judicial separation has been passed?

/kkjk,a 2 ¼,½] /kkjk 2 ¼Q½] /kkjk 2 ¼th½] 3 ¼iv½ vkSj 12 & क्या स्त्री धन की वापसी का दावा धारा 12 अधिनियम, 2005 के तहत चलने योग्य है यद्यपि न्यायिक पृथककरण की अज्ञाप्ति पारित हो चुकी हैं ?

112 **191**

RENT CONTROL AND EVICTION LAW:

HkkMk fu;a=.k vkSj fu"dklu fof/k %

– See Sections 13, 14 and 35 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFESI Act, 2002).

– देखें वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम, 2002 (सरफेसी एक्ट, 2002) की धाराएं 13, 14 और 35। **117*** **196**

RIGHT TO INFORMATION ACT, 2005

lwpuk dk vf/kdkj vf/kfu;e] 2005

Section 8 (1)(e) – Fiduciary relationship – Relationship between Public Service Commission and Examiners is totally within the fiduciary relationship.

/kkjk 8 ¼1½¼e½ & विश्वासपूर्ण संबंध – लोक सेवा आयोग और परीक्षकों के बीच के संबंध पूरी तरह से विश्वासपूर्ण संबंध होते है। **114*** **194**

Section 8 (1) (e) – Whether Reserve Bank of India and other banks can deny to provide all the information sought under the RTI Act to the public at large on the ground of economic interest, commercial confidence, fiduciary relationship with other bank on the one hand and the public interest on the other?

/kkjk 8 ¼1½ ¼e½ & क्या भारतीय रिर्जव बैंक और अन्य बैंक सूचना का अधिकार अधिनियम के अंतर्गत चाही गई सभी जानकारियाँ देने में अन्य बैंक के साथ आर्थिक हित, वाणिज्यिक विश्वास, विश्वासपूर्ण संबंध के आधार पर आमजन को इंकार कर सकती है जबकि दूसरी ओर लोक हित हैं? **115*** **194**

Section 8 (1) (j) – Whether personal information like statement of movable and immovable properties, list of family members, etc. can be given in Right to Information Act, 2005 ?

/kkjk 8 ¼1½¼t½ & क्या व्यक्तिगत सूचना जैसे चल और अचल संपत्ति के विवरण, परिवार के सदस्यों की सूची आदि सूचना का अधिकार अधिनियम, 2005 में दी जा सकती है ? **116*** **195**

SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (SARFESI ACT, 2002)

foRrh; vkfLRk;ksa dk iqufuekZ.k vkSj izfrHkwfr izorZu rFkk izfrHkwfr fgr dk izorZu vf/kfu;e] 2002 ¼ljQslh ,DV] 2002½

Sections 13, 14 and 35 – Whether the provisions of the SARFESI Act have overriding effect on the provisions of Rent Control Act?

/kkjk,a 13] 14 vkSj 35 & क्या सरफेसी एकट के प्रावधानों का भाड़ा नियत्रण अधिनियम के प्रावधानों पर अधिभावी प्रभाव है ? **117*** **196**

SPECIFIC RELIEF ACT, 1963

fofufnZ"V vuqrks"k vf/kfu;e] 1963

Section 38 – (i) Validity of sale – Post issue of preliminary notification–Such sale is void and *non est* in the eyes of law giving to the purchaser limited right to claim compensation and no more.

(ii) For claiming permanent injunction, plaintiff should prove – his settled possession on the date of filing of the suit.

(iii) Adverse possession – Essential ingredients – Explained.

/kkjk 38 - (i) प्रारंभिक अधिसूचना जारी हो जाने के बाद के विक्रय की वैधता – ऐसा विक्रय कानून की दृष्टि में शून्य हैं विक्रेता को प्रतिकर का दावा करने का सीमित अधिकार देता है इसके अलावा कुछ नहीं।

(ii) स्थाई निषेधाज्ञा का दावा करने के लिये वादी को उसका वाद प्रस्तुती दिनांक पर स्थापित आधिपत्य प्रमाणित करना चाहिये।

(iii) विरोधी आधिपत्य – आवश्यक घटक – समझाये गये। **118** **197**

STAMP ACT, 1899

Sections 49 and 50 – See Section 65 of the Contract Act, 1872.

/kkjk,a 49 vkSj 50 & देखें संविदा अधिनियम, 1872 की धारा 65। **119** **199**

SUITS VALUATION ACT, 1887

okn eY;kdu vf/kfu;e] 1887

Section 8 – Suit for declaration of sale deed to be ***ab initio void*** and perpetual injunction.

/kkjk 8 & विक्रय पत्र को शून्य घोषित करवाने और स्थायी निषेधाज्ञा का वाद।

120* 202

PART-III

(CIRCULARS/NOTIFICATIONS)

PART-IV

(IMPORTMENT CENTRAL/STATE ACTS & AMENDMENTS)

lEikndh;

inhi dqekj 0;kl
iHkkjh lpkyd

सम्माननीय पाठक गण,

यह अंक हमारे कुछ न्यायाधीशगण को नवीन पद स्थापना पर प्राप्त हो सकता है। नवीन पदस्थापना की उन सभी न्यायाधीशगण को शुभकामनाएँ।

हम कहीं भी पदस्थ रहे हमारा उद्देश्य समान है संस्था के लिये सर्वश्रेष्ठ कार्य करना। इमानदारीपूर्ण स्व–आंकलन (Self Assessment) का एक अच्छा तरीका यह हो सकता है कि प्रतिदिन कार्यालय से रवाना होने के पूर्व हम दर्पण के सामने खड़े होकर अपने आप से यह प्रश्न कर सकते हैं की आज मैंने दिन भर में अपने कार्यालयीन समय का उपयोग किस प्रकार किया? मैंने आज दिन भर में अपनी संस्थान के लिये क्या सर्वश्रेष्ठ योगदान दिया ? उत्तर आपको आपकी आँखों में और चेहरे पर मिल जायेगा कहा भी गया है कि ''दर्पण झूठ न बोले''।

इन दो माहों में दो कार्यशालाएँ घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 व महिलाओं और बच्चों के विरूद्ध बढ़ते अपराध के महत्वपूर्ण बिन्दु पर दिनांक 5 मार्च 2016 एवं 19 मार्च 2016 को रखी गई है एक कार्यशाला एन. आई. एक्ट पर 12 मार्च 2016 को रखी गई हैं। जिला न्यायालय स्तर पर मंत्रालयीन कर्मचारियों में से प्रत्येक जिले में एक प्रशिक्षक तैयार करने के उद्देश्य से एक कार्यशाला 26 मार्च 2016 से 30 मार्च 2016 तक में रखी गई हैं।

1 अप्रैल 2016 से 4 अप्रैल 2016 एक कार्यशाला अभिभाषकगण के लिये जबलपुर में रखी गई हैं। जिला एवं सत्र न्यायाधीश महोदय अपने जिले में प्रत्येक न्यायाधीश के लिये एक रोल मॉडल होते है उनके लिये एक दो दिवसीय कार्यशाला 9 और 10 अप्रैल 2016 को वही मजिस्ट्रेट के लिये रोल मॉडल मुख्य न्यायिक मजिस्ट्रेट के लिये एक कार्यशाला 30 अप्रैल 2016 को रखी गई हैं। डिस्ट्रिक्ट रजिस्ट्रार के लिये 23 अप्रैल 2016 एक कार्यशाला जबलपुर में रखी गई हैं। इस तरह इन दो माहों में 8 कार्यशालाएँ विभिन्न विषयों पर जबलपुर में रखी गई हैं।

इस अंक में न्यायिक कार्य में होने वाले सामान्य प्रक्रियात्मक त्रुटिया व उनसे बचाव, गोपनीय चरित्रावली में स्व–आंकलन पर दो लेख शामिल किये गये हैं। धारा 156 (3) द.प्र.सं. पर एक लेख शामिल किया गया है जिससे हमारे मजिस्ट्रेट महोदय के सामने इस बारे में विधिक स्थिति स्पष्ट रहे। एक लेख विक्रय करार के अपंजीकृत होने पर उसके साक्ष्य में ग्राह्य करने के बारे में लिया गया हैं। धारा 71 भा.द.सं. पर एक लेख शामिल किया गया हैं। आशा है ये सभी लेख हमारे न्यायाधीशगण के न्यायिक कार्य में सहायक हो सकेंगे।

किशोर न्याय (बालकों की देखरेख व संरक्षण) अधिनियम, 2015, मोटर दुर्घटना दावा प्रकरणों, सिविल अपील, दांडिक पुनरीक्षण, दांडिक अपील, एन.आई. एक्ट, घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 के Reading Material Update किये गये हैं व सी.डी. के रूप में इन कार्यशालाओं में शामिल होने वाले न्यायाधीशगण को दिये गये हैं। प्रदेश के सभी न्यायाधीशगण से निवेदन है की वे इन विषयों के Reading Material कार्यशालाओं में भाग लेने वाले न्यायाधीशगणों से अनुरोध करके सी.डी. लेकर अपनी आवश्यकतानुसार कॉपी कर ले ताकि उनके पास भी नवीनतम विधिक स्थिति रहेगी।

पत्रिका के बारे में आपके अमूल्य सुझाव सादर आमंत्रित हैं।

tks 0;fDr viu fgLl dk dke fd;s fcuk Hkkstu xg.k djrk gS og pkj gSA

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

Workshop on – Professionalism at Work Place for the Registry Officers and Officials of High Court of M.P., Bench Indore held at Indore
(16th & 17th January, 2016)

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

Workshop on – Juvenile Justice (Care & Protection of Children) Act, 2015 held in the Academy (6th & 7th February, 2016)

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

Training Programme on – National Core Case Information Software (NC CIS) Verson 2.0 for System Officers and System Assitants held in the Academy (13th & 14th February, 2016)

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

Workshop on – Claim Cases under Motor Vehicles Act & Key issus relating to Appeals & Revisions held in the Academy
(20th & 21st February, 2016)

JUDICIAL DISCIPLINE, CRITERIA OF WORK DONE AND SELF-ASSESSMENT IN ACR

– By **Bhupendra Kumar Nigam**
Registrar (Admn.),
High Court of M.P.,
Jabalpur.

JUDICIAL DISCIPLINE

Judicial discipline is described as self assessment and it is an inbuilt mechanism as per the pronouncement of Hon'ble Supreme Court in case of ***R.A. Khan v. Jawahar Lal and others, (2007) 10 SCC 201***. A Judicial Officer has to create the judicial discipline as an habit and not compliance of the rules or directions. It should be an inherent quality of a Judicial Officer. The slightest deviation will make him an unbecoming of a Judicial Officer.

The word 'judicial discipline" includes the word 'discipline'. Apart from the legislative enactments, the judicial discipline is governed by the judicial ethics. For the purpose of judicial discipline the following two enactments are relevant in the matter:

1. M.P. Civil Services (Conduct) Rules, 1965
2. M.P. Civil Court Act, 1961

Judicial discipline may be classified in various heads:

- Punctuality
- Sincerity
- Accountability
- Dignity and decorum
- Parity
- Subordination

PUNCTUALITY

The observation of punctuality is contemplated in Rule 2 of M.P. Civil Court Rules, 1961 as well as Rule 2 of the Rules and Order (Criminal). The observance of the punctuality is the first step to run into the judicial discipline. The excuse of non-compliance of punctuality by the advocates or litigants or staff is not a substantial reason for non observation of punctuality by a Judicial

Officer. The Indian Judiciary has a high tradition of the punctuality and being a representative of the system, each and every Judicial Officer expected to stand up to the expectation in this regard. Punctuality should be observed in time as well as in work. The cases fixed for particular time and for particular purpose should be taken up in it true spirit.

SINCERITY

Punctuality without sincerity is like a river without water. The purpose of observation of punctuality is to create sincerity towards the judicial work. Therefore, sincerity towards the work is one of the basic requirement of judicial discipline.

ACCOUNTABILITY

Every Judicial Officer is accountable to his oath to office . He is a brand ambassador of the Institution. It is a wrong perception in the mind of many of the Judicial Officer that they can exercise an unequivocal power without any accountability. He cannot shift liability to the subordinate staff as per Rule 321 of the M.P. Civil Court Rules, 1961 which runs as under:

> "Necessary entries in the order-sheet shall be made by the presiding officer as the case proceeds. Entries of a simple and routine nature may, however, be made by the court clerk under the supervision and direction of the presiding officer but the presiding officer must carefully scrutinize the entries before signature them and will, in all cases, be responsible for their correctness. All entries shall be signed with the usual signature of the presiding officer."

DIGNITY AND DECORUM

Dignity and decorum contemplate act as well as behaviour. One cannot expect what he is not delivering to others. Therefore, first deserve and then desire. Behavour of the Judicial Officer is always relevant when he interact with the advocates, litigants, staff, senior colleagues, junior colleagues and also public at large. A Judicial Officer has to be very cautious regarding his behaviour on all above counts. Each count requires a different approach, tolerance and sentiments.

PARITY

Parity is an important pillar of judicial discipline. Parity is based on the judicial pronouncements. The observance of parity is also necessary for judicial discipline. Parity means equal treatment on equal pact. It is the basis of the natural justice. Therefore, a Judicial Officer while doing his judicial work should

follow the rule of parity. The parity may be either affirmative as well as negative. Sometimes a Judicial Officer forget to follow the rule of negative parity which may leads serious consequences.

SUBORDINATION

Subordination is a necessary conduct of a government employee. Violation of subordination is treated as insubordination, which is misconduct.

Insubordination generally defined as a willful or intentionally failure to obey lawful and respectful request of a superior. It may also be an action which constitutes lack of respect or harassment directed towards a superior.

DISCIPLINARY ACTIONS

Any action in violations of provisions of Rule 3 (2),Rule 20, Rule 23-A of M.P. Civil Services (Conduct) Rule, 1965, is a misconduct, which is punishable under the provisions of M.P. Civil Services (Classification, Control and Appeal) Rule 1966, as per the provisions of Rule 10.

It is a misconception of a judicial officer that judicial order cannot be made a basis for disciplinary action. Though, there are pronouncement of Hon'ble the Apex Court that in general if the order of judicial officer is passed in bonafide manner should not be considered as a basis for disciplinary action yet it cannot be said a general rule that no judicial order can be made basis of disciplinary action. In this regard pronouncement of Hon'ble the Supreme Court in the case of ***Union of India v. K.K.Dhawan, AIR 1993 SC 1478 = (1993) 2 SCC 56*** is a land mark pronouncement, which make it clear that the order of a judicial officer, which is passed with ulterior motive or extraneous consideration, can be made a basis of disciplinary action. It has been held in the aforesaid pronouncement that " officer who exercises judicial or quasi judicial power acts negligently or recklessly or in order to confer undue favour on a person, he is not acting as a judge. The fact of "bonafide, or the fact of malafide, with ulterior motive or with extraneous consideration" is to be considered on the basis of the circumstances as well as on the basis of fact of a particular case. Discipline is abide by law and judicial officer being the officer to implement law and expected to abide by the rules.

In view of the above, each and every judicial officer should take all endevour to be ideal icon for the society.

Dont's

- Hasty
- Careless
- Arrogant
- Bias
- Lethargic

CRITERIA OF WORK DONE

The criteria of assessment of work done of the Judicial Officer of district judiciary in the State is one of the best model available in the country. It has been designed to evaluate the work of the Judicial Officer but also to motivate and inspire them towards the priority field . Recent memo, dated 01/10/2014, has incorporated many new items as per the need and it is a regular monitoring process in which the criteria is amended as per the need. The paramount object is to reduce the pendency in the subordinate courts. Therefore, the object of the Judicial Officer must not only to achieve the prescribed unit but also to reduce the pendency in his Court.

SELF ASSESSMENT IN ANNUAL CONFIDENTIAL REPORT

Annual Confidential Report is a very pious document in the service record of the Judicial Officer. The involvement of self assessment in the ACR has been incorporated since year 2004. The object of inclusion of self assessment part in the ACR is not to write a story of self admiration. The object is to introspect and to present self personality before the Reporting Authority. Each and every column should be categorically utilized for the purpose. It not only help the Reporting Officer but also may be instrumental for you future plan for shortlisting and dissolving shortcomings.

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COMMON PROCEDURAL ERRORS

– By **Bhupendra Kumar Nigam**
Registrar (Admn.),
High Court of M.P.,
Jabalpur.

The **"procedure"** is the path to reach the ultimate destination of Justice Delivery System.

The object of substantive law cannot be achieved without a perfect procedural law. Many a times, the importance of procedural law is overlooked by the Judicial Officers. The reason for the same may be different but the consequence is always one and only i.e. danger of failure of justice. The followings are the common procedural errors committed by the Judicial Officers which have been observed at different levels :-

IN CRIMINAL CASES

REMAND STAGE

- There are some instances where the Judicial Officer has denied bail to the accused in a bailable case particularly under Section 435 of IPC and others cases.
- All necessary caution should be taken at the time of grant of remand/custody and passing of order of bail. The Schedule of the Criminal Procedure Code should also be gone through before deciding the bail application.
- Cryptic order-sheets have been observed in the matter of grant of remand of the accused. The order-sheet of grant of remand (police custody/judicial custody) should be in detail inclusive of all relevant information regarding crime number, full name and details of the accused persons and reason for granting or refusing of the remand/custody.

STAGE OF CHARGESHEET

- It has been observed that the order-sheets of filing of the charge-sheet in criminal cases does not state the fact of taking of cognizance as contemplated under Section 190 Cr.P.C.
- The first order-sheet on receipt of the charge-sheet also contains the status of the seized property.

DISTINCTION OF TRIAL

- It has been observed that many a times some Judicial Officers are committing the error of fixing a criminal case of summons trial for arguments on charge, therefore, the distinction of summons trial cases and warrant trial cases should be kept in mind. The correct procedure should be adopted accordingly.

FRAMING OF CHARGE

- There is a tendency of carelessness in some of the Judicial Officers in the matters of framing of charge. There are common instances of missing of necessary requirements/ingredients of the offences in the charges.
- Unnecessary hastiness should be avoided in framing of charges. The relevant provision should necessarily be consulted before framing of charge.

RECORDING OF EVIDENCE

- The witness should not be “left alone” in the hands of the Prosecution or Defence Counsel.
- There are common errors of non-compliance of Rule 200 of Rules and Orders (Criminal) in the matters of recording of statement of Medial Officer. Necessary endorsement should be ensured after the completion of the statement of such witnesses.

EXAMINATION OF ACCUSED

- Unnecessary questions and repetition of questions in examination of accused should be avoided.
- There is common errors observed in this field is that separate questions are framed for the same fact stated by the different witnesses. It not only creates repetition but also reflect lack of marshalling.

WRITING OF JUDGMENT

- It has been observed that there is a tendency of framing of one “point for determination” for each charge.
- There should be a separate point for determination for each ingredients of the offences as far as possible.

DISTINCTION BETWEEN APPRECIATION OF EVIDENCE AND MARSHALLING OF EVIDENCE

- The error of proper marshalling has been observed in the judgments of many Judicial Officers, which is due to the fact that they do not understand the distinction between appreciation of evidence and marshalling of evidence.
- The effective and sound appreciation of evidence can only be ensured by proper marshalling of the evidence.
- It has been observed that many a times the judgment of a Judicial Officer does not indicate separate findings on separate charges.

SENTENCE

- The provisions of Section 248(2) of Cr.P.C. should be followed in its letters and spirit. There is common tendency of discussion of granting benefit of Probation of Offenders Act at the stage of hearing on the questions of sentence.

- The provisions of Section 248(2) Cr.P.C. Before imposing 'sentence' on higher side or lesser side, all relevant provisions of law should be consulted. No sentence should be imposed without going through the relevant provisions.

DISPOSAL OF SEIZED PROPERTY

- The order of disposal of seized property in a criminal case at the stage of final adjudication is an order passed under Section 452 Cr.P.C., which is appeallable under Section 454 Cr.P.C. Therefore, it is most important to take all necessary steps at the time of the passing of the order of disposal of property at the stage of final adjudication.
- The followings are the common errors which have been observed in this regard :-

  ''प्रकरण में जप्त मुददेमाल अपील अवधि उपरांत यदि अपील न हो नष्ट किया जावे।''
- This order does not indicate that which properties have been seized in the case and why the order of disposal has been passed. Many a times, it has been observed that such orders have been passed in the cases of valuable property also.
- Therefore, at the stage of final disposal of the seized property, each of the seized property should be mentioned categorically and the reason for the order of disposal should be mentioned accordingly.

COMPLIANCE OF SECTION 428 CR.P.C.

- It has been observed that there is a tendency of passing the following orders in this regard in the final judgment :-

  ''अभियुक्त द्वारा निरोध में व्यतीत की गयी अवधि को

  धारा 428 दण्ड प्रकिया संहिता के अंतर्गत समायोजित की जावे।''
- The aforesaid form of compliance of Section 428 Cr.P.C. is not proper, as it does not indicate the period which has been ordered to be considered in this regard. Therefore, the judgment should stipulate the period for which the accused has remained in custody during trial of the case.

IN CIVIL CASES

Cryptic Order sheet of presentation of a civil suit

- First order sheet regarding presentation of a civil suit should be detailed one. Name of the plaintiff and relevant counsel should be clear, date of presentation alongwith signature, if necessary, be mentioned.

Non-compliance of Rule 37 of the M.P. Civil Court Rules 1961 with Order VII Rule 9 (2) of the Code of Civil Procedure (M.P. Amendment)

- The Presiding Oficer should make an authorization of the Civil Reader for accepting the plaint in the absence of the Presiding Officer as per Rule 37 of the M.P. Civil Court Rules, 1961

- The form of authorization should be as under :-
- I…… (name), Civil Judge Class-II …… (place), hereby authorize Shri/Smt/Ku. …… Reader (Civil) to be the authorized person to receive the plaints/applications presented in my Court in my absence.

SERVICE OF SUMMONS/NOTICES

- It has been observed that the report of the service of summons/notices are not seriously verified by the Presiding Officer, which results in erroneous ex parte orders against the defendants/non-applicants, which creates further complications as the trial advances. Therefore, it is advised that service report of summons/notices should be strictly verified by the Presiding Officer and there should be a specific order sheet regarding satisfaction of proper service of notice in the matter of each defendant/non-applicant.

[See Order V Rules 16 & 18 and Order IX Rule 6 (a) of the Code of Civil Procedure Code]

GRANT OF ADJOURNMENT

- The provisions of Order XVII Rule 2 and 3 of the Code of Civil Procedure should strictly be complied with and Order VIII Rule 10 should also be taken into account. The grounds for adjournment should always be mentioned in the order-sheet.

FRAMING OF ISSUES

- The issues in the civil suit are the backbone of the civil trial. It is commonly observed that there is tendency of framing of “combined issues” by the Judicial Officers and also framining of unnecessary and redundant issues.
- Issues should be clearly speaking words and one issue should be framed for one fact in dispute between the parties.
- It should be so framed clearly show the burden of proof of such issue.
- Issues should not be framed hastily and carelessly.
- Order XIV Rule 1 of the Code of Civil Procedure and Rule 145 of the M.P. Civil Court Rules should be followed in its strict sense.

INTERLOCUTORY APPLICATIONS

- Many a times it has been observed that interlocutory applications remained undecided till the final dispoal of the case.
- Interlocutory applications should be marked as I.A. No. ……../Year, I.A. No. ……../Year and so on. The difficulty may arise when the previous interlocutory applications were not marked by the previous Presiding Officer. In that case, the Presiding Officer may make a note in his order sheet to get the previsous interlocutory application numbered alongwith a detailed note of disposal of such interlocutory application and further he may go ahead with the future interlocutory applications accordingly.

- It should be ensured by the Presiding Officer that all interlocutory applications have been decided prior to final disposal of the case.

RECORDING OF EVIDENCE

- It has been observed that in civil litigation, the witness is left alone in the hands of the counsel of the opposite party for cross examination, which results in unnecessary narrations and repetitions in the cross examination of the witnesses.
- It may also result in recording of confusing facts during the cross examination.
- The Presiding Officer should monitor and regulate the cross examination of the witness as per rules and it should be limited to relevant facts only.

JUDGMENT WRITING

- It has been observed that many a times the Judicial Officer fails to decide each issue separately as required under the provisions of Order XX Rule 5 of the Code of Civil Procedure.
- There is increasing tendency of consolidated discussion on different issues, it should and should be decided separately.
- There is also a common error of missing independent adjudication of each issue which probably results in unwarranted consolidation of issues for discussion.

FINAL RELIEF

- It has also been observed that many a times the judgment of a Judicial Officer lacks inspecific description of the property in the final judgment as well as in the decree in civil suit.
- The provisions of Order XX Rule 6 of the Code of Civil Procedure should be followed. The survey number, house number and other relevant number of the property alongwith the boundaries being available should be specified in the final relief part as well as in the decree.
- Before passing a decree in civil suit, the Presiding Officer should put himself as an executing Court and he should only pass such decree which he could execute. The terms and conditions of the decree should be specific and executable.
- It has been observed that many a times preliminary decree is not prepared as per the provisions of Order XX Rules 15 and 16 of the Code of Civil Procedure in the partition suits for accounts in particular.

Therefore, the provisions of Order XX Rule 15 and 16 of the Code of Civil Procedure should be complied with.

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inhi dekj 0;kl
प्रभारी संचालक,
म.प्र. राज्य न्यायिक अकादमी

वर्तमान में अचल संपत्ति के विक्रय के संव्यवहार तेजी से बढ़ रहे है इन मामलों में पहले विक्रय की संविदा या विक्रय अनुबंध होता है और बाद में विक्रय पत्र निष्पादित किया जाता है कई बार संपत्ति का मूल्य बढ़ जाने या कई कारणों से विवाद उत्पन्न होते है तब अनुबंध के विशिष्ट पालन का वाद व्यवहार न्यायालय में प्रस्तुत होता है और उस समय विक्रय संविदा के साक्ष्य में ग्राह्य होने के बारे में प्रश्न उत्पन्न होता है। इस संबंध में आवश्यक सुसंगत प्रावधान इस प्रकार है :–

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दस्तावेजें जिनका रजिस्ट्रीकरण अनिवार्य है – (1) निम्नलिखित दस्तावेजों की रजिस्ट्री करनी होगी यदि वह सम्पत्ति, जिससे उनका सम्बन्ध है, ऐसे जिले में स्थित है, जिसमें और यदि वे दस्तावेजें उस तारीख को या के पश्चात् निष्पादित हुई हैं, जिसको, 1864 का अधिनियम सं. 16 या इण्डियन रजिस्ट्रेशन एक्ट, 1866 (1866 का 20) या इण्डियन रजिस्ट्रेशन एक्ट, 1871 (1871 का 8) या इंडियन रजिस्ट्रेशन एक्ट, 1877 (1877 का 3) या यह अधिनियम प्रवर्तन में आया था या आता है, अर्थात् –

(a) स्थावर सम्पत्ति के दान की लिखत,

(b) अन्य निर्वसीयती लिखत जिनसे यह तात्पर्यित हो या जिनका प्रवर्तन ऐसा हो कि वे स्थावर सम्पत्ति पर या स्थावर सम्पत्ति में एक सौ रूपये या उससे अधिक के मूल्य का कोई अधिकार, हक या हित चाहे वह निहित, चाहे समाश्रित हो, चाहे वर्तमान में चाहे भविष्य में सृष्ट, घोषित, समनुदेशित परिसीमित या निर्वापित करती हो,

(c) ऐसी निर्वसीयती लिखत, जो ऐसे किसी अधिकार, हक या हित के सृजन, घोषणा, समनुदेशन, परिसीमन या निर्वापन के लेखे किसी प्रतिफल की प्राप्ति या संदाय अभिस्वीकार करती हो, तथा

(d) वर्षानुवर्ष या एक वर्ष से अधिक की किसी अवधि के लिए, या वार्षिक भाटक को आरक्षित रखने वाले स्थावर सम्पत्ति के पट्टे,

(e) न्यायालय के किसी डिक्री या आदेश का, या किसी पंचाट का अन्तरण या समनुदेशन करने वाली निर्वसीयती लिखत जबकि ऐसी डिक्री या आदेश, या पंचाट से यह तात्पर्यित हो या उसका प्रवर्तन ऐसा हो कि वह स्थावर सम्पत्ति पर या स्थावर सम्पत्ति में एक सौ रूपये या उससे अधिक मूल्य का कोई अधिकार, हक या हित, चाहे वह निहित, चाहे वह समाश्रित हो, चाहे वर्तमान में चाहे भविष्य में सृष्ट घोषित, समनुदेशित, परिसीमित या निर्वापित करता हो,

(f) dkbZ nLrkost] tks fdlh LFkkoj lEifRr ds foØ; dh fdlh lafonk ds i:orZu ;k mlesa izHkkoh dju gsrq rkRif;Z g(

(g) स्थावर संपत्ति के किसी भी रूप में विक्रय से संबंधित मुख्तारनामा;

/kkjk 49 jftLVhdj.k vf/kfu;e] 1908

जिन दस्तावेजों का रजिस्ट्रीकरण अपेक्षित है उनके अरजिस्ट्रीकरण का परिणाम – कोई भी दस्तावेज जो धारा 17 द्वारा या सम्पत्ति अन्तरण अधिनियम, 1882 (4 का 1882) के किसी भी उपबन्ध द्वारा रजिस्ट्रीकृत किये जाने के लिए अपेक्षित है जब तक कि उसका रजिस्ट्रीकरण न हो गया हो, –

(a) उसमें समाविष्ट किसी भी स्थावर संपत्ति पर प्रभाव नहीं डालेगी; अथवा

(b) दत्तक ग्रहण की कोई भी शक्ति प्रदत्त न करेगी; अथवा

(c) ऐसी सम्पत्ति पर प्रभाव डालने वाले या ऐसी शक्ति को प्रदत्त करने वाले किसी भी संव्यवहार के साक्ष्य के रूप में ली जाएगी :

परन्तु स्थावर सम्पत्ति पर प्रभाव डालने वाली और इस अधिनियम या सम्पत्ति अन्तरण अधिनियम, 1882 (1882 का 4) द्वारा jftLVhÑr fd;s tkus ds fy, vf{kr vjftLVhÑr nLrkost LiflfQd fjyhQ ,DV] 1877 ¼1877 dk 1½ ¼vc 1963½ dh v/;k; 2 dh v/khu fofufn"V ikyu dh okn lafonk ds lk{; ds rkSj ij या किसी ऐसे सम्पार्श्विक संव्यवहार के साक्ष्य के तौर पर, जो रजिस्ट्रीकृत लिखत द्वारा किये जाने के लिए अपेक्षित न हो, ली जा सकेगी।

न्यायाधीशगण के लिये पठन सामग्री भाग 2 पेज 88 से 92 तक में मेरे द्वारा पूर्व में यह मत दिया गया था कि यदि विक्रय अनुबंध 14 जनवरी 2010 के बाद का है और रजिस्टर्ड नहीं है तो उसे विक्रय संविदा की शर्ते प्रमाणित करने के लिय साक्ष्य में ग्राह्य नहीं किया जा सकता। इस मत पर पुनर्विचार आवश्यक है।

रजिस्ट्रेशन एक्ट, 1908 की धारा 17 (एफ) में दिनांक 14 जनवरी 2010 को मध्यप्रदेश राज्य ने संशोधन करके यह प्रावधान किया गया है कि कोई दस्तावेज, जो किसी स्थावर संपत्ति के विक्रय की किसी संविदा के प्रवर्तन या उसे प्रभावी करने हेतु तात्पर्यित है का रजिस्ट्रीकरण अनिवार्य है लेकिन धारा 49 रजिस्ट्रेशन एक्ट में इसी के अनुरूप कोई संशोधन नहीं किया है और धारा 49 के परंतुक के अनुसार यदि कोई दस्तावेज जिसका रजिस्ट्रीकरण अपेक्षित है और रजिस्ट्रीकरण नहीं करवाया है तब भी वह विनिर्दिष्ट अनुतोष अधिनियम, 1963 के अध्याय दो के अधीन विनिर्दिष्ट पालन के वाद में संविदा के साक्ष्य के तौर पर ली जा सकेगी।

इस तरह एक ओर जहां उक्त धारा 17 (एफ) के अनुसार विक्रय की संविदा का रजिस्ट्रीकरण अनिवार्य करने का संशोधन मध्यप्रदेश राज्य द्वारा किया गया है लेकिन उसके अनुरूप धारा 49 के परंतुक के प्रकाश में कोई संशोधन नहीं किया गया है और प्रायः यह प्रश्न सिविल न्यायालय के समक्ष उत्पन्न होता है कि क्या विक्रय अनुबंध जो रजिस्ट्रीकृत नहीं है उसे साक्ष्य में ग्राह्य किया जा सकता है या नहीं ?

जब तक धारा 49 के परंतुक के प्रकाश में कोई संशोधन धारा 49 में नहीं किया जाता तब तक विक्रय अनुबंध को साक्ष्य में ग्राह्य किया जा सकता है क्योंकि धारा 49 धारा 17 का एक अपवाद है।

कुछ विद्वानों का मत है कि धारा 17 में मध्यप्रदेश राज्य के स्थानीय संशोधन के प्रकाश में विक्रय करार या विक्रय अनुबंध अगर रजिस्ट्रीकृत नहीं है तो साक्ष्य में ग्राह्य नहीं किया जा सकता।

न्याय दृष्टांत v{k; nXxM fo:) Mk- y{e.k jko <kyk fu.k; fnukd 18-08-2005 iFke flfoy vihy Øekd 323@2014 में माननीय म.प्र. उच्च न्यायालय की खण्डपीठ ने यह प्रतिपादित किया है कि दस्तावेज जिनका पंजीकरण अनिवार्य है और अपंजीकृत है तो उसे साक्ष्य में ग्राह्य किया जाता सकता है यदि वह अनुबंध के विनिर्दिष्ट पालन के वाद में विक्रय की संविदा या विक्रय अनुबंध है। यद्यपि इस न्याय दृष्टांत में धारा 17 रजिस्ट्रेशन एक्ट के मध्यप्रदेश राज्य के संशोधन को विचार में नहीं लिया गया है। फिर भी धारा 49 के परंतुक के प्रकाश में उक्त विधि प्रतिपादित की गई है न्याय दृष्टांत वाले मामले में भी दस्तावेज धारा 17 के संशोधन के बाद का अर्थात दिनांक 17.02.2010 का था।

अतः यह मत अधिक संभाव्य प्रतीत होता है कि जब तक धारा 49 रजिस्ट्रीकरण अधिनियम का परंतुक जो धारा 17 का अपवाद है उसमें संशोधन नहीं किया जाता तब तक केवल धारा 17 (एफ) रजिस्ट्रीकरण अधिनियम के प्रकाश में विक्रय की संविदा या विक्रय अनुबंध को साक्ष्य में अनुबंध के विनिर्दिष्ट पालन के वाद में अग्राह्य नहीं किया जा सकता। अनुबंध के पालन के वाद में ऐसा अपंजिकृत अनुबंध साक्ष्य में ग्राह्य जाना चाहिए।

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/kkjk 156 ¼3½ n.M ÁfØ;k lafgrk] 1973 d ckj e

inhi dekj 0;kl
प्रभारी संचालक
म.प्र. राज्य न्यायिक अकादमी

जैसे ही एक न्यायिक मजिस्ट्रेट के समक्ष एक परिवाद प्रस्तुत होता है तब उनके समक्ष प्रथम विचारणीय प्रश्न यह उत्पन्न होता है कि क्या इसे धारा 156 (3) द.प्र.सं. के तहत पुलिस को अनुसंधान के लिए भेजना चाहिए या स्वयं को धारा 200 एवं 202 द.प्र.सं. के तहत जांच करना चाहिए। कभी–कभी केवल 156 (3) द.प्र.सं. का आवेदन भी प्रस्तुत होता है और कभी–कभी परिवाद प्रस्तुत होता है और उसके साथ उसे धारा 156 (3) द. प्र.सं. में भेजने का एक आवेदन भी प्रस्तुत होता है तब भी इसे पुलिस को अनुसंधान के लिए भेजने या न भेजने का प्रश्न उत्पन्न होता है। यहाँ हम इसी संबंध में चर्चा करेंगे ताकि दाण्डिक न्यायालयों का अमूल्य समय बचाया जा सके।

1- ey ikoZku

धारा 156 द.प्र.सं. के प्रावधान इस प्रकार हैः–

/kkjk 156 & lK; ekey dk vUos"k.k dju dh ifyl vf/kdkjh dh 'kfDr&

(1) कोई पुलिस थाने का भारसाधक अधिकारी मजिस्ट्रेट के आदेश के बिना किसी ऐसे संज्ञेय मामले का अन्वेषण कर सकता है, जिसकी जांच या विचारण करने की शक्ति उस थाने की सीमाओं के अन्दर के स्थानीय क्षेत्र पर अधिकारिता रखने वाले न्यायालय को अध्याय 13 के उपबंधों के अधीन है।

(2) ऐसे किसी मामले में पुलिस अधिकारी की किसी कार्यवाही को किसी भी प्रक्रम में इस आधार पर प्रश्नगत न किया जाएगा कि वह मामला ऐसा था जिसमें ऐसा अधिकारी इस धारा के अधीन अन्वेषण करने के लिए सशक्त न था।

(3) धारा 190 के अधीन सशक्त किया गया कोई मजिस्ट्रेट पूर्वोक्त प्रकार के अन्वेषण का आदेश कर सकता है।

2- ikoZku dh izÑfr

धारा 156 (3) द.प्र.सं. का प्रावधान वेवेकिय है। यह मजिस्ट्रेट के विवेकाधिकार का विषय है कि उन्हें परिवाद या आवेदन को धारा 156 (3) द.प्र.सं. के तहत पुलिस को अनुसंधान के लिए निर्देशित करना है या धारा 200 एवं 202 द.प्र.सं. के तहत स्वयं जाँच करना है। फिर भी ऐसे मामले जो परिस्थितिजन्य साक्ष्य पर आधारित हो जैसे अज्ञात व्यक्ति द्वारा चोरी या अज्ञात व्यक्ति द्वारा हत्या या ऐसे मामले जिनमें कोई सामग्री या दस्तावेज बरामद होना हो, हस्ताक्षर या निशानी अगूंठा की विशेषज्ञ से जांच करवानी हो और जो संज्ञेय प्रकृति के हो ऐसे मामलों को धारा 156 (3) द.प्र.सं. के तहत पुलिस

को अनुसंधान के लिए भेजना उचित होता है जबकि ऐसे मामले जो प्रत्यक्ष साक्ष्य पर आधारित हो या असंज्ञेय प्रकृति के हो या जिनमें सामग्री की बरामदगी का विशेष महत्व न हो और न्यायालय द्वारा जाँच करके एक युक्ति युक्त निष्कर्ष पर पहुंचा जा सकता हो उन्हें धारा 200 एवं 202 द.प्र.सं. के तहत लेना चाहिए।

3- vkn'k dSlk gS \

न्यायालय को परिवाद प्रस्तुत होने के बाद यह विचार करना चाहिए कि उक्त दोनों में से किस प्रकृति का मामला है और एक Speaking order करना चाहिए कि क्यों परिवाद को धारा 156(3) द.प्र.सं. के तहत पुलिस अनुसंधान के लिए भेज रहे है और क्यों धारा 200 एवं 202 द.प्र.सं. के तहत जाँच न्यायालय में करना उचित मान रहे है।

न्यायदृष्टांत ek/kk fo:) LVsV vkQ egkjk"V] ¼2013½ 5 ,l-lh-lh- 615 के अनुसार एक परिवाद प्राप्त होने पर मजिस्ट्रेट के सामने दो विकल्प होते हैं या तो वह उसे धारा 156(3) द.प्र.सं. में पुलिस को अनुसंधान के लिए निर्देशित कर सकते है यदि वह संज्ञेय अपराध हो या वह स्वयं धारा 200 एवं 202 द.प्र.सं. के तहत जांच कर सकते है। इस मामले में मजिस्ट्रेट द्वारा संज्ञान लेने के बाद धारा 200 एवं 202 द.प्र.सं. के तहत किस प्रकार कार्यवाही करना चाहिए इसको स्पष्ट किया गया है।

न्यायदृष्टांत ekuk iokj fo:) gkbdkVZ vkQ T;fMdpj vkQ bykgkckn }kjk jftLVªkj] ¼2011½ 3 ,l-lh-lh- 496 भी इस संबंध में अवलोकनीय है।

4- efLr"d dk iz;ksx

न्यायदृष्टांत रामदेव फूड प्रोडेक्टस प्रा.लि. विरूद्ध स्टेट ऑफ गुजरात, ए.आई.आर. 2015 एस.सी. 1742 तीन न्यायमूर्तिगण की पीठ में भी यह प्रतिपादित किया गया है कि जब मजिस्ट्रेट अपराध का प्रसंज्ञान नहीं लेते है और यह आवश्यक नहीं पाते है कि आदेशिका का जारी किया जाना स्थगित किया जाये तब उन्हें मस्तिष्क का प्रयोग करने के बाद धारा 156(3) द.प्र.सं. के अधीन अनुसंधान का निर्देश देने की शक्ति का प्रयोग करना चाहिए।

5- vko';d lko/kkfu;ksa

न्यायदृष्टांत Jherh fi;kdk JhokLro vkj vU; fo:) LVsV vkQ ;w-ih-] 2015 ¼2½ ØkbZEl 209 ¼,l-lh-½ के अनुसार धारा 156 (3) द.प्र.सं. के प्रावधान का दुरूपयोग न हो इसके लिए मजिस्ट्रेट को यह देखना चाहिए कि क्या परिवादी ने धारा 154(1) द.प्र.सं. के तहत पुलिस को अपराध की सूचना दी है या नहीं और यदि पुलिस ने प्रथम सूचना लेखबद्ध नहीं की तो उसने धारा 154 (3) द.प्र.सं. के तहत पुलिस अधीक्षक को डाक द्वारा लिखित में अपराध की सूचना भेजी या नहीं। मजिस्ट्रेट को शपथ पत्र से समर्थित आवेदन लेना चाहिए जिसमें उक्त तथ्य दर्ज हो कि परिवादी ने पुलिस को अपराध की सूचना दी लेकिन पुलिस ने अपराध पंजीबद्ध नहीं किया उसने पुलिस अधीक्षक को लिखित में डाक द्वारा अपराध की सूचना भेजी फिर भी कोई कार्यवाही नहीं की गई और शपथ पत्र की सत्यता को मजिस्ट्रेट को सत्यापित भी करना चाहिए और उसके बाद ही धारा 156 (3) द.प्र.सं. की शक्तियों का प्रयोग करना चाहिए।

न्यायदृष्टांत euk;t tSu fo:) LVsV vkQ ,e-ih-] 2014 ¼3½ ,e-ih-,p-Vh- 302 के अनुसार एक विक्रय अनुबंध अभियुक्त और परिवादी के बीच हुआ जिसमें दो लाख रूपये अभियुक्त ने प्राप्त किये अभियुक्त विक्रय पत्र निष्पादित नहीं करवा रहा था और न ही राशि लौटा रहा था ऐसे अभिकथन के साथ प्रस्तुत परिवाद को धारा 156 (3) द.प्र.सं. के तहत भेजा गया माननीय उच्च न्यायालय ने यह अभिमत दिया कि ऐसे सिविल प्रकृति के मामले में धारा 156 (3) द.प्र.सं. की शक्तियों का प्रयोग उचित नहीं है और कार्यवाही अभिखंडित की थी।

न्यायदृष्टांत v:.k dsdj tSu fo:) fnus'k f=ikBh] 2010 ¼2½ ,e-ih-,y-t- 621 के अनुसार धारा 156 (3) द.प्र.सं. के तहत पुलिस को अनुसंधान का निर्देश देते हुए परिवाद भेजते समय मजिस्ट्रेट को यांत्रिक तरीके से कार्य नहीं करना चाहिए बल्कि परिवाद के अभिकथनों पर अपने मस्तिष्क का प्रयोग करना चाहिए उसके बाद ही कार्यवाही करना चाहिए।

न्यायदृष्टांत food vxoky fo:) izsepan xqIrk] 2009 ¼1½ ,e-ih-,p-Vh- 251 के अनुसार धारा 156 (3) द.प्र.सं. की शक्तियों का प्रयोग करते समय यह अनिवार्य होता है कि मजिस्ट्रेट यह देख ले की उसे प्रादेशिक क्षेत्राधिकार है और परिवाद से एक संज्ञेय अपराध प्रकट होता है और ऐसे निर्देश केवल पुलिस थाने के भारसाधक अधिकारी को ही दिये जा सकते हैं किसी वरिष्ठ अधिकारी को नहीं दिये जा सकते है।

कभी–कभी पुलिस धारा 156 (3) द.प्र.सं. के तहत भेजे गये परिवाद पर प्रादेशिक क्षेत्राधिकार न होने के कारण अनुसंधान न करने का निर्णय ले लेती है इस संबंध में न्यायदृष्टांत jfld yky nyir jke Bdqj fo:) LVsV vkQ xqtjkr] ,-vkbZ-vkj- 2010 ,l-lh- 715 अवलोकनीय है। जिसमें यह कहा गया है कि पुलिस को न्यायालय के ध्यान में यह तथ्य लाना चाहिए पुलिस स्वयं एक तरफा निर्णय नहीं कर सकती और उस पर न्यायालय ही उचित आदेश करते है।

6- funs'k fdl dks nsuk pkfg, \

मजिस्ट्रेट केवल पुलिस थाने के भारसाधक अधिकारी को धारा 156 (3) द.प्र.सं. के तहत निर्देश दे सकते है किसी विशेष अनुसंधान अभिकरण से अनुसंधान करवाने के निर्देश नहीं दे सकते। इस संबंध में न्यायदृष्टात lkdhjh okl fo:) LVsV vkQ ;-ih-] ,-vkbZ-vkj- 2008 ,l-lh- 907 ,oa lhchvkbZ fo:) LVsV vkQ xqtjkr] ¼2007½ 6 ,l-lh-lh- 156 अवलोकनीय है।

7- izfØ;k

जब परिवाद या आवेदन धारा 156 (3) द.प्र.सं. के तहत भेजते है तब मूल परिवाद या मूल आवेदन ही पुलिस को भेज दिया जाता है और उसकी प्रतिलिपि न्यायालय में रहती है। कई मजिस्ट्रेट परिवादी को यह निर्देश देते है कि परिवादी तलवाना और नकल परिवाद प्रस्तुत करे तो उसे धारा 156 (3) द.प्र.सं. के तहत भेजा जावे। लेखक के मत में तलवाना लेने की आवश्यकता नहीं है और परिवाद की प्रतिलिपि नहीं भेजना चाहिए बल्कि मूल परिवाद या मूल आवेदन ही भेज देना चाहिए और प्रतिलिपि न्यायालय में रखना चाहिए।

पुलिस थाने के भारसाधक अधिकारी को यह निर्देश देना चाहिए कि मामला संज्ञेय प्रकृति का है अतः अपराध पंजीबद्ध करे और उचित रीति से अनुंसधान करे तथा अंतिम प्रतिवेदन अनुचित विलंब के बिना प्रस्तुत करे। अपराध पंजीबद्ध करने के बाद प्रथम सूचना प्रतिवदेन की एक प्रतिलिपि तत्काल इस न्यायालय को भेजे।

मजिस्ट्रेट केवल पुलिस थाने के भारसाधक अधिकारी को ही धारा 156 (3) द.प्र.सं. के तहत निर्देश दे सकता है वह ऐसे निर्देश नहीं दे सकता कि किसी विशेष एजेन्सी या अभिकरण जैसे सी.बी.आई. आदि अनुसंधान करे इसे भी ध्यान में रखना चाहिए।

8- funsZ'k dsoy izlaKku ikus gsrq lHko

न्यायदृष्टांत lnhi t;loky fo:) feFkys'k tSu] vkbZ-,y-vkj- 2011 ,e-ih- 1787 के अनुसार एक बार परिवाद पर प्रसंज्ञान ले लेने के बाद पुलिस को धारा 156 (3) द.प्र.सं. के तहत अनुसंधान के निर्देश नहीं दिये जा सकते ऐसे निर्देश प्रसंज्ञान ले लेने के बाद धारा 202 (2) द.प्र.सं. के तहत दिये जाते है। इस मामले में मजिस्ट्रेट ने परिवाद पर प्रसंज्ञान ले लेने के बाद धारा 156 (3) द.प्र.सं. के तहत अनुसंधान के निर्देश दिये थे। यद्यपि यह पाया गया था कि निर्देश धारा 156 (3) द.प्र.सं. में है या धारा 202(2) द.प्र.सं. में है यह स्पष्ट नहीं है लेकिन मजिस्ट्रेट को इस मामले के तथ्यों के प्रकाश में यह सावधानी रखना है कि प्रसंज्ञान ले लेने के बाद धारा 156 (3) द.प्र.सं. की शक्तियों का प्रयोग नहीं करना है। इस संबंध में न्यायदृष्टांत lqjs'k pUnz tSu fo:) LVsV vkQ ,e-ih-] ,-vkbZ-vkj- 2001 ,l-lh- 571] txnh'k izlkn xqIrk fo:) LVsV vkQ ,e-ih-] 2011 ¼1½ ,e-ih-,y-t- 255 ,oa ;'kiky flag fo:) LVsV vkQ ,e-ih-] 2010 ¼3½ ,e-ih-,p-Vh- 189 अवलोकनीय है।

न्यायदृष्टांत bu jQjUl nhid vxzoky] 2008 ¼5½ ,e-ih-,p-Vh- 106 के मामले में मजिस्ट्रेट ने परिवाद पेश होने पर परिवादी का तत्काल कथन लेने के बजाय प्रारंभिक साक्ष्य अभिलिखित करने के लिए लगा दिया बाद में दो स्थगन इसी कार्यवाही के लिए और दिये उसके बाद परिवाद को धारा 156 (3) द.प्र.सं. के लिए भेजा इसे उचित नहीं माना गया और यह अभिनिर्धारित किया गया कि मजिस्ट्रेट ने जैसे ही मामला प्रारंभिक साक्ष्य के लिए ले लिया था यह माना जायेगा कि उन्होंने प्रसंज्ञान ले लिया था और प्रसंज्ञान लेने के बाद धारा 156 (3) द.प्र.सं. में अनुसंधान के निर्देश नहीं दिये जा सकते।

9- ifjokn i'k gksus ij le;kHkko gksuk

कभी–कभी परिवाद कार्य दिवस के अंतिम क्षणों में अर्थात् शाम 4 से 5 बजे के बीच प्रस्तुत होता है और मजिस्ट्रेट के पास इतना समय नहीं रहता कि वे अन्य आवश्यक कार्य जैसे जमानत, सुपुदर्गी, निर्णय आदि को छोड़कर परिवाद को पढ़ सके और यह विचार कर सके की उन्हें परिवाद में स्वयं जांच करना है या धारा 156 (3) द.प्र.सं. के तहत अनुसंधान के निर्देश देना है ऐसे समय में परिवाद प्रस्तुत करने का समय डालते हुए उसे विचारार्थ आगे नियत करना चाहिए लेकिन आदेश पत्र में परिवादी के

परीक्षण के लिए नियत किया जाने का उल्लेख नहीं आना चाहिए क्योंकि ऐसा उल्लेख आने से यह ध्वनित होगा कि मजिस्ट्रेट ने संज्ञान ले लिया है और उसके बाद यदि धारा 156 (3) द.प्र.सं. के तहत कार्यवाही होने पर परेशानी होगी। परिवाद विचारार्थ नियत किया जाता है ऐसा लिखना चाहिए।

10- iwoZKku D;k gS \

दण्ड प्रक्रिया संहिता, 1973 में प्रसंज्ञान शब्द को परिभाषित नहीं किया गया है लेकिन न्यायदृष्टांत xkiky nkl fo:) LVsV vkQ vle] ,-vkbZ-vkj- 1961 ,l-lh- 986 तीन न्यायमूर्तिगण की पीठ के निर्णय चरण 7 के अनुसार जहाँ मजिस्ट्रेट अपने मस्तिष्क का प्रयोग इस उद्देश्य से करते है कि अध्याय 16 (अब अध्याय 15) दण्ड प्रक्रिया संहिता के विभिन्न प्रावधानों धारा 204 से 210 द.प्र.सं. के तहत कार्यवाही की जाये तब कहा जाता है कि उन्होंने अपराध का संज्ञान ले लिया है लेकिन परिवाद को धारा 156 (3) द.प्र.सं. के तहत भेजना, तलाशी वारण्ट जारी करना आदि क्रियाएँ प्रसंज्ञान नहीं कहलाती है।

न्यायदृष्टांत Hkw"k.k dqekj fo:) LVsV] ¼2012½ 5 ,l-lh-lh- 424 में संज्ञान शब्द का अर्थ ''बीकम अवेयर ऑफ'' अर्थात् किसी चीज का ज्ञान होना बतलाया गया है और यह कहा गया है कि जब यह शब्द न्यायालय या न्यायाधीश के संदर्भ में प्रयुक्त होता है तब इसका अर्थ ''टू टेक नोटिस ज्यूडिशीयसली'' अर्थात् न्यायिक तरीके से नोटिस लेना होता है।

11- izFke lwpuk izfrosnu ds gks tkus ij izfØ;k

प्रथम सूचना प्रतिवेदन की प्रतिलिपि प्राप्त हो जाने के बाद न्यायालय को आदेश पत्र में अपराध क्रमांक का उल्लेख करते हुए इस कार्यवाही को समाप्त करके बंडल फाइल के साथ अभिलेखागार में भेज देना चाहिए आदेश पत्र में यह उल्लेख करना चाहिए की अपराध पंजीबद्ध हो चुका है अब या तो अंतिम प्रतिवदेन अभियोग पत्र के रूप में प्रस्तुत होगा या खात्मा प्रस्तुत होगा। खात्मा प्रस्तुत होने पर परिवादी को विधिवत सूचना पत्र भेजा जायेगा जिसमें वह चाहे तो वह Protest Pitition प्रस्तुत कर सकेगा और अभियोग पत्र पेश होने पर उचित प्रक्रम पर गवाह के रूप में बुलाया जायेगा। अतः इस कार्यवाही को लंबित रखने का कोई औचित्य नहीं होने से यह कार्यवाही समाप्त की जाती है।

12- [kkREkk vkuk ij izfØ;k

न्यायदृष्टांत lxhrk 'kekZ fo:) LVsV vkQ ,e-ih-] vkbZ-,y-vkj- ¼2008½ ,e-ih- 3345 में प्रतिपादित किया गया है कि खात्मा प्रस्तुत होने पर मजिस्ट्रेट को परिवादी को सूचना पत्र देना चाहिए और सुनवाई का एक अवसर देना चाहिए।

न्यायदृष्टांत fd'ku yky fo:) /kesUnz ckQuk] ¼2009½ 7 ,l-lh-lh- 685 के अनुसार अंतिम प्रतिवेदन या खात्मा प्रस्तुत होने पर परिवादी को यह अधिकार है कि उसे इसकी सूचना दी जाये, वह एक Protest Pitition प्रस्तुत कर सकता है, अनुसंधान की ऋजुता को चुनौती दे सकता है।

न्यायदृष्टांत ehu dekjh fo:) LVsV vkQ fcgkj] ¼2006½ 4 ,l-lh-lh- 359 भी इस संबंध में अवलोकनीय है कि मजिस्ट्रेट को खात्मा प्रस्तुत होने पर परिवादी को सुनवाई का अवसर देना चाहिए। इस संबंध में न्यायदृष्टांत xxk/kkj tukuu e=h fo:) LVsV vkQ egkjk"Vª] ¼2004½ 7 ,l-lh-lh- 768 अवलोकनीय है।

न्यायदृष्टांत lat; cSly fo:) tkokt jyk okLV] 2008 lh-vkj-,y-t- 428 ¼,llh½ के अनुसार खात्मा प्रस्तुत होने पर मजिस्ट्रेट उसे स्वीकार कर सकता है या अतिरिक्त अनुसंधान के निर्देश दे सकता है या धारा 200 और 202 द.प्र.सं. की प्रक्रिया अपना सकता है।

13- vuqla/kku dk ekfuVj djuk

कुछ विद्वानों का मत यह है कि मजिस्ट्रेट को अनुसंधान को मानीटर करना चाहिए। दण्ड प्रक्रिया संहिता में अनुसंधान को मजिस्ट्रेट मानिटर करे ऐसा कोई प्रावधान नहीं है लेकिन न्यायदृष्टांत lkdhjh okl fo:) LVsV vkQ ;-ih] ,-vkbZ-vkj- 2008 ,l-lh- 907 में माननीय सर्वोच्च न्यायालय ने यह अभिमत दिया है कि यदि पुलिस उचित रीति से अनुसंधान नहीं कर रही है तब मजिस्ट्रेट धारा 156(3) द.प्र.सं. के तहत अनुसंधान को मानिटर कर सकते है इस मामले में यह भी कहा गया है कि परिवादी न्यायालय में धारा 156 (3) द.प्र.सं. के तहत आवेदन देकर मजिस्ट्रेट से उचित अनुसंधान न होने के बारे में शिकायत कर सकता है और उस दशा में मजिस्ट्रेट अनुसंधान को मानिटर कर सकता है पुलिस को आवश्यक निर्देश उचित अनुसंधान करने के बारे में दे सकता है। लेकिन इस मामले में ऐसा नहीं कहा गया है कि मजिस्ट्रेट को प्रत्येक मामले में जिसमें उसने परिवाद को धारा 156 (3) द.प्र.सं. के तहत भेजा है उसमें अनुसंधान को मानिटर करना है अतः यदि परिवादी आवेदन करे कि पुलिस न्यायालय के निर्देश के बाद भी उचित रीति से अनुसंधान नहीं कर रही है तब अनुसंधान को मानिटर करने का प्रश्न उत्पन्न होता है।

न्यायदृष्टांत vthtk cxe fo:) LVsV vkQ egkjk"Vª] ¼2012½ 3 ,l-lh-lh- 126 के अनुसार भी एक ऋजु या Fair और उचित अनुसंधान किसी भी शिकायत पर हो यह प्रत्येक शिकायतकर्ता का अधिकार है और न्यायालय को इस महत्वपूर्ण बिन्दु को ध्यान में रखना चाहिए अतः जब कभी उचित अनुसंधान पुलिस नहीं कर रही है इस बारे में न्यायालय के ध्यान में लाया जाये तो उन्हें आवश्यक निर्देश देना चाहिए।

न्यायदृष्टांत lekt ifjorZu lehk; fo:) LVsV vkQ dukZVd] ,-vkbZ-vkj- 2012 ,l-lh- 2326 तीन न्यायमूर्तिगण की पीठ के अनुसार मजिस्ट्रेट धारा 173 (8) द.प्र.सं. के तहत अभियोग पत्र प्रस्तुत हो जाने के बाद भी अतिरिक्त अनुसंधान के निर्देश दे सकता है। इस संबंध में न्यायदृष्टांत gsr n'kekuk fo:) lh-ch-vkbZ-] ,-vkbZ-vkj- 2001 ,l-lh- 2721 भी अवलोकनीय है।

न्यायदृष्टांत fnu'k Mkykfe;k fo:) lh-ch-vkbZ-] ,-vkbZ-vkj- 2008 ,l-lh- 78 के अनुसार अभियोग पत्र प्रस्तुत हो जाने के बाद भी और प्रसंज्ञान ले लेने के बाद भी मजिस्ट्रेट अतिरिक्त अनुसंधान का आदेश धारा 173 (8) द.प्र.सं. के तहत दे सकता है। अतः यदि परिवाद को धारा 156

(3) द.प्र.सं. के तहत भेज देने के बाद पुलिस में उचित अनुसंधान न भी किया हो तब भी मजिस्ट्रेट अतिरिक्त अनुसंधान के निर्देश दे सकता है अतः यह भय नहीं रहना चाहिए कि मजिस्ट्रेट ने अनुसंधान को मानिटर नहीं किया तो क्या होगा।

14- vuqla/kku esa gLr{ksi

अनुसंधान को मानिटर करना और अनुसंधान में हस्तक्षेप दो अलग–अलग तथ्य है इसे ध्यान में रखना चाहिए मजिस्ट्रेट को केवल इतना देखना होता है कि पुलिस उचित रीति से एक ऋजु या Fair अनुसंधान कर रहीं है या नहीं और यदि यह पाया जाता है कि पुलिस उचित अनुसंधान नहीं कर रही है तब मजिस्ट्रेट आवश्यक निर्देश दे सकता है इस संबंध में न्यायदृष्टांत fd'kksj fo:) f'kojkt fl ag] 2011 ¼1½ ,e-ih-t- vkj- 114 भी अवलोकनीय है।

न्यायदृष्टांत fnyhi fl ag fo:) LVsV vkQ ,e-ih-] 1997 ¼2½ t-,y-t- 64 के अनुसार न्यायालय को बाध्यताकारी परिस्थितियों को छोड़कर अनुसंधान में हस्तक्षेप नहीं करना चाहिए क्योंकि पुलिस को अतिरिक्त अनुसंधान की शक्तियाँ वैसे भी रहती है इसे ध्यान में रखना चाहिए।

15- l=a;k;ky ;s }kjk fopkj.kh; vijk/k esa /kkjk 156 ¼3½ n-i-l- dk i;kx

कभी–कभी इस बारे में संदेह रहता है कि क्या अनन्यतः सत्र न्यायालय द्वारा विचारणीय मामले में धारा 156(3) द.प्र.सं. के तहत परिवादी या आवेदन पुलिस को भेजा जा सकता है? इस संबंध में न्यायादृष्टांत 'k[k bLekbZy fo:) LVsV vkQ ,e-ih-] vkbZ-,y-vkj- ¼2015½ ,e-ih- 785 में यह अभिमत दिया गया है कि मजिस्ट्रेट सत्र न्यायालय द्वारा विचारणीय अपराधों में धारा 156 (3) द.प्र.सं. के तहत पुलिस को अपराध दर्ज करके अनुसंधान करने के निर्देश दे सकता है दण्ड प्रक्रिया संहिता, 1973 के अध्याय 12 में इस बारे में कोई वर्जन या निषेध नहीं है। न्यायदृष्टांत dey'k ikBd fo:) LVsV vkQ ,e-ih-] 2008 ¼3½ ,e-ih-,p-Vh- 426 में दिया गया मत धारा 202 द.प्र.सं. पर आधारित है जो धारा 156 (3) द.प्र.सं. के कार्यवाहीयों पर लागू नहीं होता है।

न्यायदृष्टांत nkekunj 'kekZ ,oa vU; fo:) ukFkw jke tkVo ,oa vU;] 2007 ¼2½ ,e-ih-,p-Vh- 111 एवं iou 'kekZ ,oa vU; fo:) deyk ckbZ ,oa vU;] 2007 ¼3½ ,e-ih-,y-t- 482 में भी यह प्रतिपादित किया गया है कि अनन्यतः सत्र न्यायालय द्वारा विचारणीय अपराध में भी मजिस्ट्रेट धारा 156 (3) द. प्र.सं. के तहत अनुसंधान के निर्देश जारी कर सकता है।

16- D;k nks ckj funsZ'k lEHko gS \

न्यायदृष्टांत बच्चू yky 'kekZ fo:) LVsV vkQ ,e-ih-] 2014 ¼4 ***IV***½ ,e-ih-t-vkj- 148 ***(***MhcH***)*** के अनुसार एक बार धारा 156 (3) द.प्र.सं. अनुसंधान का निर्देश दे दिया गया उसी मामले में पश्चातवर्ती प्रक्रम पर पुनः प्रथम सूचना प्रतिवेदन दर्ज करने और अनुसंधान के निर्देश देना अनुमत नहीं है इसे भी ध्यान में रखना चाहिए।

17- fo'k"k U;k;k/kh'k }kjk vuqlU/kku dh funsZ'k

न्यायदृष्टांत lR;kuan fo:) izdk'k pan] 2007 ¼1½ ,e-ih-,y-t- 291 के अनुसार भ्रष्टाचार निवारण अधिनियम, 1988 के तहत क्षेत्राधिकार का प्रयोग कर रहे विशेष न्यायाधीश धारा 156 (3) द.प्र.सं. के तहत अनुसंधान का निर्देश दे सकते है। इस मामले में न्यायदृष्टांत ,-vkj- vUrqys fo:) vkj-,l- uk;d] ,-vkbZ-vkj- 1994 ,l-lh- 711 को विचार में लिया गया था।

लेकिन धारा 19 भ्रष्टाचार निवारण अधिनियम, 1988 को ध्यान में रखना चाहिए न्यायदृष्टांत vfuy dqekj fo:) ,e-dsl- v;ikl] ¼2013½ 10 ,llhlh 705 के अनुसार परिवाद को धारा 156(3) द.प्र.सं. के तहत पुलिस को अनुसंधान के लिए भेजने से पूर्व अभियोजन चलाने की स्वीकृति धारा 19 भ्रष्टाचार निवारण अधिनियम के तहत होना आवश्यक होता है।

18- ekuuh; mPp U;k;ky; dh funsZ'k

माननीय उच्च न्यायालय ने न्यायदृष्टांत jke;'k frokjh fo:) LVsV vkQ ,e-ih-] vkbZ-,y-vkj- 2014 ,e-ih- 1404 में धारा 156 (3) द.प्र.सं. के बारे में निम्न निर्देश दिये है:–

(i) Whenever a Magistrate is called upon to pass orders under Section 156(3) of the Code, at the outset, the Magistrate should ensure that before coming to the Court, the Complainant did approach the police officer in charge of the Police Station having jurisdiction over the area for recording the information available with him disclosing the commission of a cognizable offence by the person/persons arrayed as an accused in the Complainant. It should also be examined what action was taken by the SHO, or even by the senior officer of the Police, when approached by the complainant under Section 154(3) of the Code.

(ii) The Magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of Cognizable offences by the accused persons arrayed in the complaint which can be tried in his jurisdiction. He should also satisfy himself about the need for investigation by the Police in the matter. A preliminary enquiry as this is permissible even by SHO and if no such enquiry has been done by the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application for mind should be reflected in the Order passed by him. Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing, a status report by the police is to be called for before passing final orders.

(iii) The Magistrate, when approached with a Complaint under Section 200 of the Code, should invariably proceed under Chapter XV by taking cognizance of the Complaint, recording evidence and then deciding the question of issuance of process to the accused. In that case also, the Magistrate is

fully entitled to postpone the process if it is felt that there is a necessity to call for a police report under Section 202 of the Code.

(iv) Of course, it is open to the Magistrate to proceed under Chapter XII of the Code when an application under Section 156(3) of the Code is also filed along with a Complaint under Section 200 of the Code is the Magistrate decides not to take cognizance of the Complaint. However, in that case, the Magistrate, before passing any order to proceed under Chapter XII, should not only satisfy himself about the pre-requisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for collection of evidence which is neither in the possession of the complainant nor can be produced by the witnesses on being summoned by the Court at the instance of complainant, and the matter is such which calls for investigation by a State agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code.

जहाँ तक धारा 156 (3) दं.प्र.सं. के उक्त निर्देशों का संबंध है वे माननीय सर्वोच्च न्यायालय द्वारा न्यायदृष्टांत Jherh fi;;dk JhokLro में दिये गये मामले के निर्देशों में कवर हो जाते है शेष निर्देश धारा 200 एवं 202 दं.प्र.सं.के बारे में है।

19- mi lgkj

अतः मजिस्ट्रेट को परिवाद या धारा 156 (3) द.प्र.सं. का आवेदन प्रस्तुत होने पर सर्वप्रथम यह विचार करना चाहिए कि मामला पुलिस हस्तक्षेप योग्य है या उन्हें स्वंय जॉच करना है। मामला पुलिस हस्तक्षेप योग्य पाये जाने पर धारा 156 (3) द.प्र.सं. के तहत पुलिस थाने के भारसाधक अधिकारी को इस निर्देश के साथ परिवाद या आवेदन भेजना चाहिए कि अपराध पंजीबद्ध करे और उचित रीति से अनुसंधान करे प्रथम सूचना प्रतिवेदन की प्रतिलिपि अविलंब इस न्यायालय को भेजे। ऐसा आदेश प्रसंज्ञान लेने के पूर्व ही किया जा सकता है। एक Speaking order करना चाहिए। आदेश के पूर्व मस्तिष्क का प्रयोग करना चाहिए और न्यायदृष्टांत उक्त Jherh fi;;dk JhokLro vkj vU; fo:) LVsV vkQ ;w-ih-] 2015 ½2½ ØkbZEl 209 ¼,l-lh-½ में बतलाई गई सावधानियाँ ध्यान में रखना चाहिए। प्रथम सूचना प्रतिवेदन की प्रतिलिपि आने के बाद इस कार्यवाही को समाप्त कर देना चाहिए।

यदि परिवादी यह आवेदन करता है कि पुलिस उचित रीति से अनुसंधान नहीं कर रही है तब पुलिस से प्रतिवेदन बुलवाना चाहिए और अनुसंधान को मानिटर करना चाहिए। प्रत्येक मामले में अनुसंधान को मानिटर करना आवश्यक नहीं है ऐसा आवेदन परिवादी उस मामले में भी लगा सकता है जिसमें उसने सीधे पुलिस को प्रथम सूचना दर्ज करवाई है। मजिस्ट्रेट केवल पुलिस थाने के भारसाधक अधिकारी को धारा 156 (3) द.प्र.सं. के तहत निर्देश दे सकता है किसी विशेष अनुसंधान अभिकरण से अनुसंधान करवाने के निर्देश नहीं दे सकता।

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LIMIT OF PUNISHMENT – AMBIT AND SCOPE OF SECTION 71 OF IPC*

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INTRODUCTION

Section 71 of the Indian Penal Code, 1860 cannot be understood to regulate convictions, though of course, it governs the question of sentence as a matter of substantive criminal law. This section regulates the limit of punishment for offences which are made up of parts, any of such part in itself is an offence.

The rule of assessment of punishment has been laid down in sections 71 and 72 of the Indian Penal Code, 1860. Section 71 of Indian Penal Code, 1860 provides that-

> "Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.
>
> Where any thing is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

It is also pertinent to note that Article 20(2) of the Constitution of provides a safeguard to the accused from double jeopardy i.e. he cannot be punished or prosecuted for the same offence for which he was subjected in a previous trial and similarly, section 300 Cr.P.C. also protects the interest of the accused.

SECTION 71 IPC ONLY REGULATES THE LIMIT OF PUNISHMENT:

Section 71 IPC regulates the limit of punishment in case in which greater offence is made up of two or more minor offences. The section, however, is not a rule of adjective law or procedure, but a rule of substantive law regulating the measure of punishment, and it cannot, therefore, affect the question of conviction, which relates to the province of Criminal Procedure. The question of conviction is a question of adjective law or procedure, and that when an offence provided for by the substantive law is proved, conviction must follow in the absence of express provision to the contrary in the law of procedure itself.

Section 31(1) of the Code of Criminal Procedure 1973, also provides for similar cases

> "(1) Where an accused person have been found guilty for more than one offence in one trial, when a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed, therefore, which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.
>
> (2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court: Provided that–
>
> (a) in no case shall such person be sentenced to imprisonment for longer period than fourteen years;
>
> (b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.
>
> (3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence."

It is quite evident from the language of the section that in a case where an accused person is convicted for more offences than one in one trial and the sentence is consecutive, the aggregate of the sentences shall be deemed to be one sentence. Therefore, this section bars the jurisdiction of the trial court under section 389 (3) Cr.P.C., which empowers the trial court to grant bail in cases where the accused person has been convicted for the commission of more than one offence in one transaction. If the trial court punishes the accused for more than three years in aggregate for committing more than one offence, the trial Court is barred from exercising the power u/s 389(3) of CrPC.

Section 220 of Criminal Procedure Code contains only the rule of criminal practice in regard to joinder of charges, it does not deal with the sentence to be passed on to the charges (Section 71 of the Indian Penal Code).

TWO LIMBS OF SECTION 71 OF IPC:

First limb: This clause refers to the similar cases mentioned in illustration (i) to section 220 Cr.P.C. Combined effect of this section can be understood with the case of ***Nilmony Poddar v. Queen Empress, (1889) 16 442 (FB),*** a leading case on the subject, a majority of four Judges out of five, held that separate sentences passed upon persons for the offences of rioting and grievous hurt were not legal where it was found that such persons individually did not commit any act which amounted to voluntarily causing hurt, but were guilty of that offence under section 149 of Indian Penal Code. However, Tottenham, J., in his dissenting judgment felt himself unable to adopt the view of the majority and remarked:

> "I could perhaps do so if section 149 defined and made punishable any specific offence; but it does not do this. It simply declares that under certain circumstances every person, who is a member of an unlawful assembly, is guilty of the offence committed by some other member of it, whatever that offence may be; and, if he is guilty, I apprehend he is liable to be punished for it".

In ***Queen Empress v. Dungar Singh, 7 All 29 (I)*** in which three offences were proved, viz., Section 147, Section 323 and Section 325/149, the latter two being on two different persons and were held to be distinct offences and therefore separate sentences were awarded under section 147 and section 325. In the case of ***Queen Empress v. Ram Sarup, 7 All 757(J),*** the offences under Section 147 and Section 325/149 were distinct and separate sentences were held not illegal.

In ***Queen Empress v. Bisheshar, 9 All 645 (K)*** rioting under section 147 IPC could not be held to be a part of voluntarily causing grievous hurt under section 325 IPC and the provisions of Section 71 IPC were held to be inapplicable. In ***Queen Empress v. Bana Punja, 17 Bom 260 (L),*** which follows ***Ram Sarup*** (supra), it was held that separate sentences for Section 147 IPC and Section 323/149 IPC are legal if the total punishment does not exceed the maximum for any of the offences. In ***Raghubar v. Emperor, AIR 1939 Oudh 91 (M)*** convictions were under Section 147 IPC and Section 324/149 IPC on an offence under Section 324 IPC by only one member of the assembly. Two sentences were held legal.

The decision in ***Dulan Dayal Singh v. Emperor, AIR 1945 Oudh 102 (N)*** follows the above decision and dissents from the decision of ***AIR 1940 Nag 120 (F)***. It may be pointed that in the first three decisions on this view referred to above, the offences were distinct and separate. [***Queen Empress v. Bisheshar*** (supra)]

The decision rendered by Hon'ble the Apex Court in the case of ***Bhagat Singh v. State of Punjab, AIR 1952 SC 45*** is very apt to refer here —

The Hon'ble Apex Court has observed –

> "Section.235 is only one of the exceptions to the general rule laid down in S. 233 of the Code that for every distinct offence, there shall be a separate charge and every such charge shall be tried separately. In this Court, no reference was made to S.235, but the argument was confined to the question as to whether the present case falls within another exception of S.233 which is contained in S. 234 (1) which runs as follows :
>
> > "When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for any number of them not exceeding three".

It was argued before us that even though only 3 charges have been framed against the appellant, he has in fact been tried for 4 offences and not 3. The 4 offences are said to be these:

(1) Committing the murder of Gurmail Singh;

(2) Attempting to murder Kartar Singh, son of Sarwan Singh;

(3) Attempting to murder Jangir Singh and

(4) Attempting to murder Kartar Singh, son of Bishan Singh.

> "The learned counsel contended that the fact that the appellant has been acquitted of the last 3 offences and convicted only of the first offences was immaterial to the point raised by him, and we have only to see whether all the offences mentioned above could be properly tried together. In our opinion, the short reply to this contention is that the second charge which relates to the appellant firing at Kartar Singh and Jangir Singh is not a charge with respect to 2 offences but is a charge with respect to one offence only. The evidence adduced by the prosecution shows that the appellant fired only one bullet. The word "offence" has been defined in the Code of Criminal Procedure as meaning "any act or omission made punishable by any law for the time being in force". There seems to be nothing wrong in law to regard the single act of firing by the appellant as one offence only. On the other hand we think that it would be taking an extremely narrow and artificial view to split it into 2 offences. There are several reported cases in which a similar view has been taken, and in our opinion they have not been incorrectly decided"

In ***Empress v. Reghurai, 1881 All WN 154 (2)*** where a person stole several bullocks from the same herdsman at the same time, it was held that only one offence had been committed. In ***Promtha Nath v. Emperor, 17 Cal WN 479*** it was held that misappropriation in regard to several account books constituted only one offence. In ***Johan Subarna v. King Emperor, 10 Cal. W. N. 520,*** it was held that when an attempt to cheat a number of men by speaking to them in a body had been committed, one joint charge was valid. In ***Poonat Singh v. Madho, 13 Cal 270*** it was held that only one offence had been committed by a person who gave false information in one statement to the police against 2 persons. In ***Sudheendra Kumar Ray v. Emperor, 60 Cal. 643***, a person who was chased by 2 constables had fired at them several times, but it seems to have been rightly assumed that the firing did not constitute more than one offence, though the point was not specifically raised or decided. In our opinion, there is no substance in the point raised, though we should not be understood as laying down the wide proposition that in no case can a single act constitute more than one offence.

In the case of ***Moolchand and ors. v. The State, 1955 CriLJ 1033*** five accused persons formed an unlawful assembly with the common object of voluntarily causing grievous hurt to Jamna Prasad and actually did so, therefore the offence of rioting can be said to have been committed only because violence or force was used against Jamna Prasad with the common object of doing so. If the said final act of voluntarily causing grievous hurt had not been committed then neither could an offence of rioting under section 147 nor of section 325/149, be said to have been committed. To be brief the act of using force or violence essential to convert the offence under section 143 into an offence under section 147 itself converted the offence under section 143 into that under section 325/149. The several acts constituted when combined, two different offences as required under section 235 (3) Criminal P.C., by strict application of the section. The maximum that may be said is that the two offences one under section 147 and another under section 325/149, IPC were committed. To my mind, therefore, all the five accused could be convicted of two offences under section 147 or section 325/149, IPC

As the two offences under section 147 and section 325/149 IPC were held to have been committed by the same acts and the accused convicted therefor the offenders are not under section 71 IPC liable to be punished with the punishment for more than one of such offences. There is, however, divergence of opinion in different decisions of different High Courts. One view is that separate sentences in such cases are not legal while the other view is that they are.

Following decisions take the former view that separate sentences are not legal viz., in ***Empress v. Ram Partab, 6 All 121 (A)***. The accused were members of an unlawful assembly-the common object of which was to voluntarily cause grievous hurt and such hurt was caused, separate sentences for section 147 and section 325/149 were held to be not legal.

High Court of Bombay in case of ***Tuka Ram Khandu, 1956 CriLJ 584*** where accused sets fire to a warehouse opined that his act is an offence punishable under section S.435 and S.436 IPC. He may be charged for both, however he cannot be punished for both. Only one offence has been committed and the punishment must not exceed that applicable to the graver offence according to clause 2 of section 71 and sub-section (2) of section 235 Cr.P.C.

Therefore, Section 71 IPC only regulates the limit of punishment in case in which the greater offence is made up of two or more minor offences and it cannot, therefore, affect the question of conviction.

In ***Udai Bhan, v. The State of U.P., AIR 1962 SC 1116*** it has been held that offence under section 457 and 380 IPC do not fall under section 71 and conviction under both the sections is not illegal.

In The ***State v. A. Parthiban, AIR 2007 SC 51*** it has been held that every acceptance of illegal gratification whether preceded by a demand or not, would be covered by Section 7 of the Act. But if the acceptance of an illegal gratification is in pursuance of a demand by the public servant, then it would also fall under section 13 (1) (d) of the Act. The act alleged against the respondent, of demanding and receiving illegal gratification constitutes an offence both under Section 7 and under Section 13(1)(d) of the Act. The offence being a single transaction, but falling under two different sections, the offender cannot be liable for double penalty.

Second clause of Section 71 of IPC – First provision – this clause has two provisions, the first provision provides for an offence which is made up of different act which falls within two or more separate definitions of offences. It refers to the cases mentioned under section 220 (3) of Cr. P.C. Where there are two provisions, one is specific and other is general, the specific provision ought to be applied in preference to the general one.

In ***Ramanaya v. The State of Bihar, 1997 CriLJ 467*** the petitioner was convicted by the trial court for offences under Section 101 of the Indian Railways Act and under Section 337 of the Indian Penal Code. For the offence under Section 101 of the Indian Railways Act, he was sentenced to undergo simple imprisonment for four months and for the other offence, i.e., under Section 337 of the Indian Penal Code, he was sentenced to undergo simple imprisonment for one month. The sentences were directed to run concurrently. On appeal, the convictions have been maintained but the sentence for the offence under Section 337 of the Indian Penal Code has been set aside.

The prosecution case against the petitioner is that on 16th of March, 1967, he was driving D.R.W. Down Goods train rashly and negligently between Bano and Mahabuang railway stations. Though the train was to stop at Mahabuang station, it did not stop and proceeded towards the sand-hump in the loop line at a very high speed and dashed against it as a result of which the two engines of the train and eight empty box wagons capsized and the petitioner, who was the driver of the train, the Assistant driver and the guard were injured.

The petitioner pleaded not guilty to the charges. He also examined two defence witnesses. His case was that he was not driving the train rashly and negligently and the accident took place for reasons beyond his control.

A petition of compromise has been filed before this Court on behalf of the petitioner on one side and the station master of Mahabuang railway station who was the informant in the case and the guard of the train, who received injuries. So far the offence under Section 101 of the Indian Railways Act is concerned, that is not compoundable and cannot be compounded and with regard to the other offence under Section 337 of the Indian Penal Code, that is compoundable with the permission of the court at the instance of the person to whom hurt is caused. In the circumstance, the guard is competent to compound the offence so far hurt relating to him is concerned. But as the Assistant driver has not joined this petition of compromise even though he was examined as defence witness in the case, the petitioner cannot be acquitted even for the offence under Section 337 of the Indian Penal Code on the ground that there has been a compromise in the case.

Mr. Tarkeshwar Dayal appearing on behalf of the petitioner has submitted that the petitioner cannot be convicted for two offences for the same act. In support of this contention, he has placed reliance on Section 71 of the Indian Penal Code and Section 26 of the Central General Clauses Act and also cited the decision of this Court in ***Rehamatullah v. Emperor, 32 Ind. Cas. 157 = 17 Cri. L.J. 29.*** In that case, the petitioner was convicted for offences under Section 101 of the Railways Act and under Section 353 of the Penal Code and it was held that in view of Section 353 of the Penal Code and Section 26 of the General Clauses Act, the conviction and sentence under the Railways Act would be set aside and the conviction for the offence under Section 353 of the Penal Code would stand. Though it is a Bench decision, in our opinion, it is not binding upon us as it appears to have been given ***per incuriam***.

The application is allowed to the extent indicated above on the question of sentence only.

SECTION 220 CR.P.C. PROVIDES THE PROCEDURE ONLY, IT DOES NOT PRESCRIBE ANY LIMIT OF PUNISHMENT:

Section 220 of the Code of Criminal Procedure, 1973, provides that for trial of more than one offence.

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences

of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860). Illustrations to sub- section (1)

It means that a person can be charged and convicted separately for every offence he has committed in single transaction. Therefore it appears from the language used in Section 220 of the of Criminal Procedure Code and the illustration therewith very clearly shows that in one and the same trial there may be separate charges and convictions for separate offences, though such convictions may arise from facts of the same transaction and proceed upon the same evidence.

Section 220 of the Criminal Procedure Code distinctly contemplates the trial of the accused for separate offences where the acts complained of, when combined, would constitute a different offence. However, sub Section (5) of section 220 Cr.P.C. imposes a restriction that nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860). Illustrations to sub-section (1). Therefore, question as to the measure of punishment is a different matter from the question of conviction and rests upon other considerations both of law and fact.

CONCLUSION:

The first part of section 71 of the Code deals with a case in which the whole of the act is punished under the same section under which its parts are punished; it does not deal with a case in which the whole act constitutes an offence different in nature from the offence or offences constituted by its parts.

The first part deals with cases of the kind in which the accused does a number of acts each of which constitutes an offence of the same kind. At the same time, all the acts together constitute an offence of the same kind as the individual acts. In such cases, the accused can be punished only with the punishment of one offence [See illustration (a) of section 71 IPC].

Where each act of the accused constitutes a separate offence, though of a similar kind, paragraph one of section 71 of the Code will not apply. Where an offence of the same kind is committed by different acts against different persons, it would be a case in which several offences are committed, though of the same kind, and paragraph one will not apply. [See illustration (b) of section 71 IPC].

Paragraph 2 of the section corresponds to section 220 (3) of the CrPC and refers to cases where the offence committed by the accused falls under two or more provisions of the same law. The law may be a general law (Penal Code) or a special or local act.

In order to determine whether the acts fall within two provisions of the law, it must be seen whether one of the provisions is a more specific one than the other in relation to the facts of the case, and the case must be held to fall under the more specific provision and not under both the provisions so as to attract the applicability of praragraph two of the section.

For eg. the offence of preparation of a false signature sheet at an election is specifically provided for in section 171, and hence it cannot be said that the offence falls under section 465 of the Penal Code so as to attract paragraph 2 of the section.

Another example of paragraph 2 may be when the accused sets fire to a house of another in order to cause disappearance of evidence of a murder committed therein, his act amounts to an offence both under section 436 and section 201 and the case comes under paragraph 2 of the section.

The section contemplates separate punishments for an offence against the same law and not under different laws. Where offences are committed under two separate enactments, section 71 IPC is not helpful to the accused and as such two separate sentences cannot be questioned by pressing section 71 into service.

The third clause contemplates a situation (a) where several acts of which one or more than one would by itself or themselves constitute an offence and (b) when combined constitute a different offence, the accused shall not be punished with a more severe punishment than the one the court would award for any of such offences.

This paragraph corresponds to section 220(4) of CrPC for eg. a person does several acts A, B, C, D and E. Of these acts, A and D constitute one offence. All the acts, i.e. A, B, C, D and E together constitute a different offence. In such a case, under section 220 (4) of CrPC, the offender may be charged with, tried and convicted at one trial for each of these offences but under the fourth paragraph of this section, which will apply to such a case, the offender cannot be sentenced to a more severe punishment than can be awarded for the more serious of the offences.

The next essential principle for the applicability of paragraph 3 is that the offence constituted by the totality of the acts of the accused must be a different one from the offence constituted by one or some of the acts of the accused. An aggravated form of the same offence will not be a different offence. Thus, where the accused causes both hurt and grievous hurt to another, the case will not fall under paragraph 3 nor under section 220 (4) of the CrPC. Hence, in such a case, the accused cannot be charged and convicted of both hurt and grievous hurt, but he can only be convicted of grievous hurt.

PART - II

NOTES ON IMPORTANT JUDGMENTS

66. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Sections 12 and 12 (1) (f)

(i) Maintainability of eviction suit filed by one of the co-owners without joining others – Held, such suit is maintainable.

(ii) Proof of attornment of tenancy – After purchasing suit premises, plaintiff has served a notice wherein it was mentioned that he has purchased it from his predecessor-in-title by registered sale deed – Attornment of tenancy held, proved.

(iii) Availability of alternate accommodation – Plaintiff being the owner of suit premises has a right to run his business in the suit premises owned by him as per his choice or preference or selection or convenience or favourite place etc. – He cannot be left to be satisfied on the plea of availability and justifiability of alternate accommodation as advanced by the defendant.

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Buddhiprakash Sharma v. Sanjeev Jain and ors.

Judgment dated 28.03.2014 passed by the High Court of M.P. in Second Appeal No. 42 of 2014, reported in ILR (2015) MP 998

Extracts from the Judgment:

The submission advanced by the defendant was that as per sale deed dated 13.09.2008, the plaintiff No. 1 has only 10% share whereas other co-owners Smt. Sarika Jain, w/o Sanjeev Jain has 60% share and Smt. Prabha Sharma has 30% share and, therefore, for the need of the plaintiff No. 1, no

decree could have been passed under section 12 (1) (f) of the Act as according to the defendant, 10% share of the suit premises is less than the area of the suit premises. This submission was also rejected by the First Appellate Court primarily on the ground that eviction suit can be instituted by one of the co-owners or joint owners in respect of the suit property for eviction on any grounds enumerated in the Rent Act or otherwise for eviction of a tenant and it is not necessary that all the joint owners should be joined as plaintiffs for maintaining suit for eviction. That apart, if the need of one of the co-owners in an eviction suit filed at the instance of such co-owner can also be looked into for eviction from suit premises. As such, rejection of this submission stands fully justified being in consonance with the law laid down by the Apex Court in the following cases:

1. ***Smt. Kanta Goel v. P. Pathak and others, AIR 1977 SC 1599***;
2. ***Pal Singh v. Sunder Singh (dead) by LRs. and others, AIR 1989 SC 758;*** and
3. ***Harbans Singh (Lt. Col.) v. Smt. Margaret G. Bhingardive, 1990 JLJ 97*** (FB).

In ***Smt. Kanta Goel*** (supra) while dealing with Delhi Rent Control Act, 1958, it was observed as under:

The scheme of the statute is plain and has been earlier explained by this Court with special reference to sections 14A and 25B. The government servant who owns his house, lets it out profitably and occupies at lesser rent official quarters has to quit but, for that very purpose to be fulfilled, must be put in quick possession of his premises. The legislative project and purpose turn not on niceties of little verbalism but on the actualities of rugged realism, and so, the construction of section 14 A (1) must be illumined by the goal, though guided by the word. We have, therefore, no hesitation in holding that section 14A (1) is available as a ground, if the premises are owned by him as inherited from propositus in whose name the property stood. In his name, and let out by him read in the spirit of the provision and without violence to the words of the section, clearly convey the idea that the premises must be owned by him directly and the lease must be under him directly, which is the case where he, as heir, steps into his father's 'shoes who owned the building in his own name and let it out himself. He represents the former owner and lessor and squarely falls within section 14A. The accent on 'name' is to pre-empt the common class of benami evasions, not to attach special sanctity to nominalism. Refusing the rule of ritualism we accept the reality the ownership and landlordism as the touchstone.

Nor do we set much store by the submission that the 1st respondent is not a landlord, being only a co-heir and the will in his favour having been disputed. Equally without force in our view is the plea that one co-lessor cannot sue for eviction even if the other co-lessors have no objection. Section 2(e) of the Act defines 'landlord' thus:

> "2(e) 'Landlord' means a person. who, for the time being is receiving, or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant."

'Tenant', by definition [s. 2(1)] means any person by whom or on whose account or behalf the rent of any premises is payable. Read in the context of the Rent Control law, the simple sense of the situation is that there should be a building which is let. There must be a landlord who collects rent and a tenant who pays it to the one whom he recognizes as landlord. The complications of estoppel or even the concepts of the Transfer of Property Act need not necessarily or inflexibly be imported into the proceedings under the rent control law, tried by special Tribunals under a special statute. In this case, rent was being paid to the late Das who had let out to the appellant, on the death of the former, the rent was being paid by the 1st respondent who signed his name and added that it was on behalf of the estate of the deceased Das. At a later stage the rent was being paid to and the receipts issued by the 1st respondent in his own name. Not that the little change made in the later receipts makes much of a difference, but the fact remains that the tenant in this case had been paying the rent to the 1st respondent. Therefore, the latter fell within the definition of 'landlord' for the purposes of the Act. we are not impressed with the investigation into the law of real property and estoppel between landlord and tenant, Shri Nariman invited us to make. A fair understanding of the relationship between the parites leaves little room for doubt that the appellant was the tenant of the premises. The 1st respondent, together with the other respondents, constituted the body of landlords and, by consent, implicit or otherwise, of the plurality of landlords, one of them representing them all, was collecting rent. In short, he functioned, for all practical purposes as the landlord, and was therefore entitled to institute proceedings qua landlord.

This Court, in ***Sri Ram Pasricha v. Jagannath, AIR 1976 SC 2335,*** clarified that a co- owner is as much an owner of the entire property as any sole owner of the property is: jurisprudentially, it is not correct to say that a co-owner of property is not its owner. He owns very part of the composite property alongwith others and it cannot be said that he is only a part owner or a fractional owner of the property .. It is therefore, not possible to accept the submission that the plaintiff, who is admittedly the landlord and co-owner of the premises, is not the owner of the premises within the meaning of section 13'(1) (f). It is not necessary to establish that the plain- tiff is the only owner of the property for the purpose of section 13 (1) (f) as long as he is a co-owner of the property, being at the same time acknowledged landlord of the defendants. That case also was one for eviction under the rent control law of Bengal. The law having been thus put beyond doubt, the contention that the absence of the other co-owner on record disentitled the first respondent

from suing for eviction, fails. We are not called upon to consider the piquant situation that might arise if some of the co-owners wanted the tenant to continue contrary to the relief claimed by the evicting co-owner.

The Supreme Court in ***Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta, AIR 1999 SC 2507*** has held as under:

Chambers 20th Century Dictionary defines bonafide to mean 'in good faith : genuine'. The word 'genuine' means 'natural; not spurious; real: pure: sincere'. In Law Dictionary, Mozley and Whitley define bonafide to mean 'good faith, without fraud or deceit'. Thus the term bonafide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contra-distinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bonafides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself .in the arm chair of the landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited .for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one. but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or two conservative or pedantic must be guarded against.

The availability of an alternate accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another

accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to bonafides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the Court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another principal ingredient of Clause (e) of Sub-section (1) ofSection 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available than the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternate residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternate accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come."

As regards to the aforesaid, the sale deed of the suit premises was executed by legal heirs of Umaji Rao Bhonsle in favour of plaintiffs on 13.09.2008. At that time the defendant was in occupation of the suit premises as tenent and in fact, the power of attorney holder of the appellant Dr. Om Prakash Gupta in F.A. No. 14/2005 had consented for the sale deed dated 13.09.2008. The plaintiffs have served a notice to the defendant dated 10.02.2009 wherein it was clearly mentioned that the plaintiffs have purchased the suit premises from their predecessor-in-title vide registered sale deed dated 13.09.2008. It was further stated therein that the defendant became tenant of the plaintiffs (Exhibit P/3 notice, Exhibit P/4 postal receipt and Exhibit P/5 acknowledgement). That apart, defendant in paragraph 8 of the written statement has also admitted that the plaintiffs are valid title-holders having purchased the suit premises from the legal heirs of Umaji Rao Bhonsle. As such, defendant had knowledge of the fact that the plaintiffs have acquired valid title over the suit premises by virtue of sale deed dated 13.09.2008 executed by the legal heirs of the predecessors-in-title, namely; Umaji Rao Bhonsle. Exhibit D/1, a rent note was in relation to the suit premises which were given on rent by the predecessor-in title, namely; Umaji Rao Bhonsle executed in favour of defendant. Under such circumstances, conclusion as regards absence of attornment of tenancy of the suit premises is dehors on record. Hence, the judgment relied upon in the case of ***C. Chandramohan v. Sengottaiyan (dead) by LRs. and others, (2000) 1 SCC 451*** will not render any assistance in favour of defendant in any manner whatsoever.

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***67. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Section 13**

Dispute of arrears of rent may arise in the following circumstances:

(i) Rate of rent and quantum of arrears of rent are in dispute though not the period for which arrears of rent are due;

(ii) Rate of rent and quantum of arrears of rent are in dispute and also the period of which it is due;

(iii) Rate of rent is admitted but the quantum of arrears of rent or/and the period for which it is due are disputed.

Where the rate of rent and the quantum of arrears of rent are disputed, the whole of section 13(1) becomes inoperative till provisional fixation of monthly rent by the court under sub-section (2) of section 13, which will govern compliance of section 13 (1) of the Act – ***Jamunalal and others v. Radheshyam, (2000) 4 SCC 380*** **relied on.**

LFkku fu;a=.k vf/kfu;e] 1961 ¼e-i-½ & /kkjk 13

cdk;k fdjk;k dk fookn fuEu ifjfLFkfr;ksa esa mRiUu gksrk gS %

¼i½ fdjk;k dh nj vkj cdk;k fdjk;k dh ek=k fookfnr gksrh gS ;|fi og vof/k ftldh fy;k fdjk;k nsa; gS mldk fookn ugha gksrk gS(

¼ii½ fdjk;k dh nj vkj cdk;k fdjk;k dh ek=k dk fookn gksrk gS vkj og vof/k ftldh fy;k og nsa; gS mldk Hkh fookn gksrk gS(

¼iii½ fdjk;k dh nj LohÑfr gksrh gS fdUrq cdk;k fdjk;k dh ek=k ;k@vkj vof/k ftldh fy;k fdjk;k nsa; gS fookfnr gksrh gSA

tgka fdjk;k dh nj vkj cdk;k fdjk;k dh ek=k dk fookn gks ogka ijh /kkjk 13 ¼1½ ykxw ugha gksrh gS tc rd dh U;k;ky; }kjk /kkjk 13 ¼2½ ds v/khu ikof/kd ekfld fdjk;k fu/kkfjr ugha dj fn;k tkrk] tks fd /kkjk 13 ¼1½ vf/kfu;e ds vuqikyu ls 'kkflr gksrk gS & tesuk yky vkj vU; fo:) jk/k'ke] ¼2000½ 4 ,l-lh-lh- 380 ij fo'okl fd;k x;kA

Kailash Chand v. Sonu & anr.

Order dated 08.05.2014 passed by the High Court of M.P. in Writ Petition No. 8487 of 2013, reported in 2015 (III) MPJR SN 9

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68. CIVIL PRACTICE:

Suit for malicious prosecution – Factors to be established by the plaintiff:

(a) that he was prosecuted by the defendant;

(b) that the proceedings complaint of terminated in favour of the plaintiff;

(c) that the prosecution was instituted against him without any reasonable or probable cause;

(d) that the prosecution was instituted with a malicious intention, i.e., not with the mere intention of carrying the law into effect, but with an intention which was wrongful in point of fact;

(e) that he has suffered damage to his reputation or to the safety of person, or to the security of person, or to the security of his property.

flfoy i:fØ;k %

fo}:"ki.k vfHk;kstu d: okn d: fy, oknh }kjk LFkkfir fd;: tku oky: dkjd %

¼,½ ml: ifroknh }kjk vfHk;kftr fd;k x;k Fkk (

¼ch½ dk;¡okgh ft le: ifjokn fd;k x;k Fkk oknh d: i{k e: lekIr gks Fkh(

¼lh½ mld: fo:) vfHk;kstu fcuk fdlh ;fDr;Dr ;k lHkk0; dkj.k d: fd;k x;k Fkk(

¼Mh½ vfHk;kstu fo}:"ki.k vk'k; l: lfLFkr fd;k x;k Fkk] dkuu dk iHkko e: yku d: vk'k; l: lfLFkr u djd: rF;ksa d: fcUnq ij xyr vk'k; l: lfLFkr fd;k x;k Fkk(

¼b½ mlu: mldh ifr"Bk dh {kfr mBkbZ ;k mldh lj{kk ;k {ke ;k mldh lifRr dh lj{kk dh {kfr mBkbZA

Ramjilal Sharma v. Meera Shivhare

Order dated 16.11.2015 passed by the High Court of M.P. in Civil Revision No. 45 of 2012, reported in 2016 (1) MPLJ 441

Extracts from the Order:

In ***Balbhaddar Singh and another v. Badri Sah and another, AIR 1926 PC 46*** it has been held that if a person lodges knowingly false information with the police naming the plaintiff as accused and supports the same by his false evidence before the Police as also in the Court, he will be held to be the prosecutor in suit for malicious prosecution, even though court takes cognizance of the case of police challan.

The Supreme Court in the case of ***West Bengal State Electricity Board v. Dilip Kumar Rai, (2007) 14 SCC 568*** has dealt with malicious prosecution. The relevant extract of paragraph 15 of the decision reads as under:-

"A prosecution instituted wilfully and purposely, to gain some advantage to the prosecutor, or through mere wantonness or carelessness, if it be at the same time wrong and unlawful within the knowledge of the actor, and without probable cause.

A prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or is bound to know are wrong and against the dictates of public policy.

The term 'malicious prosecution' imports a causeless as well as an ill-intended prosecution.

MALICIOUS PROSECUTION is a prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or its bound to know are wrong and against the dictates of public policy.

In malicious prosecution there are two essential elements, namely, that no probable cause existed for instituting the prosecution or suit complained of, and that such prosecution or suit terminated in some way favorably to the defendant therein."

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***69.CIVIL PROCEDURE CODE, 1908 – Section 10**

Pendency of criminal case, whether a ground to stay trial of a civil suit? Held, it would not entitle a litigant to file an application under section 10 of CPC for staying trial of a civil suit – Even examination of handwriting expert cannot be stayed as it would also have been resulted in staying of the trial of the civil suit up to some extent – ***Guru Granth Saheb Sthan Meerghat Vanaras v. Ved Prakash and others, (2013) 7 SCC 622*** **relied on.**

flfoy izfØ;k lafgrk] 1908 & /kkjk 10

nkf.Md izdj.k dk yfcr gksuk D;k 0;ogkj okn dh fopkj.k dk LFkfxr djus dk ,d vk/kkj gks ldrk gS \ vfHkfu/kkfjr fd;k x;k ;g ¼nkf.Md izdj.k dk yfcr gksuk½ ,d i{kdkj dk /kkjk 10 lh-ih-lh- dh v/khu 0;ogkj okn dh fopkj.k dk LFkfxr djus dk ,d vkosnu izLrqr djus dk gdnkj ugha cuk;k x;k & ;gk rd dh gLrys[k fo'ks"kK dk ijh{k.k Hkh ugha jkdk tk ldrk D;kfd ;g dN lhek rd 0;ogkj okn dk fopkj.k LFkfxr djus dh leku gksxk & गुरू ग्रंथ साहब स्थान मीरघाट बनारस विरूद्ध वेदप्रकाश और अन्य, (2013) 7 एस.सी.सी. 622 ij fo'okl fd;k x;kA

Ramnarayan v. Hariram and another

Order dated 14.09.2015 passed by the High Court of M.P. in W.P. No. 1181 of 2015, reported in 2015 (4) MPLJ 633

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***70.CIVIL PROCEDURE CODE, 1908 – Section 92**

Suit under section 92 of CPC against public charities for obtaining a decree for removing any trustee – Application for revocation of leave to sue when can be allowed? Held, where trustees fail to take steps to ban a book that is critical of the philosophical and spiritual guru of a trust, would not fall within the compass of administration of the trust – It might be an omission of the exercise of proper discretion on the part of the trustees, but certainly not an omission touching upon the administration of the trust – The trustees of a trust are entitled to wide discretion in the administration of a

trust – A disagreement with the exercise of the discretion does not necessarily lead to a conclusion of maladministration, unless the exercise of discretion is perverse.

flfoy izfØ;k lafgrk] 1908 & /kkjk 92

/kkjk 92 lh-ih-lh- d v/khu fdlh U;klh dk gVku dh fMØh vfHkikfkr djus d fy;s ykdiirh dk;l d fo:) okn & okn iLrqr djus dh vuefr okil yus d fy;s vkonu dc Lohdkj fd;k tk ldrk g \ vfHkfu/kkfjr fd;k x;k] tgk U;klhx.k us izfrcf/kr iLrd tk dh U;kl d ,d xs: d n'kku vkj vk/;kfRed vkykpuk d ckj e Fkh mld fo:) dne mBkus e vlQy jguk] ;g U;kl d i'kklu d {k= e ugh vk;xk & ;g U;klhx.k d Hkkx ij mfpr foodkf/kdkj dk iz;kx djus e pd gk ldrh g fdUrq fuf'pr :i l U;kl d i'kklu e pd ugh g & ,d U;kl d U;klhx.k dk U;kl d i'kklu e o;gr foodkf/kdkj gkr g & foodkf/kdkj d iz;kx e lger u gkus l ,slk fu"d"k ugh fudyrk g dh ;g dhc/ku g tc rd dh foodkf/kdkj dk iz;kx foi;Lr u gkA

Sri Aurobindo Ashram Trust and others v. R. Ramanathan and others

Judgment dated 05.01.2016 passed by the Supreme Court in Civil Appeal No. 12 of 2016, reported in 2016 AIR SCW 237

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***71.CIVIL PROCEDURE CODE, 1908 – Section 144**

Restoration – Exercising power of restoration – Principles stated.

Such expansive power has to be exercised to ensure equity, fairness and justice for both the parties – It also flows from more or less common stand of parties on the principle of law that for ascertaining the value of the property which is no longer available for restitution on account of sale, etc, the court should adopt a realistic and verifiable approach instead of resorting to hypothetical and presumptive value – It is also one of the established propositions that in the context of restitution, the court should keep under consideration not only the loss suffered by the party entitled to restitution but also the gain, if any, made by the other party which is obliged to make restitution – Court has a duty that in the matter of restitution, justice be done as per the facts of the case – In granting relief of restitution, the court should not be oblivious of any unmerited hardship to be suffered by the party against whom action by way of restitution is taken – No unmerited injustice should be caused to any of the parties.

Facts of the case:

In this case, money decree was passed in favour of plaintiff against defendant to give an option to either deliver the bonds in question

to plaintiff or return its money value – Defendant delivered the bonds to plaintiff – Defendant approached the Apex Court – Apex Court reversed the decree and ordered the plaintiff to restore back monetary benefits received by it under that decree – Plaintiff had already sold the bonds in market and was not available for returning to defendant – Special Court determined the market value of bonds on presumption that defendant would have retained the bonds with it until maturity period – Special Court ignored the fact that bonds in question were tradable commodity on stock market and their value could be easily ascertained on the date when these bonds were handed over to plaintiff or on date when these bonds were sold in market to third parties.

In above factual matrix, Hon'ble the Apex Court held, law relating to restitution as supra.

flfoy izfØ;k lfgrk] 1908 & /kkjk 144

iqu% LFkkiu dh 'kfDr;ksa dk iz;ksx & fl)kr cryk;k x;k&

,slh 0;kid 'kfDr;ksa dk iz;ksx lkE;k] _tqrk vkj U;k; nkuksa i{kksa dh fy;s gks ldk ;g lfuf'pr djus dh fy;s djuk pkfg;s ;g fl)kr nkuksa i{kksa dh fy;s leku :i ls ykxw gksrk gS fd og lifRr iqu% LFkkiu dh fy;s mldk foØ; vkfn dk dkj.k miyC/k ugh gksus ls mldk eY; dh fu/kkj.k esa U;k;ky; dks ,d okLrfod vkj lR;kiu ;kX; er viukuk pkfg;s ctk; vfr rduhdh ;k mi/kkj.kkRed eY; dks fopkj esa yus dk & ;g Hkh ,d LFkkfir fl)kr gS dh iqu% LFkkiu dh Øe esa U;k;ky; dks i{kdkj }kjk mBk;s x;s udlku vkj nlj i{k }kjk mBk;s x;s Qk;nk nkuksa dk /;ku esa j[kuk pkfg;s & U;k;ky; dk ;g dRrZO; gS dh og iqu% LFkkiu dh ekeys esa ekeyksa dh rF; dh izdk'k esa U;k; dj & iqu% LFkkiu dk vuqrk"k nsus le; U;k;ky; dks ml i{kdkj dh fo:) ftldks iqu% LFkkiu djuk gS gksus okyh ij'kkuh dk Hkh /;ku esa j[kuk pkfg;s & fdlh Hkh i{kdkj dh lkFk vU;k; ugh gksuk pkfg;sA

ekeys dh rF; dh izdk'k esa mDr fof/k izfrikfnr dh xbZA

Citibank N.A. v. Hiten P. Dalal and others

Judgment dated 21.08.2015 passed by the Supreme Court in Civil Appeal No. 3580 of 2005, reported in (2016) 1 SCC 411

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***72.CIVIL PROCEDURE CODE, 1908 – Order 1 Rule 10**
POWERS OF ATTORNEY ACT, 1882 – Section 2

(i) An agent acting under Power of Attorney always acts as a general rule, in the name of his principal – Any document executed or things done by an agent on the strength of power of attorney is as effective as if executed or done in the name

of the principal i.e. by the principal himself – An agent never gets any personal benefit of any nature on the strength of power of attorney.

(ii) Eviction suit, necessary parties – All co-owners held, not necessary parties in eviction suit.

flfoy izfØ;k lafgrk] 1908 & vkn'k 1 fu;e 10

e[rkjukek vf/kfu;e] 1882 & /kkjk 2

¼i½ ,d vfHkdrkZ tks e[rkjukek dh v/khu dk;ZdrkZ gks og ,d lkekU; fu;e ds rgr eyh 0;fDr ds uke ls dke djrk gS & fdlh nLrkost dk fu"iknu ;k dk;ZdrkZ tks e[rkjukek dh 'kfDr;ksa ds v/khu ,d vfHkdrkZ }kjk fd;k x;k gS og mlh izdkj izHkkoh.k gksrk gS tSls eyh 0;fDr ds uke ls fu"ikfnr fd;k x;k gS ;k dk;ZdrkZ fd;k x;k gS vFkkZr eyh 0;fDr }kjk fd;k x;k gS & ,d vfHkdrkZ fdlh Hkh izÑfr dk dkbZ Hkh 0;fDrxr ykHk e[rkjukek dh 'kfDr;ksa ds v/khu ugha ikrk gSA

¼ii½ fu"dklu ds okn esa vko';d i{kdkj & vfHkfu/kkfjr fd;k x;k fd lHkh lg&Lokeh fu"dklu ds okn esa vko';d i{kdkj ugha gksrs gSA

Tmt. Kasturi Radhakrishan and others v. M. Chinniyan and another

Judgment dated 28.01.2016 passed by the Supreme Court in Civil Appeal No. 5158 of 2009, reported in 2016 AIR SCW 609

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73. CIVIL PROCEDURE CODE, 1908 – Order 3 Rule 2
POWERS OF ATTORNEY ACT, 1882 – Section 2
EVIDENCE ACT, 1872 – Section 56

(i) Unregistered General Power of Attorney – Person holding Unregistered Power of Attorney can appear and act on behalf of a party to the proceeding in Court – *Syed Abdul Khader v. Kami Reddy, AIR 1979 SC 553* relied on.

(ii) Whether full signature in every page on Power of Attorney is necessary? Held, No.

flfoy izfØ;k lafgrk] 1908 & vkn'k 3 fu;e 2

Ekq[rkjukek vf/kfu;e] 1882 & /kkjk 2

Lkk{; vf/kfu;e] 1872 & /kkjk 56

¼i½ vizthÑr vke e[rkjukek & vizthÑr vke e[rkjukek /kkjd i{kdkj dh vkj ls dk;Zokgh esa U;k;ky; esa mifLFkr gks ldrk gS vkj dk;Z dj ldrk gS & U;k;n"Vkr

l;n vCnqy dknj fo:) dkfeuh jMMh] ,-vkbZ- vkj- 1979 ,lh 553 ij fo'okl fd;k x;kA

¼ii½ D;k e[rkjukek dh iR;sd i"B ij ijs gLrk{kj gksuk vko';d gS\ vfHkfu/kkfjr fd;k x;k] ughaA

Sharmila Tagore and others v. Azam Hassan Khan and others

Order dated 01.02.2016 passed by the High Court of M.P. in Writ Petition No. 16150 of 2015, reported in 2016 (1) MPLJ 461

Extracts from the Order:

From perusal of Order 3, Rules 1 and 2 of the Code of Civil Procedure as amended by High Court on 16.09.1960, it is clear that a person holding unregistered general power of attorney can appear and act on behalf of a party to the proceeding in a Court. In this connection, reference may be made to decision in the case of ***Syed Abdul Khader v. Kami Reddy, AIR 1979 SC 553***.

Section 56 and relevant extract of section 57 (6) of the Evidence Act read as under:-

56. Fact judicially noticeable need not be proved.—No fact of which the Court will take judicial notice need to be proved.

57 (6). Facts of which Court must take judicial notice.— All seals of which English Courts take judicial notice: the seals of all the [Courts in (India)], and all Courts out of [India] established by the authority of [the Central Government or the Crown Representative]: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by [the Constitution or an Act of Parliament of the United Kingdom or an] Act or Regulation having the force of law in [India].

From perusal of section 57 (6) as well as section 85 of the Evidence Act, it is evident that the Court is bound to presume that every document purporting to be a power of attorney and to have been executed before and authenticated by a notary public and it was duly executed especially in the case of no rebuttal. In this connection, reference has been made to decision in case of ***Jugraj Singh v. Jaswant Singh, AIR 1971 SC 761***.

In view of law laid down by Division Bench of Allahabad High Court reported in the case of ***Dr. Yaduveer Singh v. State of U.P., 2011 (1) AllLJ 299,*** it is evident that signature by initials is a valid signature and the power of attorney need not contain full signature. In view of aforesaid decision, the power of attorney need not contain full signatures. In Commissioner of Agricultural Income Tax, West ***Bengal v. Keshab Chandra Mandal, AIR 1950 SC 265*** wherein it has been held that if a statute requires personal signature of a person which includes a mark, the signature or mark must be that of the man himself. There must be physical contact between that person and the signature or mark put on the document.

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74. CIVIL PROCEDURE CODE, 1908 – Order 9 Rule 13
LIMITATION ACT, 1963 – Sections 5 and 14

Whether the period spent in proceeding under Order 9 Rule 13 CPC can be condoned in regular appeal against the same order on the ground of prosecution before the wrong forum? Held, No – The remedy for proceeding of Order 9 Rule 13 CPC for setting aside *ex parte* decree or order and regular appeal against such order is available concurrently, the same is not based on each other.

flfoy izfØ;k lafgrk] 1908 & vkn'k 9 fu;e 13
ifjlhek vf/kfu;e] 1963 & /kkjk,a 5 vkj 14

D;k vkn'k 9 fu;e 13 lh-ih-lh- dh dk;Zokgh esa yxk le; mlh vkn'k ds fo:) fu;fer vihy esa xyr Qkje ds le{k vfHk;kstu ds vk/kkj ij {kek fd;k tk ldrk gS \ vfHkfu/kkfjr fd;k x;k] ughaA vkn'k 9 fu;e 13 lh-ih-lh- ,d i{kh; vKkfIr ;k vkn'k dk vikLr djus ds fy;s dk;Zokgh dk mipkj vkj ml vkn'k ds fo:) fu;fer vihy lkFk&lkFk miyC/k gksrs gSa] ;s ,d nljs ij vk/kkfjr ugha gksrs gSaA

Prakash v. Uma Chaturvedi and others
Order dated 21.09.2015 passed by the High Court of M.P. in Misc. Appeal No. 118 of 2003, reported in 2016 (1) MPLJ 222

Extracts from the Order:

True, it is that as per settled proposition while considering the application under Section 5 of Limitation Act, the Court is bound to adopt a lenient view keeping in view the stake of the litigation but it does not mean that by adopting a lenient view, the valuable right, which has already been accrued in favour of other party on expiry of period of limitation prescribed, could be interfered by the Court in the lack of proving the sufficient cause.

In the matter of ***Ramlal and others v. Rewa Coalfields Limited, AIR 1962 SC 361,*** the Supreme Court has held that after expiry the period of limitation to file any specific proceeding before the appropriate forum a valuable right which has been accrued in favour of other party could not be distributed or struck down unless the sufficient cause is made out. The Apex Court has held as under:-

> "In construing Section 5, it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties and this legal right which has accrued to the decree-holder by lapse of time should not be lightheartedly disturbed."

***75.CIVIL PROCEDURE CODE, 1908 – Order 11 Rule 1**

Object of interrogatories – It may be helpful for disposal of matter in earlier stage and for framing of issues – It is not the sole ground to reject the application of Order 11 Rule 1 CPC that entire suit cannot be decided on the basis of interrogatories itself – Trial court is required to examine whether the interrogatories have any reasonable close connection with the matter in question.

flfoy izfØ;k lafgrk] 1908 & vkn'k 11 fu;e 1

lk'ukofy;k dk mnn'; & ;s ekeys dk ikjfHkd izØe ij fujkdj.k vkj okn inksa dh jpuk esa lgk;d gks ldrh gS & vkn'k 11 fu;e 1 lhihlh ds vkoonu dks [kkfjt djus dk ;g ,d ek= vk/kkj ugha gks ldrk dh i'ukofy;k ds vk/kkj ij iwjk okn fujkÑr ugha fd;k tk ldsxk & fopkj.k U;k;ky; dks fy, ;g vko';d gS fd og ;g ifjf{kr djs i'uk/khu ekeys esa i'ukofy;k dk dkbZ ;fDr;qDr fudV lEc/k gSA

Poonam Mansharamani v. Ajit Mansharamani

Order dated 16.11.2015 passed by the High Court of M.P. in Writ Petition No. 5641 of 2015, reported in 2016 (1) MPLJ 366

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76. CIVIL PROCEDURE CODE, 1908 – Order 21

In a suit for specific performance of contract, a decree was passed in favour of plaintiff – Plaintiff was directed to deposit the sale consideration and duty penalty within two months from the date of decree – He failed to comply with the direction – Held, decree is not executable.

flfoy izfØ;k lafgrk] 1908 & vkn'k 21

lafonk ds fofufn"V ikyu ds okn esa oknh ds i{k esa ,d vKkfIr ikfjr dh xbZ Fkh & oknh dk funsf'kr fd;k x;k Fkk dh og fMØh dh rkjh[k ls 2 ekg ds Hkhrj foØ; izfrQy vkj M;wVh iwuYVh tek djok ns & oknh funs'k ds ikyu esa vlQy jgk & vfHkfu/kkfjr fd;k x;k] vKkfIr fu"iknu ;kX; ugha gSA

Rammanohar v. Abhay Kumar (dead) through L.Rs. Smt. Nirmala Devi and others

Order dated 02.09.2015 passed by the High Court of M.P. in Civil Revision No. 35 of 2015, reported in 2016 (1) MPLJ 76

Extracts from the Order:

In the case of ***Brijmohandas and another v. Punjab National Bank and others, 1982 JLJ 92,*** almost similar issue has been dealt with while calculating the period in respect of limitation. The Division Bench of this Court by taking into account the General Clauses Act, 1897, in paragraph 23 has held as under :

23. Here it would be relevant to refer to Sec.9 of the General Clauses Act 1897 (Act No. X of 1897) Sub-Sec. (1) of Sec. 9 of this Act provides that in any General Act or regulation made after the commencement of this Act it shall be sufficient to the purpose of excluding the first in a series of days or any other period of time, to use the word “from” and for the purpose of including the last in a series of the days or any other period of time to use the word “to”. Subsection (2) further provides that the Section applies also to all Central Acts made after the third day of January 1868, and to all regulations made on or after the 14th day of January 1887. It therefore, follows that Sec. 9 only lays down the statutory recognition to the well established principle relating to the interpretation of statutes that ordinarily in computing time, the rule observed is to exclude the first day and to include the last day. Applying the terms of Sec. 9 and the general rule of construction of statutes, the date on which the goods were received at the destination station has to be excluded. On perusal of the evidence referred to in paragraph 22 above, it is thus clear that as regards the railway receipt no. 670242 ex.P/25, its goods were received at the destination station on 20/2/1970 and delivered to the defendant No.2 on 6/3/1970 ie., much after the expiry of the period of 7 days after the termination of transit as defined in Sec. 77 (c) (3) and Sec. 77 (5) of the Railways Act, and as such the defendant respondent Nos. 3 (a) and (b) were totally absolved of their liabilities as far as the goods covered by the railway receipt No. 670242 (Ex.P/25) were concerned. But because the goods covered by the railway receipt Nos. 670035 to 670041 (Ex.P/9 to P/15) and Railway receipt No. 6711112 P/26 are concerned the same were delivered to defendant No.2 before the expiry of the period of 7 days after the termination of transit and therefore respondent No.3 (a) and (b) were not so absolved of the liability under the provisions of Sec. 77 (c) (3) read with Sec. 77 (5) of the Railways Act.

The Division Bench has held that the first day on which the amount was due is to be ignored and the last day on which the amount has been deposited, has to be taken into consideration while computation of time. Keeping in view the aforesaid judgment, as the amount was deposited on 22/11/2004, it was certainly deposited with a delay of one day.

In the case of ***Rameshwar Dass Gupta v. State of U.P., 1997 (1) MPWN Note 163 Page 239*** it has held that a decree has to be executed as per the provisions under Order 21 and the Execution Court cannot amend or enlarge the decree.

The Apex Court in the case of ***P. R. Yelumalai v. N. M. Ravi, 2015 SAR (Civil) 549*** has taken a similar view. The Apex Court in the aforesaid case has held that in case of a conditional decree, if the decree holder fails to deposit the remain sale consideration within the specified time as per the judgment and decree, rejection of execution petition on the ground of delay in depositing of sale consideration is in order and the order passed by the executing Court has to be held as valid order.

The Apex Court in the case of ***Sunder Dass v. Ram Prakash, AIR 1977 SC 1201,*** in paragraph 3, has held as under :

> "3. Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the court to try the case and a decree which is a nullity is void and can be declared to be void by any court in which it is presented. Its nullity can be set up whenever and whenever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The executing court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the executing court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be no decree at all."

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77. CIVIL PROCEDURE CODE, 1908 – Order 39 Rules 1 and 2

Suit for declaration of title and permanent injunction – Plaintiff failed to establish *prima facie* her settled possession on the suit property – Temporary injunction held, rightly rejected.

flfoy izfØ;k lafgrk] 1908 & vkn'k 39 fu;e 1 vkj 2

LoRo ?kks"k.kk vkj LFkkbZ fu"ks/kkKk dh fy;s okn & oknh okn lifRr ij mldk izFke n"V;k LFkkfir vkf/kiR; LFkkfir djus esa vlQy jgh & vfHkfu/kkfjr fd;k x;k vLFkkbZ fu"ks/kkKk lgh :i ls [kkfjt dh xbZA

Geeta Dubey (Smt.) v. Saroj Suhane and ors.

Order dated 03.01.2014 passed by the High Court of M.P. in Writ Petition No. 10275 of 2013, reported in ILR (2015) MP 872

Extracts from the Order:

In ***Rame Gowda v. M. Varadappa Naidu, (2004) 1 SCC 769***, while affirming the law laid down in ***Puran Singh v. State of Punjab, (1975) 4 SCC 518,*** it has been observed:

> "The possession which a trespasser is entitled to defend against the right owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In Puran Singh's case (supra), the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt and concealment by the trespasser. The phrase settled possession does not carry any special charm of magic in it, nor is it a ritualistic formula which can be confined in a straitjacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The Court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession' :
>
> (i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;
>
> (ii) that the possession must be to the knowledge (either express of implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would however, be a matter to be decided on the facts and circumstances of each case.
>
> (iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession."

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78. CONSTITUTION OF INDIA – Article 300-A

MUNICIPAL CORPORATION ACT, 1956 (M.P.) – Sections 305 and 306

BHUMI VIKAS NIYAM, 2012 (M.P.) – Rule 61

(i) Municipal Corporation has neither initiated any proceeding for acquisition of the property for the petitioners nor paid any compensation to them – Therefore, the Corporation cannot be permitted to take possession of the property without acquiring the same and without making payment of compensation.

(ii) The power of 'eminent domain' is in the nature of compulsory purchase of the property of the citizen for the purpose of applying to the public but this power can be exercised subject to payment of compensation (*Coffee Board, Karnataka, Bangalore v. Commissioner of Commercial Taxes, Karnataka and others, AIR 1988 SC 1487* relied on).

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uxj ikfyd fuxe vf/kfu;e] 1956 ¼e-iz-½ & /kkjk,a 305 vkj 306
Hkfe fodkl fu;e] 2012 ¼e-iz-½ & fu;e 61

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¼ii½ *,eh,uUV Mkeus* dh 'kfDr;ksa fdlh ukxfjd dh lafpfRr dk ykd mnnsZ; dh fy;s ck/;rkdkjh Ø; djus dh izÑfr dh gS fdUrq ,slh 'kfDr;ksa dk iz;ksx ifrdj dh Hkqxrku dh v/khu fd;k tk ldrk gSA ¼कॉफी बोर्ड, कर्नाटक, बैंगलोर, विरूद्ध कमिश्नर ऑफ कमर्सियल टेक्सेस कर्नाटका और अन्य, ए.आई.आर. 1988 एस.सी. 1487 ij fo'okl fd;k x;k½

Prem Narayan Patidar and ors. v. Municipal Corporation, Bhopal & ors.

Order dated 28.10.2014 passed by the High Court of M.P. in Writ Petition No. 309 of 2014, reported in ILR (2015) MP 1223

Extracts from the Order:

In ***State of Haryana v. Mukesh Kumar and others, (2011) 10 SCC 404,*** the Supreme Court has held that right to property is not only the constitutional or statutory right but also a human right. Similarly, the Supreme Court in the case of ***Tukaram Kana Joshi v. Maharashtra Industrial Development Corporation and others, (2013) 1 SCC 353***, has held that even after right to property ceased to be a fundamental right, possession of the property of a citizen can be taken only in accordance with law as per the mandate contained in Article 300-A of the Constitution of India. In ***Coffee Board, Karnataka, Bangalore v. Commissioner of Commercial Taxes, Karnataka and others, AIR 1988 SC 1487,*** it has been held that power of 'eminent domain' can be exercised upon making just compensation.

In the instant case, admittedly, the respondent Corporation has neither initiated any proceeding for acquisition of the land/property of the petitioners nor has paid any compensation to them. Reliance placed by learned counsel for the respondents on Rule 61 of the M.P. Bhumi Vikas Niyam, 2012 is misplaced as the same applies to the case of a person who on his own volition surrenders the property to the authority. In the present case, the petitioners are not ready and willing to surrender their lands/properties in favour of the Corporation, therefore, by unilaterally invoking Rule 61 of the 2012 Rules, the Corporation cannot be permitted to take possession of the properties of the petitioners which would tantamount to violation of Article 300-A of the Constitution of India. The power of 'eminent domain' is in the nature of compulsory purchase of the property of the citizen for the purpose of applying to the public use (See: Advanced Law Lexicon, 3rd Edition by R. Ramanatha Aiyer). This power can be exercised subject to payment of compensation as has been held in the case of ***Coffee Board*** (supra). For this reason, in all the relevant provisions of law i.e. the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973, M.P. Municipal Corporation Act, 1956 as well as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, provisions for making payment of compensation to the person whose property is being acquired, have been incorporated. Therefore, the Corporation cannot be permitted to take possession of the lands in question without acquiring the same and without making payment of compensation. The Corporation has no right to take possession of the lands/houses of the petitioners, save by authority of law. A democratic polity like ours is governed by rule of law and the State cannot be allowed to deprive a citizen of his property without adhering to law. The deprivation of immovable property would amount to violation of Article 21 of the Constitution of India. The decision in ***Mayank Rastogi v. V.K. Bansal and others, (1998) 2 SCC 343*** on which reliance has been placed by the respondents is of no assistance to them in the present fact situation as the same deals with the issue whether a person who has no submitted any objection to the change of land use can subsequently be permitted to raise an objection in this regard.Admittedly, the Corporation has not initiated any proceeding for acquisition of land/houses in question therefore, it is not necessary for this Court to deal with the issue whether the acquisition should

take place under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 or under the provisions of the M.P. Municipal Corporation Act, 1956. However, the respondents are restrained from taking possession of the land/houses of the petitioners without acquiring the same in accordance with law.

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***79.CRIMINAL PROCEDURE CODE, 1973 – Section 125**

Family pension – No charge can be levied on family pension on account of an order of grant of maintenance to the legitimate children of the deceased Government servant through a legally divorced wife – It could be inherited by her legal heirs but not by those who are differently related to the deceased Government servant.

n.M ifØ;k lfgrk] 1973 & /kkjk 125

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Mamta Sharma (Smt.) v. State of M.P. & ors.

Order dated 29.08.2013 passed by the High Court of M.P. in W.P. No. 11941 of 2012, reported in ILR (2015) MP 1441

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***80.CRIMINAL PROCEDURE CODE, 1973 – Section 173 (8)**

Section 173 (8) CrPC empowers the I.O. to conduct further investigation even after filing of a report under section 173 (2) CrPC if he obtains further evidence, oral or documentary – The power of the police officer under section 173 (8) CrPC is unrestricted – Magistrate has no power to interfere but it would be appropriate on the part of the Investigating Officer to inform the Court regarding further investigation.

n.M ifØ;k lfgrk] 1973 & /kkjk 173 ¼8½

/kkjk 173 ¼8½ n-i-l- vuqla/kku vf/kdkjh dk /kkjk 173 ¼2½ n-i-l- ds v/khu ifjrosnu QkbZy dj nus ds ckn Hkh vfrfjDr vuqla/kku lpkfyr djus ds fy, l'kDr djrh g] ;fn mls ekf[kd ;k nLrkosth vU; lk{; izkIr gksrh g & /kkjk 173 ¼8½ n-i-l- ds v/khu ifyl vf/kdkjh dh 'kfDr;k vifjlhfer g & eftLVªV dk gLr{ksi dh dkbZ 'kfDr ugh g fdUrq vuqla/kku vf/kdkjh ds Hkkx ij ;g mfpr gksxk fd og U;k;ky; dk vfxe vuqla/kku ds ckjs e lfpr dj nsA

Dharam Pal v. State of Haryana and others

Judgment dated 29.01.2016 passed by the Supreme Court in Criminal Appeal No. 85 of 2016, reported in 2016 AIR SCW 618

81. CRIMINAL PROCEDURE CODE, 1973 – Section 197

Appellants, Medical Officers were discharging their public duties in the Government Hospital –They were performing surgery on the patient in the Government Hospital – Private Complaint under section 304-A IPC was registered against them without opbtaining sanction from the State Government – Held, it is not maintainable –*Jacob Mathew v. State of Punjab and another, AIR 2005 SC 3685* (Three Judge Bench) relied on.

n.M ifØ;k lafgrk] 1973 & /kkjk 197

vihykFkhx.k fpfdRlk vf/kdkjh mudh ykd ÑR;ksa dk fuokgu 'kkldh; vLirky esa dj jgs Fks & o 'kkldh; vLirky esa ejht dh 'kY; fØ;k dj jgs Fks & mudh fo:) /kkjk 304&, Hkkjrh; n.M lafgrk dk futh ifjokn jkT; ljdkj dh vuefr dh fcuk ifjthc) fd;k x;k & vfHkfu/kkfjr fd;k x;k] ;g ¼ifjokn½ ipyu'khy ugha gS & जेकब मेथ्यू विरूद्ध स्टेट ऑफ पंजाब और अन्य, ए.आई.आर. 2005 एस.सी. 3685 rhu U;k;efrx.k dh ihB ij Hkjkslk fd;k x;kA

Dr. (Smt.) Manorama Tiwari and others v. Surendra Nath Rai

Judgment dated 10.09.2015 passed by the Supreme Court in Criminal Appeal No. 1193 of 2015, reported in 2016 Cri. L J. 367 (SC)

Extracts from the Judgment:

A three-Judge Bench of this Court in ***Jacob Mathew v. State of Punjab and another (2005) 6 SCC 1 : (AIR 2005 SC 3180:2005 AIR SCW 3685)***, has laid down guidelines for prosecution of medical professionals as under:

> "As we have noticed hereinabove that the cases of doctors (surgeons and physicians) being subjected to criminal prosecutions are filed by private complainants and sometimes by the police on a FIR being lodged and cognizance taken. The investigation officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine fessional amounts to a rash or negligent action 304-A, IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment. He has to seek bail to escape arrest, which may or may not be granted to him. At the end he may be exonerated by acquittal or discharge but the loss which he has suffered to his reputation cannot be compensated by any standards.

We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasise the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefer recourse to criminal process as a tool for pressurising the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.

Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or neglignet act or omission. obtain an independent and competent medical opinion preferably from a doctor in Government service. qualified in that branch of medical practice who can normally be expected to given an impartial and unbiased opinion applying the ***Bolam v. Frein Hospital Management Committee, (1957) 1 WLR 582 : (1957) 2 All ER 118 (QBD)*** test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld."

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***82. CRIMINAL PROCEDURE CODE, 1973 – Sections 204 and 397**

(i) Revisional jurisdiction – Order of issuance of process, when can be set aside? Held, where:

(a) The allegations made in the complaint or the statement of the witness recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(b) The allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(c) The discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on material which are wholly irrelevant or inadmissible.

(ii) At the stage of issuing processes in a private complaint, the defence of accused cannot be considered – All that the Court has to see is whether there are enough grounds for proceeding in the matter and not whether there are sufficient grounds for conviction.

n.M ifØ;k lfgrk] 1973 & /kkjk,¡ 204 vkj 397

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¼b½ tgk ifjokn esa fd;s x;s vfHkopu Li"Vr% fujFkZd vkj vrjfufgr :i ls vlEHkkO; gks ftlds dkj.k dkbZ Hkh iKkoku 0;fDr ,slk fu"d"kZ ugha fudky ldrk gS dh vfHk;qDr ds fo:) vxlj gksus ds i;kZIr vk/kkj gS(

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¼ii½ ,d futh ifjokn esa vkns'kdk tkjh djus ds iØe ij vfHk;qDr dk cpko fopkj esa ugha fy;k tk ldrk gSA U;k;ky; dks ;gh n[kuk gksrk gS dh D;k ekeys esa vxlj gksus ds i;kZIr vk/kkj gS] ;g ugha n[kuk gksrk gS dh D;k nk"kflf) ds i;kZIr vk/kkj gSA

Madhusudan Tiwari v. Shyam Sunder & ors.

Order dated 19.11.2014 passed by the High Court of M.P. in Criminal Revision No. 487 of 2011, reported in ILR (2015) MP 1379

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83. CRIMINAL PROCEDURE CODE, 1973 – Sections 204 (4), 378 and 398
NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138
Complaint has been dismissed under section 204 (4) CrPC – Whether revision is maintainable against that order? Held, Yes – Had the legislature intended that such order will also amount to an order of acquittal coming within the purview of section 378 CrPC, there was absolutely no difficulty in using the word "acquit" instead of "dismissed" in section 204 (4) of the Code – Order of dismissal of a complaint under section 204 (4) Cr.P.C. is not appealable under section 378 of the Code.

n.M izfØ;k lafgrk] 1973 & /kkjk,a 204 ¼4½] 378 vkj 398
ijØkE; fy[kr vf/kfu;e] 1881 & /kkjk 138
ifjokn /kkjk 204 ¼4½ n-i-l- dk v/khu [kkfjt fd;k x;k Fkk & D;k mDr vkn'k dk fo:) iqujh{k.k pyu ;kX; gS \ vfHkfu/kkfjr fd;k x;k] gS & ;fn fo/kkf;dk dk vk'k; ;g gS rk dh ,sls vkn'k Hkh nk"kefDr dk vkn'k ekuk tk;sxk vkj /kkjk 378 n-i-l- dk {k= esa vk;sxk & rc /kkjk 204 ¼4½ lafgrk esa **[kkfjt** 'kCn dk LFkku ij **nk"kefDr** 'kCn bLrseky dju esa dkbZ dfBukbZ ugh Fkh & /kkjk 204 ¼4½ n.M izfØ;k lafgrk dk v/khu ifjokn dk [kkfjt fd;k tkus dk vkn'k /kkjk 378 lafgrk dk v/khu vihy ;kX; ugh gSA

Bhupendra Singh v. Saket Kumar

Order dated 31.07.2015 passed by the High Court of M.P. in Criminal Revision No. 289 of 2015, reported in 2016 (1) MPLJ 209

Extracts from the Order:

The complainant/petitioner assailed the impugned order on various grounds. As per the complainant, he deposited process fee earlier on several times. Because of inaction of the authorities responsible for execution of warrant, the warrant could not be executed though the matter is pending since 2008. The learned Trial Court instead of providing an opportunity to the complainant/ petitioner benefited the accused by the impugned order. Before dismissal of the criminal complaint, no peremptory order has been passed. No warning, to the petitioner/complainant, was given and the complaint was dismissed acquitting the accused which has resulted the failure of justice. In the aforesaid facts and circumstances of the case, the mistake of the petitioner is a bonafide one. Requested to invoke the inherent jurisdiction of this Court, in the interest of justice, it is prayed to set-aside the impugned order and to restore the criminal complaint case so that justice can be done with the petitioner.

In the present case, the complainant was not warned nor any peremptory order was passed. For failing to pay process fee the complainant will be put to inconvenience and the case would be thrown away without being decided on merits.

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84. CRIMINAL PROCEDURE CODE, 1973 – Section 321

Withdrawal from prosecution – Guidelines for the trial court, reiterated.

In this case, all seven prosecution witnesses have been examined – Numerous injuries were found on the person of the victims according to the MLC report – Trial Court disallowed the application under Section 321 Cr.P.C. – Order maintained by Hon'ble the High Court.

n.M izfØ;k lafgrk] 1973 & /kkjk 321

vfHk;qDr }kjk izR;kgj.k & fopkj.k U;k;ky; dks fy, fn'kk funsZ'k ikuk cryk;k x;kA bl ekeys esa lHkh 7 vfHk;qDr lk{khx.k dk ijh{k.k gks pqdk Fkk & ,e,yh dks vuqlkj vkgr dks 'kjhj ij dbZ pkVs Fkh & fopkj.k U;k;ky; us /kkjk 321 ncizl dk vkosnu [kkfjt fd;k & ekuuh; mPp U;k;ky; us bl vkns'k dh iqf"V dhA

Chitrakootram and others v. The State of M.P.

Order dated 09.02.2016 passed by the High Court of M.P. (Jabalpur) in Misc. Criminal Case No. 12556 of 2014 (Unreported Judgment)

Extracts from the Order:

Before considering the factual aspect of the matter it would be appropriate to consider the legal position with regard to section 321 of the Code of Criminal Procedure. The Apex Court laid down following guidelines for the trial Court in the case of ***Rajendra Kumar Jain vs. State, AIR 1980*** Supreme Court 1510,that:

"(1) Under the scheme of the code prosecution of an offender for a serious offence is primarily the responsibility of the executive.

(2) Withdrawal from prosecution is an executive function of the public prosecutor.

(3) The discretion to withdraw from the prosecution is that of the public prosecutor and none else, and so, he cannot surrender the discretion to someone else.

(4) The government may suggest the public prosecutor that he may withdraw from prosecution. None can compel him to do so.

(5) The public prosecutor may withdraw from prosecution not merely on the ground of paucity of evidence but on the other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate

social and economic, and, we add, political purposes sans Tammary Hall enterprises.

(6) The public prosecutor is an officer of the court and responsible to the court.

(7) The court performs a supervisory function in granting its consent to the withdrawal.

(8) The court's duty is not to re-appreciate that which led the public prosecutor to request withdrawal from the prosecution but to consider whether public prosecutor applied his mind as a free agent, uninfluenced by the irrelevant and extraneous considerations. The court has a special duty in this regard and it is ultimate repository of the legislative confidence in granting or withholding its consent to withdrawal from the prosecution."

So far as, role of the Court in granting the permission is concerned, the apex Court in the case of ***M.N. Shankar Nair vs. P.V. Balakrishnan, 1972 Cr.L.J. 301,*** has observed that:

"It is the duty of the court also to see in furtherance of justice that the permission is not sought on the grounds extraneous to the interest of justice or that offences which are offences against the state go unpunished merely because the government as a matter of general policy or expediency unconnected with its duty to prosecute offenders under the law, directs the public prosecutor to withdraw from the prosecution and the public prosecutor merely does so at its behest."

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85. CRIMINAL PROCEDURE CODE, 1973 – Sections 378 (4), 397 and 401 (4)

Where appeal against acquittal lies, no revision would be maintainable in view of section 401 (4) Cr.P.C.

n.M ifØ;k lafgrk] 1973 & /kkjk,a 378 ¼4½] 397 vkj 401

tgk¡ nk"kefldr dh fo:) vihy dh tk ldrh gks ogk¡ /kkjk 401 ¼4½ nkafl dh izdk'k esa iqujh{k.k pyus ;ksX; ugha gksrk gSA

Santosh Kumar v. Jaidka Gas Agency

Order dated 04.12.2015 passed by the High Court of M.P. (Jabalpur) in Criminal Revision No. 1296 of 2015 (Unreported Judgment)

Extracts from the Order:

A Division Bench of Karnataka High Court sitting singly in the case of ***K.H. Ganesh Rao v. H. Gopal, (2010) Cri LJ 4755*** considered the same question and inparagraph Nos. 13 and 14 of the judgment held as hereunder:

13. The relevant provision that is germane to the issue in question is section 378 Cr.P.C. Section 378(1) Cr.P.C. deals with powers of the District Magistrate and the State Government to prefer an appeal to the High Court from original or appellate order of acquittal passed by any Court arising out of police report. The section 378(2) of Cr.P.C. deals with prosecution of appeals by the Central Government to the High Court against the order of acquittal passed by the Court subordinate to High Court in its original or appellate jurisdiction arising out of prosecution launched by Delhi Police Special Establishment. The section 378(3) Cr.P.C. declares that power of the State and Central Government to prefer an appeal is again subject to leave granted by the High Court to prefer an appeal. The section 378(4) Cr.P.C. provides that if such an order of acquittal is passed in any case instituted upon complaint and the High Court on an application made to it by the complainant in this behalf, grant special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

14. The sub-section (4) unlike sub-sections (1) and (2) of section 378 Cr.P.C. does not specifically make mention of order of acquittal in original or appellate jurisdiction by the Court sub-ordinate to High Court. However, the wordings of sub-section (4) starts with “if such an order of acquittal is passed”. The expression “such order of acquittal” should be understood as “original or appellate order of acquittal”.

Thus regardless of the fact, whether the order of acquittal is recorded in the trial or in the appeal, a special leave to appeal against acquittal, shall be maintainable in a case instituted on a private complaint, view of the expression “from an original or appellate order of acquittal passed by any Court other than a High Court”?used in sub-section (1) and expression “such an order of acquittal” used in sub-section (4) of section 378.

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86. CRIMINAL PROCEDURE CODE, 1973 – Section 397

INDIAN PENAL CODE, 1860 – Section 306

Abetment to suicide – The property belonging to deceased was misappropriated or taken possession of by accused which resulted in severe financial crisis for deceased – When a person is driven to such a condition by accused, it amounts to abetment of suicide – Charge rightly framed by the Trial Court under section 306 IPC.

n.M izfØ;k lafgrk] 1973 & /kkjk 397

Hkkjrh; n.M lafgrk] 1860 & /kkjk 306

vkRegR;k dk n"iz.k & e`rd dh lifRr dk nfo"kx ;k vkf/kiR; y fy;s tku ls e`rd ds fy;s xHkhj foRrh; ldV mRiUu gks x;k Fkk & tc ,d 0;fDr dk vfHk;Dr }kjk ,slh n'kk esa igpk fn;k x;k rc ;g vkRegR;k ds n"iz.k dk leku gkxk & fopkj.k U;k;ky; }kjk /kkjk 306 Hkk-n-l- dk v/khu vkjksi mfpr jhfr ls fojfpr fd;s x;s gSA

Surjeet Singh Thakkar v. State of M.P.

Order dated 02.11.2015 passed by the High Court of M.P. in Criminal Revision No. 1162 of 2015, reported in 2016 (1) JLJ 19

Extracts from the Order:

In the present case, the facts are different here. As per the allegations in the suicide note the trucks belong to the deceased which were only attached to the transport company. He failed to pay him rent of the trucks due to which the deceased faced severe financial crises. The facts of the case is similar to those of the case before the Hon'ble Apex Court in case of ***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460***. In this case, the accused persons forcibly occupied the property of the widow lady. He misappropriated the property and was not returning the property to the deceased and, therefore, due to severe depression, the widow committed suicide. It was observed by the Hon'ble Apex Court in para 19 of the judgment that at the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.

Further, the Court observed in para 31 of the judgment as under:-

> "31. This present case is not a case where the allegations were so predominately of a civil nature that it would have eliminated criminal intent and liability. On the contrary, it is a fact and, in fact, is not even disputed that the deceased committed suicide and left a suicide note. May be, the accused are able to prove their noninvolvement in inducing or creating circumstances which compelled the deceased to commit suicide but that again is a matter of trial. The ingredients of Section 306 are that a person commits suicide and somebody alone abets commission of such suicide which renders him liable for punishment. Both these ingredients appear to exist in the present case in terms of the language of Section 228 of the Code, subject to trial. The deceased committed suicide and as per the suicide note left by her and the statement of

her son, the abetment by the accused cannot be ruled out at this stage, but is obviously subject to the final view that the court may take upon trial. One very serious averment that was made in the suicide note was that the deceased was totally frustrated when the accused persons took possessions of the ground floor of her property, C-224, Tagore Garden, Delhi and refused to vacate the same. It is possible and if the Court believes the version given by the prosecution and finds that there was actual sale of 6 property in favour of the accused, as alleged by him, in that event, the Court may acquit them of not only the offence under Section 306 IPC but under Section 107 IPC also. There appears to be some contradiction in the judgment of the High Court primarily for the reason that if charge under Section 306 is to be quashed and the accused is not to be put to trial for this offence, then where would be the question of trying them for an offence of criminal trespass in terms of Section 448 IPC based on some facts, which has been permitted by the High Court."

Further more, the Court observed in para 35 of the judgment as under:-

"35. The learned counsel appearing for the appellant has relied upon the judgment of this Court in ***Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605*** to contend that the offence under Section 306 read with Section 107 IPC is completely made out against the accused. It is not the stage for us to consider or evaluate or marshal the records for the purposes of determining whether the offence under these provisions has been committed or not. It is a tentative view that the Court forms on the basis of record and documents annexed therewith. No doubt that the word "instigate" used in Section 107 IPC has been explained by this Court in ***Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618*** to say that where the accused had, by his acts or omissions or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, an instigation may have to be inferred. In other words, instigation has to be gathered from the circumstances of the case. All 7 cases may not be of direct evidence in regard to instigation having a direct nexus to the suicide. There could be cases where the circumstances created by the accused are such that a person feels totally frustrated and finds it difficult to continue existence. The husband of the deceased was a paralysed person. They were in financial crises. They had sold their property. They had great faith in the accused and were heavily relying on him as their property transactions

were transacted through the accused itself. Grabbing of the property, as alleged in the suicide note and the statement made by the son of the deceased as well as getting blank papers signed and not giving monies due to them are the circumstances stated to have led to the suicide of the deceased. The Court is not expected to form even a firm opinion at this stage but a tentative view that would evoke the presumption referred to under Section 228 of the Code."

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***87.CRIMINAL PROCEDURE CODE, 1973 – Section 438**

CRIMIAL TRIAL: Media hype

Anticipatory bail – Relevant factors for consideration, stated.

(i) Nature and gravity of accusation – Kind of allegation and its severity besides its impact over the society is certainly a relevant factor, but it is not a decisive one – The allegation ought to be based on the anvil of substantive material collected by the prosecution.

(ii) Nature and gravity of prosecution evidence – The confession of a co-accused cannot be elevated to the status of substantive evidence which can form the basis of conviction of the co-accused.

(iii) Antecedents of an accused – If the prosecution has not pointed out any antecedents that may exist against the accused, the Court can safely presume that there are none.

(iv) Possibility of the accused fleeing from justice.

(v) Whether the accusation is made to humiliate the accused?

(vi) Whether arrest will prejudice accused?

Media hype – Word of caution for the members of the judiciary – Courts ought to save themselves from being influenced by media hype –The relief due to the litigant ought to be adjudicated on attending facts, evidence and law and not on public opinion which is often founded upon compassion, proclivity and hunch rather than reason, marshalling of evidence and settled principles of law.

n.M izfØ;k lafgrk] 1973 & /kkjk 438

nkf.Md fopkj.k & ehfM;k izpkj

vfxre tekur & fopkj dh fy;s lqlxr dkjd & crk;s x;sA

¼i½ vfHk;kx dh izÑfr vkj xHkhjrk & vfHk;kx dk izdkj vkj xHkhjrk lekt ij ml ij izHkko dk vfrfjDr fuf'pr :i ls lqlxr dkjd gksus dh ;g fu.kk;d ughs gksrh & vfHkdFku vfHk;kstu }kjk lxfgr dh xbZ rkfRod lkexh ij vk/kkfjr gksuk pkfg;sA

¼ii½ vfHk;ktu lk{; dh izÑfr vkj xHkhjrk & ,d lg&vfHk;qDr }kjk dh xbZ lLohÑfr vU; lg&vfHk;qDr dk nk"kfl) dju dk vk/kkj cukus ds fy;s ,d rkfRod lk{; dh ikfLFkfr ugha gksuh pkfg,A

¼iii½ vfHk;qDr dk izoZoRr & ;fn vfHk;ktu vfHk;qDr ds fo:) dkbZ izoZoRr tks vfLrRo esa gks ugha crykrk gS rc U;k;ky; lqf{kr :i ls ;g mi/kkfjr dj ldrh gS dh vfHk;qDr ds fo:) dkbZ izoZoRr ¼izo vijkf/kd bfrgkl½ ugha gSA

¼iv½ vfHk;qDr ds Qjkj gksus dh lHkkouk A

¼v½ D;k vfHk;qDr dk viekfur djus ds fy;s vfHk;kx yxk;k x;k gS \

¼vi½ D;k fxj¶rkjh ls vfHk;qDr ds fgrksa ij izfrdwy vlj fxjxk \

ehfM;k izpkj & U;k;ikfydk ds lnL;ksa ds fy;s lrdZrk ds 'kCn & U;k;ky;ksa dk ehfM;k izpkj }kjk izHkkfor gksus ls Lo;a dk cpkuk gh pkfg;s & ,d i{kdkj dks nh tkus okyh lgk;rk dk U;k; fu.kZ;u miyC/k rF;ksa] lk{; vkj fof/k ds vk/kkj ij fd;k tkuk pkfg;s u dh ykd vfHker ds vk/kkj ij tks dh ik;s lgkuHkwfr] izofRr] >qdko ij vk/kkfjr gksrk gS u dh dkj.k] lk{; ds Øec/ku vkj fof/k ds LFkkfir fl)kUrksa ijA

Pratap Singh v. The State of Madhya Pradesh

Order dated 14.07.2015 passed by the High Court of M.P. in Misc. Criminal Case No. 2643 of 2015, reported in 2015 (III) MPJR 219

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***88.CRIMINAL PROCEDURE CODE, 1973 – Section 439**

Vyapam case – Offences relating to admissions in Medical Colleges by corrupt means – These offences have serious adverse impact on the fabric of the society – The offence is of high magnitude indicating illegal admission to large number of undeserving candidates to the medical courses by corrupt means – The offence has the potential of undermining the trust of the people in the integrity of medical profession – If undeserving candidates are admitted to medical courses by corrupt means, not only the society will be deprived of the best brains treating the patients but also the patients will be faced with undeserving and corrupt persons treating them in whom they will find it difficult to faith – Bail rejected – Though offences are serious in nature, but the accused is in custody for about one year and there is no prospect of immediate trial – Speedy trial is a right of the accused, therefore, the trial Court must ensure speedy trial so that the right of the accused is protected.

n.M izfØ;k lfgrk] 1973 & /kkjk 439

0;kie ekeyk & Hk"V lk/kuksa ls fpfdRlk egkfo|ky;ksa esa izos'k lacU/kh vijk/k & ;s vijk/k lekt ds rku&ckuk ij xHkhj foijhr izHkko Mkyrs gSa Hk"V lk/kuksa }kjk vik= mEehnokjksa dk fpfdRlk ikB;Øe esa cMh lq[;k esa vo/k izos'k ds vijk/k

vR;f/kd egRo dh gS & ;fn vijk/k fpfdRlk 0;olk; dh ifrc)rk ij ykxk dk fo'okl de djrh gS & ;fn Hk"V lk/kuk }kjk v;kX; mEehnokjk dk fpfdRlk ikB;Øe esa izo'k gkrk gS rk ;g u dsoy lekt dk ifrHkk'kkyh 0;fDr }kjk bykt dju ls ofpr djxk cfYd ejht ,sls 0;fDRk;k ls bykt djk;xk tks vik= vkj Hk"V gS ftu ij mudk fo'okl ugh gkxk & tekur fujLr dh xbZ & ;|fi vijk/k xHkhj izÑfr dk gS fdUrq vfHk;qDr ,d o"kZ ls vfHkj{kk esa gS vkj mldk fopkj.k ikjHk gksus dh dkbZ rkRdkfyd lHkkouk ugh fn[krh gS & 'kh?k fopkj.k vfHk;qDr dk vf/kdkj gS bl dkj.k fopkj.k U;k;ky; 'kh?k fopkj.k lqfuf'pr djs rkfd vfHk;qDr dk vf/kdkj lqjf{kr gks ldsA

Vinod Bhandari (Dr.) v. State of M.P.

Judgment dated 04.02.2015 passed by the Supreme Court in Criminal Appeal No. 220 of 2015, reported in ILR (2015) MP 1625 (SC)

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89. CRIMINAL PROCEDURE CODE, 1973 – Sections 451 and 457

PC & PNDT ACT, 1994 – Section 30

Sonography machine was seized under the offence of PC & PNDT Act – Whether such machine can be released on interim supurdagi under sections 451 and 457 CrPC? Held, Yes – The printout may be taken with the help of experts and thereafter, machine may be handed over to the concerned – An undertaking may be taken that the machine would not be used in violation of the PC & PNDT Act.

n.M izfØ;k lafgrk] 1973 & /kkjk,a 451 vkSj 457

xHkZ /kkj.k izo`fr vkSj izlo izo`fr funku rduhd ¼fyx p;u dk izfr"ks/k½ vf/kfu;e] 1994 & /kkjk 30

ih-lh- vkSj ih-,u-Mh-Vh- vf/kfu;e ds v/khu ,d lkukxzkQh e'khu tCr dh xbZ & D;k ,slh e'khu dks /kkjk 451 vkSj 457 n-i-l- ds v/khu vrfjr lqiqnxhZ ds v/khu fn;k tk ldrk gS \ vfHkfu/kkfjr fd;k x;k] gk & fo'ks"kK dh lgk;rk ls fiV vkmV fy;s tk ldrs gSa vkSj mldh ckn laf/kr dks e'khu lkSaih tk ldrh gS & ,slk fyf[kr opu fy;k tk ldrk gS dh vf/kfu;e ds mYya?ku esa e'khu dk mi;ksx ugh fd;k tk;xkA

Charal Singh (Dr.) v. Dr. Sanjay Goyal

Order dated 12.12.2014 passed by the High Court of M.P. in Misc. Criminal Case No. 8062 of 2014, reported in ILR (2015) MP 1597

Extracts from the Order:

I have gone through the various documents and the complaint filed by the appropriate authority before the learned Chief Judicial Magistrate, Ratlam. It is apparent that not intimating the installation and number of machine by the present applicant is violation of rule 13 of the Rules and as such punishable under

secton 23. It is however, true that in the list of documents the seizure memo of the machine is not listed, however, such a fault on the part of the complainant would not take away the jurisdiction vested in the Magistrate under sections 451 and 457 of Cr.P.C. The machine is an electronic equipment which requires continues maintenance, if kept locked and unattended, the value of the machine may deteriorate. If, in view of the learned Chief Judicial Magistrate, some evidence is to be extracted from the memory chip of the machine, same can be done immediately. The print out may be taken with help of experts and thereafter, the machine may be handed over to the applicant. After fulfilling the formalities, as provided by the act, use of ultra sound sonography machine is not prohibited, only it is controlled by the provisions of the Act and the Rules.

In this view of the matter, the impugned order passed by the Chief Judicial Magistrate in Criminal Case No.2270/2014 dated 01.07.2014 and the order passed by the learned First Additional Sessions Judge in Criminal Revision No.137/2014 dated 27.09.2014 are hereby set aside. The application filed by the applicant for ad-interim custody of the machine is hereby allowed. It is directed that if the applicant files an undertaking that the machine would not be used in violation of provisions of the P.C. & P.N.D.T. Act and the Rules, including without licence/ permission from appropriate authority and a 'Supurdnama' for Rs.5,00,000/- the machine may be handed over to the applicant. It is further made clear that if in opinion of the learned Chief Judicial Magistrate, Ratlam, it is necessary to extract any information which is necessary for disposal of the complaint filed by the appropriate authority, he is at liberty to do so with help of experts in this field and after giving notice to the present applicant before releasing the machine to the present applicant. The learned Magistrate shall send an intimation to the Collector/appropriate authority before handing over the machine to the applicant.

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***90. EVIDENCE ACT, 1872 – Section 3**

N.D.P.S. ACT, 1985 – Sections 15 and 35

(i) Appreciation of evidence – Effect of non-examination of independent witnesses – Holding Nakabandi by the police in the midnight – According to I.O., two persons had come at the place of Nakabandi and they were asked to join, but they refused – Where there is satisfactory explanation for non-examination of independent witnesses, conviction can be based solely on the testimony of the official witnesses, if evidence of such official witnesses inspires confidence – *Gyan Singh and others v. State of U.P., 1995 Supp (4) SCC 658* distinguished on the facts.

(ii) Physical possession of the contraband has been established by the prosecution – The accused being the driver of the vehicle by all probabilities, must have been aware of the

contents of the bags transported in the trolley attached to the tractor – Once the physical possession of the contraband by the accused has been proved, presumption under section 35 of the NDPS Act comes into play and the burden shifts on the accused to prove that he was not in conscious possession of the contraband.

lk{; vf/kfu;e] 1872 & /kkjk 3

,u-Mh-ih-,l- ,DV] 1985 & /kkjk,¡ 15 vkj 35

¼i½ lk{; dk eY;kdu & Lor= xokgk dk ijh{k.k u djokus dk izHkko& izfyl }kjk e/; jkf= esa ukdkcnh dh xbZ vUo"k.k vf/kdkjh dks vuqlkj ukdkcnh ds LFkku ij nks 0;fDr vk;s Fks vkj mUgksa dk;kZokgh esa 'kkfey gksus ds fy;s iNk x;k Fkk fdUrq mUgksaus bdkj dj fn;k & tgk Lor= xokgk ds ijh{k.k u djokus dk lqizk"ktud Li"Vhdj.k gks ogk dk;kZy;hu lk{kh x.k dh lk{; ds vk/kkj ij nk"kflf) fLFkj dh tk ldrh gS ;fn ,slh lk{; fo'okl mRiUu dju ;ksX; gks & U;k;n"Vkr Kkufl}g vkj vU; fo:) LVV vkQ ;wfi-ih-] 1995 llyhesV ¼4½ ,l-lh-lh- 658 dk rF;ksa ds vk/kkj ij foHkfnr fd;k x;kA

¼ii½ vfHk;kstu }kjk fuf"k) inkFkZ dk Hkkfrd vkf/kiR; LFkkfir fd;k & vfHk;qDr okgu dk pkyd gksus ls ;g lHkko; gS dh mlus VkDVj ds lkFk tqMh gqbZ Vªkyh esa ifjofgr fd;s tk jgs Fkyksa esa j[kh lkexh dk Kku gksuk pkfg;s & ,d ckj fuf"k) inkFkZ dk Hkkfrd vkf/kiR; vfHk;qDr dk gksuk LFkkfir gks tkrk gS rc /kkjk 35 ,u-Mh-ih-,l- ,DV dh mi/kkj.kk ykxw gksrh gS vkj vfHk;qDr ij ;g izek.k Hkkj gksrk gS dh og ;g izekf.kr djus dh og fuf"k) inkFkZ ds tkxwr vkf/kiR; esa ugha FkkA

Baldev Singh v. State of Haryana

Judgment dated 04.11.2015 passed by the Supreme Court in Criminal Appeal No. 167 of 2006, reported in 2015 (4) Crimes 556 (SC)

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91. EVIDENCE ACT, 1872 – Section 3
CRIMINAL PROCEDURE CODE, 1973 – Section 294

(i) Whether Compact Disc is covered under the definition of 'document' as per section 3 of the Evidence Act? Held, Yes.

(ii) Procedure of admission or denial – It is not necessary for the court to obtain admission or denial on a document personally from the accused or complainant or witness – The endorsement of admission or denial made by the counsel for defence, on the document filed by the prosecution or a document filed by the defence endorsement of admission or denial by the

prosecutor, is sufficient – In complaint case, such an endorsement can be made by the counsel of complainant – If a document is admitted, it need not be formally proved and can be read in evidence.

In this case, application under section 294 Cr.P.C. has been produced by the defence for playing CD in the court to enable the prosecutor to admit or deny its contents – Same was disallowed by the High Court – Hon'ble the Apex Court allowed it.

lk{; vf/kfu;e] 1872 & /kkjk 3

n.M izfØ;k lfgrk] 1973 & /kkjk 294

¼i½ D;k dkEiDV fMLd /kkjk 3] lk{; vf/kfu;e d vuqlkj **nLrkost** dh ifjHkk"kk e vkrh g \ vfHkfu/kkfjr fd;k x;k] gkA

¼ii½ Lohdkjkfdr ;k bdkjh dh izfØ;k & U;k;ky; d fy; ;g vko';d ugh g dh og nLrkost ij vfHk;Dr ;k ifjoknh ;k xokg l 0;fDrxr :i l Lohdkjkfdr ;k bdkjh djok; & Lohdkjkfdr ;k bdkjh dk i"Bkdu ifrj{kk i{k d fy; mld vfHkHkk"kd }kjk vfHk;ktu }kjk iLrqr nLrkost ij dj fn;k tkuk ;k cpko i{k }kjk iLrqr nLrkost ij Lohdkjkfdr ;k bdkjh dk i"Bkdu vfHk;ktd }kjk dj fn;k tkuk i;kIr g & ifjokn ekeyk e ifjoknh d vfHkHkk"kd }kjk ,slk i"Bkdu fd;k tk ldrk g & ;fn nLrkost Lohdkj dj fy;k tkrk g rc mldk vkipkfjd :i l iekf.kr djuk vko';d ugh gkrk g vkj ml lk{; e i<k tk ldrk gA

bl ekey e cpko i{k }kjk U;k;ky; e lh-Mh- pyku d fy; /kkjk 294 n-i-l d v/khu vkonu fn;k x;k Fkk rkfd vfHk;ktd mld ?kVd dk Lohdkj ;k bdkj dju e leFk gk ld & ,slk vkonu mPp U;k;ky; }kjk fujLr fd;k x;k & ekuuh; lokPp U;k;ky; u ml Lohdkj fd;kA

Shamsher Singh Verma v. State of Haryana

Judgment dated 24.11.2015 passed by the Supreme Court in Criminal Appeal No. 1525 of 2015, reported in 2015 (4) Crimes 353 (SC)

Extracts from the Judgment:

The object of Section 294 CrPC is to accelerate pace of trial by avoiding the time being wasted by the parties in recording the unnecessary evidence. Where genuineness of any document is admitted, or its formal proof is dispensed with, the same may be read in evidence. Word "document" is defined in Section 3 of the Indian Evidence Act, 1872, as under: -

> " 'Document' means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustration

A writing is a document;

Words printed, lithographed or photographed are documents;

A map or plan is a document;

An inscription on a metal plate or stone is a document;

A caricature is a document."

In ***R.M. Malkani v. State of Maharashtra, (1973) 1 SCC 471,*** this Court has observed that tape recorded conversation is admissible provided first the conversation is relevant to the matters in issue; secondly, there is identification of the voice; and, thirdly, the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record.

In ***Ziyauddin Barhanuddin Bukhari v. Brijmohan Ramdass Mehra and others, (1976) 2 SCC 17***, it was held by this Court that tape-records of speeches were "documents", as defined by Section 3 of the Evidence Act, which stood on no different footing than photographs, and that they were admissible in evidence on satisfying the following conditions:

"(a) The voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who know it.

(b) Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibilities of tampering with the record.

(c) The subject-matter recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act."

In view of the definition of 'document' in Evidence Act, and the law laid down by this Court, as discussed above, we hold that the compact disc is also a document. It is not necessary for the court to obtain admission or denial on a document under sub-section (1) to Section 294 CrPC personally from the accused or complainant or the witness. The endorsement of admission or denial made by the counsel for defence, on the document filed by the prosecution or on the application/report with which same is filed, is sufficient compliance of Section 294 CrPC. Similarly on a document filed by the defence, endorsement of admission or denial by the public prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution. In case it is admitted, it need not be formally proved, and can be read in evidence. In a complaint case such an endorsement can be made by the counsel for the complainant in respect of document filed by the defence.

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*** 92.EVIDENCE ACT, 1872 – Sections 3 and 134**

Appreciation of evidence – Conviction on the basis of sole testimony of the wife of the deceased, if it establishes in clear and precise terms, the overt acts constituting the offence as committed by certain named accused persons and if such testimony is otherwise reliable – The test adopted in *Masalti v. State of U.P., AIR 1965 SC 202* as a rule of prudence cannot mean that in every case of mob violence, there must be more than one eye witness – The test adopted in that case is required to be applied while dealing with the cases of those accused who are sought to be made vicariously responsible for the acts committed by others – Only by virtue of their alleged presence as members of the unlawful assembly without any specific allegation of overt act committed by them or where, given the nature of assault by the mob, the Court comes to the conclusion that it would have been impossible for any particular witness to have witnessed the relevant facets constituting the offence.

lk{; vf/kfu;e] 1872 & /kkjk,¡ 3 vkSj 134

lk{; dk eY;kadu & e`rd dh iRuh dh ,d ek= lk{; d¡ vk/kkj ij nk"kflf) & ;fn Li"V vkSj ;FkkFkZ :i ls dbZ uketn vfHk;qDr }kjk vijk/k fd;k tkuk vkSj mudk ÑR; LFkkfir gksrk gS vkSj ,slh lk{; vU;Fkk fo'oluh; gks & elYrh fo:) LVsV vkQ ;w-ih- ,-vkbZ-vkj- 1965 ,l-lh- 202 esa viuk;k x;k ijh{k.k ,d iKk d¡ fu;e dh rjg ugha le>k tk ldrk fd HkhM }kjk fgalk d¡ iR;sd ekeys esa ,d ls vf/kd p{kksa lk{kh gksuk gh pkfg;s & mDr ekeys esa ykxw fd;k x;k ijh{k.k viuk;s tkus d¡ fy;s ;g vko';d gS dh ,sls ekeys ftuesa vfHk;qDr dks ok;dfj;ksa mRrjnk;h cuk;k x;k gks tks dh vU; d¡ ÑR; d¡ fy;s gks vkSj mUgsa dsoy vo/k lHkk d¡ lnL; d¡ :i esa vfHkdfFkr mifLFkr d¡ dkj.k mudk fdlh fof'k"V ÑR; d¡ fcuk nk;h cuk;k x;k gks vkSj HkhM }kjk fd;s x;s gesys dh iÑfr esa U;k;ky; bl fu"d"kZ ij igqapk gS dh fdlh fof'k"V xokg d¡ fy;s ;g vlHko gksxk dh og lqlxr ?kVuk tks vijk/k xfBr djrh gS n[k ldsA ¼d¡oy ,sls ekeys esa gh mDr elYrh oky ekeys esa ykxw ijh{k.k dh HkhM }kjk dh xbZ fgalk d¡ ekeys esa ,d ls vf/kd iR;{k xokg gksuk pkfg;s ykxw fd;k tkuk pkfg;s½A

State of Maharashtra v. Ramlal Devappa Rathod and others

Judgment dated 29.09.2015 passed by the Supreme Court in Criminal Appeal No. 1957 of 2008, reported in 2016 Cri.L J. 340 (SC)

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93. EVIDENCE ACT, 1872 – Section 27

Discovery of new fact on the basis of disclosure statement which is not in the knowledge of the police, held, admissible – Accused 'X' 'and 'Y' have given disclosure statement to police that accused 'Z' was involved in fake currency notes racket – Police arrested accused 'Z' and also recovered fake currency notes from his possession – It falls under section 27 of the Evidence Act – Conviction maintained.

lk{; vf/kfu;e] 1872 & /kkjk 27

i:xVu dFku d: vk/kkj ij u;: rF; dk irk yxuk tk fd ifyl d: Kku e: ugh Fkk] vfHkfu/kkfjr fd;k x;k] ¼lk{; e½ xkán g & vfHk;qDr ,Dl vkj ok; u ifyl dk i:xVu dFku fd;: dh vfHk;qDr tsM tkyh ukVk d: fxjkg e: 'kkfey Fkk & ifyl u: vfHk;qDr tsM dk fxj¶rkj fd;k vkj mld: vkf/kiR; l: tkyh ukV cjken fd;: x;: & ;g /kkjk 27 lk{; vf/kfu;e d: vrxrr vkrk g & nk"kflf) dk;e j[kh xbA

Mahboob Ali and anr. v. State of Rajasthan

Judgment dated 27.10.2015 passed by the Supreme Court in Criminal Appeal No. 808 of 2010, reported in 2015 (4) Crimes 357 (SC)

Extracts from the Judgment:

This Court in ***State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru, (2005) 11 SCC 600*** has considered the question of discovery of a fact referred to in section 27. This Court has considered plethora of decisions and explained the decision in ***Pulukuri Kottaya & ors. v. Emperor, AIR 1947 PC 67*** and held thus :

> "125. We are of the view that ***Kottaya case*** (supra) is an authority for the proposition that "discovery of fact" cannot be equated to the object produced or found. It is more than that. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place.
>
> 126. We now turn our attention to the precedents of this Court which followed the track of Kottaya case (supra). The ratio of the decision in Kottaya case (supra) reflected in the underlined passage extracted supra was highlighted in several decisions of this Court.
>
> 127. The crux of the ratio in ***Kottaya case*** (supra) was explained by this Court in ***State of Maharashtra v. Damu, (1976) 1 SCC 828,*** Thomas J. observed that:
>
> "The decision of the Privy Council in ***Pulukuri Kottaya v. Emperor*** (supra) is the most quoted authority for supporting

the interpretation that the 'fact discovered' envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect."

In ***Mohd. Inayatullah v. State of Maharashtra, (1976) 1 SCC 828,*** Sarkaria, J. while clarifying that the expression "fact discovered" in Section 27 is not restricted to a physical or material fact which can be perceived by the senses, and that it does include a mental fact, explained the meaning by giving the gist of what was laid down in ***Pulukuri Kottaya case*** (supra). The learned Judge, speaking for the Bench observed thus:

"Now it is fairly settled that the expression 'fact discovered' includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see ***Pulukuri Kottaya v. Emperor*** (supra); ***Udai Bhan v. State of U.P. 1962 Supp (2) SCR 830***."

In ***State of Maharashtra v. Damu Gopinath Shinde & ors., AIR 2000 SC 1691***, the statement made by the accused that the dead body of the child was carried up to a particular spot and a broken glass piece recovered from the spot was found to be part of the tail lamp of the motorcycle of co-accused alleged to be used for the said purpose. The statement leading to the discovery of a fact that accused had carried dead body by a particular motorcycle up to the said spot would be admissible in evidence. This Court has laid down thus :

"The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum. It is now well settled that recovery of an object is not discovery of a fact as envisaged in the section. The decision of the Privy Council in ***Pulukuri Kottaya v. Emperor*** (supra) is the most quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.

No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which

"distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. In this case, the fact discovered by PW 44 is that A-3 Mukinda Thorat had carried the dead body of Dipak to the spot on the motorcycle.

38. How did the particular information led to the discovery of the fact? No doubt, recovery of dead body of Dipak from the same canal was antecedent to the information which PW 44 obtained. If nothing more was recovered pursuant to and subsequent to obtaining the information from the accused, there would not have been any discovery of any fact at all. But when the broken glass piece was recovered from that spot and that piece was found to be part of the tail lamp of the motorcycle of A-2 Guruji, it can safely be held that the Investigating Officer discovered the fact that A-2 Guruji had carried the dead body on that particular motorcycle up to the spot.

In view of the said discovery of the fact, we are inclined to hold that the information supplied by A-2 Guruji that the dead body of Dipak was carried on the motorcycle up to the particular spot is admissible in evidence. That information, therefore, proves the prosecution case to the abovementioned extent."

In ***Ismail v. Emperor, AIR 1946 Sind 43,*** it was held that where as a result of information given by the accused another co-accused was found by the police the statement by the accused made to the Police as to the whereabouts of the co-accused was held to be admissible under section 27 as evidence against the accused.

In ***Subedar & ors. v. King-Emperor, AIR 1924 All. 207,*** it was held that a statement made by the accused implicating himself and others cannot be called 'first information report'. However it was held that though it could not be treated as first information report but could be used as information furnished under section 27 of Evidence Act. It was held thus :"The approver and one of the appellants were arrested practically red-handed. They made statements to the officer who arrested them involving admissions of guilt. They went further and gave a list of the other members of the gang. Thereupon the officer made a report in writing to his superior, containing the information which he had received, including the names of those other persons received from the two men arrested. Somehow or other, the learned Judge has described this police report, which is merely the report of a confession, as "the first information report." Now the first information report is a well known technical description of a report under section 154, Criminal Procedure Code, giving first information of a cognizable crime. This is usually made by the complainant, or by some one on his behalf. The

language is inapplicable to a statement made by the accused. The novelty of a statement by an accused person being called the first information report was to me so strange, that when counsel for the appellants addressed the argument to me attacking the Judge's use of the first information report, I took no notice of the argument. The learned Judge realized that he was dealing with a confession, but he momentarily failed to appreciate that the document itself was inadmissible, and that the only way in which the information relied upon could be used was by section 27. That is to say, with regard to the other accused, the officer giving evidence might say :

> "I arrested them in consequence of information received from Narain and Thakuri. When I arrested them they made a statement to me which caused me to arrest these people". The use which can legitimately be made of such information is merely this, that when direct evidence is given against the accused at the trial and there was evidence against the accused, it is open to the defence to check such evidence by asking whether the name of a particular accused was mentioned or not at the time...."

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***94.FAMILY COURTS ACT, 1984 – Sections 7 and 8**

HINDU MARRIAGE ACT, 1955 – Section 25

Whether decree passed by civil court prior to establishment of Family Court can be executed by Family Court? Held, No – The Court which passed the decree has jurisdiction to execute it – ***Rammana v. Nallaparaju, AIR 1956 SC 87*** **relied on.**

ifjokj U;k;ky; vf/kfu;e] 1984 & /kkjk,a 7 vkj 8

fgUnw fookg vf/kfu;e] 1955 & /kkjk 25

D;k ifjokj U;k;ky; dh LFkkfir gksus dh iwoZ] flfoy U;k;ky; }kjk ikfjr vkKfIr dk fu"iknu ifjokj U;k;ky; }kjk fd;k tk ldrk gS \ vfHkfu/kkfjr fd;k x;k] ugha & og U;k;ky; ftlus fMØh ikfjr dh gS mlus mldh fu"iknu dk {ks=kf/kdkj gkrk gS & U;k;n"Vkr

रामना विरूद्ध नालप्पा राजू, ए.आई.आर. 1956 एससी 87 ij fo'okl fd;k x;kA

Dinesh Sharma v. Jyoti Sharma

Order dated 02.02.2016 passed by the High Court of M.P. in Civil Revision No. 200 of 2004, reported in 2016 (1) MPLJ 465

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***95.GUARDIANS AND WARDS ACT, 1890 – Section 25**

FAMILY COURTS ACT, 1984 – Section 7 (1) (g)

Where a Family Court is constituted for any place, then any suit or proceeding in relation to guardianship or custody of, or access to any minor, would be tried by the Family Court – Therefore, District Court, Bhopal has no jurisdiction to entertain the application u/s 25 of the Act of 1890.

lj{kd vkj ifrikY; vf/kfu;e] 1890 & /kkjk 25

ifjokj U;k;ky; vf/kfu;e] 1984 & /kkjk 7 ¼1½ ¼th½

tgk ,d ifjokj U;k;ky; fdlh LFkku dh fy;s xfBr fd;k x;k gS ogk fdlh vo;Ld dh lEcU/k esa lj{k.k ;k vfHkj{kk ;k ml rd igqap dk okn ;k dk;Zokgh dk fopkj.k ifjokj U;k;ky; }kj fd;k tk;sxk & vr% fty k U;k;ky; Hkkikiky dh /kkjk 25 vf/kfu;e] 1890 dk vkonu xzg.k djus dk {k=kf/kdkj ugh gSA

Deedar Singh Dhillan & anr. v. Preetpal Singh Chadda

Order dated 11.11.2013 passed by the High Court of M.P. in Civil Revision No. 69 of 2013, reported in ILR (2015) MP 1368

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***96.HINDU MARRIAGE ACT, 1955 – Sections 9 and 24**

Husband filed a petition under section 9 of the Act – Wife filed written statement and also filed counter-claim to declare the alleged marriage as *ab initio* void on account of impotency of the husband – She filed an application under section 24 of the Act for interim alimony – Same was rejected by the Trial Court – Allowing the application, High Court held on the basis of counter-claim the spouse cannot be discriminated and deprived to extend the benefit of section 24 of the Act – Such provision is enacted by legislature to grant interim alimony for livelihood of the spouse if he/she did not possess any sufficient source of income to maintain the expenses of the litigation.

fgUnw fookg vf/kfu;e] 1955 & /kkjk,s 9 vkj 24

ifr us /kkjk 9 vf/kfu;e ds v/khu ,d ;kfpdk iLrqr dh & iRuh us fyf[kr dFku iLrqr fd;k vkj ifrnkok fookg dk ifr dh ui qlqdrk dh vk/kkj ij 'kU; ?kksf"kr djokus dh fy;s Hkh iLrqr fd;k & mlus ¼iRuh us½ /kkjk 24 vf/kfu;e ds rgr vrfje Hkj.k&ik"k.k dh fy;s ,d vkonu i= iLrqr fd;k & ml fopkj.k U;k;ky; us [kkfjt dj fn;k & mPp U;k;ky; us vkonu Lohdkj djrs gq;s ;g vfHkfu/kkfjr fd;k fd ifrnkok dh vk/kkj ij Likml dh lkFk Hkn&Hkko ugh fd;k tk ldrk vkj ml /kkjk 24 vf/kfu;e dh ykHk ls ofpr ugh fd;k tk ldrk & ,sls iko/kku fo/kkf;dk us Likml dh thou fuokg dh vrfje Hkj.k&ik"k.k dh fy;s cuk;s gS ;fn mldh ikl okn [kpZ vkj Lo;a dh ik"k.k dh fy;s i;kIr lk/ku u gksA

Beena Dehariya v. Vimal Dehariya
Order dated 27.09.2013 passed by the High Court of M.P. in Writ Petition No. 4004 of 2013, reported in ILR (2015) MP 1175

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97. HINDU SUCCESSION ACT, 1956 – Section 14

Hindu woman, who was having a pre-existing right of maintenance, gets property from her husband by Will, it creates only lifetime interest – The same will become an absolute right by operation of section 14 (1) of the Hindu Succession Act.

fgUnw mRrjkf/kdkj vf/kfu;e] 1956 & /kkjk 14

fgUnw L=h] ftl Hkj.k&ik"k.k dk vf/kdkj iwoZ l Fkk] mlus mldh ifr }kjk dh xbZ olh;r dh vk/kkj ij lhfer ikIr dh] ftlesa mlls thou Hkj dh fy, fgr lftr fd;s Fks & ¼lhfer e½ ,sls ¼lhfer fgr½ /kkjk 14¼1½ fgUnw mRrjkf/kdkj vf/kfu;e ykxw gksus dh ckn iw.kZ vf/kdkj gks tk;sxsA

Jupudy Pardha Sarathy v. Pentapati Rama Krishna and others

Judgment dated 06.11.2015 passed by the Supreme Court in Civil Appeal No. 375 of 2007, reported in (2016) 2 SCC 56

Extracts from the Judgment:

His Lordship after elaborate consideration of the law and different authorities came to the following conclusions:-

> "We would now like to summarise the legal conclusions which we have reached after an exhaustive considerations of the authorities mentioned above on the question of law involved in this appeal as to the interpretation of Sections 14(1) and (2) of the Act of 1956. These conclusions may be stated thus:
>
> "(1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognising such a right does not confer any

new title but merely endorses or confirms the pre-existing rights.

(2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends sought to be achieved by this long needed legislation.

(3) Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise pre-existing rights. In such cases a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like 'property acquired by a female Hindu at a partition', 'or in lieu of maintenance', 'or arrears of maintenance', etc. in the Explanation to Section 14(1) clearly makes sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of sub-section (2).

(6) The words 'possessed by' used by the Legislature in Section 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same.

Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of Section 14(1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title.

(7) That the words 'restricted estate' used in Section 14(2) are wider than limited interest as indicated in Section 14(1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee."

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***98.INDIAN PENAL CODE, 1860 – Sections 149 and 302**

CRIMINAL PROCEDURE CODE, 1973 – Sections 154 and 157

(i) Unlawful assembly – Presence of all the five accused at the place of occurrence is duly proved by the prosecution – Common object was also duly proved with the evidence of injured eye-witnesses – Therefore, mere non-mentioning of the names of two of accused persons in the FIR, held, immaterial.

(ii) There was no material on record to show or suggest that FIR was tampered or fabricated at a later date by antedating it – So, a little delay in sending copy of FIR to the concerned Magistrate is not vital.

Hkkjrh; n.M lafgrk] 1860 & /kkjk,a 149 vkSj 302

n.M izfØ;k lafgrk] 1973 & /kkjk,a 154 vkSj 157

¼i½ vo/k lHkk & lHkh ikp vfHk;qDr dh ?kVuk LFky ij mifLFkfr vfHk;kstu }kjk lE;d :Ik ls izekf.kr dh xbZ & vkgr iR;{k lk{khx.k dh lk{; ls lkekU; mnn'; Hkh lE;d :i ls izekf.kr gqvk gS vr% nks vfHk;qDrx.k dk uke izFke lpuk ifronu esa nt lu gksuk vrkfRod gksuk vfHkfu/kkfjr fd;k x;kA

¼ii½ vfHky[k ij ,slh dksbZ lkexzh ugha Fkh tks ;g n'kkrh gks ;k bfxr djrh gks fd izFke lpuk ifronu dh lkFk NsM&NkM dh xbZ Fkh ;k og dVjfpr gS ;k ckn esa izo fnukfdr dh xbZ gS & vr% izFke lpuk ifronu dh ifrfyfi lcf/kr eftLVªV dks Hkstus esa FkkMk foyac egRoi.k ugha gSA

Susanta Das and others v. State of Orissa

Judgment dated 06.01.2016 passed by the Supreme Court in Criminal Appeal No. 244 of 2009, reported in 2016 AIR SCW 589

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99. INDIAN PENAL CODE, 1860 – Sections 201 and 302

CRIMINAL TRIAL:

Claim of parity – Co-accused was acquitted – Though the acquittal made by the High Court requires a re-visit but there is no appeal by State against such acquittal – Acquittal of co-accused could not be a ground to acquit another accused – Where there were clinching evidence on the involvement of the accused in the offence of murder and destruction of evidence charged against her, she is not entitled for parity.

Hkkjrh; n.M lafgrk] 1860 & /kkjk,a 201 vkj 302

nkfMd fopkj.k %

lekurk dk nkok & lg&vfHk;qDr nk"ke;qDr fd;k x;k Fkk & mPp U;k;ky; }kjk dh xbZ nk"ke;qfDr ij iqufoZpkj vko';d gS fdUrq ,slh nk"ke;qfDr dk fo:) jkT; dh vkj ls dksbZ vihy ugha dh xbZ gS & lg&vfHk;qDr dh nk"ke;qfDr vU; vfHk;qDr dk nk"ke;qDr dqu dk ,d vk/kkj ugha gks ldrh gS & tgk vfHk;qDr dk gR;k ds vijk/k esa vkj lk{; u"V dqu dk vkjksi esa mldk fo:) vdkV~; lk{; miyC/k gS] og lekurk dh gdnkj ugha gSA

Ganga Bai v. State of Rajasthan

Judgment dated 30.09.2015 passed by the Supreme Court in Criminal Appeal No. 1245 of 2009, reported in 2016 (4) Crimes 362 (SC)

Extracts from the Judgment:

It is submitted that Udai Lal, whose clothes were duly recovered, also contained stains of human blood, for which also, there was no explanation and he had also given disclosure on the recovery of weapon of offence. Though we find that the acquittal made by the High Court could require a revisit, in view of the fact that there is no appeal by the State against the acquittal of Udai Lal and that the incident is of the year 1999, we do not propose to pursue the matter as against Udai Lal. However, we may state that only because Udai Lal was acquitted, in view of the clinching evidence on the involvement of the appellant in the offences of murder and destruction of evidence charged against her, she is not entitled for a similar treatment as that of Udai Lal. Merely because one or more of those charged with the substantial offences and also charged under Section 34 IPC have been acquitted, the one in the group who shared the common intention, in whose case there is conclusive evidence of direct involvement, cannot claim parity.

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100. INDIAN PENAL CODE, 1860 – Sections 419 and 420

For taking cognizance of the offence of cheating, Court should bear in mind the difference between cheating and breach of contract – The said difference would depend upon the intention of accused at the time of alleged inducement – If it is established that the intention of the accused was dishonest at the very time when he

made promise and entered into transaction with complainant to part with his property or money, then liability is criminal and the accused is guilty of the offence of cheating – Where it is established that representation made by the accused was subsequently not kept, criminal liability cannot be foisted on accused and the only right which complainant acquires is remedy for breach of contract in civil court – Criminal liability should not be imposed in disputes of civil nature.

Hkkjrh; n.M lafgrk] 1860 & /kkjk,a 419 vkj 420

Ny d vijk/k dk izkjaHkk yu d fy;s U;k;ky; dk Ny vkj lfonk d Hkx d chp vrj efLr"d e j[kuk pkfg;s & ;g vrj vfHk;Dr d vfHkdfFkr izopuk d le; d vk'k; ij fuHkj gkxk & ;fn ;g LFkkfir gkrk g dh vfHk;Dr dk vk'k; l0;ogkj e 'kkfey gku d le; tc mlu opu fn;k rHkh cbiekuh i.k Fkk rkfd ifjoknh dk mldh lifRr l iFkd fd;k tk ld ,s ekey e nkfMd nkf;Ro gkrk g vkj vfHk;Dr Ny d vijk/k dk nk"kh gkrk g & tgk ;g LFkkfir gkrk g dh vfHk;Dr u fu:i.k fd;k Fkk ;k ½opu fn;k Fkk½ mldk og ckn e fuHkk u ldk rc nkfMd nkf;Ro ugh cuxk vkj ifjoknh dk ,d gh vf/kdkj mRiUu gkxk dh og lfonk d Hkx d fy;s 0;ogkj U;k;ky; e mipkj y ld & 0;ogkj i Ñfr d fooknk e nkfMd nkf;Ro vf/kjkfir ugh djuk pkfg;sA

International Advanced Research Centre for Power Metallurgy and New Materials (ARCI) and others v. Nimra Cerglass and Techniques Private Limited and another

Judgment dated 22.09.2015 passed by the Supreme Court in Criminal Appeal No. 2128 of 2011, reported in (2016) 1 SCC 348

Extracts from the judgment:

Various clauses in the agreement indicate that technology transfer agreement 1999 was only experimental in nature and ARCI shall endeavour to achieve the performance as per the specifications. In the agreement, there was no commitment on the part of ARCI to provide extruded ceramic honeycombs as per expected specifications. Article 12 which deals with performance guarantee suggests that ARCI is to conduct performance test and shall endeavour to achieve product quality/specification as mentioned in annexure I of the agreement. We may usefully refer to Article 12.2 to 12.6 of the agreement which read as under:

> "12.2 When all guarantee figures as set forth in Article 12.1 are achieved during the performance guarantee test, then ARCI shall be released thereafter from any liability for the performance guarantee of the know-how.
>
> 12.3 In the event of failure to achieve the performance as agreed in Article 12.1 in the first performance test, ARCI shall make necessary rectification and another performance test will be conducted.

12.4 In the event of failure to achieve the guarantee figures in the second performance test, ARCI may at its option either (I) make necessary rectification so that another performance test can be conducted or pay the liquidated damages equal to 20% of the lump-sum technology transfer fee charged.

12.5 When the liquidated damages are paid by ARCI as specified in Article 12.4, the performance guarantee shall be deemed to have been fulfilled as ARCI shall be relieved from any liability or the performance guarantee.

12.6 If for reasons not attributable to ARCI, the performance guarantee figures are not attained during the performance test, both parties shall discuss and agree upon measures to be taken."

By reading of the clauses in the technology transfer agreement, it is seen that the development of technology ceramic honeycombs by ARCI was experimental. Terms and conditions of technology transfer agreement clearly suggest that the Centre is to conduct performance guarantee to achieve the product quality/specification of extruded ceramic honeycombs as mentioned in annexure-1 of the technology transfer agreement and make necessary rectification, if required. The agreement provides that in the event of failure to achieve the guarantee figures as per specification even after second performance test, option given to ARCI either to conduct another performance test or pay the liquidated damages equal to twenty percent on the lump-sum technology transfer fee charged. As per the terms and conditions of the agreement, ARCI had the option to conduct performance test to achieve the quality/specifications and when it could not achieve these specifications, it cannot be said that ARCI acted with dishonest intention to cheat the respondent attracting the essential ingredients of Section 420 IPC.

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***101.INDIAN PENAL CODE, 1860 – Sections 420, 467, 468 and 471**

CRIMINAL PROCEDURE CODE (M.P. AMENDMENT) ACT, 2007 – Schedule I

Charge-sheet was filed before JMFC on 12.12.2007 – Charges were framed on 15.07.2008 – Till 26.06.2014, no prosecution witness was examined – JMFC committed the case – Whether committal is proper? Held, Yes – ***Ramesh Kumar Soni v. State of Madhya Pradesh, 2013 ILR 714 (SC) relied on – Rakesh Kumar Dubey v. State of M.P. and another, 2014 (II) MPWN 128*** **is not in line with the principles laid down by the Apex Court in** ***Ramesh Kumar Soni's case*** **(supra).**

Hkkjrh; n.M lafgrk] 1860 & /kkjk,a 420] 467] 468 vkj 471

n.M izfØ;k lafgrk] ¼e-iz- la'kks/ku½ vf/kfu;e] 2007 & iFke vuqlwph

U;kf;d eftLVªV izFke J.kh dk le{k 12-12-2007 dk vfHk;kx i= izLrqr gqvk Fkk & 15-07-2008 dk vkjksi fojfpr fd;s x;s Fks & 26-06-2014 rd fdlh vfHk;kstu lk{kh dk ijh{k.k ugh gqvk Fkk & U;kf;d eftLVªV izFke J.kh us ekeyk lqiqnZ ¼;k mikfiZr½ fd;k & D;k lqiqnZxh ¼;k mikiZ.k½ mfpr gS \ vfHkfu/kkfjr fd;k x;k] gS & jes'k dqekj lkuh fo:) LVªV vkQ e-izs-] 2013 vkbZ,yvkj 714 ¼,llh½ ij fo'okl fd;k x;k & jkds'k dqekj nhf{kr fo:) LVªV vkQ ,e-ih- ,.M vuqnj] 2014 ¼*II*½ ,eihMCY;q ,u 128 ekuuh; lokZPPk U;k;ky; }kjk रमेश कुमार सोनी dks mDr ekeys esa vfHkfu/kkfjr fl)karksa dks vuqfpr ugh gSA

Ajay v. State of M.P.

Order dated 18.11.2014 passed by the High Court of M.P. in Misc. Criminal Case No. 8953 of 2014, reported in ILR (2015) MP 1912

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102.LIMITATION ACT, 1963 – Article 91 (a)

CIVIL PROCEDURE CODE, 1908 – Order 8 Rule 5

(i) What is the meaning of the term "first learns" as provided under Article 91 (a) of the Limitation Act,1963 ? Held, it demands two things, first, knowledge on the part of plaintiff and second, the said fact be within his peculiar knowledge – The knowledge must be of the identity of a specific person in whose possession the specific movable property is, so the knowledge of specific person against whom the suit can be instituted is crucial – Mere suspicion or a whisper of knowledge is not enough for the period of limitation to start running.

(ii) If an allegation made in the plaint is not specifically denied in the W.S., it is treated as admitted – *Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396* relied on.

(iii) Whether bond is a movable property ? Held, Yes – According to section 3 (36) General Clauses Act, 1897 'movable property' shall mean property of every description, except immovable property.

ifjlhek vf/kfu;e] 1963 & vkfVdy 91 ¼,½
flfoy izfØ;k lafgrk] 1908 & vkns'k 8 fu;e 5

¼i½ 'kCn **igyh ckj Kkr** tSlk dh vuqPNsn 91 ¼,½ ifjlhek vf/kfu;e] 1963 esa izko/kku gS dk D;k vFkZ gS \ vfHkfu/kkfjr fd;k x;k] ;g nkos rF;ksa dh ekax djrk gS] igyk okn dh Hkkax ij Kku gksuk vkSj nwljk ,slk rF; mlds fo'k"k Kku esa gksukA ;g Kku ,slk gksuk pkfg;s dh ,d fof'k"V 0;fDr dh igpku ftlds vkf/kiR; esa fofufn"V py lqifjHkr gS vFkkZr ,d fof'k"V 0;fDr dk Kku ftlds fo:) okn izLrqr fd;k tk lds egRoiw.kZ gSA dsoy lansg ;k Kku dh dkuwuh ifjlhek vof/k dh pkyw gksus dh fy;s i;kZIr ugh gSA

¼ii½ ;fn okn i= esa fd;s x;s ,d vfHkdFku dk fyf[kr dFku esa fofufn"V :i ls bdkj ugha fd;k tkrk gS rks bl LohÑr gkuk ekuk tkrk gS & U;k;n"Vkr बलराज तनेजा विरूद्ध सुनील मदान, (1999) 8 एस.सी.सी. 396 ij Hkjkslk fd;k x;kA

¼iii½ D;k ckM ,d py lEifRr gS \ vfHkfu/kkfjr fd;k x;k] gS & /kkjk 3 ¼36½ lk/kkj.k [k.M vf/kfu;e] 1897 dh vuqlkj *py lEifRr* dk vFkZ vpy lEifRr dh vykok gj izdkj dh lEifRr gksrk gSA

Standard Chartered Bank v. Andhra Bank Finacial Services Limited and others

Judgment dated 28.08.2015 passed by the Supreme Court in Civil Appeal No. 9540 of 2010, reported in (2016) 1 SCC 207

Extracts from the Judgment:

We are unable to agree with this contention advanced by the learned senior counsel on behalf of the respondents. A perusal of Article 91(a) of the Limitation Act shows that it is meant to apply to specific movable property. It further stipulates that the period of limitation shall start running from the date when the person 'first learns' about the conversion of the movable property. While it is true that the word used in the said Article is "first learns" and not knowledge, it is difficult to construe the word "first learns" without attributing to it certain degree of knowledge. The degree or the extent of knowledge is the subject matter of controversy in the instant case. The Article 91(a) of the Limitation Act was the subject matter of controversy also in the case of ***K. S. Nanji and Co. v. Jatashankar Dossa, AIR 1961 SC 1474*** wherein the terms of the Article were interpreted by this Court as under:

> "The article says that a suit for recovery of specific movable property acquired by conversion or for compensation for wrongful taking or detaining of the suit property should be filed within three years from the date when the person having the right to the possession of the property first learns in whose possession it is. The question is, on whom the burden to prove the said knowledge lies? The answer will be clear if the article is read as follows: A person having the right to the possession of a property wrongfully taken from him by another can file a suit to recover the said specific movable property or for compensation therefore within three years from the date when he first learns in whose possession it is. Obviously where a person has a right to sue within three years from the date of his coming to know of a certain fact, it is for him to prove that he had the knowledge of the said fact on a particular date, for the said fact would be within his peculiar knowledge."

The provision of Article 91 (a) of the Limitation Act thus demands two things. First is knowledge on the part of the plaintiff, and second, that the said fact be within his peculiar knowledge. We agree with the contention advanced by the learned senior counsel on behalf of the appellant, that the term "first learns" places a burden of knowledge which is rather specific in nature. Thus, the knowledge must be of the identity of a specific person in whose possession the bonds are and that he acquired the possession of the said bonds under an arrangement, which in law would constitute wrongful conversion. The knowledge of a specific person against whom the suit can be instituted is what is crucial here. A mere suspicion or a whisper of knowledge is not enough for the period of limitation to start running. Point (i) is thus, answered accordingly.

We are unable to agree with the contention of the learned senior counsel appearing on behalf of the respondents. The suit bonds in the instant case are movable properties which are capable of being possessed. The definition of the term movable property can be found in Section 3(36) of the General Clauses Act, 1897 which reads thus-

> "3. (36) 'movable property, shall mean property of every description, except immovable property."

A reading of the sub-Section of the above provision makes it clear that everything that is not immovable is movable, and thus the suit bonds in the instant case are specific movable property to which Article 91(a) of the Limitation Act applies.

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***103. LIMITATION ACT, 1963 – Article 112**

Suit by or on behalf of the Central Government – Whether Bharat Sanchar Nigam Ltd. (BSNL) is an instrumentality of the Central Government and is entitled to the protection under Article 112 of the Limitation Act,1963 which provides limitation for a period of 30 years? Held, No – It is a company which is registered under the Companies Act –Though, it is fully financed by and is under the control of the Central Government but it is a separate entity not covered under the definition of Central Government as provided under section 3(8) of the General Clauses Act, 1897.

ifjlhek vf/kfu;e] 1963 & vuPNn 112

dUnz ljdkj }kjk ;k mudh vkj ls okn & D;k Hkkjr lapkj fuxe fyfeVM ¼ch-,l-,u-,y-½ ,d dUnz ljdkj dk vfHkdj.k gS vkj ifjlhek vf/kfu;e] 1963 dh vuPNn 112 dk lj{k.k ikus dk gdnkj gS tks 30 o"kZ dh ifjlhek nzrk gS \ vfHkfu/kkfjr fd;k x;k] ugha] ;g dsiuh vf/kfu;e dh rgr iathÑr ,d dsiuh gS & ;|fi ;g dUnz ljdkj }kjk iwjh rjg foRr ikf"kr vkj fu;a=.k dh v/khu gS fdUrq bldh iFkd igpku gS tks /kkjk 3 ¼8½ lk/kkj.k [k.M vf/kfu;e] 1897 dh v/khu dUnz ljdkj dh ifjHkk"kk esa ugha vkrkA

Bharat Sanchar Nigam Limited v. Pawan Kumar Gupta

Judgment dated 16.09.2015 passed by the Supreme Court in Civil Appeal No. 1085 of 2008, reported in (2016) 1 SCC 363

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***104. MOTOR VEHICLES ACT, 1988 – Sections 2 (30), 147 and 157**

Whether in the wake of lease agreement entered into by the registered owner with State Road Transport Corporation, the registered owner, insurer and SRTC can be fastened with the liability to make payment of compensation to the claimant and whether SRTC can recover the amount from registered owner and its entitlement to seek indemnification from insurer? Held, the registered owner, insurer and SRTC would be liable to make the payment of compensation jointly and severally to the claimant and SRTC, in terms of the lease agreement entered into with the registered owner, would be entitled to recover the amount paid to the claimant from the owner as stipulated in the agreement or from the insurer.

ekVj;ku vf/kfu;e] 1988 & /kkjk,a 2 ¼30½] 147 vkj 157

D;k ifjogu fuxe dh lkFk fd;s x;s yht vuqc/k dh ifj.kke Lo:i ifjLFkr Lokeh] chekdrk vkj jkT; lM+d ifjogu fuxe ij vkond dk izfrdj dk Hkqxrku djus dk nkf;Ro Mkyk tk ldrk gS vkj D;k jkT; lM+d ifjogu fuxe mlls jkf'k dk ifjLFkr Lokeh ls olwy dj ldrh gS vkj chekdrk ls nkf;Ro efDr dh gdnkj gksus dh ekx dj ldrk gS\ vfHkfu/kkfjr fd;k x;k] ifjLFkr Lokeh] chekdrk vkj jkT; lM+d ifjogu fuxe vkond dks lq;qDrr% vkj iFkdr% ifrdj dh jkf'k dk Hkqxrku djus ds nkf;Ro/khu gksx vkj jkT; lM+d ifjogu fuxe ifjLFkr Lokeh dh lkFk fd;s x;s yht vuqc/k dh 'krksa ds vuqlkj vkond dk Hkqxrku dh xbZ jkf'k ifjLFkr Lokeh ls ;k chekdrk ls vuqc/k dh 'krksa ds vuqlkj jkf'k olwyus ds gdnkj gksxA ¼yht vuqc/k dh 'krsa bl lqc/k esa egRoiw.kZ gksrh gSA½

Managing Director, Karnataka State Road Transport Corporation v. New India Assurance Co. Ltd. and another

Judgment dated 27.10.2015 passed by the Supreme Court in Civil Appeal No. 5293 of 2010, reported in 2015 ACJ 2849 (SC)

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

Assessment of compensation under the head 'injury case' – Claimant lost his speaking power, memory retention power and also unable to move freely, therefore, lost his job – Taking permanent disability of 50%, Tribunal awarded Rs. 2,19,000/- and High Court reduced it to Rs. 1,54,200/- – Looking to the nature of injury, Hon'ble Apex Court enhanced the compensation to Rs. 4,00,000/-

ekVj;ku vf/kfu;e] 1988 & /kkjk 166

flj dh pkV d ekey e ifrdj dk fu/kkj.k & vkond mldh ckyu dh 'kfDr] ;kn j[ku dh 'kfDr [kk pdk Fkk] vkj og vklkuh l pyu e leFk ugh Fkk bl dkj.k mldh ukdjh Hkh pyh xbZ & vf/kdj.k u 50 ifr'kr LFkkbZ v;kX;rk ekur g;s 2]19]000@& :i;s vokM fd;s vkj mPp U;k;ky; u bl ?kVkdj 1]54]200@& :i;s fd;s & pkV dh ifÑfr dk n[kr g;s ekuuh; lokPp U;k;ky; u ble ¼vokM e½ 4]00]000@& :i;s dh of) dhA

Mithusinh Pannasinh Chauhan v. Gujarat State Road Trans. Corpn. and another

Judgment dated 18.09.2015 passed by the Supreme Court in Civil Appeal No. 7201 of 2015, reported in 2015 ACJ 2877 (SC)

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

CIVIL PROCEDURE CODE, 1908 – Section 11

(i) Deceased aged 47 years, an agriculturist having 12 acres of agricultural land was also involved in milk business – Tribunal assessed his income as Rs. 2000/- p.m. and awarded Rs. 2,37,500/- but High Court assessed it as 5000/- p.m. and enhanced the award up to Rs. 6,15,000/-.

(ii) ***Res judicata*** **– An order passed by the court at an earlier stage of the matter, is binding as** ***res judicata*** **against the party as well as such court at any subsequent stage before the same court –** ***Satyadhyan Ghosal and ors. v. Smt. Deorajin Debi and anr., AIR 1960 SC 941*** **relied on.**

ekVj;ku vf/kfu;e] 1988 & /kkjk 166

flfoy izfØ;k lafgrk] 1908 & /kkjk 11

¼i½ e`rd me 47 o"k] ,d Ñ"kd Fkk ftldk ikl 12 ,dM Ñf"k Hkwfe Fkh vkj n/k dk O;olk; Hkh djrk Fkk & vf/kdj.k u mld vkenkuh 2]000@& :i;s izfrekg fu/kkfjr dj 2]37]500@& :i;s vokM fd;s fdUrq mPp U;k;ky; u mldh vkenkuh 5]000@& :i;s izfrekg fu/kkfjr djr g;s vokM e 6]15]000@& :i;s rd of) dhA

¼ii½ izo`Ùk U;k; ;k रेस ज्यूडीकेटा & U;k;ky; }kjk ekey e izo`Ùk izÑe ij ikfjr ,d vkn'k mlh U;k;ky; dk le{k i'pkrorhZ izÑe ij izo`Ùk U;k; dk :i e i{kdkj vkj ml U;k;ky; ij Hkh c/kudkjh gkrk gS & lR;/;ku ?kks"kk vkj vU; fo:) Jherh nso jkftu nsoh vkj vU;] ,-vkbZ-vkj- 1960 ,l-lh- 941 ij fo'okl fd;k x;kA

Krishna Tiwari (Smt.) and others v. Ram Kumar and others

Order dated 12.04.2013 passed by the High Court of M.P. in M.A. No. 1408 of 2005, reported in ILR (2015) MP 977

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107. MOTOR VEHICLES ACT, 1988 – Section 166

Whether the Tribunal at place 'K' has jurisdiction to decide the claim petition under section 166 of the Act when the accident took place outside the jurisdiction of place 'K' and the claimant also resided outside 'K's' jurisdiction but the Insurance Company carried out its business at place 'K'? Whether in absence of failure of justice, the award could be set aside on the ground of territorial jurisdiction? Held, there is no harm to a claim petition being filed at a place where the Insurance Company, which is the main contesting party in such cases, has its business – In such cases, there is no prejudice to any party and there is no failure of justice – *Mantoo Sarkar v. Oriental Insurance Company Ltd., AIR 2009 SC 1022* relied on.

ekVj;ku vf/kfu;e] 1988 & /kkjk 166

D;k LFkku **d** dh vf/kdj.k dk /kkjk 166 vf/kfu;e d v/khu iLrqr Dyse dk fujkÑr dju dh vf/kdkfjrk g tcfd n?kVuk **d** LFkku {k=kf/kdkj d ckgj gbZ g vkj vkond Hkh **d** LFkku d {k=kf/kdkj d ckgj jgrk g fdUrq **d** LFkku ij chek diuh viuk dkjkckj pykrh g \ D;k U;k; dh gkfu d vHkko e iknf'kd {k=kf/kdkj d vk/kkj ij vokM dk vikLr fd;k tk ldrk g \ vfHkfu/kkfjr fd;k x;k] nkok ,sl LFkku ij iLrqr dju e dkbZ udlku ugh g tgk chek diuh tk dh e[; ifr)nh i{kdkj ,s ekeyk e gkrh g mldk dkjkckj LFky g & ,s ekeyk e fdlh i{k d fgrk ij dkbZ ifrdwy vlj ugh fn[krk g vkj dkbZ U;k; dh gkfu ugh gkrh g & मन्टो सरकार विरूद्ध ओरियंटल इंश्योरेंस कंपनी लिमिटेड, ए. आई.आर. 2009 एस.सी. 1022 ij fo'okl fd;k x;kA

Malati Sardar v. National Insurance Company Ltd. and others

Judgment dated 05.01.2016 passed by the Supreme Court in Civil Appeal No. 10 of 2016, reported in 2016 AIR SCW 247

Extracts from the Judgment:

In our view, the matter is fully covered by decisions of this Court in ***Mantoo Sarkar v. Oriental Insurance Company Ltd., AIR 2009 SC 1022***. It will be worthwhile to quote the statutory provision of Section 166(2) of the Act :

> ***"166. Application for compensation.–*** * * *
>
> (2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on

business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant."

In ***Mantoo Sarkar*** (supra), the insurance company had a branch at Nainital. Accident took place outside the jurisdiction of Nainital Tribunal. The claimant remained in the hospital at Bareilly and thereafter shifted to Pilibhit where he was living for a long time. However, at the time of filing of the claim petition he was working as a labourer in Nainital District. The High Court took the view that Nainital Tribunal had no jurisdiction and reversed the view taken by the Tribunal to the effect that since the office of the insurance company was at Nainital, the Tribunal had the jurisdiction. This Court reversed the view of the High Court. It was held that the jurisdiction of the Tribunal was wider than the civil court. The Tribunal could follow the provisions of Code of Civil Procedure (CPC). Having regard to Section 21 CPC, objection of lack of territorial jurisdiction could not be entertained in absence of any prejudice. Distinction was required to be drawn between a jurisdiction with regard to subject matter on the one hand and that of territorial and pecuniary jurisdiction on the other. A judgment may be nullity in the former category, but not in the later. Reference was also made to earlier decision of this Court in ***Kiran Singh v. Chaman Paswan, AIR 1954 SC 340*** to the following effect :

"With reference to objections relating to territorial jurisdiction, Section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or revisional court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99 CPC and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained under Section 11 of the Suits Valuation Act.' "

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***108.MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986 – Section 3**
FAMILY COURTS ACT, 1984 – Section 7
Can a Family Court entertain and decide an application under section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986? Held, No, because Family Court is not having jurisdiction to entertain an application under section 3 of the Act of 1986 for *Mehr* – It is not included in the explanation appended to the provisions of section 7 of the Family Courts Act, 1984.

efLye efgyk ¼fookg foPNsn ij vf/kdkjksa dk lajf{k.k½ vf/kfu;e] 1986 & /kkjk 3 ifjokj U;k;ky; vf/kfu;e] 1984 & /kkjk 7

D;k ,d ifjokj U;k;ky; /kkjk 3 efLye efgyk ¼fookg foPNsn ij vf/kdkjksa dk lajf{k.k½ vf/kfu;e] 1986 ds v/khu vkosnu dk xq.k vkj fujkÑr dj ldrh gS \ vfHkfu/kkfjr fd;k x;k] ughA D;kfd ifjokj U;k;ky; dk /kkjk 3 vf/kfu;e] 1986 ds v/khu egj ds fy;s vkosnu dk xq.k djus dh vf/kdkfjrk ugha gS & ;g ¼vf/kfu;e] 1986½ /kkjk 7 ifjokj U;k;ky; vf/kfu;e] 1984 ds Li"Vhdj.k ds lkFk lqyXu lwph esa 'kkfey ugha gSA

Munna Khan @ Abid v. Shahena Bano

Order dated 23.10.2013 passed by the High Court of M.P. in Civil Revision No. 771 of 2004, reported in ILR (2015) MP 1565

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***109.N.D.P.S. ACT, 1985 – Section 18**

Investigation Officer and complainant are the same persons – Effect of – Search was conducted in the presence of and under the instructions of Gazetted Officer who reached the spot – Therefore, it would not affect the investigation of the case – *Megha Singh v. State of Haryana, AIR 1995 SC 2339* distinguished – Conviction, held proper.

,u-Mh-ih-,l- ,DV] 1985 & /kkjk 18

vuqla/kku vf/kdkjh vkj ifjoknh ,d gh 0;fDr gS & bldk izHkko & ryk'kh jkjtif=r vf/kdkjh] tks ?kVuk LFky ij igqp x;s Fks] dh mifLFkfr esa vkj mlds funsZ'kksa ds v/khu yh xbZ & bl dkj.k ;g vuqla/kku dk izHkkfor ugha djxk & मेघा सिंह विरूद्ध स्टेट ऑफ हरियाणा, एआईआर 1995 एससी 2339 dk foHkfnr fd;k x;k & nk"kflf) mfpr gksuk vfHkfu/kkfjr fd;k x;kA

Surendra alias Kala v. State of Haryana

Judgment dated 19.01.2016 passed by the Supreme Court in Criminal Appeal No. 50 of 2016, reported in 2016 AIR SCW 508

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110.NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138

Cheque in question was issued in respect of settlement taken place in Lok Adalat – Whether it comes under debt or liability as provided under section 138 N.I. Act? Held, No – Complaint under section 138 N. I. Act based on such cheque, held not maintainable – The complainant may take appropriate action for enforcement of the sett lement arrived at between the parties in Lok Adalat and /or also at liberty to file a recovery suit.

ijØkE; fy[kr vf/kfu;e] 1881 & /kkjk 138

i:'uk/khu pd ykd vnkyr e g;s 0;oLFkkiu d lnHk e tkjh fd;k x;k Fkk & D;k ;g /kkjk 138 ,u-vkbZ- ,DV d i:ko/kku d vu:lkj _.k ;k nkf;Ro d vrxZr vkrk g \ vfHkfu/kkfjr fd;k x;k] ugh & ,s pd d vk/kkj ij /kkjk 138 ,u-vkbZ- ,DV dk ifjokn pyu ;kX; u gkuk vfHkfu/kkfjr fd;k x;k & ifjoknh ykd vnkyr e g;s 0;oLFkkiu d i:oru d fy;s mfpr dk;Zokgh dj ldrk g vkj ol;yh d fy;s okn iLr:r dju d fy;s Hkh Lor= gA

Anita v. Arun Kumar and others

Order dated 09.09.2015 passed by the High Court of M.P. in Misc. Criminal Case No. 9128 of 2012, reported in 2016 (1) MPLJ 195

Extracts from the Order:

In the present case, it is an undisputed fact that in respect of earlier cheque issued by the present applicant a criminal case was preferred under section 138 of the Negotiable Instruments Act and a judgment of conviction was also delivered by the Judicial Magistrate First Class, Narsingarh. Fine was also imposed. An appeal was preferred against the judgment of conviction i.e., No. 231/2007 and both the parties in Lok Adalat, on 25.07.2000, have agreed to withdraw pending litigation. A cheque was also given in the light of the settlement of Rs. 3,51,750/- and the same has been dishonoured. The second complaint has been preferred on account of dishonor of the second cheque.

The Apex Court in the case of ***Lalit Kumar Sharma and another v. State of U.P. and another, 2008 (4) MPLJ (S.C.) 462*** in paragraph 11 to 17 has held as under :

> 11. Section 138 of the Act reads, thus:
>
> ***138. Dishonour of cheque for insufficiency, etc., of funds in the account.*** **–** Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it

exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both :

Provided that nothing contained in this section shall apply unless –

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation. **–** For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

12. It is not disputed that in respect of the first cheques dated 30.11.1999 and 10.12.1999, the appellants, herein were not proceeded against. It is furthermore not in dispute that although a purported compromise was entered into by and between Ashish Narula, Manish Arora, on the one hand, and the complainant, on the other, as a result whereof the said cheque for a sum of Rs. 5,02,050/- was issued and bounced; the complaint petition had not been withdrawn. By a judgment and order 16.01.2006, Ashish Narula and Manish Arora had been found guilty for commission of the offence under section 138 of the Act. They were sentenced to undergo one year's R.I. with fine of Rs. 20,000/- each and in default thereof to undergo three months' simple imprisonment. They were also directed to make payment of rupees nine lakh as compensation to the complainant within a period of one month of the orders under section 357 of the Code of Criminal Procedure.

13. The fact that Manish Arora issued the second cheque in terms of the settlement between the parties is not in dispute. It appears from the complaint petition itself, the requisite averments made therefor were as under:

"5. That after getting their bail from the court the accused No. 2 to 6 approached and requested the complainant to take fresh cheques for full amount and withdraw the complaint and also felt sorry for the s aid dishonour of the cheque."

14. The learned Judicial Magistrate also in his order dated 1-10-2002 noticed :

"It has been stated on behalf of the accused persons that by settlement it was found that the party involved in the dealing would be responsible. Thus, prayer has been made on behalf of the accused persons that the aforementioned all the three accused persons may be discharged from this case. The aforesaid contentions have been opposed on behalf of the complainant and it has been stated that all these three persons were party in the whole dealing and their liability is just like other accused persons.

It is clear from the perusal of the complaint that total 6 accused persons have been made parties in this matter by the complainant and in her statement under section 200 of Criminal Procedure Code, complainant has clearly stated that Manish Arora, Ashish Narula and L.K. Sharma and Bela Narula and wife of L.K. Sharma were directors of the company. All the five accused persons demanded loan of ' Five Lakh Two Hundred Fifty from the complainant for some time and promised her to return the said money soon. All the five persons have been equally involved in the dealing of giving and receiving the cheque."

15. Evidently, therefore, the second cheque was issued in terms of the compromise. It did not create a new liability. As the compromise did not fructify, the same cannot be said to have been issued towards payment of debt.

16. Ingredients of section 138 of the Act are as under:

(i) that there is a legally enforceable debt;

(ii) that the cheque was drawn from the account of bank for discharge in whole or I part of any debt or other liability which presupposes a legally enforceable debt; and

(iii)that the cheque so issued had been returned due to insufficiency of funds.

17. Thus, the second chque was issued by Manish Arora for the purpose of arriving at a settlement. The said cheque was not issued in discharge of the debt or liability of the Company of which the appellants were said to be the directors. There was only one transaction between Shri Ashish Narula, Shri Manish Arora , Directors of the Company and the complainant. They have already been punished. Thus, the question of entertaining the second complaint did not arise. It was, in our opinion, wholly misconceived. The appeal, therefore, in our opinion, must be allowed. It is directed accordingly. Respondent shall bear the costs of the appellants. Counsel's fee assessed at Rs. 25,000/-.

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111. POLICE ACT, 1861 – Section 7

Whether acquittal in criminal case is a ground for non-punishing a police officer in departmental enquiry? Held, No - ***Commissioner of Police, New Delhi and another v. Mehar Singh, AIR 2013 SC 2861*** and ***Deputy Inspector General of Police and another v. S. Samuthiram, AIR 2013 SC 14*** **referred.**

ifyl vf/kfu;e] 1861 & /kkjk 7

D;k nkfMd ikdj.k esa nk"kefDr ,d ifyl vf/kdkjh dk foHkkxh; tkp esa nfMr u dju dk ,d vk/kkj gS \ vHkfu/kkfjr fd;k x;k] ugh & कमिश्नर ऑफ पुलिस न्यू देहली और अन्य विरूद्ध मेहर सिंह, ए.आई.आर. 2013 एस.सी. 2861 और डिप्टी इंस्पेक्टर जनरल ऑफ पुलिस एण्ड अनादर विरूद्ध एस. सामूथिरम, ए.आई.आर. 2013 एस.सी. 14 jQj fd;s x;sA

Baljinder Pal Kaur v. State of Punjab and others

Judgment dated 08.09.2015 passed by the Supreme Court in Criminal Appeal No. 5142 of 2009, reported in 2015 AIR SCW 6904

Extracts from the Judgment:

In ***Commissioner of Police, New Delhi and another v. Mehar Singh, AIR 2013 SC 2861*** this Court, in paragraph 24, has observed as under: -

"24. .....While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit....."

In ***Deputy Inspector General of Police and another v. S. Samuthiram, AIR 2013 SC 84*** this Court, in paragraph 26, has held as under: -

> "26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so."

In ***Union of India and another v. Bihari Lal Sidhana, AIR 1997 SC 3695*** this Court has observed that it is true that the respondent was acquitted by the criminal court but acquittal does not automatically gave him the right to be reinstated into the service.

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112.PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 2(a), 2(f), 2(g), 3(iv) and 12

(i) Whether claim for return of stridhan is maintainable under section 12 of the Act of 2005 though decree of judicial separation has been passed? Held, Yes – In Judicial Separation, relationship of husband and wife continues – Depriving wife from stridhan is a continuous offence.

(ii) What is stridhan? Explained.

?kjyw fgalk lsa efgykvksa dk lajf{k.k vf/kfu;e] 2005 & /kkjk,a 2 ¼,½] /kkjk 2 ¼,Q½] /kkjk 2 ¼t½] 3 ¼iv½ vkj 12

¼i½ D;k L=h /ku dh okilh dk nkok /kkjk 12 vf/kfu;e] 2005 d rgr pyu ;kX; g ;fi U;kf;d i Fkddj.k dh vKkflr ikfjr gk p dh g \ vfHkfu/kkfjr fd;k x;k] gk] U;kf;d i Fkddj.k e ifr vkj iRuh d lac/k fujrj jgr g & iRuh dk L=h /ku l ofpr djuk ,d lrr vijk/k gA

¼ii½ L=h /ku D;k g \ le>k;k x;kA

Krishna Bhatacharjee v. Sarathi Choudhury & anr.

Judgment dated 20.11.2015 passed by the Supreme Court in Criminal Appeal No. 1545 of 2015, reported in 2015 (4) Crimes 384 (SC)

Extracts from the Judgment:

Stridhana property is the exclusive property of the wife on proof that she entrusted the property or dominion over the stridhana property to her husband or any other member of the family, there is no need to establish any further special agreement to establish that the property was given to the husband or other member of the family. Further, the Court observed that it is always a question of fact in each case as to how the property came to be entrusted to the husband or any other member of the family by the wife when she left the matrimonial home or was driven out therefrom. Thereafter, the Court adverted to the concept of entrustment and eventually concurred with the view in the case of ***Pratibha Rani*** (supra). It is necessary to note here that the question had arisen whether it is a continuing offence and limitation could begin to run everyday lost its relevance in the said case, for the Court on scrutiny came to hold that the complaint preferred by the complainant for the commission of the criminal breach of trust under Section 406 of the Indian Penal Code was within limitation.

Having appreciated the concept of Stridhan, we shall now proceed to deal with the meaning of "continuing cause of action". In ***Raja Bhadur Singh v. Provident Fund Inspector and others, (1984) 4 SCC 222,*** the Court while dealing with the continuous offence opined that the expression "continuing offence" is not defined in the Code but that is because the expressions which do not have a fixed connotation or a static import are difficult to define. The Court referred to the earlier decision in ***State of Bihar v. Deokaran Nenshi, (1972) 2 SCC 890*** and reproduced a passage from the same which is to the following effect:-

> "A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence

once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

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***113.PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 4, 8 and 30**

EVIDENCE ACT, 1872 – Section 3

CRIMINAL PROCEDURE CODE, 1973 – Sections 161 and 164

(i) Appreciation of evidence – Penetration of any part of accused's body in the private part of the prosecutrix neither mentioned in the FIR nor in police statement as statement of prosecutrix's mother on this point found unreliable by Hon'ble the High Court but the prosecution has proved that the accused took the prosecutrix, aged 5 or 6 years, inside his house – He removed her slacks and panty, lifted her on to the cot – By virtue of presumption under section 30 of the POSCO Act, it may be presumed that the assault was made with sexual intent – Accused convicted under section 8 of the Act of 2012.

(ii) When non-recording of statement of prosecutrix under section 161 or 164 of Cr.P.C. is not fatal for prosecution? According to I.O., she was unable to speak at the time of recording her statement – The entire prosecution case was based upon the statement of prosecutrix's mother and grand-mother – Non-recording of statement of prosecutrix, held, not fatal for prosecution.

yfxd vijk/k l ckydksa dk lajf{k.k vf/kfu;e] 2012 & /kkjk,a 4] 8 vkj 30

lk{; vf/kfu;e] 1872 & /kkjk 3

n.M izfØ;k lafgrk] 1973 & /kkjk,a 161 vkj 164

¼i½ lk{; dk eY;kdu & vfHk;qDr ds 'kjhj ds fdlh Hkkx dk vfHk;kD=h ds futh vaxksa esa izo'ku dk mYys[k u rks izFke lpuk izfrosnu esa vkj u gh ifyl dFku esa Fkk bl dkj.k ekuuh; mPp U;k;ky; }kjk vfHk;kD=h ds ekrk ds bl fcUnq ij dFku vfo'oluh; ik;k x;k fdUrq vfHk;ksa tu us ;g izekf.kr fd;k Fkk fd vfHk;qDr vfHk;kD=h me 5 ;k 6 o"kZ dk mld ?kj ds vanj ys x;k & mlus mldk ik;tkek vkj iVh mrkj fn;s Fks vkj ml ij yx ij mBk j[kk Fkk & /kkjk 30 vf/kfu;e] 2012 ds v/khu ;g mi/kkfjr fd;k tk ldrk gS fd fd;k x;k geyk yfxd vk'k; ds lkFk Fkk & vfHk;qDr dks /kkjk 8 vf/kfu;e] 2012 esa nk"kfl) fd;k x;kA

¼ii½ dc vfHk;kD=h d dFku /kkjk 161 ;k 164 n.M izfØ;k lfgrk d v/khu y[kc) u djuk vfHk;ktu d fy;s ?krd ugh gkrk g \ vuqlwpuk vf/kdkjh d vuqlkj og ¼vfHk;kD=h½ dFku vfHkfyf[kr djr le; ckyu e vleFk Fkh & vfHk;ktu dk ijk ekeyk vfHk;kD=h dh ekrk vkj nknh d dFkuk ij vk/kkfjr Fkk & vfHkfu/kkfjr fd;k x;k fd vfHk;kD=h d dFku vfHkfyf[kr u djuk vfHk;ktu d fy;s ?krd ugh gA

Chaitu Singh Gond v. State of M.P.

Judgment dated 11.11.2014 passed by the High Court of M.P. in Criminal Appeal No. 344 of 2014, reported in ILR (2015) MP 1343 (DB)

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***114.RIGHT TO INFORMATION ACT, 2005 – Section 8 (1) (e)**

Fiduciary relationship – Relationship between Public Service Commission and Examiners is totally within the fiduciary relationship – Although the information regarding answer sheets and details of interview marks can be and should be provided to the candidates but by disclosing the details of the persons who examined/checked papers, no public interest is served – The Commission has reposed trust on the examiners that they will check the exam papers with utmost care, honesty and impartiality – Similarly, the Examiners have faith that they will not be facing any unfortunate consequences for doing their job properly.

lpuk dk vf/kdkj vf/kfu;e] 2005 & /kkjk 8 ¼1½ ¼b½

fo'okl iw.kZ lEc/k & ykd lsok vk;ksx vkj ijh{kdksa d chp d lEc/k ijh rjg l fo'okl iw.kZ lEc/k gkrs g & ;|fi mRrj&ifLrdk vkj lk{kRdkj e fn;s x;s vadksa l lEcf/kr tkudkjh mEehnokjksa dks nh tk ldrh g vkj nuk gh pkfg, fdUrq o 0;fDr tks i'ui=ksa dh tkp@ijh{k.k djr g mudh tkudkjh nus l dkbZ ykdfgr dh ifrl ugh gkrh g & vk;ksx ijh{kdksa ij fo'okl djrk g fd o ijh{kk d i'u i= dh tkp ijh lko/kkuh] biekunkjh vkj fu"i{krk l dj;sx &blh rjg ijh{kd Hkh ;g fo'okl djr g fd mUgsa mudk dk;Z mfpr rjhd l dju d dkj.k fdlh nHkkX;iw.kZ ifj.kke dk lekuk ugh djuk iMsxkA

Kerala Public Service Commission and others v. State Information Commission and another

Judgment dated 04.02.2016 passed by the Supreme Court in Civil Appeal No. 823 of 2016, reported in 2016 AIR SCW 711

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***115. RIGHT TO INFORMATION ACT, 2005 – Section 8 (1) (e)**

Whether Reserve Bank of India and other banks can deny to provide all the information sought under the RTI Act to the public at large

on the ground of economic interest, commercial confidence, fiduciary relationship with other bank on the one hand and the public interest on the other? Held, No – RBI is supposed to uphold public interest and not the interest of individual banks – RBI is clearly not in any fiduciary relationship with any bank – It has a statutory duty to uphold the interest of the public at large, the depositors, the country's economy and the banking sector – It ought to act with transparency and not to hide information that might embarrass the individual banks – It is duty bound to comply with the provisions of the RTI Act and disclose the information sought by the public at large.

lpuk dk vf/kdkj vf/kfu;e] 2005 & /kkjk 8 ¼1½ ¼b½

D;k Hkkjrh; fjtoZ cSad vkj vU; cSad lpuk dk vf/kdkj vf/kfu;e ds varxZr pkgh xbZ lHkh tkudkfj;k¡ nwljs e vU; cSad ds lkFk vkfFkZd fgr] okf.kfT;d fo'okl] fo'okliw.kZ lEcU/k ds vk/kkj ij vkeUr dk bdkj dj ldrh gS tcfd nwljh vkj ykd fgr gS \ vfHkfu/kkfjr fd;k x;k] ugha Hkkjrh; fjtoZ cSad l ykd fgr ds j{k.k dh vk'kk dh tkrh gS u dh fdlh 0;fDrxr cSad ds fgr dh j{kk & Hkkjrh; fjtoZ cSad dk Li"V :i l fdlh vU; cSad ds lkFk dkbZ fo'okfld lEcU/k ugha gS & ;g mldk o/kkfud dRrZ0; gS dh vkeUrk ds fgrk] tekdrk] n'k dh vFkZ0;oLFkk vkj cSafdx lsDVj ds fgrk dh j{kk dh tk; & bl ¼Hkkjrh; fjtoZ cSad dk½ ikjnf'kZrk ds lkFk dk;Z djuk pkfg;s vkj ,slh dkbZ Nwiku okyh lpuk ugha gksrh gS tks fdlh 0;fDrxr cSad ds fy;s d"V nk;d gks & og lpuk ds vf/kdkj vf/kfu;e ds izko/kkuksa dk ikyu djus vkj ykd fgr esa pkgh xbZ lpuk nsus ds fy;s dRrZ0; l sEc/kh gSA

Reserve Bank of India v. Jayantilal N. Mistry

Judgment dated 16.12.2015 passed by the Supreme Court in Transferred Case Civil No. 91 of 2015, reported in AIR 2016 SC 1

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***116.RIGHT TO INFORMATION ACT, 2005 – Section 8 (1) (j)**

Whether personal information like statement of movable and immovable properties, list of family members, etc. can be given under Right to Information Act, 2005 ? Held, No, unless the Public Information Officer is satisfied that larger public interest justifies disclosure of it.

lpuk dk vf/kdkj vf/kfu;e] 2005 & /kkjk 8 ¼1½ ¼t½

D;k 0;fDrxr lpuk tSls py vkj vpy lEifRr ds fooj.k] ifjokj ds lnL;ksa dh lph vkfn lpuk dk vf/kdkj vf/kfu;e] 2005 esa nh tk ldrh gS \ vfHkfu/kkfjr fd;k x;k] ugha] tc rd dh ykd lpuk vf/kdkjh bl ckr esa lUrq"V u gks dh bl

¼0;fDrxr lpuk dk½ fn;k tkuk ogn ykd fgr e g ¼vFkkr ;fn 0;fDrxr lpuk dk fn;k tkuk ogn ykd fgr e gk bl ckj e ykd lpuk vf/kdkjh lr"V gk tk; rHkh ,slh tkudkjh nh tk ldrh g½A

Ramesh v. Deputy Commissioner and ors.

Order dated 17.07.2014 passed by the High Court of M.P. in W.P. No. 5517 of 2006, reported in ILR (2015) MP 927

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***117.SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 – Sections 13, 14 and 35**

RENT CONTROL AND EVICTION LAW:

Whether the provisions of the SARFESI Act have overriding effect on the provisions of Rent Control Act? Held, No – SARFESI Act and Rent Control Act operate in completely different fields – SARFESI Act is concerned with Non-performing Assets of the Banks whereas the Rent Control Act governs the relationship between a tenant and the landlord and specifies the rights and liabilities of each as well as the rules of ejectment with respect to such tenants – Once tenancy is established, a tenant can be evicted only after following the due process of law, as prescribed under the provisions of the Rent Control Act.

foRrh; vkfLrk;k dk ifrHkfrdj.k vkj iqux%Bu rFkk ifrHkfr fgr dk izorZu vf/kfu;e] 2002 ¼ljQslh ,DV] 2002½ & /kkjk,s 13] 14 vkj 35

HkkMk fu;=.k vkj fu"dklu fof/k %

D;k ljQslh ,dV d iko/kkuk dk HkkMk fu;=.k vf/kfu;e d iko/kkuk ij vf/kHkkoh izHkko g \ vfHkfu/kkfjr fd;k x;k] ugh & ljQslh ,DV vkj HkkMk fu;=.k vf/kfu;e ijh rjg lsa fHkUu {k=k e ykx gkrs g & ljQslh ,DV cdk d vizoruh; vkfLr;k lsa lacf/kr g tcfd HkkMk fu;=.k vf/kfu;e edku ekfyd vkj fdjk;nkj d lac/k dk 'kkfLkr djrk g vkj mudk vf/kdkjk vkj nkf;Rok dk crykrk g lkFk gh ,s fdjk;nkjk d lac/k e fu"dklu d fu;e crykrk g & ,d ckj fdjk;nkjh LFkkfir gk tkrh g rc ,d fdjk;nkj dk dkuu dh ifØ;k dk ikyu djd gh fu"dkflr fd;k tk ldrk g tk ifØ;k HkkMk fu;=.k vf/kfu;e d iko/kkuk e fofgr dh xbZ gA

Vishal N. Kalsaria v. Bank of India and others

Judgment dated 20.01.2016 passed by the Supreme Court in Criminal Appeal No. 52 of 2016, reported in 2016 AIR SCW 530

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118.SPECIFIC RELIEF ACT, 1963 – Section 38

LIMITATION ACT, 1963 – Articles 64 and 65

LAND ACQUSITION ACT, 1894 – Sections 4 and 6

(i) Validity of sale – Post issue of preliminary notification – Such sale is void and *non est* in the eyes of law giving to the purchaser the limited right to claim compensation and no more.

(ii) For claiming permanent injunction, plaintiff should prove his settled possession on the date of filing of the suit – Plaintiff not found in possession of suit property but the property found vacant on the date of filing of the suit – The question of establishing settled possession held, did not arise.

(iii) Adverse possession – Essential ingredients – Explained.

fofufn"V vuqrk"k vf/kfu;e] 1963 & /kkjk 38

ifjlhek vf/kfu;e] 1963 & vuqPNn 64 vkSj 65

Hkwfe vf/kxg.k vf/kfu;e] 1894 & /kkjk,a 4 vkSj 6

¼i½ izkjfHkd vf/klwpuk tkjh gksus ds ckn dh foØ; dh o/krk & ,sls foØ; dkuwu dh n`f"V esa 'kwU; gksrk dk izfrdj dk nkok djus dk lhfer vf/kdkj nsrk gS bldk vykok dqN ughaA

¼ii½ LFkkbZ fu"ks/kkKk dk nkok djus ds fy;s okndh dk mldk okn izLrqrh fnukad ij LFkkfir vkf/kiR; izekf.kr djuk pkfg;s & okndh okn lqifRr dh vkf/kiR; esa ugha ik;k x;k cfYd okn izLrqfr fnukad ij lqifRr fjDr ik;k xbZ & LFkkfir vkf/kiR; LFkkfir djus dk i'u mRiUu u gksus vfHkfu/kkfjr fd;k x;kA

¼iii½ fojks/kh vkf/kiR; & vko';d ?kVd & le>k;s x;sA

M. Venkatesh and others v. Commissioner, Bangalore Development Authority

Judgment dated 24.09.2015 passed by the Supreme Court in Civil Appeal No. 7944 of 2015, reported in 2015 AIR SCW 6933 (Three Judge Bench)

Extracts from the Judgment:

Coming to the question whether the plaintiffs-respondents could claim adverse possession, we need to hardly mention the well known and oft quoted maxim ***nec vi, nec clam, nec precario*** meaning thereby that adverse possession is proved only when possession is peaceful, open, continuous and hostile. The essentials of adverse possession were succinctly summed-up by this Court in ***Karnataka Board of Wakf v. Govt. of India (2004) 10 SCC 779*** in the following words:

> "11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when

another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party elairning adverse possession must prove that his possession is ***"nec vi, nec clam, nec precario"***, that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statu- tory period. (See ***S. M. Karim v. Bibi Sakina, AIR 1964 SC 1254, Parsinni v. Sukhi , 1993 AIR SCW 3606 and D. N. Venkatarayappa v. State of Kamataka, AIR 1997 SC 2930***. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the face turn of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [***Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma, AIR 1996 SC 869***."

Reference may also be made'to the decision of this Court in ***Saroop Singh v. Banto, AIR 2005 SC 4407*** where this Court emphasised the importance of animus possidendi and observed:

"In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See ***Vasantiben Prahladji Nayak v. Sornnath Muljibhai Nayak, AIR 2004 SC 1893***).

"Animus possidendi" is one of the ingredients of adverse possession. Unless the person possessing the land has the requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not

have the requisite animus. [See ***Mohd. Mohd. All v. Jagadish Kalita, (2004) 1 SCC 271***]"

Also noteworthy is the decision of this Court in ***Mohan Lal v. Mirza Abdul Gaffar, AIR 1996 SC 910***, where this Court held that claim of title to the property and adverse possession are in terms contradictory. This Court observed:

> "As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period of his title by prescription nee vi, nee clam, nee precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

To the same effect is the decision of this Court in ***Annasaheb Bapusaheb Patil v. Balwant, AIR 1995 SC 895,*** where this Court elaborated the significance of a claim to title ***viz-a-viz.*** the claim to adverse possession over the same property. The Court said:

> "Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all."

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119. STAMP ACT, 1899 – Sections 49 and 50
CONTRACT ACT, 1872 – Section 65

Facts of the case:

Appellant purchased properties in auction sale – He deposited entire sale consideration and also stamp duty of Rs. 6.22 crores –Due to some reason it is not found possible for seller to put him in possession of the properties – Apex Court passed an order of cancellation of sale and refund of deposited money – He filed an application for refund of money paid for purchase of stamp duty –

Same was rejected by the State Exchequer on the ground of limitation – Appellant approached the Supreme Court.

Held, maxim "actus curiae neminem gravabit" meaning – An Act of the Court shall prejudice no man would apply with full vigour in the above facts – A person cannot be penalized for no fault of his – His application cannot be rejected on such a technical ground – Application allowed by Hon'ble the Apex Court.

LVkEi vf/kfu;e] 1899 & /kkjk,a 49 vkj 50
lfonk vf/kfu;e] 1872 & /kkjk 65
i:dj.k d: rF; %

vihykFkh u: uhyke foØ; e: l:ifRr [kjhnhA mlu: i:jk foØ; i:frQy tek djok;k vkj LVkEi M;wVh :- 6-22 djkM: :i;: Hkh tek djok;:A dkN dkj.k l: foØ:rk d: fy;: ml: ¼Ø:rk½ dk l:ifRr dk vkf/kiR; nuk lHko ugh ik;k x;kA lokPp U;k;ky; u foØ; dk fujLr dju: vkj tek /ku ykVku: dk vkn'k ikfjr fd;kA mlu: ¼vihykFkh u½ ,d vkonu LVkEi M;wVh Ø; dju: d: fy;: p:dk;k x;k /ku okil dju: dk i'k fd;k x;kA ml: jkT; d: vf/kdkjh u: ifjlhek d: vk/kkj ij fujLr dj fn;kA vihykFkh u: lokPp U;k;ky; e: dk;:okgh dhA

vfHkfu/kkfjr fd;k x;k] **,DVl D;:fj uehue xkokfcV** vFkk:r U;k;ky; d: dk;: l: fdlh 0;fDr dk gkfu ugh: gkxh ;g l= okD; mDr rF;k: ij i:jh rjg ykx: gkxk & ,d 0;fDr dk: mldh dkbZ xyrh ugh: gkus: ij nf.Mr ugh: fd;k tk ldrk & mldk vkonu ,: l: rduhdh vk/kkjk: ij [kkfjt ugh: fd;k tk ldrk ekuuh; lokPp U;k;ky; u vkonu Lohdkj fd;kA

Committee-GFIL v. Libra Build Tech Private Ltd. and others

Judgment dated 30.09.2015 passed by the Supreme Court in I.A. No. 7 of 2015, reported in 2015AIR SCW 6925

Extracts from the order:

In the first place, admittedly the transaction originally intended between the parties, i.e., sale of properties in question by GFIL-Committee to the applicants was not accomplished and failed due to reasons beyond the control of the parties. Secondly, this Court after taking into consideration all facts and circumstances also came to the conclusion that it was not possible for the parties to conclude the transactions originally intended and while cancelling the same directed the seller (GFIL-Committee) to refund the entire sale consideration to the applicants and simultaneously permitted the applicants to claim refund of stamp duty amount from the State Government by order dated 26.09.2012. Thirdly, as a result of the order of this Court, a right to claim refund of amount paid towards the stamp duty accrued to the applicants. Fourthly, this being a court monitored transaction, no party was in a position to take any steps in the matter without the permission of the Court. Fifthly, the applicants throughout

performed their part of the contract and ensured that transaction in question is accomplished as was originally intended but for the reasons to which they were not responsible, the transaction could not be accomplished. Lastly, the applicants in law were entitled to claim restoration of all such benefits/advantages from the State once the transaction was cancelled by this Court on 26.09.2012 in the light of the principle contained in Section 65 of the Contract Act which enable the party to a contract to seek restoration of all such advantage from other party which they took from such contract when the contract is discovered to be void or becomes void. This was a case where contract in question became void as a result of its cancellation by order of this Court dated 26.09.2012 which entitled the applicants to seek restitution of the money paid to the State for purchase of stamp duty.

In our considered opinion, while deciding a case of this nature, we have to also bear in mind one maxim of equity, which is well settled namely "actus curiae neminem gravabit "meaning – An Act of the Court shall prejudice no man. In Broom's Legal Maxims 10th edition, this maxim is explained saying that it is founded upon justice and good sense and afforded a safe and certain guide for the administration of law. This maxim is also explained in the same words in [(Jenk. Cent.118)]. This principle is fundamental to any system of justice and applies to our jurisprudence. (See: ***Busching Schmitz Pvt. Ltd. v. P. T. Menghani & Anr., AIR 1977 SC1569 and Raj Kumar Dey & Ors. v. Tarapada Dey & Ors., AIR 1987 SC 2192***

In our considered opinion, the aforesaid maxim would apply with full vigour in the facts of this case and if that is the position then applicants, in our opinion, are entitled to claim the refund of entire amount of stamp duty from the State Government which they spent in purchasing the stamp duty for execution of sale deed in relation to the properties in question. Indeed in the light of six reasons set out supra which, in our considered opinion, in clear terms attracts the principle contained in the aforesaid maxim, the State has no right to defend the order of SDM for retaining the amount of stamp duty paid by the applicants with them. The applicants' bona fide genuine claim of refund cannot be denied on such technical grounds.

This case reminds us of the observations made by the Chief Justice M.C. Chagla in a case reported in ***Firm Kaluram Sitaram v. The Dominion of India, AIR 1954 Bombay 50***.

The learned Chief Justice in his distinctive style of writing observed as under in para 19:

> ".....we have often had occasion to say that when the State deals with a citizen it should not ordinarily reply on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person."

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***120.SUITS VALUATION ACT, 1887 – Section 8**

COURT FEES ACT, 1870 – Section 7

Suit for declaration of sale deed to be *ab initio* void and perpetual injunction – Sale deed was executed on behalf of plaintiff by his Power of Attorney holder who is the real sister of plaintiff – It can be inferred that he was party of the sale deed executed by his Power of Attorney with his consent – So direction to make *ad valorem* valuation of the suit on the value of alleged sale deed and pay Court fees accordingly, held proper.

okn eY;kdu vf/kfu;e] 1887 & /kkjk 8

U;k;ky; 'kYd vf/kfu;e] 1870 & /kkjk 7

foØ; i= dk 'kU; ?kkf"kr djokus vkj LFkk;h fu"k/kkKk dk okn & foØ; i= oknh dh vkj ls mldh e[rkjukek /kkjd us fu"ikfnr fd;k tk oknh dh cgu gS & ;g vuqeku yxk;k tk ldrk gS fd oknh foØ;&i= tk mldh e[r;kj us fu"ikfnr fd;k mlesa mldh lgerh gS vkj og mldk i{kdkj gS & vr% okn dk foØ;&i= dk eY; vuqlkj eY;kdu djus vkj ml vuqlkj U;k;ky; 'kYd vnk djus dk funsZ'k mfpr gksuk vfHkfu/kkfjr fd;k x;kA

Harish Patel v. Sanjay Kumar

Order dated 08.10.2013 passed by the High Court of M.P. in Writ Petition No. 16943 of 2013, reported in ILR (2015) MP 1676

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PART - III

CIRCULARS/NOTIFICATIONS

NOTIFICATION DATED 12th JANUARY, 2016 OF THE MINISTRY OF WOMEN AND CHILD DEVELOPMENT REGARDING THE DATE OF ENFORCEMENT OF JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2015

dk- vk- 110 ¼v½ & केंद्रीय सरकार, किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 (2016 का 2) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 15 जनवरी, 2016 की उस तारीख के रूप में नियत करती है जिसकी उक्त अधिनियम प्रवृत्त होगा।

[l-lhMCY;w&II@11@4@2015&lhMCY;w-II]

jf'e lDlquk lkguh] la;qDr lfpo

S.O. 110(E). – In exercise of the powers conferred by sub-section (3) of section 1 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), the Central Government hereby appoints the 15th day of January, 2016 as the date on which the said Act shall come into force.

[No. CW-II-11/4/2015-CW.II]

RASHMI SAXENA SAHNI, Jt. Secy.

[*Published in Gazette of India, Extraordinary Part II Section 3 Sub-Section (ii), dated 13-01-2016 (No. 96*)]

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NOTIFICATION DATED 18th JANUARY, 2016 REGARDING THE DATE OF ENFORCEMENT OF SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) AMENDMENT ACT, 2015

S.O. 152 (E), dated the 18th January, 2016 - In exercise of the powers conferred by sub-section (2) of section 1 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (1 of 2016), the Central Government hereby appoints the 26th day of January, 2016 as the date on which the provisions of the said Act shall come into force.

dk- vk- 152 ¼v½] fnukd 18 tuojh] 2016 & केन्द्रीय सरकार, अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) संशोधन अधिनियम, 2015 (2016 का सं. 1) की धारा 1 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 26 जनवरी, 2016 को ऐसी तारीख के रूप में नियत करती है जिसको उक्त अधिनियम के उपबंध प्रवृत्त होंगे ।

[*Published in the Gazette of India, Extraordinary Part II, Sec. 3(ii), dated 18-1-2016 (No. 136*)]

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PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN)ACT, 2015

No. 2 of 2016

[31st December, 2015]

An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinunder and for matters connected therewith or incidental thereto.

WHEREAS, the provisions of the Constitution confer powers and impose duties, under clause (3) of article 15, clauses (e) and (f) of article 39, article 45 and article 47, on the State to ensure that all the needs of children are met and that their basic human rights are fully protected;

AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child;

AND WHEREAS, it is expedient to re-enact the Juvenile Justice (Care and Protection of Children) Act, 2000 to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection, taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993), and other related international instruments.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent, commencement and application. (1) This Act may be called the Juvenile Justice (Care and Protection of Children) Act, 2015.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including —

(i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;

(ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.

2. In this Act, unless the context otherwise requires,—

(1) “abandoned child” means a child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry;

(2) “adoption” means the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child;

(3) “adoption regulations” means the regulations framed by the Authority and notified by the Central Government in respect of adoption;

(4) “administrator” means any district official not below the rank of Deputy Secretary to the State, on whom magisterial powers have been conferred;

(5) “aftercare” means making provision of support, financial or otherwise, to persons, who have completed the age of eighteen years but have not completed the age of twenty-one years, and have left any institutional care to join the mainstream of the society;

(6) “authorised foreign adoption agency” means a foreign social or child welfare agency that is authorised by the Central Adoption Resource Authority on the recommendation of their Central Authority or Government department of that country for sponsoring the application of non-resident Indian or overseas citizen of India or persons of Indian origin or foreign prospective adoptive parents for adoption of a child from India;

(7) “Authority” means the Central Adoption Resource Authority constituted under section 68;

(8) “begging” means—

(i) soliciting or receiving alms in a public place or entering into any private premises for the purpose of soliciting or receiving alms, under any pretence;

(ii) exposing or exhibiting with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(9) "best interest of child" means the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development;

(10) "Board" means a Juvenile Justice Board constituted under section 4;

(11) "Central Authority" means the Government department recognised as such under the Hague Convention on Protection of Children and Cooperation in Inter-country Adoption (1993);

(12) "child" means a person who has not completed eighteen years of age;

(13) "child in conflict with law" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;

(14) "child in need of care and protection" means a child—

(i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or

(ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or

(iii) who resides with a person (whether a guardian of the child or not) and such person—

(a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or

(b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or

(c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

(vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or

(vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or

(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or

(ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or

(x) who is being or is likely to be abused for unconscionable gains; or

(xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or

(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;

(15) "child friendly" means any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child;

(16) "child legally free for adoption" means a child declared as such by the Committee after making due inquiry under section 38;

(17) "Child Welfare Officer" means an officer attached to a Children's Home, for carrying out the directions given by the Committee or, as the case may be, the Board with such responsibility as may be prescribed;

(18) "Child Welfare Police Officer" means an officer designated as such under sub-section (1) of section 107;

(19) "Children's Home" means a Children's Home, established or maintained, in every district or group of districts, by the State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such for the purposes specified in section 50;

(20) "Children's Court'' means a court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act;

(21) "child care institution" means Children Home, open shelter, observation home, special home, place of safety, Specialised Adoption Agency and a fit facility recognised under this Act for providing care and protection to children, who are in need of such services;

(22) “Committee” means Child Welfare Committee constituted under section 27;

(23) “court” means a civil court, which has jurisdiction in matters of adoption and guardianship and may include the District Court, Family Court and City Civil Courts;

(24) “corporal punishment” means the subjecting of a child by any person to physical punishment that involves the deliberate infliction of pain as retribution for an offence, or for the purpose of disciplining or reforming the child;

(25) “child line services” means a twenty-four hours emergency outreach service for children in crisis which links them to emergency or long-term care and rehabilitation service;

(26) “District Child Protection Unit” means a Child Protection Unit for a District, established by the State Government under section 106, which is the focal point to ensure the implementation of this Act and other child protection measures in the district;

(27) “fit facility” means a facility being run by a governmental organisation or a registered voluntary or non-governmental organisation, prepared to temporarily own the responsibility of a particular child for a specific purpose, and such facility is recognised as fit for the said purpose, by the Committee, as the case may be, or the Board, under sub-section (1) of section 51;

(28) “fit person” means any person, prepared to own the responsibility of a child, for a specific purpose, and such person is identified after inquiry made in this behalf and recognised as fit for the said purpose, by the Committee or, as the case may be, the Board, to receive and take care of the child;

(29) “foster care” means placement of a child, by the Committee for the purpose of alternate care in the domestic environment of a family, other than the child’s biological family, that has been selected, qualified, approved and supervised for providing such care;

(30) “foster family” means a family found suitable by the District Child Protection Unit to keep children in foster care under section 44;

(31) “guardian” in relation to a child, means his natural guardian or any other person having, in the opinion of the Committee or, as the case may be, the Board, the actual charge of the child, and recognised by the Committee or, as the case may be, the Board as a guardian in the course of proceedings;

(32) “group foster care” means a family like care facility for children in need of care and protection who are without parental care, aiming on providing personalised care and fostering a sense of belonging and identity, through family like and community based solutions;

(33) “heinous offences” includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more;

(34) “inter-country adoption” means adoption of a child from India by nonresident Indian or by a person of Indian origin or by a foreigner;

(35) “juvenile” means a child below the age of eighteen years;

(36) “narcotic drug” and “psychotropic substance” shall have the meanings, respectively, assigned to them in the Narcotic Drugs and Psychotropic Substances Act, 1985;

(37) “no objection certificate” for inter-country adoption means a certificate issued by the Central Adoption Resource Authority for the said purpose;

(38) “non-resident Indian” means a person who holds an Indian passport and is presently residing abroad for more than one year;

(39) “notification” means the notification published in the Official Gazette of India, or as the case may be, in the Gazette of a State, and the expression “notify” shall be construed accordingly;

(40) “observation home” means an observation home established and maintained in every district or group of districts by a State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such, for the purposes specified in sub-section (1) of section 47;

(41) “open shelter” means a facility for children, established and maintained by the State Government, either by itself, or through a voluntary or non-governmental organisation under sub-section (1) of section 43, and registered as such, for the purposes specified in that section;

(42) “orphan” means a child—

(i) who is without biological or adoptive parents or legal guardian; or

(ii) whose legal guardian is not willing to take, or capable of taking care of the child;

(43) “overseas citizen of India” means a person registered as such under the Citizenship Act, 1955;

(44) “person of Indian origin” means a person, any of whose lineal ancestors is or was an Indian national, and who is presently holding a Person of Indian Origin Card issued by the Central Government;

(45) “petty offences” includes the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years;

(46) “place of safety” means any place or institution, not being a police lockup or jail, established separately or attached to an observation home or a special home, as the case may be, the person in-charge of which is willing to receive and take care of the children alleged or found to be in conflict with law, by an order of the Board or the Children’s Court, both during inquiry and ongoing rehabilitation after having been found guilty for a period and purpose as specified in the order;

(47) “prescribed” means prescribed by rules made under this Act;

(48) “probation officer” means an officer appointed by the State Government as a probation officer under the Probation of Offenders Act, 1958 or the Legal-cum-Probation Officer appointed by the State Government under District Child Protection Unit;

(49) “prospective adoptive parents” means a person or persons eligible to adopt a child as per the provisions of section 57;

(50) “public place” shall have the same meaning assigned to it in the Immoral Traffic (Prevention) Act, 1956;.

(51) “registered”, with reference to child care institutions or agencies or facilities managed by the State Government, or a voluntary or non-governmental organisation, means observation homes, special homes, place of safety, children’s homes, open shelters or Specialised Adoption Agency or fit facility or any other institution that may come up in response to a particular need or agencies or facilities authorised and registered under section 41, for providing residential care to children, on a short-term or long-term basis;

(52) “relative”, in relation to a child for the purpose of adoption under this Act, means a paternal uncle or aunt, or a maternal uncle or aunt, or paternal grandparent or maternal grandparent;

(53) “State Agency” means the State Adoption Resource Agency set up by the State Government for dealing with adoption and related matters under section 67;

(54) “serious offences” includes the offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is imprisonment between three to seven years;

(55) “special juvenile police unit” means a unit of the police force of a district or city or, as the case may be, any other police unit like railway police, dealing with children and designated as such for handling children under section 107;

(56) “special home” means an institution established by a State Government or by a voluntary or non-governmental organisation, registered under section 48, for housing and providing rehabilitative services to children in conflict with law, who are found, through inquiry, to have committed an offence and are sent to such institution by an order of the Board;

(57) “Specialised Adoption Agency” means an institution established by the State Government or by a voluntary or non-governmental organisation and recognised under section 65, for housing orphans, abandoned and surrendered children, placed there by order of the Committee, for the purpose of adoption;

(58) “sponsorship” means provision of supplementary support, financial or otherwise, to the families to meet the medical, educational and developmental needs of the child;

(59) “State Government”, in relation to a Union territory, means the Administrator of that Union territory appointed by the President under article 239 of the Constitution;

(60) “surrendered child” means a child, who is relinquished by the parent or guardian to the Committee, on account of physical, emotional and social factors beyond their control, and declared as such by the Committee;

(61) all words and expressions used but not defined in this Act and defined in other Acts shall have the meanings respectively assigned to them in those Acts.

CHAPTER II
GENERAL PRINCIPLES OF CARE AND PROTECTION OF CHILDREN

3. General principles to be followed in administration of Act. The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:—

(i) Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.

(ii) Principle of dignity and worth: All human beings shall be treated with equal dignity and rights.

(iii) Principle of participation: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child’s views shall be taken into consideration with due regard to the age and maturity of the child.

(iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

(v) Principle of family responsibility: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

(vi) Principle of safety: All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

(vii) Positive measures: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.

(viii) Principle of non-stigmatizing semantics: Adversarial or accusatory words are not to be used in the processes pertaining to a child.

(ix) Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

(x) Principle of equality and non-discrimination: There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.

(xi) Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

(xii) Principle of institutionalisation as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

(xiii) Principle of repatriation and restoration: Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

(xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances.

(xv) Principle of diversion: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

(xvi) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

CHAPTER III

JUVENILE JUSTICE BOARD

4. Juvenile Justice Board. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the State Government shall, constitute for every district, one or more Juvenile Justice Boards for exercising the powers and discharging its functions relating to children in conflict with law under this Act.

(2) A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (hereinafter referred to as Principal Magistrate) with at least three years experience and two social workers selected in such manner as may be prescribed, of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

(3) No social worker shall be appointed as a member of the Board unless such person has been actively involved in health, education, or welfare activities pertaining to children for atleast seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law.

(4) No person shall be eligible for selection as a member of the Board, if he -

(i) has any past record of violation of human rights or child rights;

(ii) has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence;

(iii) has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government;

(iv) has ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act.

(5) The State Government shall ensure that induction training and sensitisation of all members including Principal Magistrate of the Board on care, protection, rehabilitation, legal provisions and justice for children, as may be prescribed, is provided within a period of sixty days from the date of appointment.

(6) The term of office of the members of the Board and the manner in which such member may resign shall be such, as may be prescribed.

(7) The appointment of any member of the Board, except the Principal Magistrate, may be terminated after holding an inquiry by the State Government, if he —

(i) has been found guilty of misuse of power vested under this Act; or

(ii) fails to attend the proceedings of the Board consecutively for three months without any valid reason; or

(iii) fails to attend less than three-fourths of the sittings in a year; or

(iv) becomes ineligible under sub-section (4) during his term as a member.

5. Placement of person, who cease to be a child during process of inquiry. Where an inquiry has been initiated in respect of any child under this Act, and during the course of such inquiry, the child completes the age of eighteen years, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued by the Board and orders may be passed in respect of such person as if such person had continued to be a child.

6. Placement of persons who committed an offence, when person was below the age of eighteen years. (1) Any person, who has completed eighteen years of age, and is apprehended for committing an offence when he

was below the age of eighteen years, then, such person shall, subject to the provisions of this section, be treated as a child during the process of inquiry.

(2) The person referred to in sub-section (1), if not released on bail by the Board shall be placed in a place of safety during the process of inquiry.

(3) The person referred to in sub-section (1) shall be treated as per the procedure specified under the provisions of this Act.

7. Procedure in relation to Board. (1) The Board shall meet at such times and shall observe such rules in regard to the transaction of business at its meetings, as may be prescribed and shall ensure that all procedures are child friendly and that the venue is not intimidating to the child and does not resemble as regular courts.

(2) A child in conflict with law may be produced before an individual member of the Board, when the Board is not in sitting.

(3) A Board may act notwithstanding the absence of any member of the Board, and no order passed by the Board shall be invalid by the reason only of the absence of any member during any stage of proceedings:

Provided that there shall be atleast two members including the Principal Magistrate present at the time of final disposal of the case or in making an order under sub-section (3) of section 18.

(4) In the event of any difference of opinion among the members of the Board in the interim or final disposal, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the Principal Magistrate, shall prevail.

8. Powers functions and responsibilities of the Board. (1) Notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, the Board constituted for any district shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law, in the area of jurisdiction of such Board.

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them under section 19 or in appeal, revision or otherwise.

(3) The functions and responsibilities of the Board shall include'—

(a) ensuring the informed participation of the child and the parent or guardian, in every step of the process;

(b) ensuring that the child's rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation;

(c) ensuring availability of legal aid for the child through the legal services institutions;

(d) wherever necessary the Board shall provide an interpreter or translator,

having such qualifications, experience, and on payment of such fees as may be prescribed, to the child if he fails to understand the language used in the proceedings;

(e) directing the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed;

(f) adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14;

(g) transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved;

(h) disposing of the matter and passing a final order that includes an individual care plan for the child's rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non-governmental organisation, as may be required;

(i) conducting inquiry for declaring fit persons regarding care of children in conflict with law;

(j) conducting at least one inspection visit every month of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government;

(k) order the police for registration of first information report for offences committed against any child in conflict with law, under this Act or any other law for the time being in force, on a complaint made in this regard;

(l) order the police for registration of first information report for offences committed against any child in need of care and protection, under this Act or any other law for the time being in force, on a written complaint by a Committee in this regard;

(m) conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the observation home; and

(n) any other function as may be prescribed.

9. Procedure to be followed by a Magistrate who has not been empowered under this Act. (1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.

CHAPTER IV

PROCEDURE IN RELATION TO CHILDREN IN CONFLICT WITH LAW

10. Apprehension of child alleged to be in conflict with law. (1) As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended:

Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail.

(2) The State Government shall make rules consistent with this Act,—

(i) to provide for persons through whom (including registered voluntary or non-governmental organisations) any child alleged to be in conflict with law may be produced before the Board;

(ii) to provide for the manner in which the child alleged to be in conflict with law may be sent to an observation home or place of safety, as the case may be.

11. Role of person in whose charge child in conflict with law is placed. Any person in whose charge a child in conflict with law is placed, shall while the order is in force, have responsibility of the said child, as if the said person was the child's parent and responsible for the child's maintenance:

Provided that the child shall continue in such person's charge for the period stated by the Board, notwithstanding that the said child is claimed by the parents or any other person except when the Board is of the opinion that the parent or any other person are fit to exercise charge over such child.

12. Bail to a person who is apparently a child alleged to be in conflict with law. Bail to a person who is apparently a child alleged to be in conflict with law (1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub- section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.

13. Information to parents guardian or probation officer. (1) Where a child alleged to be in conflict with law is apprehended, the officer designated as Child Welfare Police Officer of the police station, or the special juvenile police unit to which such child is brought, shall, as soon as possible after apprehending the child, inform —

(i) the parent or guardian of such child, if they can be found, and direct them to be present at the Board before which the child is produced; and

(ii) the probation officer, or if no probation officer is available, a Child Welfare Officer, for preparation and submission within two weeks to the Board, a social investigation report containing information regarding the antecedents and family background of the child and

other material circumstances likely to be of assistance to the Board for making the inquiry.

(2) Where a child is released on bail, the probation officer or the Child Welfare Officer shall be informed by the Board.

14. Inquiry by Board regarding child in conflict with law. (1) Where a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.

(2) The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.

(3) A preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

(4) If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated:

Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to berecorded in writing.

(5) The Board shall take the following steps to ensure fair and speedy inquiry, namely:—

(a) at the time of initiating the inquiry, the Board shall satisfy itself that the child in conflict with law has not been subjected to any ill-treatment by the police or by any other person, including a lawyer or probation officer and take corrective steps in case of such ill-treatment;

(b) in all cases under the Act, the proceedings shall be conducted in simple manner as possible and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings;

(c) every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry;

(d) cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973;

(e) inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973;

(f) inquiry of heinous offences,—

(i) for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e);

(ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.

15. Preliminary assessment into heinous offences by Board. (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumustances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub- section (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.— For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973:

Provided that the order of the Board to dispose of the matter shall be applealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

16. Review of pendency of inquiry. (1) The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board once in every three months, and shall direct the Board to increase the frequency of its sittings or may recommend the constitution of additional Boards.

(2) The number of cases pending before the Board, duration of such pendency, nature of pendency and reasons thereof shall be reviewed in every six months by a high level committee consisting of the Executive Chairperson of the State Legal Services Authority, who shall be the Chairperson, the Home Secretary, the Secretary responsible for the implementation of this Act in the State and a representative from a voluntary or non- governmental organisation to be nominated by the Chairperson.

(3) The information of such pendency shall also be furnished by the Board to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate and the District Magistrate on quarterly basis in such form as may be prescribed by the State Government.

17. Orders regarding a child not found to be in conflict with law. (1) Where a Board is satisfied on inquiry that the child brought before it has not

committed any offence, then notwithstanding anything contrary contained in any other law for the time being in force, the Board shall pass order to that effect.

(2) In case it appears to the Board that the child referred to in sub-section (1) is in need of care and protection, it may refer the child to the Committee with appropriate directions.

18. Orders regarding child found to be in conflict with law. (1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformative services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

(i) attend school; or

(ii) attend a vocational training centre; or (iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

19. Powers of Children's Court. (1) After the receipt of preliminary assessment from the Board under section 15, Children's the Children´s Court may decide that—

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformative services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children´s Court for record and follow up, as may be required.

20. Child attained age of twenty one years and yet to complete prescribed term of stay in place of safety. (1) When the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay, the Children´s Court shall provide for a follow up by the probation officer or the District Child Protection Unit or a social worker or by itself, as required, to evaluate if such child has undergone reformative changes and if the child can be a contributing member of the society and for this purpose the progress records of the child under sub-section (4) of section 19, along with evaluation of relevant experts are to be taken into consideration.

(2) After the completion of the procedure specified under sub-section (1), the Children's Court may—

(i) decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay;

(ii) decide that the child shall complete the remainder of his term in a jail: Provided that each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed.

21. Order that may not be passed against a child in conflict with law. No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force.

22. Proceeding under Chapter VII of the Code of Criminal Procedure not to apply against child. Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973, or any preventive detention law for the time being in force, no proceeding shall be instituted and no order shall be passed against any child under Chapter VIII of the said Code.

23.No joint proceedings of child in conflict with law and person not a child. (1) Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 or in any other law for the time being in force, there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child.

(2) If during the inquiry by the Board or by the Children's Court, the person alleged to be in conflict with law is found that he is not a child, such person shall not be tried along with a child.

24. Removal of disqualification on the findings of an offence. (1) Notwithstanding anything contained in any other law for the time being in force, a child who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attached to a conviction of an offence under such law:

Provided that in case of a child who has completed or is above the age of sixteen years and is found to be in conflict with law by the Children's Court under clause (i) of sub-section (1) of section 19, the provisions of sub-section (1) shall not apply.

(2) The Board shall make an order directing the Police, or by the Children's court to its own registry that the relevant records of such conviction shall be destroyed after the expiry of the period of appeal or, as the case may be, a reasonable period as may be prescribed:

Provided that in case of a heinous offence where the child is found to be in conflict with law under clause (i) of sub-section (1) of section 19, the relevant records of conviction of such child shall be retained by the Children's Court.

25. Special provision in respect of pending cases. Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court as if this Act had not been enacted.

26. Provisions with respect of runaway child in conflict with law. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge of a child in conflict with law who has run away from a special home or an observation home or a place of safety or from the care of a person or institution under whom the child was placed under this Act.

(2) The child referred to in sub-section (1) shall be produced, within twenty-four hours, preferably before the Board which passed the original order in respect of that child, if possible, or to the nearest Board where the child is found.

(3) The Board shall ascertain the reasons for the child having run away and pass appropriate orders for the child to be sent back either to the institution or person from whose custody the child had run away or any other similar place or person, as the Board may deem fit:

Provided that the Board may also give additional directions regarding any special steps that may be deemed necessary, for the best interest of the child.

(4) No additional proceeding shall be instituted in respect of such child.

CHAPTER V

CHILD WELFARE COMMITTEE

27. Child Welfare Committee. (1) The State Government shall by notification in the Official Gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act and ensure that induction training and sensitisation of all members of the committee is provided within two months from the date of notification.

(2) The Committee shall consist of a Chairperson, and four other members as the State Government may think fit to appoint, of whom atleast one shall be a woman and another, an expert on the matters concerning children.

(3) The District Child Protection Unit shall provide a Secretary and other staff that may be required for secretarial support to the Committee for its effective functioning.

(4) No person shall be appointed as a member of the Committee unless such person has been actively involved in health, education or welfare activities pertaining to children for atleast seven years or is a practicing professional with a degree in child psychology or psychiatry or law or social work or sociology or human development.

(5) No person shall be appointed as a member unless he possesses such other qualifications as may be prescribed.

(6) No person shall be appointed for a period of more than three years as a member of the Committee.

(7) The appointment of any member of the Committee shall be terminated by the State Government after making an inquiry, if—

(i) he has been found guilty of misuse of power vested on him under this Act;

(ii) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

(iii) he fails to attend the proceedings of the Committee consecutively for three months without any valid reason or he fails to attend less than three-fourths of the sittings in a year.

(8) The District Magistrate shall conduct a quarterly review of the functioning of the Committee.

(9) The Committee shall function as a Bench and shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

(10) The District Magistrate shall be the grievances redressal authority for the Child Welfare Committee and anyone connected with the child, may file a petition before the District Magistrate, who shall consider and pass appropriate orders.

28. Procedure in relation to Committee. (1) The Committee shall meet at least twenty days in a month and shall observe such rules and procedures with regard to the transaction of business at its meetings, as may be prescribed.

(2) A visit to an existing child care institution by the Committee, to check its functioning and well being of children shall be considered as a sitting of the Committee.

(3) A child in need of care and protection may be produced before an individual member of the Committee for being placed in a Children's Home or fit person when the Committee is not in session.

(4) In the event of any difference of opinion among the members of the Committee at the time of taking any decision, the opinion of the majority shall prevail but where there is no such majority, the opinion of the Chairperson shall prevail.

(5) Subject to the provisions of sub-section (1), the Committee may act, notwithstanding the absence of any member of the Committee, and no order made by the Committee shall be invalid by reason only of the absence of any member during any stage of the proceeding:

Provided that there shall be at least three members present at the time of final disposal of the case.

29. Powers of Committee. (1) The Committee shall have the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection.

(2) Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection.

30. Functions and responsibilities of Committee. The functions and responsibilities of the Committee shall include—

(i) taking cognizance of and receiving the children produced before it; (ii) conducting inquiry on all issues relating to and affecting the safety and well-being of the children under this Act;

(iii) directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organisations to conduct social investigation and submit a report before the Committee;

(iv) conducting inquiry for declaring fit persons for care of children in need of care and protection;

(v) directing placement of a child in foster care;

(vi) ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard;

(vii) selecting registered institution for placement of each child requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution;

(viii) conducting at least two inspection visits per month of residential facilities for children in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government;

(ix) certifying the execution of the surrender deed by the parents and ensuring that they are given time to reconsider their decision as well as making all efforts to keep the family together;

(x) ensuring that all efforts are made for restoration of abandoned or lost children to their families following due process, as may be prescribed;

(xi) declaration of orphan, abandoned and surrendered child as legally free for adoption after due inquiry;

(xii) taking suo motu cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee, provided that such decision is taken by at least three members;

(xiii) taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012;

(xiv) dealing with cases referred by the Board under sub-section (2) of section 17;

(xv) co-ordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government;

(xvi) in case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the District Child Protection Unit or labour department or childline services, as the case may be;

(xvii) accessing appropriate legal services for children;

(xviii) such other functions and responsibilities, as may be prescribed.

CHAPTER VI

PROCEDURE IN RELATION TO CHILDREN IN NEED OF CARE AND PROTECTION

31. Production before Committee. (1) Any child in need of care and protection may be produced before the Committee before by any of the following persons, namely:—

(i) any police officer or special juvenile police unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit or inspector appointed under any labour law for the time being in force;

(ii) any public servant;

(iii) Childline Services or any voluntary or non-governmental organisation or any agency as may be recognised by the State Government;

(iv) Child Welfare Officer or probation officer;

(v) any social worker or a public spirited citizen; (vi) by the child himself; or

(vii) any nurse, doctor or management of a nursing home, hospital or maternity home:

Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.

(2) The State Government may make rules consistent with this Act, to provide for the manner of submitting the report to the Committee and the manner of sending and entrusting the child to children's home or fit facility or fit person, as the case may be, during the period of the inquiry.

32. Mandatory reporting regarding a child found separated from guardian. (1) Any individual or a police officer or any functionary of any organisation or a nursing home or hospital or maternity home, who or which finds and takes charge, or is handed over a child who appears or claims to be abandoned or lost, or a child who appears or claims to be an orphan without family support, shall within twenty-four hours (excluding the time necessary for the journey), give information to the Childline Services or the nearest police station or to a Child Welfare Committee or to the District Child Protection Unit, or hand over the child to a child care institution registered under this Act, as the case may be.

(2) The information regarding a child referred to in sub-section (1) shall be mandatorily uploaded on a portal as may be specified by the Central Government or the Committee or the District Child Protection Unit or the child care institution, as the case may be.

33. Offence of non-reporting. If information regarding a child as required under section 32 is not given within the period specified in the said section, then, such act shall be regarded as an offence.

34. Penalty for non-reporting. Any person who has committed an offence under section 33 shall be liable to imprisonment up to six months or fine of ten thousand rupees or both.

35. Surrender of children. (1) A parent or guardian, who for physical, emotional and social factors beyond their control, wishes to surrender a child, shall produce the child before the Committee.

(2) If, after prescribed process of inquiry and counselling, the Committee is satisfied, a surrender deed shall be executed by the parent or guardian, as the case may be, before the Committee.

(3) The parents or guardian who surrendered the child, shall be given two months time to reconsider their decision and in the intervening period the Committee shall either allow, after due inquiry, the child to be with the parents or guardian under supervision, or place the child in a Specialised Adoption Agency, if he or she is below six years of age, or a children's home if he is above six years.

36. Inquiry. (1) On production of a child or receipt of a report under section 31, the Committee shall hold an inquiry in such manner as may be prescribed and the Committee, on its own or on the report from any person or agency as specified in sub-section (2) of section 31, may pass an order to send the child to the children's home or a fit facility or fit person, and for speedy social investigation by a social worker or Child Welfare Officer or Child Welfare Police Officer:

Provided that all children below six years of age, who are orphan, surrendered or appear to be abandoned shall be placed in a Specialised Adoption Agency, where available.

(2) The social investigation shall be completed within fifteen days so as to enable the Committee to pass final order within four months of first production of the child:

Provided that for orphan, abandoned or surrendered children, the time for completion of inquiry shall be as specified in section 38.

(3) After the completion of the inquiry, if Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may send the child to a Specialised Adoption Agency if the child is below six years of age, children's home or to a fit facility or person or foster family, till suitable means of rehabilitation are found for the child, as may be prescribed, or till the child attains the age of eighteen years:

Provided that the situation of the child placed in a children's home or with a fit facility or person or a foster family, shall be reviewed by the Committee, as may be prescribed.

(4) The Committee shall submit a quarterly report on the nature of disposal of cases and pendency of cases to the District Magistrate in the manner as may be prescribed, for review of pendency of cases.

(5) After review under sub-section (4), the District Magistrate shall direct the Committee to take necessary remedial measures to address the pendency,

if necessary and send a report of such reviews to the State Government, who may cause the constitution of additional Committees, if required:

Provided that if the pendency of cases continues to be unaddressed by the Committee even after three months of receiving such directions, the State Government shall terminate the said Committee and shall constitute a new Committee.

(6) In anticipation of termination of the Committee and in order that no time is lost in constituting a new Committee, the State Government shall maintain a standing panel of eligible persons to be appointed as members of the Committee.

(7) In case of any delay in the constitution of a new Committee under sub-section (5), the Child Welfare Committee of a nearby district shall assume responsibility in the intervening period.

37. Orders passed regarding a child in need of care and protection. (1) The Committee on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the following orders, namely:—

(a) declaration that a child is in need of care and protection;

(b) restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker;

(c) placement of the child in Children's Home or fit facility or Specialised Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child;

(d) placement of the child with fit person for long term or temporary care;

(e) foster care orders under section 44;

(f) sponsorship orders under section 45;

(g) directions to persons or institutions or facilities in whose care the child is placed, regarding care, protection and rehabilitation of the child, including directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need-based counselling, occupational therapy or modification therapy, skill training, legal aid, educational services, and other developmental activities, as required, as well as follow-up and coordination with the District Child Protection Unit or State Government and other agencies;

(h) declaration that the child is legally free for adoption under section

(2) The Committee may also pass orders for —

(i) declaration of fit persons for foster care;

(ii) getting after care support under section 46 of the Act; or

(iii) any other order related to any other function as may be prescribed.

38. Procedure for declaring a child legally free for adoption. (1) In case of orphan and abandoned child, the Committee shall make all efforts for tracing the parents or guardians of the child and on completion of such inquiry, if it is established that the child is either an orphan having no one to take care, or abandoned, the Committee shall declare the child legally free for adoption:

Provided that such declaration shall be made within a period of two months from the date of production of the child, for children who are up to two years of age and within four months for children above two years of age:

Provided further that notwithstanding anything contained in this regard in any other law for the time being in force, no first information report shall be registered against any biological parent in the process of inquiry relating to an abandoned or surrendered child under this Act.

(2) In case of surrendered child, the institution where the child has been placed by the Committee on an application for surrender, shall bring the case before the Committee immediately on completion of the period specified in section 35, for declaring the child legally free for adoption.

(3) Notwithstanding anything contained in any other law for the time being in force, a child of a mentally retarded parents or a unwanted child of victim of sexual assault, such child may be declared free for adoption by the Committee, by following the procedure under this Act.

(4) The decision to declare an orphan, abandoned or surrendered child as legally free for adoption shall be taken by at least three members of the Committee.

(5) The Committee shall inform the State Agency and the Authority regarding the number of children declared as legally free for adoption and number of cases pending for decision in the manner as may be prescribed, every month.

CHAPTER VII

REHABILITATION AND SOCIAL RE-INTEGRATION

39. Process of rehabilitation and social reintegration. (1) The process of rehabilitation and social integration of children under this Act shall be undertaken, based on the individual care plan of the child, preferably through family based care such as by restoration to family or guardian with or without supervision or sponsorship, or adoption or foster care:

Provided that all efforts shall be made to keep siblings placed in institutional or non- institutional care, together, unless it is in their best interest not to be kept together.

(2) For children in conflict with law the process of rehabilitation and social integration shall be undertaken in the observation homes, if the child is not released on bail or in special homes or place of safety or fit facility or with a fit person, if placed there by the order of the Board.

(3) The children in need of care and protection who are not placed in families for any reason may be placed in an institution registered for such children under this Act or with a fit person or a fit facility, on a temporary or long-term basis, and the process of rehabilitation and social integration shall be undertaken wherever the child is so placed.

(4) The Children in need of care and protection who are leaving institutional care or children in conflict with law leaving special homes or place of safety on attaining eighteen years of age, may be provided financial support as specified in section 46, to help them to re-integrate into the mainstream of the society.

40. Restoration of child in need of care and protection. (1) The restoration and protection of a child shall be the prime objective of any Children's Home, Specialised Adoption Agency or open shelter.

(2) The Children's Home, Specialised Adoption Agency or an open shelter, as the case may be, shall take such steps as are considered necessary for the restoration and protection of a child deprived of his family environment temporarily or permanently where such child is under their care and protection.

(3) The Committee shall have the powers to restore any child in need of care and protection to his parents, guardian or fit person, as the case may be, after determining the suitability of the parents or guardian or fit person to take care of the child, and give them suitable directions.

Explanation.— For the purposes of this section, "restoration and protection of a child" means restoration to—

(a) parents;

(b) adoptive parents;

(c) foster parents;

(d) guardian; or

(e) fit person.

41. Registration of child care institution. (1) Notwithstanding anything contained in any other law for the time being in force, all institutions, whether run by a State Government or by voluntary or non-governmental organisations, which are meant, either wholly or partially, for housing children in need of care and protection or children in conflict with law, shall, be registered under this Act in such manner as may be prescribed, within a period of six months from

the date of commencement of this Act, regardless of whether they are receiving grants from the Central Government or, as the case may be, the State Government or not:

Provided that the institutions having valid registration under the Juvenile Justice (Care and Protection of Children) Act, 2000 on the date of commencement of this Act shall be deemed to have been registered under this Act.

(2) At the time of registration under this section, the State Government shall determine and record the capacity and purpose of the institution and shall register the institution as a Children's Home or open shelter or Specialised Adoption Agency or observation home or special home or place of safety, as the case may be.

(3) On receipt of application for registration under sub-section (1), from an existing or new institution housing children in need of care and protection of children in conflict with law, the State Government may grant provisional registration, within one month from the date of receipt of application, for a maximum period of six months, in order to bring such institution under the purview of this Act, and shall determine the capacity of the Home which shall be mentioned in the registration certificate:

Provided that if the said institution does not fulfill the prescribed criteria for registration, within the period specified in sub-section (1), the provisional registration shall stand cancelled and the provisions of sub-section (5) shall apply.

(4) If the State Government does not issue a provisional registration certificate within one month from the date of application, the proof of receipt of application for registration shall be treated as provisional registration to run an institution for a maximum period of six months.

(5) If the application for registration is not disposed of within six months by any officer or officers of any State Government, it shall be regarded as dereliction of duty on their part by their higher controlling authority and appropriate departmental proceedings shall be initiated.

(6) The period of registration of an institution shall be five years, and it shall be subject to renewal in every five years.

(7) The State Government may, after following the procedure as may be prescribed, cancel or withhold registration, as the case may be, of such institutions which fail to provide rehabilitation and reintegration services as specified in section 53 and till such time that the registration of an institution is renewed or granted, the State Government shall manage the institution.

(8) Any child care institution registered under this section shall be duty bound to admit children, subject to the capacity of the institution, as directed by the Committee, whether they are receiving grants from the Central Government or, as the case may be, the State Government or not.

(9) Notwithstanding anything contained in any other law for the time being in force, the inspection committee appointed under section 54, shall have the powers to inspect any institution housing children, even if not registered under this Act to determine whether such institution is housing children in need of care and protection.

42. Penalty for non-registration of child care institutions. Any person, or persons, in-charge of an institution housing children in need of care and protection and children in conflict with law, who fails to comply with the provisions of sub-section (1) of section 41, shall be punished with imprisonment which may extend to one year or a fine of not less than one lakh rupees or both:

Provided that every thirty days delay in applying for registration shall be considered as a separate offence.

43. Open shelter. (1) The State Government may establish and maintain, by itself or through voluntary or non-governmental organisations, as many open shelters as may be required, and such open shelters shall be registered as such, in the manner as may be prescribed.

(2) The open shelters referred to in sub-section (1) shall function as a community based facility for children in need of residential support, on short term basis, with the objective of protecting them from abuse or weaning them, or keeping them, away from a life on the streets.

(3) The open shelters shall send every month information, in the manner as may be prescribed, regarding children availing the services of the shelter, to the District Child Protection Unit and the Committee.

44. Foster care. (1) The children in need of care and protection may be placed in foster care, including group foster care for their care and protection through orders of the Committee, after following the procedure as may be prescribed in this regard, in a family which does not include the child's biological or adoptive parents or in an unrelated family recognised as suitable for the purpose by the State Government, for a short or extended period of time.

(2) The selection of the foster family shall be based on family's ability, intent, capacity and prior experience of taking care of children.

(3) All efforts shall be made to keep siblings together in foster families, unless it is in their best interest not to be kept together.

(4) The State Government, after taking into account the number of children, shall provide monthly funding for such foster care through District Child Protection Unit after following the procedure, as may be prescribed, for inspection to ensure well being of the children.

(5) In cases where children have been placed in foster care for the reason that their parents have been found to be unfit or incapacitated by the Committee, the child's parents may visit the child in the foster family at regular intervals, unless the Committee feels that such visits are not in the best interest of the

child, for reasons to be recorded therefor; and eventually, the child may return to the parent's homes once the parents are determined by the Committee to be fit to take care of the child.

(6) The foster family shall be responsible for providing education, health and nutrition to the child and shall ensure the overall well being of the child in such manner, as may be prescribed.

(7) The State Government may make rules for the purpose of defining the procedure, criteria and the manner in which foster care services shall be provided for children.

(8) The inspection of foster families shall be conducted every month by the Committee in the form as may be prescribed to check the well-being of the child and whenever a foster family is found lacking in taking care of the child, the child shall be removed from that foster family and shifted to another foster family as the Committee may deem fit.

(9) No child regarded as adoptable by the Committee shall be given for long-term foster care.

45. Sponsorship. (1) The State Government shall make rules for the purpose of undertaking various programmes of sponsorship of children, such as individual to individual sponsorship, group sponsorship or community sponsorship.

(2) The criteria for sponsorship shall include,—

(i) where mother is a widow or divorced or abandoned by family;

(ii) where children are orphan and are living with the extended family;

(iii) where parents are victims of life threatening disease;

(iv) where parents are incapacitated due to accident and unable to take care of children both financially and physically.

(3) The duration of sponsorship shall be such as may be prescribed.

(4) The sponsorship programme may provide supplementary support to families, to Children's Homes and to special homes to meet medical, nutritional, educational and other needs of the children, with a view to improving their quality of life.

46. After care of children leaving child care institution. Any child leaving a child care institution on completion of eighteen years of age may be provided with financial support in order to facilitate child's re-integration into the mainstream of the society in the manner as may be prescribed.

47. Observation homes. (1) The State Government shall establish and maintain in every district or a group of districts, either by itself, or through voluntary or non-governmental organisations, observation homes, which shall be registered under section 41 of this Act, for temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during the pendency of any inquiry under this Act.

(2) Where the State Government is of the opinion that any registered institution other than a home established or maintained under sub-section (1), is fit for the temporary reception of such child alleged to be in conflict with law during the pendency of any inquiry under this Act, it may register such institution as an observation home for the purposes of this Act.

(3) The State Government may, by rules made under this Act, provide for the management and monitoring of observation homes, including the standards and various types of services to be provided by them for rehabilitation and social integration of a child alleged to be in conflict with law and the circumstances under which, and the manner in which, the registration of an observation home may be granted or withdrawn.

(4) Every child alleged to be in conflict with law who is not placed under the charge of parent or guardian and is sent to an observation home shall be segregated according to the child's age and gender, after giving due consideration to physical and mental status of the child and degree of the offence committed.

48. Special homes. (1) The State Government may establish and maintain either by itself or through Special voluntary or non-governmental organisations, special homes, which shall be registered as homes such, in the manner as may be prescribed, in every district or a group of districts, as may be required for rehabilitation of those children in conflict with law who are found to have committed an offence and who are placed there by an order of the Juvenile Justice Board made under section 18.

(2) The State Government may, by rules, provide for the management and monitoring of special homes, including the standards and various types of services to be provided by them which are necessary for social re-integration of a child, and the circumstances under which, and the manner in which, the registration of a special home may be granted or withdrawn.

(3) The rules made under sub-section (2) may also provide for the segregation and separation of children found to be in conflict with law on the basis of age, gender, the nature of offence committed by them and the child's mental and physical status.

49. Place of safety. (1) The State Government shall set up atleast one place of safety in a State Place of registered under section 41, so as to place a person above the age of eighteen years or child safety in conflict with law, who is between the age of sixteen to eighteen years and is accused of or convicted for committing a heinous offence.

(2) Every place of safety shall have separate arrangement and facilities for stay of such children or persons during the process of inquiry and children or persons convicted of committing an offence.

(3) The State Government may, by rules, prescribe the types of places that can be designated as place of safety under sub-section (1) and the facilities and services that may be provided therein.

50. Children's Home. (1) The State Government may establish and maintain, in every district or group of Children's districts, either by itself or through voluntary or non-governmental organisations, Children's Home. Homes, which shall be registered as such, for the placement of children in need of care and protection for their care, treatment, education, training, development and rehabilitation.

(2) The State Government shall designate any Children's Home as a home fit for children with special needs delivering specialised services, depending on requirement.

(3) The State Government may, by rules, provide for the monitoring and management of Children's Homes including the standards and the nature of services to be provided by them, based on individual care plans for each child.

51. Fit facility. (1) The Board or the Committee shall recognise a facility being run by a Governmental organisation or a voluntary or non-governmental organisation registered under any law for the time being in force to be fit to temporarily take the responsibility of a child for a specific purpose after due inquiry regarding the suitability of the facility and the organisation to take care of the child in such manner as may be prescribed.

(2) The Board or the Committee may withdraw the recognition under sub-section (1) for reasons to be recorded in writing.

52. Fit person. (1) The Board or the Committee shall, after due verification of credentials, recognize any person fit to temporarily receive a child for care, protection and treatment of such child for a specified period and in the manner as may be prescribed.

(2) The Board or Committee, as the case may be, may withdraw the recognition granted under sub-section (1) for reasons to be recorded in writing.

53. Rehabilitation and reintegration services in institutions registered under this Act and management thereof. (1) The services that shall be provided, by the institutions registered under this Act in the process of rehabilitation and re-integration of children, shall be in such manner as may be prescribed, which may include—

(i) basic requirements such as food, shelter, clothing and medical attention as per the prescribed standards;

(ii) equipment such as wheel-chairs, prosthetic devices, hearing aids, Braille kits, or any other suitable aids and appliances as required, for children with special needs;

(iii) appropriate education, including supplementary education, special education, and appropriate education for children with special needs:

Provided that for children between the age of six to fourteen years, the provisions of the Right of Children to Free and Compulsory Education Act, 2009 shall apply;

(iv) skill development;

(v) occupational therapy and life skill education;

(vi) mental health interventions, including counselling specific to the need of the child;

(vii) recreational activities including sports and cultural activities;

(viii) legal aid where required;

(ix) referral services for education, vocational training, de-addiction, treatment of diseases where required;

(x) case management including preparation and follow up of individual care plan;

(xi) birth registration;

(xii) assistance for obtaining the proof of identity, where required; and

(xiii) any other service that may reasonably be provided in order to ensure the well-being of the child, either directly by the State Government, registered or fit individuals or institutions or through referral services.

(2) Every institution shall have a Management Committee, to be set up in a manner as may be prescribed, to manage the institution and monitor the progress of every child.

(3) The officer in-charge of every institution, housing children above six years of age, shall facilitate setting up of children's committees for participating in such activities as may be prescribed, for the safety and well-being of children in the institution.

54. Inspection of institutions registered under this Act. (1) The State Government shall appoint inspection committees for the State and district, as the case may be, for all institutions registered or recognised to be fit under this Act for such period and for such purposes, as may be prescribed.

(2) Such inspection committees shall mandatorily conduct visits to all facilities housing children in the area allocated, at least once in three months in a team of not less than three members, of whom at least one shall be a woman and one shall be a medical officer, and submit reports of the findings of such visits within a week of their visit, to the District Child Protection Units or State Government, as the case may be, for further action.

(3) On the submission of the report by the inspection committee within a week of the inspection, appropriate action shall be taken within a month by the District Child Protection Unit or the State Government and a compliance report shall be submitted to the State Government.

55. Evaluation of functioning of structures. (1) The Central Government or State Government may independently evaluate the functioning of the Board, Committee, special juvenile police units, registered institutions, or recognised fit facilities and persons, at such period and through such persons or institutions as may be prescribed by that Government.

(2) In case such independent evaluation is conducted by both the Governments, the evaluation made by the Central Government shall prevail.

CHAPTER VIII

ADOPTION

56. Adoption. (1) Adoption shall be resorted to for ensuring right to family for the orphan, abandoned and surrendered children, as per the provisions of this Act, the rules made thereunder and the adoption regulations framed by the Authority.

(2) Adoption of a child from a relative by another relative, irrespective of their religion, can be made as per the provisions of this Act and the adoption regulations framed by the Authority.

(3) Nothing in this Act shall apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956.

(4) All inter-country adoptions shall be done only as per the provisions of this Act and the adoption regulations framed by the Authority.

(5) Any person, who takes or sends a child to a foreign country or takes part in any arrangement for transferring the care and custody of a child to another person in a foreign country without a valid order from the Court, shall be punishable as per the provisions of section 80.

57. Eligibility of prospective adoptive parents. (1) The prospective adoptive parents shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good upbringing to him.

(2) In case of a couple, the consent of both the spouses for the adoption shall be required.

(3) A single or divorced person can also adopt, subject to fulfilment of the criteria and in accordance with the provisions of adoption regulations framed by the Authority.

(4) A single male is not eligible to adopt a girl child.

(5) Any other criteria that may be specified in the adoption regulations framed by the Authority.

58. Procedure for adoption by Indian prospective adoptive parents living in India. (1) Indian prospective adoptive parents living in India, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child, may apply for the same to a Specialised Adoption Agency, in the manner as provided in the adoption regulations framed by the Authority.

(2) The Specialised Adoption Agency shall prepare the home study report of the prospective adoptive parents and upon finding them eligible, will refer a child declared legally free for adoption to them along with the child study report and medical report of the child, in the manner as provided in the adoption regulations framed by the Authority.

(3) On the receipt of the acceptance of the child from the prospective adoptive parents along with the child study report and medical report of the child signed by such parents, the Specialised Adoption Agency shall give the child in pre-adoption foster care and file an application in the court for obtaining the adoption order, in the manner as provided in the adoption regulations framed by the Authority.

(4) On the receipt of a certified copy of the court order, the Specialised Adoption Agency shall send immediately the same to the prospective adoptive parents.

(5) The progress and wellbeing of the child in the adoptive family shall be followed up and ascertained in the manner as provided in the adoption regulations framed by the Authority.

59. Procedure for inter-country adoption of an orphan or abandoned or surrendered child. (1) If an orphan or abandoned or surrendered child could not be placed with an Indian or non-resident Indian prospective adoptive parent despite the joint effort of the Specialised Adoption Agency and State Agency within sixty days from the date the child has been declared legally free for adoption, such child shall be free for inter-country adoption:

Provided that children with physical and mental disability, siblings and children above five years of age may be given preference over other children for such inter-country adoption, in accordance with the adoption regulations, as may be framed by the Authority.

(2) An eligible non-resident Indian or overseas citizen of India or persons of Indian origin shall be given priority in inter-country adoption of Indian children.

(3) A non-resident Indian or overseas citizen of India, or person of Indian origin or a foreigner, who are prospective adoptive parents living abroad, irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child from India, may apply for the same to an authorised foreign adoption agency, or Central Authority or a concerned Government department in their country of habitual residence, as the case may be, in the manner as provided in the adoption regulations framed by the Authority.

(4) The authorised foreign adoption agency, or Central Authority, or a concerned Government department, as the case may be, shall prepare the home study report of such prospective adoptive parents and upon finding them eligible, will sponsor their application to Authority for adoption of a child from India, in the manner as provided in the adoption regulations framed by the Authority.

(5) On the receipt of the application of such prospective adoptive parents, the Authority shall examine and if it finds the applicants suitable, then, it will refer the application to one of the Specialised Adoption Agencies, where children legally free for adoption are available.

(6) The Specialised Adoption Agency will match a child with such prospective adoptive parents and send the child study report and medical report of the child to such parents, who in turn may accept the child and return the child study and medical report duly signed by them to the said agency.

(7) On receipt of the acceptance of the child from the prospective adoptive parents, the Specialised Adoption Agency shall file an application in the court for obtaining the adoption order, in the manner as provided in the adoption regulations framed by the Authority.

(8) On the receipt of a certified copy of the court order, the specialised adoption agency shall send immediately the same to Authority, State Agency and to the prospective adoptive parents, and obtain a passport for the child.

(9) The Authority shall intimate about the adoption to the immigration authorities of India and the receiving country of the child.

(10) The prospective adoptive parents shall receive the child in person from the specialised adoption agency as soon as the passport and visa are issued to the child.

(11) The authorised foreign adoption agency, or Central Authority, or the concerned Government department, as the case may be, shall ensure the submission of progress reports about the child in the adoptive family and will be responsible for making alternative arrangement in the case of any disruption, in consultation with Authority and concerned Indian diplomatic mission, in the manner as provided in the adoption regulations framed by the Authority.

(12) A foreigner or a person of Indian origin or an overseas citizen of India, who has habitual residence in India, if interested to adopt a child from India, may apply to Authority for the same along with a no objection certificate from the diplomatic mission of his country in India, for further necessary actions as provided in the adoption regulations framed by the Authority.

60. Procedure for inter-country relative adoption. (1) A relative living abroad, who intends to adopt a child from his relative in India shall obtain an order from the court and apply for no objection certificate from Authority, in the manner as provided in the adoption regulations framed by the Authority.

(2) The Authority shall on receipt of the order under sub-section (1) and the application from either the biological parents or from the adoptive parents, issue no objection certificate under intimation to the immigration authority of India and of the receiving country of the child.

(3) The adoptive parents shall, after receiving no objection certificate under sub-section (2), receive the child from the biological parents and shall facilitate

the contact of the adopted child with his siblings and biological parents from time to time. 61. Court procedure and penalty against payment in consideration of adoption. (1) Before issuing an adoption order, the court shall satisfy itself that –

(a) the adoption is for the welfare of the child; (b) due consideration is given to the wishes of the child having regard to the age and understanding of the child; and (c) that neither the prospective adoptive parents has given or agreed to give nor the specialised adoption agency or the parent or guardian of the child in case of relative adoption has received or agreed to receive any payment or reward in consideration of the adoption, except as permitted under the adoption regulations framed by the Authority towards the adoption fees or service charge or child care corpus.

(2) The adoption proceedings shall be held in camera and the case shall be disposed of by the court within a period of two months from the date of filing.

62. Additional procedural requirements and documentation. (1) The documentation and other procedural requirements, not expressly provided in this Act with regard to the adoption of an orphan, abandoned and surrendered child by Indian prospective adoptive parents living in India, or by non-resident Indian or overseas citizen of India or person of Indian origin or foreigner prospective adoptive parents, shall be as per the adoption regulations framed by the Authority.

(2) The specialised adoption agency shall ensure that the adoption case of prospective adoptive parents is disposed of within four months from the date of receipt of application and the authorised foreign adoption agency, Authority and State Agency shall track the progress of the adoption case and intervene wherever necessary, so as to ensure that the time line is adhered to.

63. Effect of adoption. A child in respect of whom an adoption order is issued by the court, shall become the child of the adoptive parents, and the adoptive parents shall become the parents of the child as if the child had been born to the adoptive parents, for all purposes, including intestacy, with effect from the date on which the adoption order takes effect, and on and from such date all the ties of the child in the family of his or her birth shall stand severed and replaced by those created by the adoption order in the adoptive family:

Provided that any property which has vested in the adopted child immediately before the date on which the adoption order takes effect shall continue to vest in the adopted child subject to the obligations, if any, attached to the ownership of such property including the obligations, if any, to maintain the relatives in the biological family.

64. Reporting of adoption. Notwithstanding anything contained in any other law for the time being in force, information regarding all adoption orders

issued by the concerned courts, shall be forwarded to Authority on monthly basis in the manner as provided in the adoption regulations framed by the Authority, so as to enable Authority to maintain the data on adoption.

65. Specialised Adoption Agencies. (1) The State Government shall recognise one or more institutions or organisations in each district as a Specialised Adoption Agency, in such manner as may be provided in the adoption regulations framed by the Authority, for the rehabilitation of orphan, abandoned or surrendered children, through adoption and non-institutional care.

(2) The State Agency shall furnish the name, address and contact details of the Specialised Adoption Agencies along with copies of certificate or letter of recognition or renewal to Authority, as soon as the recognition or renewal is granted to such agencies.

(3) The State Government shall get every Specialised Adoption Agency inspected at least once in a year and take necessary remedial measures, if required.

(4) In case any Specialised Adoption Agency is in default in taking necessary steps on its part as provided in this Act or in the adoption regulations framed by the Authority, for getting an orphan or abandoned or surrendered child legally free for adoption from the Committee or in completing the home study report of the prospective adoptive parents or in obtaining adoption order from the court within the stipulated time, such Specialised Adoption Agency shall be punishable with a fine which may extend up to fifty thousand rupees and in case of repeated default, the recognition of the Specialised Adoption Agency shall be withdrawn by the State Government.

66. Adoption of children residing in institutions not registered as adoption agencies. (1) All the institutions registered under this Act, which may not have been recognised as Specialised Adoption Agencies, shall also ensure that all orphan or abandoned or surrendered children under their care are reported, produced and declared legally free for adoption, by the Committee as per the provisions of section 38.

(2) All institutions referred to in sub-section (1) shall develop formal linkages with nearby Specialised Adoption Agency and shall furnish details of the children declared legally free for adoption to that Specialised Adoption Agency along with all relevant records in the manner as may be prescribed, for the placement of such children in adoption.

(3) If any such institution contravenes the provisions of sub-section (1) or sub-section (2), it shall be liable to fine of fifty thousand rupees for each instance to be imposed by the registering authority and it may also attract de-recognition in the event of persistent flouting of such provisions.

67. State Adoption Resource Agency. (1) The State Government shall set up a State Adoption Resource Agency for dealing with adoptions and related matters in the State under the guidance of Authority.

(2) The State Agency, wherever already exists, shall be deemed to be set up under this Act.

68. Central Adoption Resource Authority. The Central Adoption Resource Agency existing before the commencement of this Act, shall be deemed to have been constituted as the Central Adoption Resource Authority under this Act to perform the following functions, namely:—

(a) to promote in-country adoptions and to facilitate inter-State adoptions in co-ordination with State Agency;

(b) to regulate inter-country adoptions;

(c) to frame regulations on adoption and related matters from time to time as may be necessary;

(d) to carry out the functions of the Central Authority under the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption;

(e) any other function as may be prescribed.

69. Steering Committee of Authority. (1) The Authority shall have a Steering Committee with following members:

(a) Secretary, Ministry of Women and Child Development, Government of India, who shall be the Chairperson—ex officio;

(b) Joint Secretary, Ministry of Women and Child Development, Government of India, dealing with Authority—ex officio;

(c) Joint Secretary, Ministry of Women and Child Development, overnment of India, dealing with Finance—ex officio;

(d) one State Adoption Resource Agency and two Specialised Adoption Agencies;

(e) one adoptive parent and one adoptee;

(f) one advocate or a professor having at least ten years of experience in family law;

(g) Member-Secretary, who shall also be Chief Executive Officer of the organisation.

(2) Criteria for the selection or nomination of the Members mentioned at (d) to (f), their tenure as well as the terms and conditions of their appointment shall be such as may be prescribed.

(3) The Steering Committee shall have the following functions, namely:—

(a) to oversee the functioning of Authority and review its working from time to time so that it operates in most effective manner;

(b) to approve the annual budget, annual accounts and audit reports as well as the action plan and annual report of Authority;

(c) to adopt the recruitment rules, service rules, financial rules of Authority as well as the other regulations for the exercise of the administrative and programmatic powers within the organisation, with the prior approval of the Central Government;

(d) any other function that may be vested with it by the Central Government from time to time.

(4) The Steering Committee shall meet once in a month in the manner as may be prescribed.

(5) The Authority shall function from its headquarter and through its regional offices as may be set up as per its functional necessity.

70. Powers of Authority. (1) For the efficient performance of its functions, Authority shall have the following powers, namely:—

(a) to issue instructions to any Specialised Adoption Agency or a Children Home or any child care institution housing any orphan, abandoned or surrendered child, any State Agency or any authorised foreign adoption agency and such directions shall be complied by such agencies;

(b) recommending to the concerned Government or Authority to take appropriate action against any official or functionary or institution under its administrative control, in case of persistent non-compliance of the instructions issued by it;

(c) forwarding any case of persistent non-compliance of its instructions by any official or functionary or institution to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the same as if the case has been forwarded to him under section 346 of the Code of 2 of 1974. Criminal Procedure, 1973;

(d) any other power that may be vested with it by the Central Government.

(2) In case of any difference of opinion in an adoption case, including the eligibility of prospective adoptive parents or of a child to be adopted, the decision of Authority shall prevail.

71. Annual Report of Authority. (1) The Authority shall submit an annual report to the Central Government in such manner as may be prescribed.

(2) The Central Government shall cause the annual report of Authority to be laid before each House of Parliament.

72. Grants by Central government. (1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Authority by way of grants such sums of money as the Central Government may think fit for being utilised for performing the functions of Authority under this Act.

(2) The Authority may spend such sums of money as it thinks fit for performing the functions, as prescribed under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

73. Accounts and audit of Authority. (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of Authority shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Authority under this Act shall, have the same rights and privileges and the Authority in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Authority.

(5) The Central Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament.

CHAPTER IX

OTHER OFFENCES AGAINST CHILDREN

74. Prohibition on disclosure of identity of children. (1) No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published:

Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.

(2) The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in cases where the case has been closed or disposed of.

(3) Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both.

75. Punishment for cruelty to child. Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees.

76. Employment of child for begging. (1) Whoever employs or uses any child for the purpose of begging or causes any child to beg shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees:

Provided that, if for the purpose of begging, the person amputates or maims the child, he shall be punishable with rigorous imprisonment for a term not less than seven years which may extend up to ten years, and shall also be liable to fine of five lakh rupees.

(2) Whoever, having the actual charge of, or control over the child, abets the commission of an offence under sub-section (1), shall be punishable with the same punishment as provided for in sub-section (1) and such person shall be considered to be unfit under sub-clause (v) of clause (14) of section 2:

Provided that the said child, shall not be considered a child in conflict with law under any circumstances, and shall be removed from the charge or control of such guardian or custodian and produced before the Committee for appropriate rehabilitation.

77. Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to a child. Whoever gives, or causes to be given, to any child any intoxicating liquor or any narcotic drug or tobacco products or psychotropic substance, except on the order of a duly qualified medical practitioner, shall be punishable with rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine which may extend up to one lakh rupees.

78. Using a child for vending peddling carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance. Whoever uses a child, for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance, shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine up to one lakh rupees.

79. Exploitation of a child employee. Notwithstanding anything contained in any law for the time being in force, whoever ostensibly engages a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earning for his own purposes shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees.

Explanation.— For the purposes of this section, the term "employment" shall also include selling goods and services, and entertainment in public places for economic gain.

80. Punitive measures for adoption without following prescribed procedures. If any person or organisation offers or gives or receives, any orphan, abandoned or surrendered child, for the purpose of adoption without following the provisions or procedures as provided in this Act, such person or organisation shall be punishable with imprisonment of either description for a term which may extend upto three years, or with fine of one lakh rupees, or with both:

Provided in case where the offence is committed by a recognised adoption agency, in addition to the above punishment awarded to the persons in-charge of, and responsible for the conduct of the day-to-day affairs of the adoption agency, the registration of such agency under section 41 and its recognition under section 65 shall also be withdrawn for a minimum period of one year.

81. Sale and procurement of children for any purpose. Any person who sells or buys a child for any purpose shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees:

Provided that where such offence is committed by a person having actual charge of the child, including employees of a hospital or nursing home or maternity home, the term of imprisonment shall not be less than three years and may extend up to seven years.

82. Corporal punishment. (1) Any person in-charge of or employed in a child care institution, who subjects a child to corporal punishment with the aim of disciplining the child, shall be liable, on the first conviction, to a fine of ten thousand rupees and for every subsequent offence, shall be liable for imprisonment which may extend to three months or fine or with both.

(2) If a person employed in an institution referred to in sub-section (1), is convicted of an offence under that sub-section, such person shall also be liable

for dismissal from service, and shall also be debarred from working directly with children thereafter.

(3) In case, where any corporal punishment is reported in an institution referred to in sub-section (1) and the management of such institution does not cooperate with any inquiry or comply with the orders of the Committee or the Board or court or State Government, the person in-charge of the management of the institution shall be liable for punishment with imprisonment for a term not less than three years and shall also be liable to fine which may extend to one lakh rupees.

83. Use of child by militant groups or other adults. (1) Any non-State, self-styled militant group or outfit declared as such by the Central Government, if recruits or uses any child for any purpose, shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to fine of five lakh rupees.

(2) Any adult or an adult group uses children for illegal activities either individually or as a gang shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to fine of five lakh rupees.

84. Kidnapping and abduction of child. For the purposes of this Act, the provisions of sections 359 to 369 of the Indian Penal Code, shall mutatis mutandis apply to a child or a minor who is under the age of eighteen years and all the provisions shall be construed accordingly.

85. Offences committed on disabled children. Whoever commits any of the offences referred to in this Chapter on any child who is disabled as so certified by a medical practitioner, then, such person shall be liable to twice the penalty provided for such offence.

***Explanation.*—** For the purposes of this Act, the term “disability” shall have the same meaning as assigned to it under clause (i) of section 2 of the Persons with Disabilities

(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

86. Classification of offences and designated court. (1) Where an offence under this Act is punishable with imprisonment for a term more than seven years, then, such offence shall be cognizable, non-bailable and triable by a Children’s Court.

(2) Where an offence under this Act is punishable with imprisonment for a term of three years and above, but not more than seven years, then, such offence shall be cognizable, non-bailable and triable by a Magistrate of First Class.

(3) Where an offence, under this Act, is punishable with imprisonment for less than three years or with fine only, then, such offence shall be non-cognizable, bailable and triable by any Magistrate.

87. Abetment. Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with the punishment provided for that offence.

Explanation.— An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.

88. Alternative punishment. Where an act or omission constitutes an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding anything contained in any such law, the offender found guilty of such offence shall be liable for punishment under such law which provides for punishment which is greater in degree.

89. Offence committed by child under this Chapter. Any child who commits any offence under this Chapter shall be considered as a child in conflict with law under this Act.

CHAPTER X
MISCELLANEOUS

90. Attendance of parent or guardian of child. The Committee or the Board, as the case may be, before which a child is brought under any of the provisions of this Act, may, whenever it so thinks fit, require any parent or guardian having the actual charge of the child to be present at any proceeding in respect of that child.

91. Dispensing with attendance of child. (1) If, at any stage during the course of an inquiry, the Committee or the Board is satisfied that the attendance of the child is not essential for the purpose of inquiry, the Committee or the Board, as the case may be, shall dispense with the attendance of a child and limit the same for the purpose of recording the statement and subsequently, the inquiry shall continue even in the absence of the child concerned, unless ordered otherwise by the Committee or the Board.

(2) Where the attendance of a child is required before the Board or the Committee, such child shall be entitled to travel reimbursement for self and one escort accompanying the child as per actual expenditure incurred, by the Board, or the Committee or the District Child Protection Unit, as the case may be.

92. Placement of a child suffering from disease requiring prolonged medical treatment in an approved place. When a child, who has been brought before the Committee or the Board, is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the Committee or the Board, as the case may be, may send the child to any place recognised as a fit facility as prescribed for such period as it may think necessary for the required treatment.

93. Transfer of a child who is mentally ill or addicted to alcohol or other drugs. (1) Where it appears to the Committee or the Board that any child

kept in a special home or an observation home or a Children's Home or in an institution in pursuance of the provisions of this Act, is a mentally ill person or addicted to alcohol or other drugs which lead to behavioural changes in a person, the Committee or the Board , may order removal of such child to a psychiatric hospital or psychiatric nursing home in accordance with the provisions of the Mental Health Act, 1987 or the rules made thereunder.

(2) In case the child had been removed to a psychiatric hospital or psychiatric nursing home under sub-section (1), the Committee or the Board may, on the basis of the advice given in the certificate of discharge of the psychiatric hospital or psychiatric nursing home, order to remove such child to an Integrated Rehabilitation Centre for Addicts or similar centres maintained by the State Government for mentally ill persons (including the persons addicted to any narcotic drug or psychotropic substance) and such removal shall be only for the period required for the inpatient treatment of such child.

Explanation.— For the purposes of this sub-section,—

(a) "Integrated Rehabilitation Centre for Addicts" shall have the meaning assigned to it under the scheme called "Central Sector Scheme of Assistance for Alternative punishment Prevention of Alcoholism and Substance (Drugs) Abuse and for Social Defence Services" framed by the Central Government in the Ministry of Social Justice and Empowerment or any other corresponding scheme for the time being in force;

(b) "mentally ill person" shall have the same meaning assigned to it in clause (l) of section 2 of the Mental Health Act, 1987; 14 of 1987.

(c) "psychiatric hospital" or "psychiatric nursing home" shall have the same meaning assigned to it in clause (q) of section 2 of the Mental Health Act, 1987.

94. Presumption and determination of age. (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

95. Transfer of a child to place of residence. (1) If during the inquiry it is found that a child hails from a place outside the jurisdiction, the Board or Committee, as the case may be, shall, if satisfied after due inquiry that it is in the best interest of the child and after due consultation with the Committee or the Board of the child's home district, order the transfer of the child, as soon as possible, to the said Committee or the Board, along with relevant documents and following such procedure as may be prescribed:

Provided that such transfer can be made in case of a child in conflict with law, only after the inquiry has been completed and final order passed by the Board:

Provided further that in case of inter-State transfer, the child shall be, if convenient, handed over to the Committee or the Board, as the case may be, of the home district of the child, or to the Committee or the Board in the capital city of the home State.

(2) Once the decision to transfer is finalised, the Committee or Board, as the case may be, shall give an escort order to the Special Juvenile Police Unit to escort the child, within fifteen days of receiving such order:

Provided that a girl child shall be accompanied by a woman police officer:

Provided further that where a Special Juvenile Police Unit is not available, the Committee or Board, as the case may be, shall direct the institution where the child is temporarily staying or District Child Protection Unit, to provide an escort to accompany the child during travel.

(3) The State Government shall make rules to provide for travelling allowance to the escorting staff for the child, which shall be paid in advance.

(4) The Committee or the Board, as the case may be, receiving the transferred child will process for restoration or rehabilitation or social re-integration, as provided in this Act.

96.Transfer of child between Children's Homes, or special homes or fit facility or fit person in different parts of India. (1) The State Government may at any time, on the recommendation of a Committee or Board,

as the case may be, notwithstanding anything contained in this Act, and keeping the best interest of the child in mind, order the child's transfer from any Children's Home or special home or fit facility or fit person, to a home or facility, within the State with prior intimation to the concerned Committee or the Board:

Provided that for transfer of a child between similar home or facility or person within the same district, the Committee or Board, as the case may be, of the said district shall be competent to issue such an order.

(2) If transfer is being ordered by a State Government to an institution outside the State, this shall be done only in consultation with the concerned State Government.

(3) The total period of stay of the child in a Children's Home or a special home shall not be increased by such transfer.

(4) Orders passed under sub-sections (1) and (2) shall be deemed to be operative for the Committee or the Board, as the case may be, of the area to which the child is sent.

97. Release of a child from an institution. (1) When a child is kept in a Children's Home or special home, on a report of a probation officer or social worker or of Government or a voluntary or non-governmental organisation, as the case may be, the Committee or the Board may consider, the release of such child, either absolutely or on such conditions as it may think fit to impose, permitting the child to live with parents or guardian or under the supervision of any authorised person named in the order, willing to receive and take charge, educate and train the child, for some useful trade or calling or to look after the child for rehabilitation:

Provided that if a child who has been released conditionally under this section, or the person under whose supervision the child has been placed, fails to fulfil such conditions, the Board or Committee may, if necessary, cause the child to be taken charge of and to be placed back in the concerned home.

(2) If the child has been released on a temporary basis, the time during which the child is not present in the concerned home in pursuance of the permission granted under sub-section (1) shall be deemed to be part of the time for which the child is liable to be kept in the children or special home:

Provided that in case of a child in conflict with law fails to fulfil the conditions set by the Board as mentioned in sub-section (1), the time for which he is still liable to be kept in the institution shall be extended by the Board for a period equivalent to the time which lapses due to such failure.

98. Leave of absence to a child placed in an institution. (1) The Committee or the Board, as the case may be, may permit leave of absence to any child, to allow him, on special occasions like examination, marriage of relatives, death of kith or kin or accident or serious illness of parent or any emergency of like nature, under supervision, for a period generally not exceeding seven days in one instance, excluding the time taken in journey.

(2) The time during which a child is absent from an institution where he is placed, in pursuance of such permission granted under this section, shall be deemed to be part of the time for which he is liable to be kept in the Children's Home or special home.

(3) If a child refuses, or has failed to return to the Children's Home or special home, as the case may be, on the leave period being exhausted or permission being revoked or forfeited, the Board or Committee may, if necessary, cause him to be taken charge of and to be taken back to the concerned home:

Provided that when a child in conflict with law has failed to return to the special home on the leave period being exhausted or on permission being revoked or forfeited, the time for which he is still liable to be kept in the institution shall be extended by the Board for a period equivalent to the time which lapses due to such failure.

99. Reprots to be treated as confidential. (1) All reports related to the child and considered by the Committee or the Board shall be treated as confidential:

Provided that the Committee or the Board, as the case may be, may, if it so thinks fit, communicate the substance thereof to another Committee or Board or to the child or to the child's parent or guardian, and may give such Committee or the Board or the child or parent or guardian, an opportunity of producing evidence as may be relevant to the matter stated in the report.

(2) Notwithstanding anything contained in this Act, the victim shall not be denied access to their case record, orders and relevant papers.

100. Protection of action taken in good faith. No suit, prosecution or other legal proceeding shall lie against the Central Government, or the State Government or any person acting under the directions of the Central Government or State Government, as the case may be, in respect of anything which is done in good faith or intended to be done in pursuance of this Act or of any rules or regulations made thereunder.

101. Appeals. (1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children's Court, except for decisions by the Committeerelated to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate:

Provided that the Court of Sessions, or the District Magistrate, as the case may be, may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and suchappeal shall be decided within a period of thirty days.

(2) An appeal shall lie against an order of the Board passed after making the preliminary assessment into a heinous offence under section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal,

take the assistance of experienced psychologistsand medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said section.

(3) No appeal shall lie from,—

(a) any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years; or

(b) any order made by a Committee in respect of finding that a person is not a child in need of care and protection.

(4) No second appeal shall lie from any order of the Court of Session, passed in appeal under this section.

(5) Any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973.

102. Revision. The High Court may, at any time, either on its own motion or on an application received in this behalf, call for the record of any proceeding in which any Committee or Board or Children's Court, or Court has passed an order, for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:

Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

103. Procedure in inquiries, appeals and revision proceedings. (1) Save as otherwise expressly provided by this Act, a Committee or a Board while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 for trial of summons cases.

(2) Save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals or revision proceedings under this Act shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973.

104. Power of the Committee or the Board to amend its own orders. (1) Without prejudice to the provisions for appeal and revision contained in this Act, the Committee or the Board may, on an application received in this behalf, amend any orders passed by itself, as to the institution to which a child is to be sent or as to the person under whose care or supervision a child is to be placed under this Act:

Provided that during the course of hearing for amending any such orders, there shall be at least two members of the Board of which one shall be the Principal Magistrate and at least three members of the Committee and all persons

concerned, or their authorized representatives, whose views shall be heard by the Committee or the Board, as the case may be, before the said orders are amended.

(2) Clerical mistakes in orders passed by the Committee or the Board or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Committee or the Board, as the case may be, either on its own motion or on an application received in this behalf.

105. Juvenile Justice fund (1) The State Government may create a fund in such name as it thinks fit for the welfare and rehabilitation of the children dealt with under this Act.

(2) There shall be credited to the fund such voluntary donations, contributions or subscriptions as may be made by any individual or organisation.

(3) The fund created under sub-section (1) shall be administered by the Department of the State Government implementing this Act in such manner and for such purposes as may be prescribed.

106. State Child Protection Society and District Child Protection Unit. Every State Government shall constitute a Child Protection Society for the Stateand Child Protection Unit for every District, consisting of such officers and other employees

as may be appointed by that Government, to take up matters relating to children with a viewto ensure the implementation of this Act, including the establishment and maintenance of institutions under this Act, notification of competent authorities in relation to the children and their rehabilitation and co-ordination with various official and non-official agencies concerned and to discharge such other functions as may be prescribed.

107. Child Welfare Police Officer and special Juvenile Police Unit. (1) In every police station, at least one officer, not below the rank of assistant sub-inspector, with aptitude, appropriate training and orientation may be designated as the child welfare police officer to exclusively deal with children either as victims or perpetrators, in co-ordination with the police, voluntary and non-governmental organisations.

(2) To co-ordinate all functions of police related to children, the State Government shall constitute Special Juvenile Police Units in each district and city, headed by a police officer not below the rank of a Deputy Superintendent of Police or above and consisting of all police officers designated under sub-section (1) and two social workers having experience of working in the field of child welfare, of whom one shall be a woman.

(3) All police officers of the Special Juvenile Police Units shall be provided special training, especially at induction as child welfare police officer, to enable them to perform their functions more effectively.

(4) Special Juvenile Police Unit also includes Railway police dealing with children.

108. Public awareness on provisions of Act. The Central Government and every State Government, shall take necessary measures to ensure that —

(a) the provisions of this Act are given wide publicity through media including television, radio and print media at regular intervals so as to make the general public, children and their parents or guardians aware of such provisions;

(b) the officers of the Central Government, State Government and other concerned, persons are imparted periodic training on the matters relating to the implementation of the provisions of this Act.

109. Monitoring of implementation of Act. (1) The National Commission for Protection of Child Rights constituted under section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under section 17 (herein referred to as the National Commission or the State Commission, as the case may be), of the Commissions for Protection of Child rights Act, 2005, shall, in addition to the functions assigned to them under the said Act, also monitor the implementation of the provisions of this Act, in such manner, as may be prescribed.

(2) The National Commission or, as the case may be, the State Commission, shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in the National Commission or the State Commission under the Commissions for Protection of Child Rights Act, 2005.

(3) The National Commission or, as the case may be, the State Commission, shall also include its activities under this section, in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005.

110. Power ot make rules. (1) The State Government shall, by notification in the Official Gazette, make rules to carry out the purposes of this Act:

Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government is required to make rules and where any such model rules have been framed in respect of any such matter, they shall apply to the State mutatis mutandis until the rules in respect of that matter are made by the State Government and while making any such rules, they conform to such model rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely :—

(i) manner of inquiry in case of a missing or run away child or whose parents cannot be found under sub-clause (vii) of clause (14) of section 2;

(ii) responsibilities of the Child Welfare Officer attached to a Children's Home under clause (18) of section 2;

(iii) qualifications of the members of the Board under sub-section (2) of section 4;

(iv) induction training and sensitisation of all members of the Board under sub-section (5) of section 4;

(v) term of office of the members of the Board and the manner in which such member may resign under sub-section (6) of section 4;

(vi) time of the meetings of the Board and the rules of procedure in regard to the transaction of business at its meeting under sub-section (1) of section 7;

(vii) qualifications, experience and payment of fees of an interpreter or translator under clause (d) of sub-section (3) of section 8;

(viii) any other function of the Board under clause (n) of sub-section (3) of section 8;

(ix) persons through whom any child alleged to be in conflict with law may be produced before the Board and the manner in which such a child may be sent to an observation home or place of safety under sub-section (2) of section 10;

(x) manner in which a person apprehended and not released on bail by the officer-in-charge of the police station may be kept in an observation home until such person is brought before a Board under sub-section (2) of section 12;

(xi) format for information on pendency in the Board to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate and District Magistrate on quarterly basis under sub-section (3) of section 16;

(xii) monitoring procedures and list of monitoring authorities under sub-section (2) of section 20;

(xiii) manner in which the relevant records of the child may be destroyed by the Board, police or the court under sub-section (2) of section 24;

(xiv) qualifications of the members of the Child Welfare Committee under subsection (5) of section 27;

(xv) rules and procedures with regard to transaction of business at the meetings of the Child Welfare Committee under sub-section (1) of section 28;

(xvi) process of restoration of abandoned or lost children to their families under clause (x) of section 30;

(xvii) manner of submitting the report to the Committee and the manner of sending and entrusting the child to Children's Home or fit facility or fit person under sub-section (2) of section 31;

(xviii) manner of holding an inquiry by the Child Welfare Committee under subsection (1) of section 36;

(xix) manner in which a child may be sent to a Specialised Adoption Agency if the child is below six years of age, Children's Home or to a fit facility or person or foster family, till suitable means of rehabilitation are found for the child including manner in which situation of the child placed in a Children's Home or with a fit facility or person or foster family, may be reviewed by the Committee under sub-section (3) of section 36;

(xx) manner in which a quarterly report may be submitted by the Committee to the District Magistrate for review of pendency of cases under sub-section (4) of section 36;

(xxi) any other order related to any other function of the Committee under clause (iii) of sub-section (2) of section 37;

(xxii) information to be given every month by the Committee to State Agency and Authority regarding number of children declared legally free for adoption and number of cases pending under sub-section (5) of section 38;

(xxiii)manner in which all institutions under this Act shall be registered under sub-section (1) of section 41;

(xxiv) procedure for cancelling or withholding registration of an institution that fails to provide rehabilitation and re-integration services under sub-section (7) of section 41;

(xxv) manner in which information shall be sent every month by the open shelter to the District Child Protection Unit and Committee under sub-section (3) of section 43;

(xxvi) procedure for placing children in foster care including group foster care under sub-section (1) of section 44;

(xxvii) procedure for inspection of children in foster care under sub-section (4) of section 44;

(xxviii) manner in which foster family shall provide education, health and nutrition to the child under sub-section (6) of section 44;

(xxix) procedure and criteria in which foster care services shall be provided to children under sub-section (7) of section 44;

(xxx) format for inspection of foster families by the Committee to check the well being of children under sub-section (8) of section 44;

(xxxi) purpose of undertaking various programmes of sponsorship of children, such as individual to individual sponsorship, group sponsorship or community sponsorship under sub-section (1) of section 45;

(xxxii) duration of sponsorship under sub-section (3) of section 45;

(xxxiii) manner of providing financial support to any child leaving institutional care on completing eighteen years of age under section 46;

(xxxiv) management and monitoring of observation homes, including the standards and various types of services to be provided by them for rehabilitation and social integration of a child alleged to be in conflict with law and the circumstances under which, and the manner in which, the registration of an observation home may be granted or withdrawn under sub-section (3) of section 47;

(xxxv) management and monitoring of special homes including the standards and various types of services to be provided to them under sub-section (2) and sub-section (3) of section 48;

(xxxvi) monitoring and management of children's homes including the standards and the nature of services to be provided by them, based on individual care plans for each child under sub-section (3) of section 50;

(xxxvii) manner in which a Board or the Committee shall recognise, a facility being run by a Governmental organisation or a voluntary or non-governmental organisation registered under any law for the time being in force, fit to temporarily take the responsibility of a child for a specific purpose after due inquiry regarding the suitability of the facility and the organisation to take care of the child under sub-section (1) of section 51;

(xxxviii) procedure of verification of credentials, for recognising any person fit to temporarily receive a child for care, protection and treatment of such child for a specified period by the Board or the Committee under sub-section (1) of section 52;

(xxxix) manner in which services shall be provided by an institution under this Act for rehabilitation and re-integration of children and standards for basic requirements such as food, shelter, clothing and medical attention under sub-section (1) of section 53;

(xl) manner in which Management Committee shall be set up by each institution for management of the institution and monitoring of the progress of every child under sub-section (2) of section 53;

(xli) activities that may be taken up by children's committees under sub-section (3) of section 53;

(xlii) appointment of inspection committees for all institutions registered or recognised fit, for the State and district under sub-section (1) of section 54;

(xliii) manner in which Central Government or State Government may independently evaluate the functioning of the Board, Committee, special juvenile police units, registered institutions, or recognised fit

facilities and persons, including the period and through persons or institutions under sub-section (1) of section 55;

(xliv) manner in which institutions shall furnish details of children declared legally free for adoption to the Specialised Adoption Agency under sub-section (2) of section 66;

(xlv) any other function of the Authority under clause (e) of section 68;

(xlvi) criteria for the selection or nomination of the Members of the Steering Committee of the Authority and their tenure as well as the terms and conditions of their appointment under sub-section (2) of section 69;

(xlvii) manner in which Steering Committee of the Authority shall meet under sub-section (4) of section 69;

(xlviii) manner in which the Authority shall submit an annual report to the Central Government under sub-section (1) of section 71;

(xlix) functions of the Authority under sub-section (2) of section 72;

(l) manner in which the Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts under sub-section (1) of section 73;

(li) period that the Committee or Board may think necessary for the treatment of children who are found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment to a fit facility under section 92;

(lii) procedure for transfer of child under sub-section (1) of section 95;

(liii) provision for travelling allowance to the escorting staff for the child under sub-section (3) of section 95;

(liv) procedure to be followed by the Committee or a Board while holding any inquiry, appeal or revision under sub-section (1) of section 103;

(lv) manner in which juvenile justice fund shall be administered under sub-section (3) of section 105;

(lvi) functioning of the Child Protection Society for the State and Child Protection Units for every district under section 106;

(lvii) to enable the National Commission, or as the case may be, the State Commission to monitor implementation of the provisions of this Act under sub-section (1) of section 109;

(lviii) any other matter which is required to be, or may be, prescribed.

(3) Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in

session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

(4) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

111. Repeal and savings. (1) The Juvenile Justice (Care and Protection of Children) Act, 2000 is hereby Repeal and repealed.

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

112. Power to remove difficulties. (1) If any difficulty arises in giving effect to the provisions of this Act, the Power to Central Government may, by order, not inconsistent with the provisions of this Act, the difficulty:

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

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

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THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) AMENDMENT ACT, 2015

NO. 1 OF 2016

[31st December, 2015]

An Act to amend the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

1. Short title and commencement. - (1) This Act may be called the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of long title - In the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the principal Act), in the long title, for the words “Special Courts”, the words “Special Courts and the Exclusive Special Courts” shall be substituted.

3. Amendment of section 2.- In section 2 of the principal Act, in sub-section (1),—

(i) after clause (b), the following clauses shall be inserted, namely:—

‘(bb) “dependent” means the spouse, children, parents, brother and sister of the victim, who are dependent wholly or mainly on such victim for his support and maintenance;

(bc) “economic boycott” means-

(i) a refusal to deal with, work for hire or do business with other person; or

(ii) to deny opportunities including access to services or contractual opportunities for rendering service for consideration; or

(iii) to refuse to do anything on the terms on which things would be commonly done in the ordinary course of business; or

(iv) to abstain from the professional or business relations that one would maintain with other person;

(bd) “Exclusive Special Court” means the Exclusive Special Court established under sub-section (1) of section 14 exclusively to try the offences under this Act;

(be) “forest rights” shall have the meaning assigned to it in sub-section (1) of section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006;

(bf) “manual scavenger” shall have the meaning assigned to it in clause (g) of sub-section (1) of section 2 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013;

(bg) “public servant” means a public servant as defined under section 21 of the Indian Penal Code, as well as any other person deemed to be a public servant under any other law for the time being in force and includes any person acting in his official capacity under the Central Government or the State Government, as the case may be;’;

(ii) after clause (e), the following clauses shall be inserted, namely:—

‘(ea) “Schedule” means the Schedule appended to this Act;

(eb) “social boycott” means a refusal to permit a person to render to other person or receive from him any customary service or to abstain from social relations that one would maintain with other person or to isolate him from others;

(ec) “victim” means any individual who falls within the definition of the ‘‘Scheduled Castes and Scheduled Tribes’’ under clause (c) of sub-section (1) of section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs;

(ed) “witness” means any person who is acquainted with the facts and circumstances, or is in possession of any information or has knowledge necessaryfor the purpose of investigation, inquiry or trial of any crime involving an offence under this Act, and who is or may be required to give information or make a statement or produce any document during investigation, inquiry or trial of such case and includes a victim of such offence;’;

(iii)for clause (f), the following clause shall be substituted, namely:—

“(f) the words and expressions used but not defined in this Act and definedin the Indian Penal Code, the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, as the case may be, shall be deemed to have the meanings respectively assigned to them in those enactments.”.

4. Amendment of section 3. In section 3 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

‘(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(a) puts any inedible or obnoxious substance into the mouth of a member of a Scheduled Caste or a Scheduled Tribe or forces such member to drink or eat such inedible or obnoxious substance;

(b) dumps excreta, sewage, carcasses or any other obnoxious substance in premises, or at the entrance of the premises, occupied by a member of a Scheduled Caste or a Scheduled Tribe;

(c) with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe, dumps excreta, waste matter, carcasses or any other obnoxious substance in his neighbourhood;

(d) garlands with footwear or parades naked or semi-naked a member of a Scheduled Caste or a Scheduled Tribe;

(e) forcibly commits on a member of a Scheduled Caste or a Scheduled Tribe any act, such as removing clothes from the person, forcible tonsuring of head, removing moustaches, painting face or body or any other similar act, which is derogatory to human dignity;

(f) wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred;

(g) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.

Explanation.– For the purposes of clause (f) and this clause, the expression “wrongfully” includes—

(A) against the person’s will;

(B) without the person’s consent;

(C) with the person’s consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested in fear of death or of hurt; or

(D) fabricating records of such land;

(h) makes a member of a Scheduled Caste or a Scheduled Tribe to do "begar" or other forms of forced or bonded labour other than any compulsory service for public purposes imposed by the Government;

(i) compels a member of a Scheduled Caste or a Scheduled Tribe to dispose or carry human or animal carcasses, or to dig graves;

(j) makes a member of a Scheduled Caste or a Scheduled Tribe to do manual scavenging or employs or permits the employment of such member for such purpose;

(k) performs, or promotes dedicating a Scheduled Caste or a Scheduled Tribe woman to a deity, idol, object of worship, temple, or other religious institution as a devadasi or any other similar practice or permits aforementioned acts;

(l) forces or intimidates or prevents a member of a Scheduled Caste or a Scheduled Tribe—

(A) not to vote or to vote for a particular candidate or to vote in a manner other than that provided by law;

(B) not to file a nomination as a candidate or to withdraw such nomination; or

(C) not to propose or second the nomination of a member of a Scheduled Caste or a Scheduled Tribe as a candidate in any election;

(m) forces or intimidates or obstructs a member of a Scheduled Caste or a Scheduled Tribe, who is a member or a Chairperson or a holder of any other office of a Panchayat under Part IX of the Constitution or a Municipality under Part IXA of the Constitution, from performing their normal duties and functions;

(n) after the poll, causes hurt or grievous hurt or assault or imposes or threatens to impose social or economic boycott upon a member of a Scheduled Caste or a Scheduled Tribe or prevents from availing benefits of any public service which is due to him;

(o) commits any offence under this Act against a member of a Scheduled Caste or a Scheduled Tribe for having voted or not having voted for a particular candidate or for having voted in a manner provided by law;

(p) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(q) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

(t) destroys, damages or defiles any object generally known to be held sacred or in high esteem by members of the Scheduled Castes or the Scheduled Tribes.

***Explanation.*—**For the purposes of this clause, the expression "object" means and includes statue, photograph and portrait;

(u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;

(v) by words either written or spoken or by any other means disrespects any late person held in high esteem by members of the Scheduled Castes or the Scheduled Tribes;

(w) (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

***Explanation.* –** For the purposes of sub-clause (i), the expression "consent" means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;

(x) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(y) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any other section thereof have a right to use or access to;

(z) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence:

Provided that nothing contained in this clause shall apply to any action taken in discharge of a public duty;

(za) obstructs or prevents a member of a Scheduled Caste or a Scheduled Tribe in any manner with regard to—

(A) using common property resources of an area, or burial or

cremation ground equally with others or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, any public conveyance, any road, or passage;

(B) mounting or riding bicycles or motor cycles or wearing footwear or new clothes in public places or taking out wedding procession, or mounting a horse or any other vehicle during wedding processions;

(C) entering any place of worship which is open to the public

or other persons professing the same religion or taking part in, or taking out, any religious, social or cultural processions including jatras;

(D) entering any educational institution, hospital, dispensary,

primary health centre, shop or place of public entertainment or any other public place; or using any utensils or articles meant for public use in any place open to the public; or

(E) practicing any profession or the carrying on of any occupation, trade or business or employment in any job which other members of the public, or any section thereof, have a right to use or have access to;

(zb) causes physical harm or mental agony of a member of a Scheduled Caste or a Scheduled Tribe on the allegation of practicing witchcraft or being a witch; or

(zc) imposes or threatens a social or economic boycott of any person or a family or a group belonging to a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.';

(ii) in sub-section (2), –

(a) in clause (v), for the words "on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member", the words "knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member" shall be substituted;

(b) after clause (v), the following clause shall be inserted, namely: –

"(va) commits any offence specified in the Schedule, 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 such punishment as specified under the Indian Penal Code for such offences and shall also be liable to fine.".

5. Substitution of new section for section 4. - For section 4 of the principal Act, the following section shall be substituted, namely:—

"4. Punishment for neglect of duties. – (1) Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act and the rules made thereunder, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

(2) The duties of public servant referred to in sub-section (1) shall include—

(a) to read out to an informant the information given orally, and reduced to writing by the officer in charge of the police station, before taking the signature of the informant;

(b) to register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act;

(c) to furnish a copy of the information so recorded forthwith to the informant;

(d) to record the statement of the victims or witnesses;

(e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing;

(f) to correctly prepare, frame and translate any document or electronic record;

(g) to perform any other duty specified in this Act or the rules made thereunder:

Provided that the charges in this regard against the public servant shall be booked on the recommendation of an administrative enquiry.

(3) The cognizance in respect of any dereliction of duty referred to in

sub-section (2) by a public servant shall be taken by the Special Court or the Exclusive Special Court and shall give direction for penal proceedings against such public servant.".

6. Amendment of section 8. – In section 8 of the principal Act,—

(i) in clause (a), for the words "any financial assistance to a person accused of", the words "any financial assistance in relation to the offences committed by a person accused of" shall be substituted;

(ii) after clause (b), the following clause shall be inserted, namely:—

"(c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved.".

7. Amendment of section 10. – In section 10 of the principal Act, in sub-section (1),—

(a) after the words and figures "article 244 of the Constitution", the words,brackets and figures "or any area identified under the provisions of clause (vii) ofsub-section (2) of section 21" shall be inserted;

(b) for the words "two years", the words "three years" shall be substituted.

8. Substitution of new section for section 14. – For section 14 of the principal Act, the following section shall be substituted, namely: –

"***14.Special Court and Exclusive Special Court***. – (1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing:

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet.".

9. Insertion of new section 14A.– After section 14 of the principal Act, the following section shall be inserted, namely:—

"*14A. Appeals*. – (1) Notwithstanding anything contained in the Code of Criminal Procedure,1973, an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section (3) of section 378 of theCode of Criminal Procedure, 1973, an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal."

10. Substitution of new section for section 15. - For section 15 of the principal Act, the following section shall be substituted, namely:—

"***15.Special Public Prosecutor and Exclusive Public Prosecutor***. – (1) For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

(2) For every Exclusive Special Court, the State Government shall, by notification in the Official Gazette, specify an Exclusive Special Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as an Exclusive Special Public Prosecutor for the purpose of conducting cases in that Court.".

11. Insertion of new Chapter IVA. - After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

"CHAPTER IVA

RIGHTS OF VICTIMS AND WITNESSES

15A. Rights of victims and witnesses. - (1) It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.

(2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victim's age or gender or educational disadvantage or poverty.

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court or the Exclusive Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses—

(a) the complete protection to secure the ends of justice;

(b) the travelling and maintenance expenses during investigation, inquiry and trial;

(c) the social-economic rehabilitation during investigation, inquiry and trial; and

(d) relocation.

(7) The State shall inform the concerned Special Court or the Exclusive Special Court about the protection provided to any victim or his dependent, informant or witnesses and such Court shall periodically review the protection being offered and pass appropriate orders.

(8) Without prejudice to the generality of the provisions of sub-section (6), the concerned Special Court or the Exclusive Special Court may, on an application made by a victim or his dependent, informant or witness in any proceedings before it or by the Special Public Prosecutor in relation to such victim, informant or witness or on its own motion, take such measures including –

(a) concealing the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to the public;

(b) issuing directions for non-disclosure of the identity and addresses of the witnesses;

(c) take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day, if necessary, pass appropriate orders for protection:

Provided that inquiry or investigation into the complaint received under clause (c) shall be tried separately from the main case by such Court and concluded within a period of two months from the date of receipt of the complaint:

Provided further that where the complaint under clause (c) is against any public servant, the Court shall restrain such public servant from interfering with the victim, informant or witness, as the case may be, in any matter related or unrelated to the pending case, except with the permission of the Court.

(9) It shall be the duty of the Investigating Officer and the Station House Officer to record the complaint of victim, informant or witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence, whether given orally or in writing, and a photocopy of the First Information Report shall be immediately given to them at free of cost.

(10) All proceedings relating to offences under this Act shall be video recorded.

(11) It shall be the duty of the concerned State to specify an appropriate scheme to ensure implementation of the following rights and entitlements of victims and witnesses in accessing justice so as–

(a) to provide a copy of the recorded First Information Report at free of cost;

(b) to provide immediate relief in cash or in kind to atrocity victims or their dependents;

(c) to provide necessary protection to the atrocity victims or their dependents, and witnesses;

(d) to provide relief in respect of death or injury or damage to property;

(e) to arrange food or water or clothing or shelter or medical aid or transport facilities or daily allowances to victims;

(f) to provide the maintenance expenses to the atrocity victims and their dependents;

(g) to provide the information about the rights of atrocity victims at the time of making complaints and registering the First Information Report;

(h) to provide the protection to atrocity victims or their dependents and witnesses from intimidation and harassment;

(i) to provide the information to atrocity victims or their dependents or associated organisations or individuals, on the status of investigation and charge sheet and to provide copy of the charge sheet at free of cost;

(j) to take necessary precautions at the time of medical examination;

(k) to provide information to atrocity victims or their dependents or associated organisations or individuals, regarding the relief amount;

(l) to provide information to atrocity victims or their dependents or associated organisations or individuals, in advance about the dates and place of investigation and trial;

(m) to give adequate briefing on the case and preparation for trial to atrocity victims or their dependents or associated organisations or individuals and to provide the legal aid for the said purpose;

(n) to execute the rights of atrocity victims or their dependents or associated organisations or individuals at every stage of the proceedings under this Act and to provide the necessary assistance for the execution of the rights.

12. Insertion of new Schedule. – It shall be the right of the atrocity victims or their dependents, to take assistance from the Non-Government Organisations, social workers or advocates."

"THE SCHEDULE

[See section 3(2) (va)]

Section under the Indian Penal Code	Name of offence and punishment
120A	Definition of criminal conspiracy.
120B	Punishment of criminal conspiracy.
141	Unlawful assembly.
142	Being member of unlawful assembly
143	Punishment for unlawful assembly.
144	Joining unlawful assembly armed with deadly weapon
145	Joining or continuing in unlawful assembly, knowing it has been commanded to disperse
146	Rioting.
147	Punishment for rioting.
148	Rioting, armed with deadly weapon.
217	Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.
319	Hurt.
320	Grievous hurt.
323	Punishment for voluntarily causing hurt.
324	Voluntarily causing hurt by dangerous weapons or means.
325	Punishment for voluntarily causing grievous hurt.

326B	Voluntarily throwing or attempting to throw acid.
332	Voluntarily causing hurt to deter public servant from his duty.
341	Punishment for wrongful restraint.
354	Assault or criminal force to woman with intent to outrage her modesty.
354A	Sexual harassment and punishment for sexual harassment.
354B	Assault or use of criminal force to woman with intent to disrobe.
354C	Voyeurism.
354D	Stalking
359	Kidnapping
363	Punishment for kidnapping.
365	Kidnapping or abducting with intent secretly and wrongfully to confine person.
376B	Sexual intercourse by husband upon his wife during separation.
376C	Sexual intercourse by a person in authority.
447	Punishment for criminal trespass.
506	Punishment for criminal intimidation.
509	Word, gesture or act intended to insult the modesty of a woman.”.

13. Repeal and saving. – (1) The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014 is hereby repealed.

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