# JOTI JOURNAL

(BI-MONTHLY)

**AUGUST 2017**

**MADHYA PRADESH STATE JUDICIAL ACADEMY**
**HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007**

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## FROM EDITOR'S DESK

**Sanjeev Kalgaonkar**
Director Incharge

Respected Judges,

In April issue, we discussed about the "Judge led change" in Justice Dispensation System. In next issue, proactive role of Magistrates in dealing with offences related to road accidents was discussed.

Proactive Judiciary is the need of the hour. It is high time for the Judiciary to take the initiative and make every possible endeavour to correct the prevalent situations and circumstances before the society suffers great loss. Famous scientist Albert Einstein has said:

> *"The world is a dangerous place not because of those who do evil but because of those who look on and do nothing"*

An attempt is therefore, made to create awareness amongst the Magistrates to take the responsibility and bring about the change.

Tobacco abuse is a major health concern in India. Adolescents are the most vulnerable population to initiate tobacco use. It is now well established that most of the adult users of tobacco started using it in childhood or adolescent. The age at first use of tobacco has been reduced considerably. Tobacco usage in children and adolescents has reached pandemic levels. The World Bank has reported that approximately 1,00,000 children and adolescents all over the world begin smoking or other tobacco substance usage every day. About half of them would continue it to adulthood and half of the adult users of tobacco are expected to die prematurely due to tobacco related diseases.

Global Adult Tobacco Survey provided statistics that in the age group of 13-15 years, 14.6% currently use tobacco products and 15.5% of never smokers are likely to initiate smoking by next year. 24% of boys and 13.4% of girls think that those who smoke have more friends and look more attractive. 56.2% who bought cigarettes from a *pan* shop or local *kirana* shop were not refused purchase because of their age. Also, most of the times, the use of tobacco is the first step towards addiction of narcotic substances and drugs.

The Preamble of the United Nations Declaration on Rights of Child, 1999 points out:

*"The child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth and that mankind owes to the child the best it has to give."*

Now the question arises what a Magistrate can do to address this ever-growing menace? The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 lays down offences and punishment with regard to sale of tobacco products to a person below the age of 18 years. Section 24 provides for fine of Rs. 200/- for sale of cigarettes or other tobacco products in certain places or to persons below the age of 18 years. The Juvenile Justice (Care & Protection of Children) Act, 2015 provides for very stringent punishment for giving tobacco products to a child. Section 77 of the Act of 2015 provides that whoever gives, or causes to be given, to any child any tobacco products, 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 and by virtue of section 86 of the Act, such an offence shall be cognizable, non-bailable and triable by a Judicial Magistrate First Class. An awareness campaign with regard to these stringent provisions, may be undertaken under the aegis of DLSA and TLSA. The educational institutions, Government and non-Government organization may be taken on board to spread awareness and to educate all concerned. The Magistrates, Municipal Magistrates and Special Railway Magistrates performing mobile Courts may consider visiting local schools and other educational institutions and other public places within their respective jurisdictions to keep an eye on persons contravening the law regulating the usage of tobacco products. They may take cognizance of offences under section 190 (1) (c) of CrPC and proceed for trial as per the law. It will certainly create a deterrent impact on wrongdoers.

This issue comprises of latest judgments on various nuances of law enunciated by the Supreme Court and High Court of Madhya Pradesh. Let us have a glimpse of the latest trends of law laid down in various judgments.

The Supreme Court in case of ***Ashok Kumar Mishra*** laid down that protection against eviction to the tenant is available only if the post-suit payment of rent is regularly made by the tenant. Deposit of few months rent jointly after due date amounts to an implicit admission of default and the court has no power to condone the delay of post-suit rent.

In case of ***Amolak Singh Tuteja***, the High Court of Madhya Pradesh laid down that in a suit for specific performance of contract coupled with relief of declaration of subsequent third party sale as null and void and permanent injunction for protection of possession, the relief of permanent injunction need to be valued separately and court fees under Section 7 (iv) (d) of the Court Fees Act would be payable.

In case of ***C.B.I. v. M. Sivamani,*** the Apex Court observed that when the investigation was directed by the High Court into allegation that motor accident claim was false, such a direction is at par with the direction of an administrative superior to public servant to file a complaint in writing. Hence, bar under section 195 (i) (a) Cr.P.C. cannot be pressed into service.

The Apex Court in the case of ***Roopendra Singh*** held that Section 372 Cr.P.C. confers a substantive and independent right upon victim to file an appeal against acquittal. Merely because the leave was not granted to the State to prefer an appeal against acquittal, the appeal preferred by victim cannot be rejected.

In case of ***Charandas Swami***, the Apex Court, relying on the earlier judgment of Privy Council in the case of ***Pulukuri Kottaya,*** reiterated that the "fact" used in Section 27 of the Evidence Act is not limited to "actual physical material object". Knowledge of the accused is also relevant and admissible.

In the case of ***Sonu @ Amar,*** the Apex Court differentiated between "objection as to mode of proof" and "objection regarding admissibility of evidence". It was held that the objection as to mode of proof cannot be permitted at the appellate stage whereas objection regarding admissibility of evidence can be raised at any stage.

In the case of ***Purohit and Company***, three Judge Bench of the Supreme Court examined the limitation for filing of claim petition in motor accident. It was held that although the Motor Vehicles Act does not provide for any limitation to raise claim but the claim should be filed within a reasonable time. The question of reasonability would depend on facts and circumstances of each case. The stale and dead claims cannot be permitted whereas live and surviving claims may be permitted, despite delay.

The Academy has been in the thick of Educational activities in the past two months. The Academy conducted Induction Course on Juvenile Justice (Care & Protection of Children) Act, 2015 for the newly appointed Principal Magistrates of the Juvenile Justice Boards, Induction Course programme for the newly appointed Civil Judges of 2017 Batch, Sensitization Programme on

Adoption Laws, Foundation Course for the directly appointed District Judges (Entry Level) from the Bar and Advance Course for District Judges (Entry Level) promoted in the year 2017. The Academy conducted a special Workshop of Protection of Animal Rights for the first time.

In addition to the above Induction and Advance Course programmes, Specialised Educational Programmes at Forensic Science Laboratory, Sagar and State Medico-Legal Institute, Bhopal were also organized for the Judges of HJS cadre.

The Academy also conducted Educational Programmes for other stakeholders that include workshops for Panel Lawyers, Prosecutors, Advance Course for Presiding Officers of Labour Courts and State Level Conference on – Juvenile Justice & Capacity Building for all the stakeholders working under the Juvenile Justice (Care & Protection of Children) Act, 2015.

The Academy started conducting a series of lectures – ***"iustum talks"*** on various topics of personality development, management, ethical values as well as on the topics of contemporary legal importance by inviting eminent speakers.

To commence the series, the Academy invited Dr. N. Raghuraman, a renowned management thinker and charismatic motivational speaker. Dr. N. Raghuraman is a Post Graduate from Mumbai University and IIT, Mumbai alumnus. His immensely popular daily article – ***Management Funda*** published in Dainik Bhaskar (M.P.) has helped people by touching their lives to transform them into better human beings. Dr. Raghuraman addressed the Judges of District Judiciary on the topic – ***Good is no more Good***. It was webcasted to all the District Headquarters through video-linkage. It has received a welcome response. The Academy shall be conducting such kind of Educational Programmes in future also.

I sincerely hope that the content of this issue will enlighten and guide the readers in discharge of their duties. Your valuable contributions and response are always welcome.

Keep blessing our pursuit for judicial excellence.

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# HON'BLE SHRI JUSTICE N.K. GUPTA DEMITS OFFICE

Hon'ble Shri Justice Naresh Kumar Gupta demitted office on His Lordship's attaining superannuation.

Born on 01-07-1955 in the house of Shri M.L. Gupta, who was a judicial officer and retired as a District Judge in the year 1976. After obtaining degree of LL.B (Hons.) in the year 1977, His Lorship started law practice at Indore with late Shri B.K. Samadani, Advocate at Indore. Joined Judicial Services as Civil Judge Class II on 10-08-1979. His Lordship was promoted as Additional District & Sessions Judge in the year 1991.

Worked in different capacities as Additional Registrar (Admn.) & (Vig.) at main seat of M.P. High Court at Jabalpur. Being Additional Registrar, also held the additional charge of Additional Director of the then JOTI. Worked as District Judge at Datia, Mandsaur and Gwalior, President, Consumer Forum at Hoshangabad and also worked as District Judge (Vig.), Gwalior and Registrar, High Court of M.P., Bench Gwalior and Principal Secretary (Law Department) and Legal Remembrancer to the Govt. of M.P. from 2007. His Lordship also authored a book 'Niyamanukul Nirnay' to share his experiences with his Junior Officers regarding judgment writing.

His Lordship was elevated as Additional Judge of the High Court of Madhya Pradesh on 3rd May, 2010 and as permanent Judge on 24th September, 2011. His Lordship was appointed as Administrative Judge of the High Court of M.P., Bench Gwalior in the year 2016. Was accorded farewell ovation on 30.06.2017 at High Court of M.P., Bench Gwalior.

**We on behalf of JOTI Journal, wish His Lordship a healthy, happy and prosperous life.**

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

**Field Training of Newly Inducted Civil Judges Class-II with Revenue Officials**

**Field Training of Newly Inducted Civil Judges Class-II at Police Station with Police Officials**

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

**Induction/Refresher Course on Juvenile Justice**
**(Care and Protection of Children) Act, 2015**
**16.06.2017 & 17.06.2017**

**Orientation/ Sensitization Programme on Adoption Laws/**
**Rules Regulations/Procedures**
**15.07.2017**

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


**"*Iustum* talks" on "Good is no more good" by**
**Dr. N. Raghuraman on 01.07.2017**

**Foundation Course (II Phase) for District Judge (Entry Level)**
**directly appointed from the Bar-24.07.2017 to 05.08.2017**
**&**
**Advance/ Orientation Course for the District Judges (Entry Level)**
**Promoted in the year 2017- 31.07.2017 to 05.08.2017**

# PART – I

## GIFT UNDER MOHAMMEDAN LAW

**Vidhan Maheshwari**
Assistant Director,
M.P. S.J.A.

The law relating to Mohammedan law is based upon customs and treaties stated in various Islamic jurisprudential books and later recognised by various Courts in India. One of the most frequent question that comes before the Courts relates to Gift under Mohammedan law which is commonly known as ***hiba***. The assertion or defence of oral gift is often put before the Court because it is thought to be easier to raise such claim as it is based upon oral evidence rather than any documentary evidence. This article tries to demystify the concept of gift under the Mohammedan law, discuss essentials for hiba and how to appreciate it in given circumstances.

The law relating to gift to Sunni and Shia are almost similar with few differences as may be pointed out. The english term "Gift" is much wider than Islamic word *"Hiba"* and the two must not be confused. The term Gift is generic and is applied to large group of transfers. The word *"Hiba"*, however, is narrow and well defined legal concept. *Hiba* is the immediate and unqualified transfer of the corpus (bodily structure) of the property without any return. The 18th century book on Islamic jurisprudence Durr al-Mukhtar defines *"Hiba"* as the transfer of the right of the property in the substance (***tamlik al ain***) by one person to another without return (***iwad***). As defined by Mulla it is "a transfer of property made immediately and without any exchange." A three judge Bench of the the Supreme Court in the case of ***Valia Peedikakkandi Katheessa Umma and others v. Pathakkalan Narayanath Kunhamu (D) thr. L.Rs. and others, AIR 1964 SC 275*** has observed as follows:

> *"A gift (Hiba) is the conferring of a right of property in something specific without an exchange (ewaz). The word (Hiba) literally means the donation of a thing from which the donee may derive a benefit. The transfer must be immediate and complete (tamlik-ul-ain)."*

*"Hiba"* in singular sense is different from other forms of gifts recognised under the Mohammedan law which are ***Hiba bil-Iwas*** i.e. hiba with return gift from donee and bi- ***Shart-il-Iwaz*** i.e. hiba with a condition that may involve return. It is also different from sadaqah which is a gift with the object of accruing religious merit.

In Mohammedan law, there is a clear distinction between the gift of the corpus (mal) or substance (*ain*) and the gift of the usufruct or the fruits (*manafi*) of the property. The ain, variously called the substance or the corpus or the thing itself, can be given away, for example one may give away a piece of land or a house or an animal or jewellery. He may also give away the *manafi*. *Manafi* means, not the thing in itself but its use, benefit, produce or profits or for instance, the right to reside in a house, the right to fish in a stream, the right to take the produce of a garden, the recurring income of a partnership or dividends on shares or interest on Government loans or stock. This is not referred to as *hiba* but *ariya* in its various forms. As stated earlier hiba does not mean simple gift, but relates to transfer of ownership of determinate objects of the *ain*. As distinguished from this, the transfer of ownership of usufruct will come under the category of *ariya*. Under Mohammedan law gift of corpus i.e. hiba will involve transfer of absdute right of ownership over the property which is heritable and is unlimited in point of time. Where as in case of usufruct , the right to enjoy and use the property is transferred which is not heritable and is limited in point of time.

The general law relating to Gift and other modes of transfer of property is contained in the Transfer of Property Act, 1882. Section 122 of the Act defines "Gift" and other provisions state the conditions and regulations for gift, but Section 129 provides for a saving clause excluding gifts under Mohammedan Law. It provides as follows:

> *"Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Mohammedan law."*

The effect of the above Section is that the provisions of the Act does not apply to *"hiba"* and the gift under Mohammedan Law is governed by the personal laws based upon customs and treaties. As the requisites contained in Section 124 does not apply to *hiba,* it is not necessary that it must be made in writing and registered. *Hiba* may be made orally and writing of memorandum of hiba after it or even simultaneously does not make it compulasorily registrable. The law relating to it no more *res integra*. The Supreme Court in the case of ***Hafeeza Bibi & Ors. v. Shaikh Farid (Dead) By L.R.S & Othrs, 2011 (5) SCC 654*** held as following:

> *"In our opinion, merely because the gift is reduced to writing by a Mohammedan instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by Mohammedan orally, its nature and character is not changed because of it having been made by a*

*written document. What is important for a valid gift under Mohammedan Law is that three essential requisites must be fulfilled. The form is immaterial. If all the three essential requisites are satisfied constituting valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rule of gifts in Mohammedan Law."*

Therefore, if a memorandum reciting the fact of hiba is produced before the Court, it must be remembered that such a deed of gift executed by a Mohammedan is not the instrument effecting, creating or making the gift but a mere piece of documentary evidence. All essentials of Hiba must be proved as fact. Such deed/memorandum of *"hiba"* may be used only for the purpose of corroboration. It may also be relevant under Section 8 of Evidence Act indicating conduct of the parties. But it in itself, is not sufficient to replace the proof of the fact of *hiba* or essentials thereto. Also in case of a registered hiba memorandum, it may not prove the fact of hiba but may indicate genuineness of the same.

It is important to note that *Hiba-bil-iwaz* being different from a *hiba* or simple gift, is a gift for consideration. The High Court of Madhya Pradesh in the case of ***Mohd. Iqbal Khan & Ors. v. Late Manzoor Ahmad Khan & Ors., 2012 (4) MPLJ 363,*** has held that it is in reality a sale where the property is immovable and if it is of a value of Rs. 100/- upwards, it must be effected by a registered instrument, as required by Section 54 of the Transfer of Property Act. While deciding whether a the mode is simple hiba or *Hiba-bil-iwaz* the nature of a document and intention of the parties has to be seen and the document has to be read as a whole.

Gift under Mohammedan law is a disposition inter vivos is unfettered as quantum. But at the same time a *hiba* must be differentiated from *hiba* made in the death bed. As per Section 135 of ***Mulla Principles of Mohammedan Law, 21 Edition*** a gift made by a Mohammedan during *marz-ul-maut* or death illness cannot take effect beyond a third of his estate after payment of funeral expenses and debts, unless the heirs give their consent, after the death of the donor, to the excess taking effect; nor can such a gift take effect if made in favour of an heir unless the other heirs consent thereto after the donors death. Further, as per Section 136, a gift made during *marz-ul-maut* is subject to all the conditions necessary for the validity of a *hiba* or gift, including delivery of possession by the donor to the donee.

**ESSENTIALS FOR HIBA:**

Every Mohammedan who has attained majority and is of sound mind can make a gift. A woman has the same right to make a gift as a man. However, in case of *Pardanashin* lady the disposition made must be substantially understood by the donor and the document if any must be the expression of the will of the maker of the hiba. As far as donee is concerned, he must be capable of holding his property which includes juristic person and person of any other religion. If a gift is mode by a Mohammedan to person of other religions, it shall be governed by the rules of Mohammedan law. A hiba to unborn person is invalid as held in ***Fathimuthu v. Ghouse Ahmed Maracayar and ors., 1986 (1) Mad LJ 412,*** but at the same time any disposition shall be governed by section 13 to 18 of Transfer of Property Act, 1882.

Every act which, in the Mohammedan Law, would be treated under the head of *tasuraufat-i-dhariat* (legal transaction) presupposes a captain amount of free volition. Like any disposition necessary conditions for *hiba* are (i) Majority (18 years) (ii) Understanding (iii) Freedom (iv) Ownership of the subject matter of the disposition.

Whenever a claim of hiba is made before the Court, the Court must be satisfied that the essential of Hiba were fulfilled at the time of execution. The three essential for any hiba are :

(i) Declaration of Hiba by the donor (***Ijab***),
(ii) Acceptance by the donee (***Qabul***) and
(iii) Delivery of possession (***Qabda***).

The first condition for a valid *hiba* under Mohammedan law involves the question of intention, the second consent of the donee and the third is a peculiarity of the Islamic law demanding the handing over of the possession. The Supreme Court in the case of ***Mahboob Sahab v. Syed Ismail and others, (1995) 3 SCC 693,*** referred to the ***Principles of Mohammedan Law by Mulla, 19th Edition*** and recognised the legal position as follows:

> *"Under Section 149, three essentials to the validity of the gift should be, (i) a declaration of gift by the donor, (ii) acceptance of the gift, express or implied, by or on behalf of the donee, and (iii) delivery of possession of the subject of the gift by the donor to the donee as mentioned in Section 150. If these conditions are complied with, the gift is complete.*

On proof of these essential conditions, the *hiba* becomes complete and valid. We may take these essentials one by one to understand the requisites.

The first essential being the “a declaration of gift by the donor” relates to the intention of the donor to actually gift the property. Where there is no intention to make a gift, the gift fails. It is the manifestation of the wish to give on the part of the donor. The basis of the principle of gift is the prophet saying *“exchange gift amongst yourself so that love may increase.”* There may be for example sham gifts and colourable or benami transaction, where the real intention is not to gift but to avoid any legal obligation. All these must be distinguished from gifts which are legally and properly constituted.

As per Section 140 of ***Mulla principle of Mohammedan law, 21st edition,*** there must be in every gift a bonafide intention on the part of the donor to transfer the property from the donor to the donee. For example a gift made with intent to defraud the creditor of the donor is voidable at the option of the creditor. The intention of donor must be gathered from evidence on record and surrounding circumstances.

To make out that a declaration of gift is established, it must be shown that the donor either in the presence of the witnesses or otherwise made a public statement that he gifted a property in favour of the donee and that he divested himself of the ownership of the property by delivering such possession as the property is capable of, to the donee who accepted the gift. Declaration of a gift cannot be made unilaterally by a Mohammedan without making a public statement of the gift. Declaration of a gift for the purpose of law has a definite connotation in the sense that the person making a gift must declare by some means to give a public notice that he gifted the property to the donee and divested himself of the ownership or the property. As held in the case of ***Ratan Lal Bora v. Mohd. Nabiaddin, AIR 1984 AP 344*** that it is unknown to law that a Mohammedan can make an oral gift within the confines of his house and without the presence of anybody else and canvass the plea that by making such a declaration allegedly of the gift, the valid requirements of a gift are satisfied.

Second essential condition for valid *hiba* is that there must be acceptance by the donee. The condition of acceptance is similar to the condition of gift under Section 122 of Transfer of Property Act, 1882. The acceptance may be express or implied but must be unequivocal. Generally, the acceptance may be proved by way of signature on the memorandum or conduct of the donee. However, taking over the possession or applying for mutation in government records by donee may also indicate acceptance. As far as ***hiba*** made to minor is concerned, the acceptance in such case must be made through legal guardian or a guardian appointed by law. The legal guardian are (1) the father; (2) the executor appointed by the father’s will; (3) the paternal grand father; and (4)

the executor appointed by the will of the paternal grand father whereas other persons may be appointed as guardians under the Guardians and Wards Act, 1890. Acceptance being the essential condition, death of a donee after declaration but before acceptance would also invalidate the ***hiba***.

The third and most unique condition for completion of hiba is requirement of delivery of possession.Under Section 122 of Transfer of Property Act, 1882, delivery of possession is not a condition precedent but under the Mohammedan law, it is mandatory except for few conditions discussed later. Talking about the importance of possession in cases of Gift under Mohammedan law the Supreme Court in case of ***Valia Peedikakkandi Katheessa Umma*** (supra) held that:

> *"Now Mohammedan Law of gifts attaches great importance to possession or seisin of the property gifted (Kabz-ul-Kamil) especially of immovable property. The Hedaya says that seisin in the case of gifts is expressly ordained and Baillie (Dig p. 508) quoting from the Inayah refers to a Hadis of the Prophet - "a gift is not valid unless possessed." In the Hedaya it is stated - "Gifts are rendered valid by tender, acceptance and seisin" (p. 482) and in the Vikayah "gifts are perfected by complete seisin" Macnaghten 202)."*

As per Section 150 of *Mulla* for a valid gift, there should be delivery of possession of the subject of the gift and taking of possession of the gift by the donee, actually or constructively. Further, Section 152 envisages that where the donor is in possession, a gift of immovable property of which the donor is in actual possession is not complete unless the donor physically departs from the premises with all his goods and chattels, and the donee formally enters into possession. It means that in case of immovable property in the possession of the donor, he should completely divest himself physically of the subject of the gift.

The Mohammedan law mandates the gift of corpus itself. Any condition repugnant to gift would be invalid. If the donor reserves to himself the right to be in possession of the corpus and the right to enjoy the same, there cannot be a valid gift under the law as held in ***Nawazis Ali Khan v. Aleis Raza Khan, AIR 1948 PC 134***.

The delivery of possession may be actual or constructive. This fact must be proved like other essentials. Mere admission in the memorandum alone will not be sufficient and actual possession must be proved to have been delivered to the donee. If a person lives in a house and proposes to make a gift by saying to the donee *"take possession"* or *"I had delivered possession"* and no overt act of tender and acceptance of the possession takes place, there is no *hiba*. For

example, where the husband reserved to himself the right to receive rents during his life time and also undertakes to pay municipal tax, a mere recital in the deeds that the delivery of possession has been made to the donee does not make the gift complete. In the case of ***Rasheeda Khatoon v. Ashiq Ali, (2014) 10 SCC 459,*** the Supreme Court quoting Section 394 of the *Muslim Law* by *Tayabji* observed that -

> *"A person is said to be in possession of a thing, or of immovable property, when he is so placed with reference to it that he can exercise exclusive control over it, for the purpose of deriving from it such benefit as it is capable of rendering, or as is usually derived from it."*

Mohammedan law, does not insist on delivery of physical possession in every case. Specially, in the case of incorporeal property and actionable claims, where the property is not susceptible of physical possession, the donor must do everything in his power to show clear intention of transferring the property effectively to the donee and of relinquish entirely his own dominion over the property.

Where the subject of the gift is incorporeal property or an actionable claim, gift can be completed by any act on the part of the donor stating a clear intention on his part to disassociate himself in *praesenti* of the property, and to confer it upon the donee. Delivery of possession can be made in such manner as the subject of the gift is susceptible of. Possession can be shown not only by acts of enjoyment of the land itself, but also by ascertaining as to in whom the actual control or the thing is to be attributed or the advantages of the possession is to be credited, even though some other person is in apparent occupation of the land. In one case, it would be actual possession and in the other case, it would be constructive possession.

Mutation of names in revenue records is not necessary to complete transfer of possession in favour of the donee and at the same time, mutation itself is also not a substitute for delivery of possession. Mutation of names may be one of the factors for Court while considering possession but actual possession must be proved to have been delivered to the donee. Further, possession taken at a subsequent date is also sufficient to complete gift if it was taken with donor consent as held in the case of ***Zhumman v. Hussain, AIR 1931 Oudh. 7*.**

Under Section 152, *Mulla* has also recognised two other propositions for delivery of possession i.e. (i) where property is in occupation of tenants and (ii) where donor and donee both reside in the property. The Supreme Court also recognised these propositions in the case of ***Khursida Begum (D) By L.Rs. & Ors. v. Komammad Farooq (D) By L.Rs. & Anr., AIR 2016 SC 694***. In the case of tenant

the court has held that if the property is in occupation of tenants, gift can be completed by delivery of title deed or by request to tenants to attorn to the donee or by mutation. Notice to the tenants that the property has been gifted and that in future the rents should be paid to the donee may indicate delivery of possession.

As to the second situation, where donor and donee both reside in the property the Supreme Court in the case of ***Valia Peedikakkandi Katheessa Umma*** (supra) held that:

> *"The strict view was that the donor must not leave behind even a straw belonging to him to show his ownership and possession. Exceptions to these strict rules which are well recognized are gifts by the wife to the husband and by the father to his minor child (Macnaghten, page 51 principles 8 and 9) . Later it was held that where the donor and donee reside together an overt act only is necessary and this rule applies between husband and wife."*

Also as per Section 152(3) of *Mulla*, no physical departure or formal entry is necessary in the case of a gift of immovable property in which the donor and the donee are both residing at the time of the gift. In such a case, the gift may be completed by some overt act by the donor indicating a clear intention on his part to transfer possession and to divest himself of all control over the subject of the gift. Also, where the subject of the gift is in possession of the donee at the time of making of the gift, the gift is completed on acceptance and actual delivery of possession is unnecessary.

In case of co-sharer a gift of the land to another co-sharer may be made by declaration and investing of authority to take possession effectively. Other than these as per ***Fyzee's Outlines of Mohammedan Law, Fifth Edition,*** transfer of possession may not be required where –

(1) where the donor or the donee reside in the same house,
(2) where the gift is from the husband to the wife or vice versa,
(3) where the father or the mother makes a gift to a child,
(4) where the guardians makes a gift to the ward,
(5) where the gift is made to a doneel bailee in possession and,
(6) where Fatima law is applicable.

A valid *hiba* can be made of property held by adversary to the donor by obtaining and delivering physical possession or by doing everything possible to obtain possession. In a case, where a donee claiming *hiba* in his favour proposes an application to become a party in a suit for ejectment of the trespasser or person holding possession adversely to the donor before the Court, the

completion of hiba and act towards delivery of possession may be inferred because he has done everything, he can do to get the possession.

In case of minor, as per Section 155 of *Mulla*, if the donor is father or a legal guardian to his ward, no transfer of possession is required. But as per Section 156, if the donor is any person other than them, gift is completed by delivery of possession to the father or guardian. A gift will also be complete when a minor, who having attained mojority, himself takes possession.

In the end, whether possession was delivered or not is question between donor and donee or persons claiming under them, but a stranger cannot question the delivery possession when both parties admit to it. The High Court of Madras in the case of ***Kairan Bai v. Mariyam B, AIR 1960 Madras 447*** has held that the question whether possession has been delivered is relevant only when an issue is raised between the donee or those claiming under him on the one side and the donor or those claiming under him on the other. This principle enunciated in later editions of Mulla has also been approved the the High Court of Madhya Pradesh in ***Y. S. Chen v. Batulbai, AIR 1991 MP 90***.

As far as *hiba* of an undivided share in property known as ***"Mushaa"*** is concerned, according to Section 159 of *Mulla*, a valid gift may be made of an undivided share (*mushaa*) in property which is not capable of partition. Further, as per Section 160, a gift of an undivided share *(mushaa)* in property which is capable of division is irregular *(fasid)*, but not void *(batil)*. The gift being irregular and not void, it may be perfected and rendered valid by subsequent partition and delivery to the donee of the share given to him. For example, if A makes a gift of her undivided share in certain lands to B and the share is not divided off at the time of gift, but is subsequently separated and possession thereof is delivered to B. The gift though irregular in its inception, is validated by subsequent delivery of possession. But this general rule is also subject to exception where the gift of undivided share is made by one co-heir to another. There the gift will come into effect from the moment of the gift and not on division. Different from Sunni law a gift of *"mushaa"* is valid under the Shia law, even if the property is capable of division.

**BURDEN OF PROOF:**

As far as burden of proof is concerned, whenever an assertion of oral hiba is made the Court will expect that party to discharge the burden by proving above essential facts. The Supreme Court in the case of ***Kamakshi Builders v. Ambedkar Educational Society, (2007) 12 SCC 27*** observed that Hiba although permissible in law, but a heavy burden lay on the party to prove the same. In

***Ratanlal Bora case*** (supra) the Andhra Pradesh High Court has also held as follows:

> *"When claims of oral gift are made, the law requires strict evidence to establish that an oral gift had in fact been made and that there is some contemporaneous evidence to establish such an oral gift. It is true that no special set of rules are prescribed under the law of evidence to establish an oral gift and the evidence can take any form. But it must point out unquestionably to the fulfilment of the three requirements of a valid gift under the Mohammedan Law. If evidence is lacking on any of the requirements of a valid gift, law cannot presume that a valid gift has been orally made by a Mohammedan in favour of a donee."*

**CONDITIONAL GIFTS:**

In *hiba* the immediate and absolute ownership in the substance or corpus of a thing is transfered to the donee; hence where a hiba is proportionate to be made with conditions or restrictions annexed as to its use or disposal, the condition and restriction are void and the hiba is valid. Here the distinction between the gift of corpus i.e. the thing itself and usufruct i.e. benefits, discussed earlier, is vital. *Hiba* being of corpus and immediate transfer being essential, any condition restraining the same is void, where as in case of gift of usufruct, by the very nature of being incapable of delivery, conditions imposed may be valid. The Supreme Court in the case of ***V. Sreeramachandra Avadhani (D) By L.Rs. v. Shail Abdul Rahim & Anr., AIR 2014 SC 3464*** dealt with this issue in great length and held as follows:

> *"The above extracts from the observations recorded by the Privy Council, leave no room for any doubt, that the parameters for gifts (under Mohammedan Law) are clear and well defined. Gifts pertaining to the corpus of the property are absolute. Where a gift of corpus seeks to impose a limit, in point of time (as a life interest), the condition is void.*
>
> *Likewise, all other conditions, in a gift of the corpus are impermissible. In other words, the gift of the corpus has to be unconditional. Conditions are however permissible, if the gift is merely of a usufruct. Therefore, the gift of a usufruct can validly impose a limit, in point of time (as an interest, restricted to the life of the donee)."*

In the case of ***Abdul Rahim v. S.K. Abdul Zabar, AIR 2010 SC 211,*** the

Supreme Court approving a passage from *Faiz Badruddin Tyabji- The Personal Law of Muslims in India and Pakistan*, observed that:

> *"In Hiba the immediate and absolute ownership in the substance or corpus of a thing is transfered to a donee. Hence where a Hiba is proportionate to be made with conditions or restrictions annexed as to its used or disposal, the condition and restriction are void and the Hiba is valid. For example, D make a Hiba on condition that he has a option of cancelling the Hiba within 3 days. The Hiba is valid but the option is valid. Also for a example, if A makes Hiba of certain property to B with a condition that B shall not transfer the property, the restrained against the alienations is void and B takes the property absolutely.*

Under the Sunni law gift of a life-estate is not recognised and any condition may be void. But the Shia law recognizes a gift of a life-estate.

It is further to be noted that a declaration proportionate to the transfer certain property by way of *Hiba* to the donee at a future time, or contingent on happening of certain event, is void. The subject of the gift also must be actually in existence at the time of the donation.

For example, if A makes a *Hiba* on condition that he has a option of cancelling the Hiba within 1 year, the *Hiba* is valid but the option is invalid. Also for an example, if A makes *Hiba* of certain property to B with a condition that B shall not transfer the property, the restraint against the alienations is void and B takes the property absolutely.

**REVOCATION :**

As far as revocation of gift is concerned it may be revocked at any time before the delivery of the possession as the gift is not complete. In case of Sunni once possession has been delivered the gift becomes irrevocable and nothing short of a decree of court would revoke the gift. As has been held by High Court of Orissa in ***Abu Khan v. Moriam Bibi, (1974) 40 C.L.T. 1306*** that mere cancellation of the deed of gift by donor would not operate as a revocation of the gift.

The relief for revocation of gift under the Mohammadan Law it is the personal right of the donor and after his death his heirs have not the right of revocation. According to *Mulla* subject to the necessity of decree of a Court, a gift may be revoked even after delivery of possession except in the following cases where the gift becomes irrevocable -

(a) when the gift is made by a husband to his wife or by wife to her husband;

(b) when the donee is related to the donor within the prohibited degrees;
(c) when the doner or donee is dead;
(d) when the thing given has passed out of the donee's possession by sale, gift or otherwise;
(e) when the thing given is lost or destroyed;
(f) when the thing given has increased in value, whatever be the cause of the increase;
(g) when the thing is so changed that it cannot be identified, as when what is converted into flour by grinding;
(h) when the donor has received something in exchange (iwaz) for the gift.

The law relating to revocation is different for Shias as in their case a gift to any blood relation, whether within the prohibited degrees or not, is irrevocable after delivery of possession. Also a gift may be revoked by a mere declaration on the part of the donor without any proceeding in the Court. While dealing with revocation, the law of the donor shall apply rather than law of the donee.

As for as limitation period for concellng or setting aside deed of gift is concerned, it shall be governed by Ariticles 59 of the limitation Act, 1963 i.e. three years from the date of knowledge of the transaction.

**CONCLUSION :**

The above discussion shows following major points to make a valid and complete gift under the Mahamadden Law which were also stated in the ***Abdul Rahim case*** (Supra):

(a) The donor should be sane and major and must be the owner of the property which he is gifting.
(b) The thing gifted should be in existence at the time of hiba.
(c) If the thing gifted is divisible, it should be separated and made distinct.
(d) The thing gifted should be such property to benefit from which is lawful under the Shariat.
(e) The thing gifted should not be accompanied by things not gifted; i.e. should be free from things which have not been gifted.
(f) The thing gifted should come in the possession of the donee himself, or of his representative, guardian or executor.

In dealing with a gift under Muslim law, the first duty of the Court is to construe the gift. If it is a gift of the corpus, then any condition which derogates from absolute dominion over the subject of the gift will be rejected as repugnant,

but if upon construction the gift is held to be one of a limited interest the gift can take effect out of the usufruct, leaving the ownership of the corpus unaffected except to the extent to which its enjoyment is postponed for the duration of the limited interest. Other than above points it must be remembered that the three essentials of declaration, acceptance and delivery of possession must be proved specifically so as to complete hiba. Further, the heavy burden lies upon the party asserting the oral hiba and the fact of oral hiba must be proved strictly.

निष्कर्ष

ऊपर की जा चुकी व्याख्या से मुस्लिम विधि के अधीन पूर्ण एवं वैध दान (हिबा) के संबंध में निम्नलिखित मुख्य बातें प्रकट होती हैं जो अब्दुल रहीम वाले उपरोक्त न्यायदृष्टांत में कहीं गई हैं-

(क) दाता को वयस्क, मानसिक रूप से स्वस्थ्य एवं दान की जाने वाले संपत्ति का स्वामी होना चाहिये।

(ख) हिबा किये जाते समय दान में दी जा रही वस्तु को अस्तित्व में होना चाहिये।

(ग) यदि दान में दी जा रही संपत्ति विभाजित की जा सकती हैं वहां उसे (संपत्ति या वस्तु) पृथक कर विशिष्ट रूप से जाने जा सकने वाली होना चाहिये।

(घ) दान दिये जाने वाले लाभ (Benefit) शरियत के अधीन विधि पूर्ण होना चाहिये।

(ड) दान में दी जा रही वस्तुएं दान न की जा रही वस्तुओं के संयुक्त न हो अर्थात् दान की जा रही वस्तुएं दान न की गई वस्तुओं से स्वतंत्र होना चाहिये।

(च) दान की गई वस्तु दान गृहिता या उसके प्रतिनिधि, संरक्षक अथवा उसके निष्पादक के कब्जे में आ जाना चाहिये।

मुस्लिम विधि के अधीन ''दान'' के मामले में व्यवहार करते समय न्यायालय का प्रथम कर्तव्य हैं कि वह दान का अर्थान्वयन करें। यदि संपत्ति भौतिक रूप से अंतरित की गई है तो दान की गई वस्तु में संप्रभुता (Dominion) का अल्पीकरण करनी वाली शर्तो को दान के प्रतिकूल मानते हुए अस्वीकार किया जाना चाहिये, किन्तु जहां अर्थान्वयन करने पर पाया जाये कि केवल सीमित हित का दान किया गया हैं वहां संपत्ति के स्वामित्व को अप्रभावित रखते हुए भोगाधिकार उस विस्तार तक जहां उपभोग को कुछ अवधि के लिये सीमित किया गया है, प्रभावशील होगा। उपरोक्त बिन्दुओं के साथ-साथ यह ध्यान रखा जाना चाहिये कि दान को हिबा को पूर्ण बनाने हेतु तीन आवश्यक तत्व क्रमशः घोषणा, स्वीकृति एवं कब्जे का परिदान अवश्य साबित होने चाहिये। आगे यह भी कि मौखिक हिबा का अभिकथन करने वाले यह कठोर भार हैं कि वह मौखिक हिबा के तथ्य को साबित करें।

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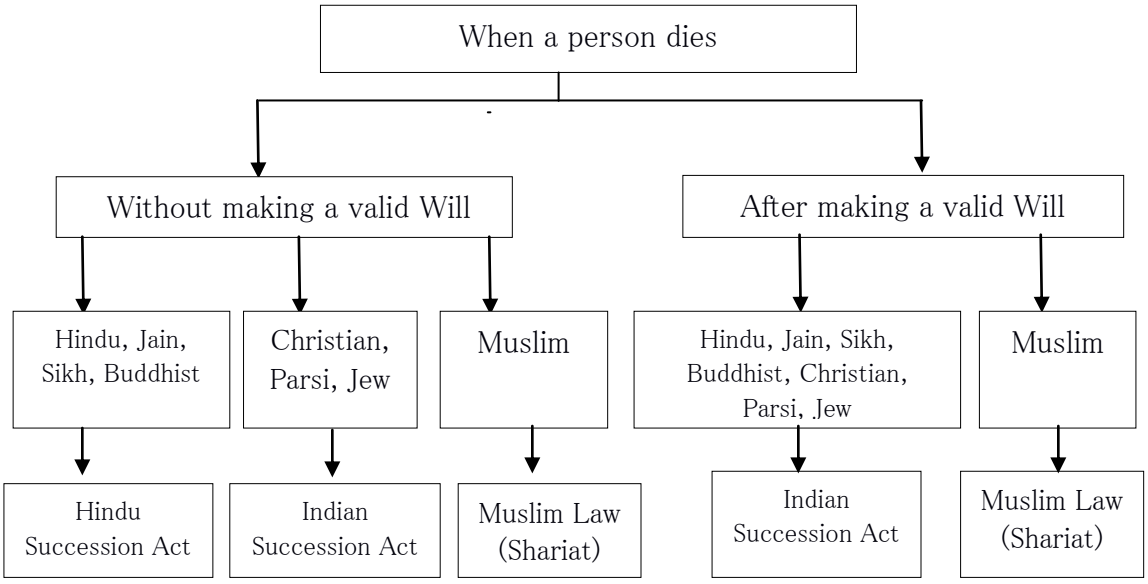
# PRINCIPLES OF INHERITANCE IN MUSLIM LAW

**– By Swati Bajaj**
OSD (Research and Training), MPSJA

## INTRODUCTION:

Succession is the devolution of property belonging to a person upon his death to his descendents or to some other person.

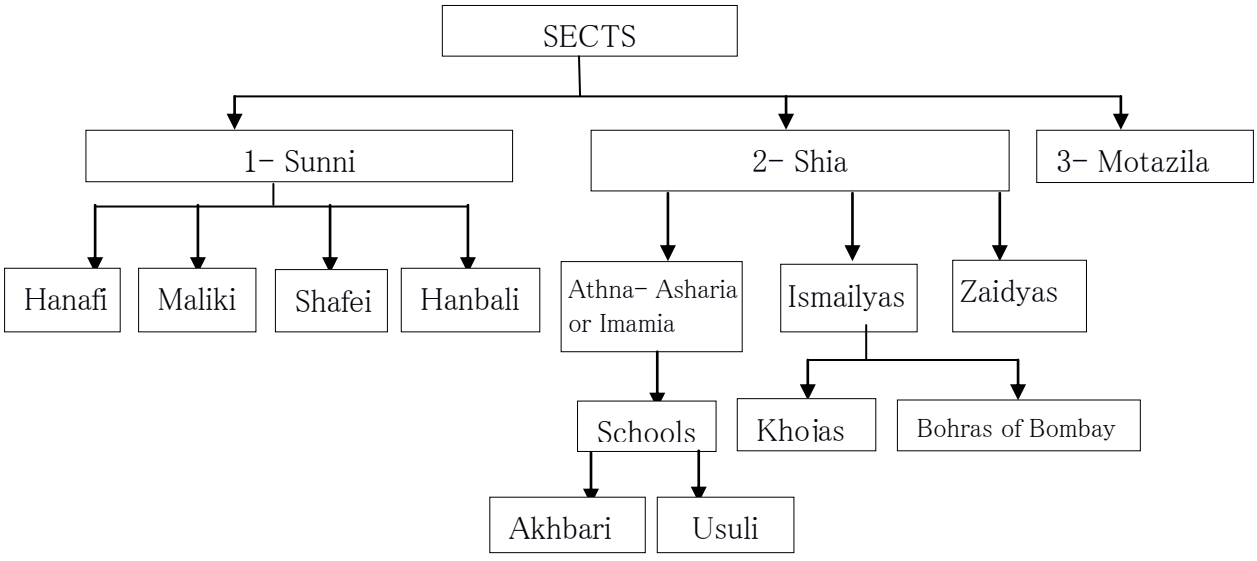
The law of testate and intestate succession for different communities in India can be explained and studied in the following diagram




## Sects in Muslim Law

Before proceeding towards the principles of inheritance and succession among Muslims, it is necessary to understand the sects in Muslim because Succession to the estate of a deceased Mahomedan in governed ***by the law of the sect to which he belonged at the time of his death,*** and not by the law of the sect to which the heirs belong.

The sects of Muslims are as under:-



Since great majority of Mahomedan in India are Sunnis. The Sunni Mahomedans of India principally belong to the Hanafi school. Hence, it is presumed that the parties to a suit are Sunnis unless it is shown that the parties belong to the Shia sect. Amongst Sunnis, the majority is of Hanafi sects, so again the presumption can only be that the Indian muslims are Sunni of Hanafi sect unless it is pleaded and proved otherwise. This Article particularly deals with Principles of inheritance pertaining to Sunni Muslims belonging to Hanafi sect.

**Principles of Inheritance among Mahomedan:**

In order to understand succession and inheritance among muslims, it is necessary to understand general principles relating to inheritance which are as under:

(1) What property is heritable?
(2) When inheritance opens?
(3) Exclusion from inheritance.

**Heritable Property:-**

Heritable property is that property which is available to the legal heirs for inheritance after the death of a muslim. Before inheritance the following must be paid out of the deceased property:-

(1) His funeral expenses and death bed charges.
(2) Expenses for obtaining probate, letters of administration, or succession certificate.
(3) Wages due for personal service rendered to the deceased within 3 months next proceeding his death by any labourer, artisan or domestic servant.
(4) Other debts.
(5) Legacies not exceeding one-third of what remains after all the payments.

After these payments, the remaining property is called heritable property. The heritable property of a muslim includes both movable and immovable property. It also does not make any distinction between ancestral and self – acquired property nor between real and personal property.

Mahomedan law does not recognise the joint family system. The shares of heirs under Mahomedan Law are definite and known before actual partition. Therefore, on partition of properties belonging to a deceased Muslim there is division by metes and bounds in accordance with the specific share of each heir being already determined by law.

**When Inheritance Opens:-**

The inheritance opens on the death of the person. Before his death nobody can claim any right in the property on the basis of his being heir – apparent or heir presumptive. A right by birth is not recognised in Muslim Law.

**Exclusion from inheritance**

Every person, including a child in the womb (provided it is born alive), is entitled to inherit, unless there is specific rule of exclusion. According to the rule of exclusion certain persons are disqualified to inherit the property of another person. These impediments or disabilities are personal and are known as grounds of exclusion. These grounds are as follows:

1- Homicide;
2- Illegitimacy;
3- Slavery;
4- Difference of religion;
5- Estoppel in succession.

(1) **Homicide:-** Under Sunni Law a person who causes the death of a person is not entitled to inherit the property of that person; no matter whether the death was caused intentionally or by accident.

(2) **Illegitimacy:-** Under Sunni Law an illegitimate child is entitled to inherit his mother but not his father.

(3) **Slavery:-** This impediment to inheritance has been abolished and has no place in Mohammedan Law as it is administered in India. The bar of slavery has been abolished by the Abolition of Slavery Act, V of 1843.

(4) **Difference of religion:-** Under Islamic Law a non-Muslim could not inherit from a Muslim but the Caste Disabilities Removal Act of 1850 does away in India with the exclusion from inheritance from a deceased Muslim on the ground of mere difference of religion whether due to apostasy or otherwise. The estate of a Hindu converted to Islam and dying as a Muslim is subject to Muslim Law.

(5) **Estoppel in succession:-** A person who first denies his relationship with the propositus, cannot be allowed subsequently to turn his back and claim inheritance when succession opens. Denial of relationship operates as estoppel in succession.

**Spes successionis not recognised :**

The right of an heir-apparent comes into existence for the first time on the death of the ancestor, and until then his right to succeed is nothing more than a mere spes successionis. The Muslim law does not recognize any interest expectant on the death of another and till that death occurs which by force of that law gives birth to the rights as heir in the person entitled to it according to the rules of succession, he possesses not right at all.

**Hanafi law of Inheritance**

The term ‘Hanafi’ is generally used as synonimous to ‘Sunni’ under Muslim law. Under any law of intestate succession, two questions, that arise, are:

(i) Who are the heirs of the deceased, and
(ii) What share the heirs are entitled.

**Who is an heir?**

A person, who is entitled to inherit the estate of another after his death, is known as an heir.

As per Hanafi Law, the persons entitled to inherit or succeed the heritable property are classified into following classes:-

1- **Sharers** (also known as Quaranic heirs)
2- **Residuaries** (also known as Agnatic heirs)
3- **Distant Kindred** (also known as Uterine heirs)

The **Sharers** are those who are entitled to a prescribed share of the inheritance; the **Residuaries** are those who take no prescribed share, but succeed to the "residue" after the claims of the sharers are satisfied; **Distant kindred** are those relations by blood who are neither Sharers nor Residuaries.

**Property of the Deceased, how distributed:**

After payment of funeral expenses, debts, and legacies, the first step in the distribution of the estate, of a deceased Mahomedan is to ascertain which of the surviving relations belong to the class of sharers. After ascertaining the sharers who are entitled to a share of inheritance the next step is to allot their respective share of sharer mentioned in Koran (Quran).

After that, the next step is to divide the residue (if any) among such of the residuaries which are entitled to inherit the residue. If there are no sharers, the residuaries will succeed to the whole inheritance. If there are neither sharers nor residuaries, the inheritance will be divided among such of the distant kindered as are entitled to succeed thereof. The distant kindred are not entitled to succeed, as long as there is any heir belonging to the class of sharers or residuaries. But there is one case in which the distant kindered will inherit with a sharer, and that is, where the sharer is the husband or wife of the deceased.

In the absence of all the above mentioned three classes of heir, the property devolves to the fourth class viz., successors unrelated in blood.

**General rule of Succession:**

Amongst relatives belonging to the same class, the nearer relative excludes the more remote. Thus, if the surviving relations are the father and the father's father, the father alone will succeed by excluding the father's father.

**Sharers:-**

They are the family members with fixed shares & whose share is exclusively set by Quran. Hence, they are called Quranic heirs or Obligatory sharers. They are 12 in number under Hanafi law.

The 12 sharers are as follows:-

**Spouse**

Husband and wife

**Ascendants**

Father

True grandfather (Paternal) h.h.s.

Mother

True grandmother (Paternal and Maternal)

**Descendants**

Daughter

Son’s daughter h.l.s.

**Collaterals**

Full sister

Consanguine sister

Uterine brother

Uterine sister

The fractional shares that are specified by the Koran are only six, namely 1/2, 1/4, 1/8, 2/3, 1/3 and 1/6. The fixed Quranic share of above mentioned sharers are as follows:-

| S. No. | Quranic share | Sharers mentioned in Quran |
|---|---|---|
| 1 | 1/2 | •Husband (no child or child of a son)<br>•Daughter (if only one)<br>•Son's daughter h.l.s. (if only one)<br>•Full sister (if only one)<br>•Consanguine Sister (if only one) |
| 2 | 1/4 | •Husband (presence of child or child of a son)<br>•Wife (no child or child of a son) |
| 3 | 1/8 | •Wife (presence of child or child of a son) |
| 4 | 2/3 | •Daughters (if more than one)<br>•Daughter of son h.l.s. eg grand daughter) )if more than one)<br>•Consanguine sister (if more than one) |
| 5 | 1/3 | •Mother (absence of child, child of a son or their descendants)<br>•More than one Uterine brother (in absence of child, child of son, father or true paternal grandfather of deceased)<br>•More than one Uterine sister (in absence of child, child of son, father or true paternal grandfather of deceased) |
| 6 | 1/6 | •Father (presence of child or child of a son)<br>•True grandfather (absence of father)<br>•Mother (presence of child, child of a son or their descendants)<br>•True maternal grandmother (in absence mother)<br>•True paternal grandmother (in absence of mother, father)<br>•Daughter of a son (if they share with daughter)<br>•Consanguine sister (in presence of one full sister)<br>•Uterine brother (if only one)<br>•Uterine sister (if only one) |

## THE KORANIC HEIRS AND THEIR SPECIFIED SHARES

| No. | Heirs | Normal Share | | Conditions under whichnormal share is inherited | When entirely excluded | Conditions under which | How the share is affected |
|---|---|---|---|---|---|---|---|
| | | One | Two or more | | | | |
| **1. SPOUSE** | | | | | | | |
| 1 | **Wife** | 1/8 | 1/8 | Presence of a child or child of a son how low so ever | Never | Absence of child or child of son how low so ever | Share is increased to 1/4 |
| 2 | **Husband** | 1/4 | – | Presence of a child or child of a son how low so ever | Never | Absence of child or child of son how low so ever | Share is increased to 1/2 |
| **2. CHILDREN** | | | | | | | |
| 1 | **Daughter** | 1/2 | 2/3 | Absence of son | Never | In presence of son | Inherits as residuary half of the son |
| 2 | **Son's daughter** | 1/2 | 2/3 | Absence of (i) son, (ii) daughter, (iii) son's son | In the presence of (i) a son, (ii) more than one daughter, | (a) In the presence of only one daughter (b) equal son's son c) In absence of equal son's son but in presence of lower son's son i.e. son's son's son d) when inherits as residuary with lower son's son but there is lower son's daughter also | a) share is reduced to 1/6 (whether one or more) (b) inherits as residuary (c) inherits as residuary (d)willinherit equally with lower son's daughter |
| 3 | **Son's son's daughter** | 1/2 | 2/3 | Absence of (i) son, (ii) daughter, (iii) son's son (iv) son's dauthter, (iv) son's dauthter, (v) Equal Son's son | In the presence of (i) son, (ii) daughter (iii) Son's son (iv) son's daugther | (a) In the presence of only one daughter of Son's dauthter (b) equal son's son's son | (a) share is reduced to 1/6 (whether one or more) b) inherits as residuary |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| **3. SIBLINGS** | | | | | | | |
| 1 | **Full sister** | 1/2 | 2/3 | Absence of (i) child or child of a son h.l.s. (ii) father (iii) true grandfather (iv) full brother | In the presence of (i) son, (ii) son's son how low so ever, (iii) father, and (iv) true grandfather, | (a) In presence of full brother (b) With daughter or son's daughter h.i.s. in absence nearer residuary | (a) inherits as residuary. (b) inherits as residuary. |
| 2 | **Consanguine sister** | 1/2 | 2/3 | Absence of (i) child or child of a son h.l.s.(ii) father (iii) true grandfather (iv) full brother & sister (v) consanguine brother | In the presence of (i) son, (ii) son's son how low so ever, (iii) father, (iv) true grandfather, (v) full brother, and (vi) more than one full sister | (a) presence of one full sister who succeeds as a sharer (b) when there is a consanguine brother | (a) inherits 1/6 share (whether one or more) (b) inherits as residuary |
| 3 | **Uterine brother** | 1/6 | 1/3 | Absence of (i) child (ii) child of a son h.l.s. (iii) father (iv) true grandfather | In the presence of (i) child, (ii) child of a son , how low so ever, (iii) father, and (iv) true grandfather | – | – |
| 4 | **Uterine sister** | 1/6 | 1/3 | Absence of (i) child (ii) child of a son h.l.s. (iii) father (iv) true grandfather | In the presence of (i) child, (ii) child of a son , how low so ever, (iii) father, and (iv) true grandfather | – | – |
| **4. PARENTS** | | | | | | | |
| 1 | **Father** | 1/6 | - | Presence of child or child of a son h.l.s. | Never | Absence of child or child of a son how low so ever | Inherits as residuary |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 2 | **Mother** | 1/6 | - | Presence of (i) child or child of a son h.l.s. or (ii) two or more brothersor sisters or one brother and one sister (whether full consanguine or uterine) | Never | (a) In absence of child of son's child, how low so ever<br>(b) less than two siblings i.e. brother and sister<br>(c) when inherits with father and spouse | (a) share is increased to 1/3<br>(b) share is increased to 1/3<br>(c) 1/3 of the residue after deducting the share of husband or wife. |
| **5. GRANDPARENTS** | | | | | | | |
| 1 | **True Grand-father** | 1/6 | - | Presence of child or child of a son h.l.s. but absence of father or nearer true grandfather | In the presence of (i) father, and (ii) nearer true grandfather | Absence of child or child of a son how low so ever (absence of father or nearer Tr. G.F.) | Inherits as residuary |
| 2 | **True Paternal grandmother** | 1/6 | 1/6 | Absence of (i) mother, (ii) father, (iii) nearer Tr. G.M. either paternal or maternal and intermediate Tr. G.F. | In the presence of (i) mother, (ii) nearer maternal or paternal grandmother, (iii) father, and (iv) nearer true grandfather | - | - |
| 3 | **True Maternalgrandmother** | 1/6 | 1/6 | Absence of (i) mother, (ii) nearer Tr. G.M. either paternal or maternal | In the presence of (i) mother, and (ii) nearer maternal or paternal grandmother. | | |

By looking into the table, it is clear that the Koran has alloted specified shares to the sharers but, in the case of some sharers, their shares vary under certain circumstances. Some sharers under certain circumstances do not inherit as sharers, but as residuaries. Both these situations are explained in tabular form in the following two tables:

**The Koranic Residuaries**

There are certain sharers who do not take their specified shares if a residuary equal rank co-exists. In such a case they become residuaries. They are called the Koranic residuaries with another. They may be stated in the tabular form as below:

**Koranic Residuaries or residuaries with another**

| No. | Sharers | Circumstances in which the sharer becomes residuary |
|---|---|---|
| 1 | Daughter | When there co-exists a son of the deceased |
| 2 | Son's daughter | When there co-exists:<br>(a) Son's son, or<br>(b) a male agnatic heir in a lower degree. |
| 3 | Son son's daughter | When there co-exists:<br>(a) Son's son's son, or<br>(b) a male agnatic heir in a lower degree |
| 4 | Full Sister | When there co-exists a Full brother |
| 5 | Consanguine Sister | When there co-exists a Consanguine brother. |

**Illustrations of Sharers**

A Sunni Muslim dies leaving behind him:

(i) A father, a mother, father's father, mother's mother, 2 daughters and a son's daughter:
   a. Father - 1/6 (as sharer, as deceased has left daughters surviving him)
   b. Father's father - NIL (excluded by father)
   c. Mother - 1/6 (because of presence of the child i.e. daughters)
   d. Mother's mother - NIL (excluded by mother)
   e. 2 daughters - 2/3 (as sharers)
   f. Son's daughter - NIL (excluded by daughters)

(ii) Only mother and father:
   a. Mother - 1/3 (as sharer in absence of child or child of a son)
   b. Father - 2/3 (as residuary in absence of child or child of a son)

(iii) Husband and father:
   a. Husband - 1/2 (as sharer, because there is no child or child of a son h.l.s.)
   b. Father - 1/2 (as residuary in absence of child or child of a son)

(iv) Mother, father and 2 sisters:
   a. Mother - 1/6 (as sharer because of presence of 2 sisters)
   b. 2 sisters - NIL (excluded by father)
   c. Father - 5/6 (as residuary)

(v) Father and 4 widows:
   a. 4 widows - 1/4 (each will get 1/16)
   b. Father - 3/4 (as residuary)

(vi) Sister, brother, mother and father
   a. Mother - 1/6 (as sharer due to presence of a brother and sister)
   b. Sister - NIL (excluded by father)
   c. Brother - NIL (excluded by father)
   d. Father - 5/6 (as residuary)

(vii) Mother, father and husband:
   a. Husband - 1/2 (as sharer in absence of child or child of a son)
   b. Mother - 1/6 (as sharer; 1/3 of residue 1/2 after allotting share to husband)
   c. Father - 1/3 (as residuary)

(viii) Mother, father, widow:
   a. Widow - 1/4 (as sharer in absence of child or child of a son)
   b. Mother - 1/4 (as sharer ; after allotting share to widow 1/3 of residue 3/4)
   c. Father - 1/2 (as residuary)

(ix) Husband, mother and father's father:
   a. Husband - 1/2 (as sharer)
   b. Mother - 1/3 (as sharer)
   c. Father' father - 1/6 (as residuary in absence of father)

(x) Father's mother, mother's mother and father
   a. Father's mother - NIL (excluded by father)
   b. Mother's mother - 1/6 (as sharer; not excluded by father)
   c. Father - 5/6 (as residuary)

(xi) Father, mother, daughter and 4 son's daughters:
   a. Father - 1/6 (as sharer; due to presence of child)
   b. Mother - 1/6 (as sharer; due to presence of child)
   c. Daughter - 1/2 (as sharer; only one daughter present)
   d. 4 son's daughter - 1/6 (each taking 1/24; son's daughter is not excluded because there is only one daughter and they together make up 2/3 total share of daughters. If there had been 2

daughters, then they had been excluded as both the daughters will together inherit 2/3 share)

**The Residuaries (Agnatic Heirs)**

When there are no sharers, or when there are sharers and a residue of estate is left after allotting them their shares, then whole of the inheritance, or the residue, as the case may be, devolves upon the residuaries. All residuaries are related to the deceased through a male. The residuaries do not get any fixed shares.The residuaries may be classified into:

(i) Descendants
(ii) Ascendants
(iii) Descendants of father
(iv) Descendants of true grandfather, how high soever.

The above mentioned residuaries may be depicted in tabular form mentioned below:-

**Residuaries**

| No. | Heirs | When portion of estate they take |
|---|---|---|
| **Descendants** | | |
| 1 | | (a) When there is a daughter, he takes double portion.<br>(b) When there is no daughter, he takes the entire residue. |
| 2 | Son's son how low soever | (a) When there is son's daughter, he takes double portion. (when there is equal son's son, but there is a lower son's son's daughter, if she does not inherit as a sharer, inherits as residuary with lower son's son.)<br>(b) Nearer son's son excludes remoter.<br>(c) Two or more son's sons take the estate in equal shares. |
| **Ascendants** | | |
| | Father | As a residuary he takes the entire estate. |
| 4 | True Grandfather | (a) As a residuary he takes the entire estate.<br>(b) The near true grandfather excludes the remoter. |
| **Descendants of the father** | | |
| 5 | Full brother | (a) Where there co-exists a full sister, he takes double portion. |

| | | |
|---|---|---|
| | | (b) In the absence of the sister, he takes the entire residue. |
| 6 | Full sister | In the absence of the full brother and aforesaid residuaries, she takes the residue, if any, if there is/are daughter/daughters or son's daughter/daughters how low soever or one daughter and son's daughter/ daughters, how low soever. |
| 7 | Consanguine brother | When there is consanguine sister, he takes double portion. |
| 8 | Consanguine sister | In default of a consanguine brother and abovementioned residuaries she takes the residue, if any, if there be daughter/daughters or a son's daughter/daughters how low so ever or one daughter and a son's daughter/daughters how low soever. |
| 9 | Full brother's son | In the default of above residuaries he takes the entire residue. |
| 10 | Consanguine brother's son | In the default of above residuaries he takes the entire residue. |
| 11 | Full brother's son's son | In the default of above residuaries he takes the entire residue. |
| 12 | Consanguine brother's son's son | In the default of above residuaries he takes the entire residue. |
| Then come the male descendants of brother's son's son, and then the male descendants of consanguine brother's son's son alternatively. | | |
| **Descendants of the true grandfather** | | |
| 13 | Full paternal uncles | He takes the entire residue. |
| 14 | Consanguine paternal uncle | He takes the entire residue. |
| 15 | Full paternal uncle's son | He takes the entire residue. |
| 16 | Consanguine paternal uncle's son | He takes the entire residue. |
| 17 | Full paternal uncle's son's son | He takes the entire residue. |
| 18 | Consanguine paternal uncle's son's son | He takes the entire residue. |

**Principles of Succession among Sharers and Residuaries:**

It is clear from the above Tables of Sharers and Residuaries that certain relations entirely exclude other relations from inheritance. This proceeds upon the following principles:

**RULE I**

Whoever is related to the deceased through any person shall not inherit while that person is living.

**RULE II**

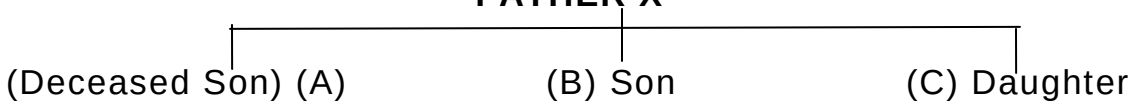
Rule of propinquity, which means that the nearer in degree excludes the remoter.

**RULE III**

One who is excluded himself may exclude others, wholly or partially.

**RULE I**

"Whoever is related to the deceased through any person, shall not inherit while that person is living". Thus the father excludes brother and sister because the brother or sister is related to the deceased through father,




Here B and C are brother and sister of A, deceased, but this relationship of brotherhood or sisterhood is not directly with A but through their father X, hence X will exclude B and C.

Exception – But there is one exception to this, namely, the mother does not exclude the uterine brothers or sister though they are related to the deceased though her. (Uterine brother or sister means brother or sister from the same mother, but different fathers).

**RULE II**

"The nearer in degree excludes the more remote" – The person who is nearer in blood to the deceased excludes the more remote (Sirajiyyah).

Examples: (i) Father excludes grandfather.

(ii) Mother excludes grandmother.

(iii) Son excludes son's son.

It should be noted that the Rule of Propinquity applies only when the heirs belong to the same class. If they belong to different classes, this rule will not apply.

**RULE III**

"One who is excluded himself may exclude others, wholly or partially"– There are certain cases in which heirs are excluded or have their shares reduced, by reason of the existence of other heirs who themselves take no share in the inheritance. Eg, if, there be two brothers or sisters or more, on whichever side they are, they do not inherit with the father of the deceased, yet they drive the mother from a third to a sixth."

There are five heirs that are always entitled to some share of the inheritance, and they are in no case liable to exclusion. These are

(1) Child, i.e., son or daughter,
(2) Father,
(3) Mother,
(4) Husband, and
(5) Wife

These are the most favoured heirs, and known as Primary Heirs by Mulla. Next to these, there are three, namely, (1) child of a son, h.l.s., (2) true grandfather h.h.s. and (3) true grandmother h.h.s. These three are the Subsitutes of the corresponding primary heirs. The husband or wife can have no substitute. The following two lines indicate at a glance the primary heirs and their substitutes:-

| **Primary heirs** | Child | Father | Mother |
|---|---|---|---|
| **Substitutes** | Child of a son h.l.s | Tr. G.F. | Tr. G.M. |

**The right of succession of the substitutes is governed by the following rules:-**

(1) No substitute is entitled to succeed so long as there is the corresponding primary heir. To this there is an exception, and that is when there is no son, but a daughter and a son's daughter in which case the daughter takes 1/2, and the son's daughter (though a substitute) takes 1/6.
(2) The child of a son h.l.s. is always entitled to succeed, when there is no child.
(3) The Tr. G.F. is always entitled to succeed, when there is no Father.
(4) The mother's mother is always entitled to succeed, when there is no mother. The father's mother is always entitled to succeed, if there be no mother and no father.
(5) All relations who are excluded by primary heirs are also excluded by their substitutes. Thus, full and consanguine sisters and uterine brothers and sisters are excluded by the child and the father. They are also excluded therefore by the child of son h.l.s. and by the true grandfather.

**Illustrations of residuaries:**

A Sunni Muslim dies leaving behind him:

(i) Son and daughter:
   a. Son - 2/3 (Son always take double the share of a daughter)
   b. Daughter - 1/3 (as residuary in presence of son)

(ii) 2 Sons and 3 daughters
   a. 2 Sons - 4/7 (each son taking 2/7)
   b. 3 Daughters - 3/7 (each daughter taking 1/7)

(iii) Husband, mother, son and daughter
   a. Husband - 1/4 (as sharer in presence of child)
   b. Mother - 1/6 (as sharer in presence of child)
   c. Son - 2/3 of 7/12 = 7/18 (as residuary, taking double share of daughter)
   d. Daughter - 1/3 of 7/12 = 7/36 (as residuary)

(iv) Husband, mother, sister and brother:
   a. Husband - 1/2 (as sharer in absence of child or child of a son)
   b. Mother - 1/6 (as sharer in presence of a brother & sister)
   c. Brother - 2/3 of 1/3 = 2/9 (as residuary with sister)
   d. Sister - 1/3 of 1/3 = 1/9 ( as residuary with brother)

(v) Daughter, full sister and brother's son
   a. Daughter - 1/2 (as sharer)
   b. Full sister - 1/2 (as residuary)
   c. Brother's son - NIL (excluded by full sister)

(vi) 2 Daughters and full sister
   a. 2 Daughters - 2/3 (as sharer)
   b. Full sister - 1/3 ( as residuary)

(vii) Daughter, son's daughter and full sister
   a. Daughter - 1/2 (as sharer)
   b. Son's daughter - 1/6 (as sharer)
   c. Full sister - 1/3 (as residuary)

(viii) Daughter, son's daughter, husband, full sister
   a. Daughter - 1/2 (as sharer)
   b. Son's daughter - 1/6 (as sharer)

c. Husband - 1/4 (as sharer)
d. Full sister - 1/12 (as residuary)

(ix) Full brother, full sister and con. sister
a. Full brother - 2/3 (as residuary with full sister)
b. Full sister - 1/3 (as residuary with full brother)
c. Con. sister - NIL (excluded by full brother)

(x) Daughter and Father
a. Daughter - 1/2 (as sharer)
b. Father - 1/2 (1/6 as sharer + 1/3 as residuary)

**Doctrine of *Aul* (increase) and *Radd* (return)**

Since in Muslim law, as per Quran fixed shares are being alloted to heirs. So while making the allotment of sharers, 3 situations are likely to occur which are as follows:

1. The sum of shares alloted to various heirs according to their entitlement may be in excess of the unity or
2. The sum of shares alloted to various heirs according to their entitlement may be equal to the unity or
3. The sum of shares alloted to various heirs according to their entitlement may be less than the unity.

Suppose that the property is Rs. 1 and there are four sharers each of whom is entitled to ½ of the Property, the total of share will come out to be Rs. 2 which is more than the heritable property (Rs. 1). Similarly, the total of shares may be less than or equal to the heritable property.

In such cases where the total shares exceed the property or fall short of it, the necessity for application of certain special rules present itself. These rules are known as the ***'Doctrine of Return and Increase'***. These are nothing but contain rules to increase or decrease, the shares according to the requirements of the case.

**Doctrine of *Aul* or increase –**

When the sum total of the shares allotted to various heirs in accordance with their entitlement exceeds the unity, then the doctrine of ***aul*** lays down that the share of each heir should be proportionately reduced. This is done by reducing the fractional shares to be common denominator. Since this is done by increasing the denominator, the doctrine has been given the name of increase ***(aul)***, though in fact, the shares are proportionately reduced.

This anomoly arises only where either daughter's class (D, SD) or sister's class (real, or consanguine) is present.

**Illustrations**

A Sunni Muslim dies leaving behind :

(i) Husband and 2 full sisters

| | | | |
|---|---|---|---|
| a. Husband | - | 1/2 = 3/6 | reduced to 3/7 |
| b. 2 full sisters | - | 2/3 = 4/6 | reduced to 4/7 |
| | | 7/6 | 1 |

(ii) Husband, 2 full sisters, mother

| | | | |
|---|---|---|---|
| a. Husband | - | 1/2 = 3/6 | reduced to 3/8 |
| b. 2 full sisters | - | 2/3 = 4/6 | reduced to 4/8 |
| c. Mother | - | 1/6 = 1/6 | reduced to 1/8 |
| | | 8/6 | 1 |

(iii) Husband, mother and 2 daughters

| | | | |
|---|---|---|---|
| a. Husband | - | 1/4 = 3/12 | reduced to 3/13 |
| b. Mother | - | 1/6 = 2/12 | reduced to 2/13 |
| c. 2 daughters | - | 2/3 = 8/12 | reduced to 8/13 |
| | | 13/12 | 1 |

(iv) Husband, mother, daughter and son's daughter

| | | | |
|---|---|---|---|
| a. Husband | - | 1/4 = 3/12 | reduced to 3/13 |
| b. Mother | - | 1/6 = 2/12 | reduced to 2/13 |
| c. Daughter | - | 1/2 = 6/12 | reduced to 6/13 |
| d. Son's daughter | - | 1/6 = 2/12 | reduced to 2/13 |
| | | 13/12 | 1 |

(v) Widow, 2 C sisters and mother

| | | | |
|---|---|---|---|
| a. Widow | - | 1/4 = 3/12 | reduced to 3/13 |
| b. 2 C sisters | - | 2/3 = 8/12 | reduced to 8/13 |
| c. Mother | - | 1/6 = 2/12 | reduced to 2/13 |
| | | 13/12 | 1 |

(vi) Husband, father, mother and 3 daughters

| | | | |
|---|---|---|---|
| a. Husband | - | 1/4 = 3/12 | reduced to 3/15 |
| b. Father | - | 1/6 = 2/12 | reduced to 2/15 |
| c. Mother | - | 1/6 = 2/12 | reduced to 2/15 |
| d. Daughter | - | 2/3 = 8/12 | reduced to 8/15 |
| | | 15/12 | 1 |

(vii) Widow, 2 full sisters, 2 U. sisters and mother

a. Widow - 1/4 = 3/12 reduced to 3/17

b. 2 full sisters - 2/3 = 8/12 reduced to 8/17

c. 2 U. sisters - 1/3 = 4/12 reduced to 4/17

d. Mother - 1/6 = 2/12 reduced to 2/17

17/12 1

(viii) Wife, 2 daughters, father and mother

a. Wife - 1/8 = 3/24 reduced to 3/27

b. 2 daughters - 2/3 = 16/24 reduced to 16/27

c. Father - 1/6 = 4/24 reduced to 4/27

d. Mother - 1/6 = 4/24 reduced to 4/27

27/24 1

**Doctrine of *Return* (Radd) –**

If there is a residue left after satisfying the claims of Sharers, but there is no Residuary, the residue reverts to the Sharers in proportion to their shares. This right of reverted is technically called “Return” or Radd.

**Exception –** Neither the husband nor the wife is entitled to the Return so long as there is any other heir, whether he be a Sharer or a Distant Kinsman. But if there be no other heir, the residue will go to the husband or the wife, as the case may be, by ***Return***.

**Thus, the doctrine of *Return* lays down:**

(i) The Surplus is distributed among the sharers in proportion to their shares.

(ii) But the husband or the wife is not entitled to return, so long as there is a sharer or a distant kindred alive.

(iii) If there is no sharer or a distant kindred then the surplus returns to the wife or husband.

**Illustrations:**

A Sunni Muslim dies leaving behind:

(i) Husband and mother

a. Husband - 1/2 (as sharer) (Husband is not entitled to the *Return*, as there is another sharer, the mother. The surplus 1/6 will therefore go to the mother by *Return*.)

b. Mother - 1/2 (1/3 as sharer and 1/6 by Return)

(ii) Husband and daughter

a. Husband - 1/4

b. Daughter - 3/4 (1/2 as sharer and 1/4 by Return)

(iii) Mother and son's daughter

a. Mother - 1/6 = 1/6 increased to 1/4

b. Son's daughter -1/2 = 3/6 increased to 3/4

4/6 1

(iv) Mother, daughter and son's daughter

a. Mother - 1/6 = 1/6 increased to 1/5

b. Daughter - 1/2 = 3/6 increased to 3/5

c. Son's daughter -1/6 = 1/6 increased to 1/5

5/6 1

(v) Wife and son's daughter

a. Wife - 1/8 (As sharer in presence of child of a son)

b. Son's daughter -7/8 (1/2 as sharer and 3/8 by Return)

(vi) Mother, Full sister and U. brother

a. Mother - 1/6 = 1/6 increased to 1/5

b. Full sister - 1/2 = 3/6 increased to 3/5

c. U. brother - 1/6 = 1/6 increased to 1/5

5/6 1

(vii) Husband, Mother and Daughter

a. Husband - 1/4 = 1/4 = 4/16

b. Mother - 1/6 = 1/6 increased to 1/4 of (3/4) = 3/16

c. Daughter - 1/2 = 3/6 increased to 3/4 of (3/4) = 9/16

11/12 1

Note:-Since neither the husband nor the wife is entitled to the Return when there are other sharers, his or her share will remain the same, and the shares of the others will be increased by reducing them to a common denominator, and then decreasing the denominator of the original fractional share so as to make it equal to the sum of the numerators, and multiplying the new fractional shares thus obtained by the residue after deducting the husband's or wife's share. Thus in the present illustration the shares of the mother and daughter, when reduced to a common denominator, are 1/6 and 3/6 respectively. The total of the numerators is 1+3=4, and the new fractional

shares will thus be 1/4, and 3/4 respectively. The residue after deducting the husband's share is 3/4, and the ultimate shares of the mother and daughter will therefore be 1/4 of 3/4= 3/16 and 3/4 of 3/4 = 9/16 respectively.

(viii) Wife, Mother and daughter

| | | | |
|---|---|---|---|
| a. Wife | - 1/8 | | = 4/32 |
| b. Mother | - 1/6 = 1/6 increased to 1/4 | of (7/8) | = 7/32 |
| c. Daughter | - 1/2 = 3/6 increased to 3/4 | of (7/8) | = 21/32 |
| | 19/24 | | 1 |

(ix) Father's mother, Mother's mother, Full sister and C. sister

| | | |
|---|---|---|
| a. Father's mother | - | 1/6 increased to 1/5 |
| b. Mother's mother | | - |
| c. Full sister | - 1/2 = 3/6 increased to | 3/5 |
| d. C. sister | - 1/6 = 1/6 increased to | 1/5 |
| | 5/6 | 1 |

(x) Full sister, C. sister and U. sister

| | | |
|---|---|---|
| a. Full sister 1/2 | - | = 3/6 increased to 3/5 |
| b. C. sister | - = 1/6 increased to | 1/5 |
| c. U. sister | - = 1/6 increased to | 1/5 |
| | 5/6 | 1 |

**Difference between doctrines of 'Increase' and 'Return':**

The two doctrines, that is, the doctrines of *'Increase'* and *'Return'* are converse of each other. The points of difference between the two may be formulated as under :-

1. In *'Increase'* the total of shares adds up to more than unity and suffers a proportionate reduction. For example, where the surviving heirs are:

| | | | | |
|---|---|---|---|---|
| Husband | = | 1/2 | reduced to | 3/8 |
| 2 Full Sister | = | 2/3 | -do- | 4/8 |
| Mother | = | 1/6 | -do- | 1/8 |
| | | 8/6 | | 8/8 |

Whereas in *'Return'* the total falls short of unity and are proportionately increased. For example, where the surviving heirs are:

| | | | | |
|---|---|---|---|---|
| Mother | = | 1/6 | increased to | 1/4 |
| Son's Daughter | = | 1/2 | -do- | 3/4 |
| | | 4/6 | | 4/4 |

Thus in *'Increase'* the shares undergo a rateable reduction, whereas in *'Return'* the shares undergo a rateable increase.

2. In *'Increase'*, the share of the husband or wife suffers a proportionate reduction along with other sharers (this has been illustrated in the example given above); but in *'Return'* the husband or wife is not entitled to the 'return' so long as there is any other heir, whether sharer or distant kindred. For example, where the surviving heirs are

| | | |
|---|---|---|
| Husband | = | 1/4 |
| Daughter | = | 1/2 |
| Total | = | 3/4 |

Here the residue i.e. (1-3/4) 1/4 goes only to the daughter and she takes (1/2 + 1/4) = 3/4.

Even if there is no other sharer besides the husband or wife but there is one distant kindred, the said distant kindred gets the residue. For example, where the surviving heirs are the husband and daughter's son, the husband gets 1/4, and the residue goes to the dauthter's son, who is a distant kindred.

**Distant Kindred**

The distant kindred are entitled to inherit only-

(i) In the absence of the sharers or residuaries, or

(ii) If the only sharer is a husband or wife, and there is no relation belonging to the class of residuaries, the husband or wife will take his or her full share, and the remaining estate will be divided among the distant kindred.

**Classification of Distant Kindred:**

Distant kindred are divied into 4 classes which are:

1. Descendants of the deceased, other than sharers and residuaries;
2. Ascendants of the deceased, other than sharers and residuaries;
3. Descendants of parents, other than residuaries; and
4. Descendants of grandparents.

**Descentants of the deceased:**

1. Daughter’s children and their descendants.
2. Children of son’s daughter h.l.s. and their descendants.

**Ascendants of the deceased:**

1. False grandfathers h.h.s.
2. False grandmothers h.h.s.

**Descendants of parents:**

1. Full brother's daughters and their descendants.
2. Con. brother's daughters and their descendants.
3. Uterine brother's children and their descendants.
4. Daughters of full brothers' son h.l.s. and their descendants.
5. Daughters of con. brothers' son h.l.s. and their descendants.
6. Sisters' (f., c. or ute.) children and their descendants.

Descendants of immediate grandparents (true or false):

1. Full paternal uncles' daughters and their descendants.
2. Con. paternal uncles' daughters and their descendants.
3. Uterine paternal uncles and their children and their descendants.
4. Daughters of full paternal uncles' son h.l.s. and their descendants.
5. Daughters of con. paternal uncles' son h.l.s. and their descendants.
6. Paternal aunts (f., c. or ute) and their children and their descendants.
7. Maternal uncles and aunts and their children and their descendants.

**The General Rules regarding shares of distant kindreds –**

The rules regarding the share of distant kindreds are as follows.

**Rule I –** The first class or distant kindred excludes the second class.

**Rule II –** The nearer in degree excludes the more remote e.g., daughter's children exclude son's daughter's children.

**Rule III –** As amongst the member of the same class and of the same degree, the children of sharers and residuaries are preferred to those of distant kindreds, e.g., son's daughter's children are preferred to daughter's children.

***Note :An attempt is made to understand the principles of inheritance amongst Muslim Law in a simple way with the help of Principles of Mahomedan Law by Mulla 22nd Edition revised by Prof. Iqbal Ali Khan. All the illustrations mentioned in the article have been taken from the aforementioned book.***

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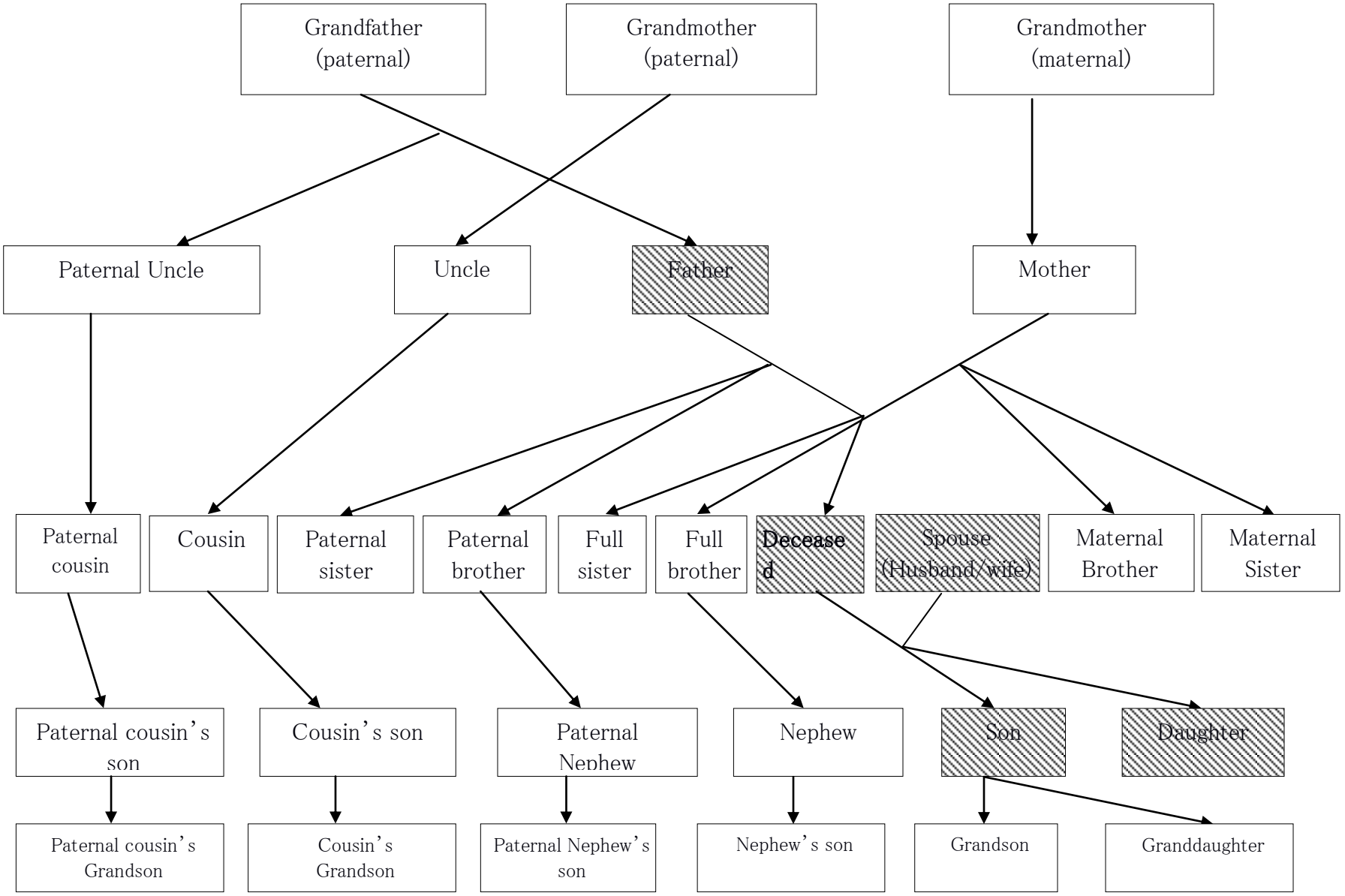


* There are five heirs that are always entitled to some share of the inheritance, and they are in no case liable to exclusion. These are (1) Child, i.e., son or daughter, (2) Father, (3) mother, (4) Husband, and (5) Wife which has been highlighted in the above mentioned table.

# PART - II

## NOTES ON IMPORTANT JUDGMENTS

**151. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Section 12(1)(a) & (f)**
**EVIDENCE ACT, 1872 – Section 116**

**(i) Whether production of title deed is mandatory requirement under section 12 (1)(f) of the Act to prove ownership? Suit shop purchased vide sale deed – Tenant acknowledged plaintiff as the landlord and paid rent subsequently for few months – Derivative title of landlord not challenged – Consideration of sale deed paid by father – Held, mere payment of consideration by father and non-production of title deed does not disentitle landlord/plaintiff to bring eviction suit under section 12(1)(f) of the Act.**

**(ii) Principle of estoppel, applicability of – Rule of estoppel applies where the tenant has been let into possession by the landlord – Where the landlord himself has not inducted the tenant in the suit premises and claims his possession under a derivative title, the law of estoppel has no application against the tenant – Tenant is entitled to show that landlord does not possess derivative title which he claims. (relied on *Kumar Kishna Prasad Lal Singha Deo v. Barabonic Coal Concern Limited, AIR 1937 PC 251*)**

स्थान नियंत्रण अधिनियम**, 1961 (**म.प्र.) - धारा **12 (i) (**क) एवं (च)
साक्ष्य अधिनियम**, 1872 -** धारा **116**

(i) क्या अधिनियम की धारा 12 (i)(च) के अधीन स्वामित्व को प्रमाणित करने के लिये स्वत्व के विलेखों का प्रस्तुतीकरण अनिवार्य आवश्यकता है- वादग्रस्त दुकान को विक्रय पत्र के माध्यम से क्रय किया गया - किरायेदार ने वादी को भूस्वामी के रूप में अभिस्वीकृत किया और तत्पश्चात् कुछ माह के किराये का भुगतान किया - भू-स्वामी के व्युत्पन्न हक को चुनौती नहीं दी गई - प्रतिफल का भुगतान पिता द्वारा किया गया - अभिनिर्धारित, मात्र पिता के द्वारा प्रतिफल का भुगतान और स्वत्व विलेखों का प्रस्तुत न किया जाना भूस्वामी/वादी को अधिनियम की धारा 12(i)(च) के अधीन निष्कासन के संबंध में वाद लाने के हक से वंचित नहीं करता है।

(ii) विबंधन के सिद्धांत की प्रयोज्यता- विबंधन का नियम वहां लागू होता है, जहां भूस्वामी द्वारा किरायेदार को अधिपत्य में रखा गया है - जहां भूस्वामी ने स्वयं, किरायेदार को वादग्रस्त परिसर में प्रतिष्ठापित न किया हो और उसके द्वारा व्युत्पन्न हक के अधीन अधिपत्य का दावा किया हो, वहां विबंधन की विधि की प्रयोज्यता किरायेदार के विरूद्ध नहीं है - किरायेदार को यह दर्शित करने का हक है कि भूस्वामी व्युत्पन्न हक नहीं रखता है, जिसका उसने दावा किया है (*कुमार कृष्णा प्रसाद लाल सिंधा देव विरूद्ध बारबोनिक कोल कंसर्न लिमिटेड, ए.आई.आर. **1937** पी.सी. **251*** अवलंबित)

**Ravi Prakash v. Hussain Ali**

**Judgment dated 11.04.2017 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Second Appeal No. 285 of 2003, reported in 2017 (3) MPLJ 699**

**Relevant extracts from the judgment:**

Law is also well settled that the rule of estoppel under section 116 of the Evidence Act, applies where the tenant has been let into possession by the landlord. However, where the landlord himself has not inducted the tenant in the suit premises and claims his position under a derivative title, the law of estoppel has no application against the tenant. The tenant is entitled to show that the plaintiff does not possess derivative title he claims (***Kumar Kishna Prasad Lal Singha Deo v. Barabonic Coal Concern Limited, AIR 1937 PC 251***, referred to).

The law is also well settled as regards the "doctrine of tenant's estoppel" to question or disclaim perfection of title of the landlord despite attornment of tenancy in his favour. The Hon'ble Supreme Court in the case of ***Anar Devi (Smt.) v. Nathu Ram, (1994) 4 SCC 250*** with reference to the judgments of the Judicial Committee and that of the Hon'ble Supreme Court addressed on the scope of applicability of section 116 of the Evidence Act, in the aforesaid context has held in paragraph 13 as under:

> ".... Ever since, the accepted position is that Section 116 of the Evidence Act applies and estops even a person already in possession as tenant under one landlord from denying the title of his subsequent landlord when once he acknowledges him as his landlord by attainment or conduct. Therefore, a tenant of immovable property under landlord who becomes a tenant under another landlord by accepting him to be the owner who had derived title from the former landlord, cannot be permitted to deny the latter's title, even when he is sought to be evicted by the latter on a permitted ground."

Now, turning to the facts of the case, the suit shop was purchased by the plaintiff vide registered sale deed dated 29/06/1993. Through a notice dated 15/07/1993 (exhibit P/1), the plaintiff had informed and brought to the knowledge of the defendant about the said change of ownership and further demanded payment of rent for the period December, 1992 to June, 1993 at the rate of Rs.140/- per month, total Rs.980/-. The defendant has acknowledged the plaintiff as landlord and paid rent and obtained receipt vide exhibit D/1 dated 29/06/1993. Thereafter, the defendant used to pay rent and obtained receipts from time to time as evident from exhibit P/4. As such, the defendant has attorned tenancy in favour of the plaintiff. Since August, 1994, no rent has been paid, therefore, the plaintiff served a notice dated 26/12/1994 (exhibit P/5) terminating the tenancy from midnight of 28/02/1995, therefore, called upon defendant/tenant to vacate the suit shop.

That apart, as a matter of fact, there is no challenge to the derivative title or disclaimer of title by defendant rather there is an acknowledgment of such sale in paragraph 19 of the written statement. Therefore, even if sale deed was not produced by the plaintiff, this by itself, shall not disentitle the plaintiff to bring an action or suit for eviction of the suit shop under section 12(1)(f) of the Act 1961. Such circumstances, does not entitle the defendant to allege the sale deed in favour of the plaintiff as sham transaction without any cogent and relevant material evidence in support thereof. The view taken by this Court finds support from the judgment of the Hon'ble Supreme Court in the case of ***Anar Devi, (Smt.)*** (supra).

Further, the plaintiff has pleaded and also proved the requirement of suit shop for running the hardware business having no other suitable alternate accommodation available in Vidisha. The testimony of the plaintiff has remained intact in his cross-examination in that context. The contention that as father of the plaintiff had paid the amount of sale consideration for purchase of the suit shop in favour of the plaintiff and the plaintiff was a student and, therefore, the sale and need, both were not bona fide, in the opinion of this Court cannot be countenanced. Merely for the reason that father had paid the amount of consideration of the suit shop, this by itself, shall not be construed that the plaintiff is not the owner of the suit shop although sale deed was executed and registered in his name.

That apart, the plaintiff who is B.Sc., and ITI qualified person is at the right age to start his business. The view taken by this Court finds support from the judgment of Hon'ble Supreme Court in the case of ***Ram Babu Agarwal, 2010 (1) SCC 164*** (supra) wherein it is held that a person can start a new business even if he has no experience. Hence, the plaintiff has made out a ground seeking eviction of the suit shop under section 12(1)(f) of the 1961 Act. It is accordingly held that the trial Court has not committed any error on facts and in law while decreeing the suit of the plaintiff.

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

**Post-suit payment of rent by the tenant – Shield to the tenant available only if the payment is made regularly – Deposit of few months rent jointly after due date amounts to an implicit admission of default – Also, the Court has no power to condone the delay of post suit rent.**

स्थान नियंत्रण अधिनियम**, 1961 (**म.प्र.) - धारा **13**

किरायेदार द्वारा वाद उत्तरावधि में किराये का भुगतान - किरायेदार के लिये कवच मात्र तभी उपलब्ध है, जब भुगतान नियमित रूप से किया जाये - देय तिथि पश्चात् कुछ माह के किराये का संयुक्त भुगतान में व्यतिक्रम की विवादित स्वीकृति - इसके अतिरिक्त न्यायालय को वाद की उत्तरावधि में किराया अदा करने में हुये विलंब को क्षमा करने की कोई अधिकारिता नहीं है।

**Ashok Kumar Mishra and another v. Goverdhan Bhai (D) Thr. LRs. and another**

**Judgment dated 21.02.2017 passed by the Supreme Court in Civil Appeal No. 3149 of 2017, reported in AIR 2017 SC 1819**

**Relevant extracts from the judgment:**

Sub-Section 13(2) of the Act requires the tenant to pay such reasonable provisional rent as may be fixed by the Court in case of a dispute or doubt about the amount that must be paid by the tenant. As stated above, the amount in this case is Rupees 150/- per month. It is pointed out on behalf of the appellants that for the period from January, 2001 to May, 2011, when the second appeal was pending, the tenant did not deposit the monthly rent as required by sub-sections 13(1) and 13(2) of the Act, i.e. the rent at monthly intervals. We have perused the chart of payment of rent and we find that for the period from 09.08.2000 to 12.05.2011, the tenant paid rent on only three occasions, i.e. Rs. 2000/- on 09.08.2000, Rs. 2000/- on 09.12.2000 and Rs. 500/- on 12.02.2001. Thereafter, on 12.05.2011 the tenant deposited a sum of Rs. 31,250/-, i.e. the amount of default rent of 5 months from January, 2011 to May, 2011. This in our view, amounts to an implicit admission of the fact that no rent was paid on the days it was due during this period.

The learned counsel for the respondents-tenants vehemently argued that the respondents who are the legal representatives of the original tenant were not aware of the default. It is not possible to accept this contention since they were clearly aware of the fact that they were living in tenanted premises and were bound to pay rent. In any case we find that even if the impalement of legal representatives on 06.07.2009 there are defaults for a period of two years thereafter.

In the circumstances, we find no merit in the contention that the respondents had paid rent regularly. Learned counsel for the respondents also contended that the respondents are willing to pay arrears of tent now before this Court and this Court may condone such delay. The learned counsel for the respondents relied on Section 13(5) of the Act which reads as follows:

> "13(5) If a tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no decree or order shall be made by the court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the court may allow such cost as it may deem fit to the landlord".

We are of the view that on a plain reading, this provision protects a tenant from eviction if a tenant makes deposit/payment as required by sub-section 13(1) or 13(2) of the Act. In other words, if the tenant has complied with the provisions of sub-section 13(1) and 13(2) in the matter of making payment, he is protected from eviction. It must be remembered that provisions of Section 13 of the Act shield a tenant from eviction if the tenant regularly pay rent after the suit is filed.

Accordingly, it provides a ***locus penitential*** to the tenant. Sub-section 13(5) of the Act reiterates the protection by stating that if the tenant makes payment post-suit in accordance with the provisions of sub-section 13(1) and 13(2) of the Act, he shall not be liable for eviction. This Section does not confer the power on the court to condone the defaults in payment of rent after the suit is filed. It is, therefore, not possible for us to accept this contention. In the circumstances, the impugned judgment of the High Court is set aside.

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***153. ARMS ACT, 1959 – Sections 3 (1), 21 (1) and 25 (1B) (a) & (h) Effect of subsequent renewal of fire-arm – Accused in possession of fire-arm of which licence stood cancelled due to non-renewal – Non-deposit of fire-arm by accused as per Section 21(1) – Accused prosecuted for two offences; firstly under section 21 (1) r/w/s 25 (1-B)(h) and secondly under section 3(1) r/w/s 25(1B)(a) – Held, subsequent renewal of licence by accused may be relevant in reference to Section 21(1) r/w/s 25 (1 B) (h) but offence under section 3 (1) r/w/s 25 (1 B) (a) is independent and does not washout completely by mere renewal of the licence.**

आयुध अधिनियम**, 1959 -** धाराएं **3 (1), 21 (1), 25 (1** ख) (ए) एवं (ज) आग्नेयास्त्र के पश्चातवर्ती प्रक्रम पर नवीनीकरण का प्रभाव - अभियुक्त द्वारा ऐसे आग्नेयास्त्र को आधिपत्य में रखा गया, जिसकी अनुज्ञप्ति नवीनीकरण के अभाव में निरस्त हो गयी थी - धारा 21 (1) के अधीन अभियुक्त के द्वारा आग्नेयास्त्र को जमा नहीं किया गया - अभियुक्त के विरूद्ध दो अपराधों का अभियोग था, प्रथमतः अंतर्गत धारा 21 (1) सहपठित 25 (1बी) (एच) तथा द्वितीयतः अंतर्गत धारा 3 (1) सहपठित 25 (1बी) (ए) - अभिनिर्धारित, अभियुक्त द्वारा पश्चातवर्ती प्रक्रम पर अनुज्ञप्ति का नवीनीकरण, धारा 21 (1) सहपठित 25 (1बी) (एच) के संदर्भ में सुसंगत हो सकता है परंतु धारा 3 (1) सहपठित 25 (1बी) (ए) का अपराध स्वतंत्र है एवं केवल अनुज्ञप्ति का नवीनीकरण संपूर्ण अपराध को समाप्त नहीं करता है।

**Harpreet Singh v. State of Himachal Pradesh**
**Judgment dated 10.07.2017 passed by the Supreme Court in Criminal Appeal No. 1108 of 2017, reported in 2017 (3) Crimes 154**

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**154. CIVIL PROCEDURE CODE, 1908 – Sections 13, 14 and 44-A Execution of order of foreign court – Order of foreign court on merits and of a conclusive nature – Also accepted by the other party – Execution filed in India – Such "order" of the reciprocating territory will come under the category of "decree" under Section 44-A – Principle of comity of nations must also be recognised.**

सिविल प्रक्रिया संहिता, **1908-** धाराएं **13, 14** एवं **44-**क

विदेशी न्यायालय के आदेश का निष्पादन- विदेशी न्यायालय का आदेश गुण दोषों पर एवं निश्चयात्मक प्रकृति का - दूसरे पक्षकार द्वारा भी उसे स्वीकार किया गया - भारत में निष्पादन प्रस्तुत किया गया- व्यतिकारी राज्यक्षेत्र का ऐसा आदेश धारा 44 क के अधीन डिक्री की श्रेणी में आता है - राष्ट्रों के सद्भाव के सिद्धांत को भी मान्यता होनी चाहिये।

**M/s Alcon Electronics Pvt. Ltd. v. Celem S.A. and Anr.**
**Judgment dated 09.12.2016 passed by the Supreme Court in Civil Appeal No. 10106 of 2017, reported in AIR 2017 SC 1**

**Relevant extracts from the judgment:**

As far as the explanation with regard to reciprocal territory is concerned, there is no dispute that England is a reciprocating territory for the purpose of above Section. Section 44A of CPC indicates an independent right conferred on a foreign decree holder for enforcement of a Decree/Order in India. Section 44A was inserted by Section 2 of the Civil Procedure Code (Amendment) Act, 1937 (Act No. 8 of 1937). This Section is meant to give effect to the policy contained in the Foreign Judgments (Reciprocal Enforcement) Act, 1933. It is a part of the arrangement under which on one part decrees of Indian Courts are made executable in United Kingdom and on the other part, decrees of Courts in the United Kingdom and other notified parts of Her Majesty's dominions are made executable in India. It is to be seen that as United Kingdom is a reciprocating territory and the High Court of Justice, Chancery Division, England being a recognized superior Court in England. Therefore, the order passed by that Court is executable in India under Section 44A of the CPC. Now we come to the next limb of the argument put forth by the appellant that the order passed by the English Court does not amount to a decree and hence it is not executable. It is no doubt correct, Section 44A of CPC deals with "execution of decrees passed by Courts in reciprocating territory". Before we further decide this issue it is appropriate to have a look at how decree, order and foreign judgment are defined under the CPC.

As per Section 2 (2) of the CPC, "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144 of CPC but shall not include (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default.

Then a "foreign judgment" is defined under Section 2(6) as judgment of a foreign Court. "Judgment" as per Section 2(9) of C.P.C. means the statement given by the Judge on the grounds of a decree or order. Order is defined under Section 2(14) of CPC as a formal expression of any decision of the Civil Court

which is not a 'decree'. Then Explanation 2 to Section 44A (3) says "decree" with reference to a superior Court means any 'decree' or 'judgment'. As per the plain reading of the definition 'Judgment' means the statement given by the Judge on the grounds of decree or order and order is a formal expression of a Court. Thus "decree" includes judgment and "judgment" includes "order". On conjoint reading of 'decree', 'judgment' and 'order' from any angle, the order passed by the English Court falls within the definition of 'Order' and therefore, it is a judgment and thus becomes a "decree" as per Explanation to Section 44A(3) of CPC. In this case, the Court at England, after following the principles of natural justice, by recording reasons and very importantly basing on the application of the appellant itself, has conclusively decided the issue with regard to jurisdiction and passed the order coupled with costs. Hence in our considered opinion, the order passed by the Foreign Court is conclusive in that respect and on merits. Hence executable as a decree and accordingly the issue is answered.

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

**Grant of leave to institute the suit against public trust – Notice to the defendant is not mandatory – An application under Section 92 must be accompanied with the plaint and averments of the plaint must be taken into consideration while considering the application.**

सिविल प्रक्रिया संहिता**, 1908 -** धारा **92**

लोक न्यास के विरूद्ध वाद संस्थित करने हेतु अनुमति प्रदान किया जाना - प्रतिवादी को सूचना दिया जाना आज्ञापक नहीं है - धारा 92 के अंतर्गत आवेदन आवश्यक रूप से वादपत्र के साथ प्रस्तुत किया जाना चाहिए एवं आवेदन पर विचार करते समय वादपत्र के प्रकथनों को ध्यान में रखा जाना चाहिए।

**Swami Shivshankargiri Chella Swami v. Satya Gyan Niketan and Another**

**Judgment dated 23.02.2017 passed by the Supreme Court in Civil Appeal No. 3166 of 2017, reported in 2017 (4) MPLJ 64**

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**156. CIVIL PROCEDURE CODE, 1908 – Order 5 Rule 16 and Order 7 Rule 11**

**Whether plaint can be rejected in part ? Held, No – The court may strike out pleadings under Order 5 Rule 16 C.P.C. if they fall under the grounds mentioned, but cannot reject the plaint in part.**

सिविल प्रक्रिया संहिता**, 1908 -** आदेश **5** नियम **16** एवं आदेश **7** नियम **11**

क्या वाद को भागतः नामंजूर किया जा सकता है? अभिनिर्धारित, नहीं - आदेश 5 नियम 16 सि.प्र.सं के अधीन न्यायालय अभिवचनों को काट सकता है, यदि वे उक्त आधारों के अंतर्गत आते हैं परंतु वाद पत्र को भागतः नामंजूर नहीं किया जा सकता है।

**Sejal Glass Ltd. v. Navilan Merchants Pvt. Ltd.**
**Judgment dated 21.08.2017 passed by the Supreme Court in Civil Appeal No. 10802 of 2017, reported in AIR 2017 SC 4477**

**Relevant extracts from the judgment:**

What is important to remember is that the provision refers to the "plaint" which necessarily means the plaint as a whole. It is only where the plaint as a whole does not disclose a cause of action that Order VII Rule 11 springs into being and interdicts a suit from proceeding.

It is settled law that the plaint as a whole alone can be rejected under Order VII Rule 11. In ***Maqsud Ahmad v. Mathra Datt & Co., 1936 AIR (Lah) 1021*** Bx ***at 1022*** Ix, the High Court held that a note recorded by the trial Court did not amount to a rejection of the plaint as a whole, as contemplated by the CPC, and, therefore, rejected a revision petition in the following terms:-

> "There is no provision in the Civil Procedure Code for the rejection of a plaint in part, and the note recorded by the trial Court does not, therefore, amount to the rejection of the plaint as contemplated in the Civil Procedure Code."
>
> xxx xxx xxx
>
> If only a portion of the plaint, as opposed to the plaint as a whole is to be struck out, Order VI Rule 16 of the CPC would apply. Order VI Rule 16 states as follows:-
>
> "16. Striking out pleadings.- ....."

It is clear that Order VI Rule 16 would not apply in the facts of the present case. There is no plea or averment to the effect that, as against the Directors, pleadings should be struck out on the ground that they are unnecessary, scandalous, frivolous, vexatious or that they may otherwise tend to prejudice, embarrass or delay the fair trial of the suit or that it is otherwise an abuse of the process of the Court.

In contrast to the above provisions, which apply on a demurrer, the provisions of Order XIV Rule 2, read as follows;

> "2. Court to pronounce judgment on all issues.-....."

The Court is vested with a discretion under this order to deal with an issue of law, which it may try as a preliminary issue if it relates to the jurisdiction of the Court, or is a bar to the suit created for the time being in force. Obviously, this provision would apply after issues are struck i.e. after a written statement is filed. This provision again cannot come to the rescue of learned counsel for the respondent.

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**157. CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 17**

**Amendment of pleadings, consideration for – Discretionary jurisdiction – Proposed amendments ought to be relevant and also within scope of nature of the suit – Nature of the suit or relief cannot be changed by allowing amendment hyper technically by applying proviso appended to Rule 17 of Order 6.**

सिविल प्रक्रिया संहिता**, 1908 -** आदेश **6** नियम **17**

अभिवचनों में संशोधन के समय विचारार्थ तथ्य - वैवेकिक क्षेत्राधिकार - प्रस्तावित संशोधन, सुसंगत एवं वाद की प्रकृति के क्षेत्र के अधीन भी होने चाहिये- वाद की प्रकृति या अनुतोष को, आदेश 6 नियम 17 के परंतुक को लागू कर अत्यंत तकनीकी रूप से संशोधन अनुज्ञात कर, परिवर्तित नहीं किया जा सकता है।

**Omkar Lal v. Bidya Bai and others**

**Order dated 20.01.2017 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Writ Petition No. 7197 of 2015, reported in 2017 (3) MPLJ 163**

**Relevant extracts from the order:**

Law is well settled that the trial Court while regulating the procedure in a trial of suit is required to look into the procedural law codified under the C.P.C. Hence, the trial Court is required to exercise the jurisdiction conferred upon it with care, caution and circumspection, particularly, exercising discretionary jurisdiction under Order VI Rule 17 C.P.C. After all, the procedural laws are hand maid laws which are intended to sub serve the cause of justice between the parties. The proviso to Order VI Rule 17 C.P.C could not have been applied by the trial Court in hyper technical manner for allowing the amendment sought for as the same is beyond the scope for resolving the controversy involved in the suit, therefore the amendment application should not have been allowed. That apart, law as regards discretionary jurisdictionof the court in the matter of dealing with amendment of pleadings is also well settled. The Court shall exercise the jurisdiction with due care and caution to ensure that amendments proposed are not only relevant but also within the scope of the nature of the suit qua the pleadings in the suit as court cannot permit to change the nature of the suit or relief sought under the garb of allowing amendment under Order VI Rule 17 C.P.C. Therefore, upon perusal of the order impugned this Court finds that trial court has not exercised its jurisdiction in proper perspective as the amendment allowed will change the nature of the suit as rightly pointed out by learned counsel for the petitioner. Hence the impugned order is set aside.

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***158. CIVIL PROCEDURE CODE, 1908 – Order 9 Rule 13**

**Setting aside *ex parte* decree – *Ex parte* decree in suit for specific performance of sale of suit premises obtained against landlord by tenant in name of dummy purchaser to stultify final decree of eviction obtained by landlord, liable to be set aside.**

सिविल प्रक्रिया संहिता, **1908 -** आदेश **9** नियम **13**

एक पक्षीय आज्ञप्ति को अपास्त करना - अभिधारी द्वारा प्रतिरूपी (छद्म) क्रेता के नाम में भूस्वामी द्वारा प्राप्त निष्कासन की अंतिम आज्ञप्ति को व्यर्थ करने के लिए भूस्वामी के विरूद्ध वादग्रस्त परिसर के विक्रय के विनिर्दिष्ट अनुपालन की एक पक्षीय डिक्री अपास्त किए जाने योग्य है।

**Laldhari Mistri (dead) through legal representatives and Another v. Vijay Kumar**
**Judgment dated 13.07.2017 passed by the Supreme Court in Civil Appeal No. 5780 of 2008, reported in (2017) 8 SCC 406**

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***159. CIVIL PROCEDURE CODE, 1908 – Order 39 Rule 2A**

**Application under Order 39 Rule 2A, maintainability of – Absence of an order under Order 39 Rules 1 and 2, the question of entertaining an application under Order 39 Rule 2A does not arise – Breach of an order on an application under Order 39 Rules 1 and 2 is necessary (relied on *Food Corporation of India v. Sukha Deo Prasad, AIR 2009 SC 2330* and *Kanwar Singh Saini v. High Court of Delhi, (2012) 4 SCC 307*).**

सिविल प्रक्रिया संहिता, **1908 -** आदेश **39** नियम **2**क

आदेश 39 नियम 2ए के तहत आवेदन की पोषणीयता - आदेश 39 नियम 1 व 2 के अंतर्गत, आदेश के अभाव में आदेश 39 नियम 2ए के आवेदन को ग्रहण करने का कोई प्रश्न ही उत्पन्न नहीं होता है - आदेश 39 नियम 1 व 2 के आदेश का भंग होना आवश्यक है। (*फूड कारपोरेशन आफ इंडिया विरूद्ध सुखदेव प्रसाद, ए.आई.आर. **2009** एस.सी. **2330** एवं कंवर सिंह सैनी विरूद्ध दिल्ली उच्च न्यायालय, **(2012) 4** एस.सी.सी. **307*** अवलंबित)

**Ashok Kumar Goenka v. MP Grih Nirman Mandal**
**Order dated 30.01.2017 passed by the High Court of Madhya Pradesh (Jabalpur) in Writ Petition No. 17045 of 2011, reported in 2017 (3) MPLJ 617**

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**160. CIVIL PROCEDURE CODE, 1908 – Order 41 Rule 17**

**Dismissal of appeal on merits in absence of both the parties, permissibility of – Held, Court should take recourse to the powers under Rule 17 of Order 41 CPC i.e. dismissal of appeal for appellant's default – Speaking order is necessary for *in limine* dismissal.**

सिविल प्रक्रिया संहिता, **1908 -** आदेश **41** नियम **17**

उभयपक्ष की अनुपस्थिति में अपील को गुण दोष पर खारिज किये जाने की अनुज्ञेयता - अभिनिर्धारित, न्यायालय को आदेश 41 नियम 17 सि.प्र.सं. के अंतर्गत अपनी शक्तियों का प्रयोग करना चाहिये अर्थात् अपीलकर्ताओं की चूक के आधार पर अपील खारिज करनी चाहिये - आरंभतः खारिजी के लिये आज्ञापक आदेश होना आवश्यक हैं।

**Navnirman Development Consultants (India) Private Limited v. Divisional Commissioner and President District Sports Complex Executive Committee, Pune**

**Judgment dated 05.07.2017 passed by the Supreme Court in Civil Appeal No. 8408 of 2017, reported in (2017) 8 SCC 603**

**Relevant extracts from the Judgment:**

We find from the record that the High Court decided the appeal in the absence of both parties. In other words, when the appeal was called on for hearing, neither the counsel for the appellant nor the counsel for the respondent was present.

In such situation, provisions of Order 41 Rule 17 of the Civil Procedure Code, 1908 got attracted and, therefore, the High Court should have taken recourse to the powers under Order 41 Rule 17 for passing appropriate orders as contemplated in Rule 17. Indeed the explanation appended to Rule 17 in clear terms provides that nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on merits.

In any event, the dismissal of appeal being essentially under Order 41 Rule 17, the appellant herein should have taken recourse to the remedy available under Order 41 Rule 19 by filing application to the High Court praying therein for readmission of their appeal by making out the sufficient cause for their non-appearance on the date when the appeal was listed for hearing instead of filing this appeal against the impugned order before this Court.

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**161. COURT FEES ACT, 1870 – Section 7(iv)(d)**

**Suit for specific performance of contract, declaration of subsequent third party sale deed as null and void and permanent injunction for protection of possession – Whether valuation and payment of court fee for relief of injunction is necessary? Held, Yes – Relief of permanent injunction does not flow from other reliefs – Separate valuation and Court fees under Section 7(iv)(d) is payable.**

न्यायालय फीस अधिनियम, **1870-** धारा **7 (iv)**(घ)

संविदा के विर्निदिष्ट अनुपालन एवं पश्चातवर्ती प्रक्रम पर तृतीय पक्षकार के पक्ष में निष्पादित विक्रय पत्र को अकृत व शून्य घोषित करने एवं आधिपत्य के संरक्षण के लिये स्थायी निषेधाज्ञा हेतु वाद - क्या निषेधाज्ञा की सहायता के लिये वाद का मूल्यांकन

एवं न्यायालय फीस का भुगतान आवश्यक है ? - अभिनिर्धारित, हाँ - स्थायी निषेधाज्ञा की सहायता, अन्य सहायताओं से प्रवाहित नहीं होती है - धारा 7 (iv)(घ) के तहत पृथक से वाद का मूल्यांकन एवं न्यायालय फीस संदेय है।

**Amolak Singh Tuteja v. Munni Bai Sharma**
**Order dated 11.04.2017 passed by the High Court of Madhya Pradesh in Writ Petition No. 10734 of 2012, reported in AIR 2017 MP 87**

**Relevant extracts from the order:**

The question, however, is whether the plaintiff is required to pay fixed Court fee on the relief of permanent injunction, when he has already paid the ad valorem Court fee for specific performance of contract. Petitioner relies upon the decision in ***Mulla Maqbool Husain v. Seth Chandmal, 1959 MPLJ 649***, wherein in respect of the suit for specific performance of a contract to lease and also delivery of possession of certain premises belonging to defendant No.1 therein and held by the defendants No.2 and 3 as lessees; it was in this factual background which gave rise to the verdict in paragraph 10 of said judgment that "... a suit for specific performance of a contract to sell where the plaintiff seeks to force the vendor to execute the sale deed and also hand over possession of the property should be stamped under Section 7(x)(a) of the Act". On the same reasoning, a suit for specific performance of the demised premises would fall under sub-clause (c) of clause (x).

Present, however, is not the case wherein possession is sought. Rather with the decree for specific performance of contract, the plaintiff seeks declaration and permanent injunction that his possession over suit property be not interfered, which attracts the provisions of Section 7(iv)(d) of the Court Fees Act, 1870, as it is a relief independent to the main relief sought in the suit plaint.

In ***Devaki v. Basu Singh 1971 JLJ-SN 111*** wherein the plaintiff claims possession of the disputed property without claiming relief of setting aside the gift deed by which the disputed property was said to have been alienated. In these facts situation, he was held liable to pay Court fees according to Section 7(v)(b) of the Court Fees Act and not ad-valorem Court fees under Section 7(iv)(c). Thus, the facts and the law laid down in Devaki is of no assistance in the case at hand.

In ***Subhash Chand Jain v. Chairman, M.P. Electricity Board, 2000 3 MPLJ 522***, a Full Bench of our High Court was concerned with the issue as to what form the basis for settling the court-fee payable in the case. Relying on the decisions in ***Sathappa Chettiar v. Ramanathan Chettiar, 1958 AIR (SC) 245, Shamsher Singh v. Rajinder Prashad, 1973 AIR (SC) 2384*** and ***Commercial Aviation and Travel Company v. Vimal Pannalal, 1988 AIR (SC) 1636,*** their Lordships were pleased to hold :

> "6. The suits which are mentioned under Section 7(iv) of the Act of 1870 are of such nature where it is difficult to lay down any standard of valuation. This means that the

valuation of the reliefs will have to be made by the plaintiff under the entry against which the suit is preferred. Provisions of Order 7 Rule 11B of the C.P.C. provides inter alia that the plaint shall be rejected where the relief claimed is under-valued and the plaintiff, on being required by the Court to correct the valuation within a time fixed by it, fails to do so. Under this provision, Court has to reach a finding of under-valuation, specify the correct valuation of the relief, determine the same and require the plaintiff to correct the same within the time fixed by the Court. Failure to do so would entail rejection of the plaint. Obviously, the Court would undertake this enquiry in the interest of revenue after realising that the valuation of plaintiff is demonstratively unreasonable and case for interference is made out. Otherwise the plaintiff is free to make his own estimation of the reliefs sought in the plaint and the valuation both for purposes of Court-fee and Jurisdiction has to be ordinarily accepted.

Settled legal position seems to be that plaint has to be read as a whole. Allegations in the plaint including the substantive relief claimed must be the basis for settling the court-fee payable by the plaintiff. Mere astuteness in drafting the plaint would not glaze the jurisdiction of court for looking at the substance of the relief asked for. The nature of suit under Section 7(iv) is such where the Legislature could not lay down fixed standard thereby leaving it to the plaintiff to mention it. But where he attempts to under-value the plaint and the reliefs, Court has to intervene. While doing so, concept of real money value forms integral part of court enquiry where relief sought has real money value which can be objectively ascertained. Where a plaintiff has been made liable to pay specified amount and asked to pay the same and he claims to avoid it, obviously, he seeks relief to that effect and in case, he avoids payment of court-fee by drafting the plaint in such a way that results in undervaluation of the plaint and the relief, it will be a case of arbitrary and unreasonable under-valuation which Court is bound to correct."

In the case at hand, as evident from the plaint that the relief for permanent injunction does not flow from the relief for specific performance, it is to be separately valued and the Court fees under Section 7(iv)(d) of the Court Fees Act, 1870 is payable.

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***162. CRIMINAL PROCEDURE CODE, 1973 – Section 65**
**FOREIGN EXCHANGE REGULATION ACT, 1973 – Sections 40 and 56 (1) (ii)**

**(i) Service of summons – Summons not served in normal course – Summons affixed on last known address by bailiff – Summons deemed to be duly served.**

**(ii) Disobedience to summons under section 40 of FERA whether amounts to an offence – Summons issued under section 40 to appear before Enforcement Officer – Failure in pursuance of summons issued under section 40 of the Act, amounts to an offence under section 56 of FERA.**

दंड प्रक्रिया संहिता, **1973 -** धारा **65**

विदेशी मुद्रा विनियमन अधिनियम, **1973 -** धाराएं **40** एवं **56** (1) (ii)

(i) समन की तामील- समन सामान्य अनुक्रम में तामील नहीं हुआ - बेलिफ के द्वारा समन को अंतिम ज्ञात पते पर चस्पा किया गया - समन सम्यक् रूप से तामील हुआ समझा जाएगा।

(ii) क्या फेरा (FERA) की धारा 40 के अधीन समन की अवज्ञा अपराध है? फेरा (FERA) की धारा 40 के अंतर्गत समन, प्रवर्तन अधिकारी के समक्ष उपस्थिति हेतु जारी किया गया - अधिनियम की धारा 40 के अनुसरण में जारी समन में चूक होना, फेरा (FERA) की धारा 56 के अंतर्गत अपराध की कोटि में आता है।

**The Enforcement Officer v. Mohammed Akram**
**Judgment dated 17.08.2017 passed by the Supreme Court in Criminal Appeal No. 1422 of 2017, reported in 2017 (3) Crimes 380**

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**163. CRIMINAL PROCEDURE CODE, 1973 – Sections 154 and 161**
**EVIDENCE ACT, 1872 – Section 3**
**INDIAN PENAL CODE, 1860 – Section 302**

**(i) First Information Report – FIR although mentioned names of only five accused but FIR clearly mentioned that seven more accused persons were there – Thus, FIR clearly mentioned that the number of accused persons were twelve – Not naming other seven accused although number of seven other accused were mentioned in the FIR is inconsequential.**

**(ii) Appreciation of evidence – All the eye-witnesses have assigned the role of all the accused of causing injuries in their statements – In their statements under Section 161 Cr.P.C and before the Court also eye-witnesses proved the role of the accused and presence of the accused – Hence, the eye-witness account of witnesses proves the presence of the accused – Contradiction in statements of accused before the court and before the police u/s 161 CrPC cannot shake the entire evidence or make the statements of witnesses unreliable.**

दंड प्रक्रिया संहिता, **1973 -** धाराएं **154** एवं **161**
साक्ष्य अधिनियम, **1872 -** धारा **3**
भारतीय दंड संहिता, **1860 -** धारा **302**

(i) प्रथम सूचना रिपोर्ट- प्रथम सूचना प्रतिवेदन में यद्यपि मात्र 5 अभियुक्तों के नाम का उल्लेख था परंतु प्रथम सूचना प्रतिवेदन में स्पष्ट रूप से यह उल्लेख किया गया था कि अन्य 7 अभियुक्तगण व्यक्ति भी वहां उपस्थित थे - इस प्रकार प्रथम सूचना प्रतिवेदन स्पष्ट रूप से उल्लेख करती है कि अभियुक्त व्यक्तियों की संख्या 12 थी - सात अन्य अभियुक्तों की संख्या का उल्लेख था, अतः सात अन्य अभियुक्तों के नामों का उल्लेख प्रथम सूचना प्रतिवेदन में न होना महत्वहीन है।

(ii) साक्ष्य का मूल्यांकन - सभी चक्षुदर्शी साक्षियों ने अपने कथनों में सभी अभियुक्तगण द्वारा उपहतियां कारित करने में उनकी भूमिका बतायी - धारा 161 दं.प्र.सं. के अंतर्गत अपने कथनों में एवं न्यायालय के समक्ष भी चक्षुदर्शी साक्षियों ने अभियुक्तगण की भूमिका को एवं अभियुक्तगण की उपस्थिति को प्रमाणित किया - अतएव साक्षियों की साक्ष्य से अभियुक्तों की उपस्थिति साबित होती है - न्यायालय के समक्ष और पुलिस के समक्ष धारा 161 दं.प्र.सं. के अधीन साक्षियों के कथनों में विरोधाभास संपूर्ण साक्ष्य को विचलित नहीं करते हैं या साक्षियों के कथनों को अविश्वसनीय नहीं बना देते है।

**Fazar Ali v. State of Assam**
**Judgment dated 21.04.2017 passed by the Supreme Court in Criminal Appeal No. 1062 of 2007, reported in 2017 (2) Crimes 366**

**Relevant extracts from the Judgment :**

Three facts are clear: Firstly, FIR although mentions name of only five accused but FIR clearly mentions that seven more accused persons were there. Thus, FIR clearly mentions that the number of accused persons were twelve. Thus present is not a case where only those five persons who were named, were accused, but FIR from the very beginning is claiming that apart from those five, seven others are also accused. In the investigation, when names of seven others had surfaced the charge sheet was submitted against twelve accused. The submission that since in the FIR names of seven other accused were not disclosed, they could not have been charge sheeted, cannot be accepted. Secondly, in his cross-examination informant clearly mentioned that he had told the names of other seven accused persons also to writer Karim, who had written the FIR but, informant being illiterate had put only thumb impression on the FIR. Not naming other seven accused although, number of seven other accused were mentioned in the FIR is inconsequential and on this ground, there is no substance in the submission of the learned counsel for the appellants that since names of other accused were not mentioned in the FIR except five names, others could not have been convicted.

All the eyewitnesses have assigned the role of all the accused of causing injuries in their statements. PW.1 and PW.4 are two independent witnesses who have also proved the incident and role of the accused. The mere fact that, there are certain inconsistencies with regard to the manner of causing injuries to Samsuddin and Abdul Rahman by the witnesses as deposed in the court and as noted in the statement under Section 161 Cr.P.C., can in no manner shake the entire evidence or make the statement of witnesses unreliable.

There are two reasons for not accepting the above arguments; firstly, before the Police also the role of accused was mentioned by eyewitnesses. In their statements under Section 161 Cr.P C and before the Court also eyewitnesses proved the role of the accused and presence of the accused. Hence, the eyewitness account of witnesses proves the presence of the accused. They have been rightly convicted under Section 302 read with 49 IPC.

Secondly, there is clear evidence of eyewitnesses that accused persons did not allow the injured to come out from their house for about three hours. In spite of the request being made by neighbours and other persons present on the spot, accused have almost seized the house and did not permit injured Afazuddin, Abdul Rahman and Samsuddin to come out or to go for treatment. Finding to this effect has been recorded both by trial court and High Court. Each person being a member of unlawful assembly is guilty of offence being committed in prosecution of common object, has been held both by trial court and High Court. This Court in ***Chandrappa and others v. State of Karnataka, (2008) 11 SCC 328*** has laid down that it is unreasonable to expect from a witness to give a picture perfect report of the incident and minor discrepancies in their statement have to be ignored. Para 17 and 18 of the judgment is extracted as below:-

> "17. It has been contended by the learned Counsel for the appellants that the discrepancies between the statements of the eyewitnesses inter se would go to show that they had not seen the incident and no reliance could thus be placed on their testimony. It has been pointed out that their statements were discrepant as to the actual manner of assault and as to the injuries caused by each of the accused to the deceased and to PW3, the injured eyewitness. We are of the opinion that in such matters it would be unreasonable to expect a witness to give a picture perfect report of the injuries caused by each accused to the deceased or the injured more particularly where it has been proved on record that the injuries had been caused by several accused armed with different kinds of weapons.
>
> 18. We also find that with the passage of time the memory of an eyewitness tends to dim and it is perhaps difficult for a witness to recall events with precision. We have gone through the record and find that the evidence had been

recorded more than five years after the incident and if the memory had partly failed the eye witnesses and if they had not been able to give an exact description of the injuries, it would not detract from the substratum of their evidence. It is however very significant that PW 2 is the sister of the four appellants, the deceased and PW 3 Devendrappa and in the dispute between the brothers she had continued to reside with her father Navilapa who was residing with the appellants, but she has nevertheless still supported the prosecution. We are of the opinion that in normal circumstances she would not have given evidence against the appellants but she has come forth as an eyewitness and supported the prosecution in all material particulars."

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***164. CRIMINAL PROCEDURE CODE, 1973 – Sections 154 and 313 EVIDENCE ACT, 1872 – Section 32**

**(i) Whether delay in lodging FIR fatal to prosecution case? Held, if delay in lodging FIR is fully explained on record, it is not fatal.**

**(ii) Benefit of defect in investigation – Non-production of envelop by investigating officer in which FIR was received by post, whether ground for acquittal? Accused not entitled to acquittal on strength of such minor lapses – Accused is entitled to benefit of only reasonable doubt and not every doubt.**

**(iii) Dying declaration, effect of non-recording – FIR lodged by deceased may be treated as dying declaration in absence of non-recording of dying declaration.**

**(iv) Object of examination of accused – It requires the court to question the accused generally after the prosecution evidence is over, to explain the circumstances in evidence against him – It does not require re-writing of each and every sentence of prosecution evidence and reading over once again.**

दंड प्रक्रिया संहिता**, 1973 -** धाराएं **154** एवं **313**

साक्ष्य अधिनियम**, 1872 -** धारा **32**

(i) क्या प्रथम सूचना रिपोर्ट को लेख कराने में विलंब अभियोजन मामले के लिये घातक है - अभिनिर्धारित, यदि प्रथम सूचना रिपोर्ट को लेख कराने में हुये विलंब को अभिलेख पर पूर्णतः स्पष्ट किया गया है तो यह घातक नहीं है।

(ii) आपराधिक विचारण - साक्ष्य का मूल्यांकन- अनुसंधान में दोष का लाभ - अनुसंधान अधिकारी के द्वारा लिफाफे को प्रस्तुत न किया जाना, जिसमें प्रथम सूचना रिपोर्ट डाक के माध्यम से प्राप्त हुई थी, क्या दोषमुक्ति का आधार होगा ? - अभियुक्त ऐसी मामूली विफलताओं के आधार पर दोषमुक्ति का

हकदार नहीं है - अभियुक्त केवल उचित संदेह का लाभ प्राप्त करने का हकदार है न कि प्रत्येक संदेह का।

(iii) मृत्युकालिक कथन को अभिलिखित न करने का प्रभाव - मृतक द्वारा लेख करायी गई प्रथम सूचना रिपोर्ट को, मृत्युकालिक कथन के अभिलिखित न हो पाने के अभाव में, मृत्युकालिक कथन के रूप में माना जा सकता है।

(iv) अभियुक्त की परीक्षा का उद्देश्य - न्यायालय के लिये यह आवश्यक है कि वह अभियुक्त से साधारणतः अभियोजन साक्ष्य समाप्त हो जाने के पश्चात्, उसके विरूद्ध साक्ष्य में प्रकट होने वाली परिस्थितियों को स्पष्ट करने के लिये प्रश्न पूछें - इसके लिये यह आवश्यक नहीं है कि अभियोजन साक्ष्य के प्रत्येक वाक्य को पुनः लेखबद्ध किया जावे और उसे एक बार पुनः पढ़ा जावे।

**Suresh Chandra Jana v.The State of West Bengal & Ors. Judgement dated 11.08.2017 passed by the Supreme Court in Criminal Appeal No. 31 of 2008 reported in 2017 (3) Crimes 137**

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**165. CRIMINAL PROCEDURE CODE, 1973 – Sections 156, 173 and 386**

**EVIDENCE ACT, 1872 – Section 3**

**INDIAN PENAL CODE, 1860 – Section 302**

**(i) Appreciation of evidence – When ocular evidence supported by medical evidence, it cannot be discarded.**

**(ii) Defective investigation – Duty of Court – If Investigating officer has committed any error and has been negligent in carrying out any investigation or in the investigation there is some omission and defect, it is the legal obligation on the part of the Court to examine the prosecution evidence *de hors* such lapses – Also held, some lapses on behalf of the investigation in examining the Doctor cannot be taken as a sole basis to doubt the case of the prosecution. [*C. Muniappan and others v. State of Tamil Nadu, (2010) 9 SCC 567* relied on]**

**(iii) Reversal of acquittal in appeal – When two views are reasonably possible, one indicating conviction and other acquittal, the Court will not interfere with the order of acquittal but Court shall never hesitate to interfere if the acquittal is perverse in the sense that no reasonable person would have come to that conclusion, or if the acquittal is manifestly illegal or grossly unjust. [*State of U.P v. Anil Singh, (1988) (Supp). SCC 686* relied on]**

**(iv) Appreciation of evidence – Weapons of offence not shown to doctors at time of their deposition in the Court, but murder was proved by eye-witnesses – As there was clear medical evidence that injuries could be caused by knife, axe and battle axe, mere non-showing of the weapons to the Doctors at the**

**time of their depositions in the Court is inconsequential and in no manner weakens the prosecution case.**

दण्ड प्रक्रिया संहिता**, 1973 -** धाराएं **156, 173** एवं **386**

साक्ष्य अधिनियम**, 1872 -** धारा **3**

भारतीय दंड संहिता**, 1860 -** धारा **302**

(i) साक्ष्य का मूल्यांकन - जब चक्षुदर्शी साक्ष्य का समर्थन चिकित्सीय साक्ष्य के द्वारा हो तो इसे अस्वीकार नहीं किया जा सकता है।

(ii) त्रुटिपूर्ण अनुसंधान - न्यायालय का कर्तव्य - यदि अनुसंधान अधिकारी ने कोई त्रुटि कारित की है और अनुसंधान को करने में उपेक्षा की गई है या अनुसंधान में कुछ लोप या त्रुटि है, तो न्यायालय हेतु यह विधिक बाध्यता है कि वह अभियोजन साक्ष्य की जांच ऐसी गलतियों से असंगत रहते हुए करे - इसके अतिरिक्त अभिनिर्धारित, अनुसंधान में हुई कुछ गलतियां जो कि चिकित्सक के परीक्षण में थी, को अभियोजन मामले को संदेहास्पद बनाये जाने का एक मात्र आधार नहीं माना जा सकता है। [*सी. मुनिअप्पन एवं अन्य विरूद्ध तमिलनाडू राज्य,* ***(2010) 9*** *एस.सी.सी.* ***567*** अवलंबित]

(iii) अपील में दोषमुक्ति का उलटा जाना - जबकि दो मत युक्तियुक्त रूप से संभव हैं, पहला दोषसिद्धि उपदर्शित करता है और दूसरा दोषमुक्ति तो न्यायालय को दोषमुक्ति के आदेश में हस्तक्षेप नहीं करना चाहिये, परन्तु न्यायालय को तब हस्तक्षेप करने में संकोच नहीं करना चाहिये यदि दोषमुक्ति इस संदर्भ में विपर्यस्त है कि कोई भी युक्तियुक्त व्यक्ति ऐसे निष्कर्ष पर नहीं पहुँच सकता है या अगर दोषमुक्ति स्पष्ट रूप से अवैध या पूर्णतया अन्यायपूर्ण है। [*उ.प्र. राज्य विरूद्ध अनिल सिंह,* ***(1988)*** *(सप्लीमेंट) एस.सी.सी.* ***686*** अवलंबित]

(iv) साक्ष्य का मूल्यांकन - न्यायालय में चिकित्सकों के कथनों के समय अपराध के आयुधों को नहीं दिखाया गया परन्तु चक्षुदर्शी साक्षियों ने हत्या को प्रमाणित किया - चूंकि इस बात की स्पष्ट चिकित्सीय साक्ष्य थी कि उपहतियां चाकू , कुल्हाड़ी एवं फरसे से कारित हो सकती हैं तो केवल चिकित्सकों को न्यायालय में उनके कथनों के दौरान आयुधों का न दिखाया जाना महत्वहीन है और किसी भी प्रकार से अभियोजन मामले को कमजोर नहीं करता है।

**Sudha Renukaiah v. State of A.P.**
**Judgment dated 13.04.2017 passed by the Supreme Court in Criminal Appeal No. 119 of 2014, reported in 2017 (2) Crimes 397**

**Relevant extracts from the Judgment:**

Trial Court after noticing the evidence of PW.16 has made the following observation :

> "In fact, this evidence gives rise to many doubts. First of all it is not possible to hold that the nature of injuries could be caused with sharp edged weapon like hunting sickle."

The Trial Court held that it is not possible to hold that the nature of injuries could be caused with sharp edged weapon like hunting sickle. This was one of the reasons for discarding the evidence of PW.5.

PW.5 himself came in the witness box and was examined. PW.5 has deposed about the injuries caused to him. In his statement PW.5 stated:

> "Velivala Akkaiah (A19) beat me on my right temporal bone with a knife. Botchu Vasu (A11) beat with a stick on my right sticks. Valivala Akkaiah (A19) caught hold of my hands and legs and thrown me. I lost consciousness. I regained consciousness in Hitch Hospital, Guntur. After that police examined me."

When PW.5 has stated that he was beaten by knife and stick on right temporal bone, the injuries found in his person have to be looked into in the light of the evidence given by him.

When, PW.5 himself has stated that he was attacked by knife and stick the injuries which were noticed by the Doctor were caused by knife and stick, since there is no inconsistency between the ocular evidence of PW.5 and medical evidence of PW.16, the reason given by the Trial Court for discarding the evidence of PW.5 is incorrect.

It is also relevant to notice that observation has been made by the Trial Court that IO, PW.23 ought to have been taken endorsement from the Doctor that PW.5 was in unconscious state of mind on 10.10.2003, although there is evidence that he was unconscious on 10.10.2003 when he was admitted in the Hospital, the mere fact that certificate was not obtained by IO from the Doctor is inconsequential. Furthermore, it is well settled that even if IO has committed any error and has been negligent in carrying out any investigation or in the investigation there is some omission and defect, it is the legal obligation on the part of the Court to examine the prosecution evidence de hors such lapses. In ***C. Muniappan and others v. State of Tamil Nadu, (2010) 9 SCC 567***, following has been laid down in paragraph 55:

> "Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth."

The High Court has specifically considered the evidence of PW.5 in paragraphs 27 and 28 of the judgment. The High Court has rightly observed that the fact of sustaining injuries by this witness has not been denied or disputed nor it was suggested to him that he sustained those injuries at a different place in a different manner in the hands of some other assailants. The High Court observed that some lapses on behalf of the investigation in examining the Doctor of the Government Hospital, Guntur or at Hitech Hospital cannot be taken as sole basis so as to doubt the case of the prosecution. When PW.5 was unconscious, the delay in examination cannot be said to be fatal to the case of the prosecution. The High Court, thus, has correctly appreciated and relied on the evidence of PW.5 which we find fully in accordance with law.

In ***State of U.P v. Anil Singh, (1988)(Supp). SCC 686***, this Court has held that although when two views are reasonably possible, one indicating conviction and other acquittal, this Court will not interfere with the order of acquittal but Court shall never hesitate to interfere if the acquittal is perverse in the sense that no reasonable person would have come to that conclusion, or if the acquittal is manifestly illegal or grossly unjust. In paragraph 14 of the judgment following has been stated:

> "14. The scope of appeals under Article 136 of the Constitution is undisputedly very much limited. This Court does not exercise its overriding powers under Article 136 to reweigh the evidence. The court does not disturb the concurrent finding of facts reached upon proper appreciation. Even if two views are reasonably possible, one indicating conviction and other acquittal, this Court will not interfere with the order of acquittal (See: ***State of U.P. v. Jashoda Nandan Gupta and others, AIR 1974 SC 753;State of A.P. v. P. Anjaneyulu, AIR 1982 SC 1598***) But this Court will not hesitate to interfere if the acquittal is perverse in the sense that no reasonable person would have come to that conclusion, or if the acquittal is manifestly illegal or grossly unjust."

Looking to the injuries as noticed by PW.17, it is clear that the cut injuries as noticed above could be by axe and knife as well as by battle axe as opined by the Doctor. The fact that weapon was not shown to the Doctor nor in the cross examination attention of the Doctor was invited towards the weapon, is not of much consequence in the facts of the present case where there was clear medical evidence that injuries could be caused by knife, axe and battle axe. It is not the contention before us that the injuries as noted by the Doctors in the postmortem of deceased Nos.1 and 2 could not have been caused by knives and axes. The submission has also been raised that it was put to the Doctor that injuries by battle axe could be half moon, Doctor himself admitted in his report that he has not reported depth of the injury, middle of the injury nor

margins of the injuries have been noted. He has not described any injury as the half moon. Doctor himself has admitted that he has not described the shapes of the injuries, depth and middle of the injuries. The above medical evidence does not lead to the conclusion that injuries as noticed by the Doctors could not have been caused by axe, knives and battle axe. The eye-witnesses, PW.1, 2, 3 and 5 have clearly mentioned about the weapons used by the accused which eyewitnesses accounts are in accordance with medical evidence. Thus, mere non-showing of the weapons to the Doctors at the time of their depositions in the Court is inconsequential and in no manner weakens the prosecution case. Some discrepancies referred by the Trial Court in the statements of eye-witnesses were inconsequential. The eyewitnesses after lapse of time cannot give picture perfect report of the injuries caused by each accused and the minor inconsistencies were inconsequential. It is useful to refer to the judgment of this Court in ***Chandrappa and others v. State of Karnataka, (2008) 11 SCC 328***. In paragraphs 17 and 18 following was stated:

> "17. It has been contended by the learned counsel for the appellants that the discrepancies between the statements of the eyewitnesses inter se would go to show that they had not seen the incident and no reliance could thus be placed on their testimony. It has been pointed out that their statements were discrepant as to the actual manner of assault and as to the injuries caused by each of the accused to the deceased and to PW 3, the injured eyewitness. We are of the opinion that in such matters it would be unreasonable to expect a witness to give a picture perfect report of the injuries caused by each accused to the deceased or the injured more particularly where it has been proved on record that the injuries had been caused by several accused armed with different kinds of weapons.
>
> 18. We also find that with the passage of time the memory of an eyewitness tends to dim and it is perhaps difficult for a witness to recall events with precision. We have gone through the record and find that the evidence had been recorded more than five years after the incident and if the memory had partly failed the eyewitnesses and if they had not been able to give an exact description of the injuries, it would not detract from the substratum of their evidence. It is however very significant that PW 2 is the sister of the four appellants, the deceased and PW 3 Devendrapa and in the dispute between the brothers she had continued to reside with her father Navilapa who was residing with the appellants, but she has nevertheless still supported the prosecution. We are of the opinion that in normal

circumstances she would not have given evidence against the appellants but she has come forth as an eyewitness and supported the prosecution in all material particulars."

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***166. CRIMINAL PROCEDURE CODE, 1973 – Sections 161 and 311**

**Recording of evidence of witnesses in absence of statements under Section 161 Cr.P.C. – Court has a duty to take all evidence produced in support of prosecution – No bar of recording evidence of such witness – May be examined under Section 311 Cr.P.C. – Probative value and prejudice to the accused are different considerations.**

दंड प्रक्रिया संहिता, **1973 -** धाराएं **161** एवं **311**

धारा 161 दं.प्र.सं. के अधीन कथन के अभाव में साक्षी की साक्ष्य का अभिलिखित किया जाना - न्यायालय का यह कर्तव्य है कि वह अभियोजन पक्ष के समर्थन में प्रस्तुत संपूर्ण साक्ष्य को ले - इस तरह के साक्षी की साक्ष्य को अभिलिखित करने का कोई वर्जन नहीं हैं - धारा 311 दं.प्र.सं. के अंतर्गत परीक्षित किया जा सकता है - साक्ष्यिक मूल्य एवं अभियुक्त पर प्रतिकूल प्रभाव दोनों सुभिन्न विचार हैं।

**Anand Dohare v. State of Madhya Pradesh**
**Order dated 05.10.2016 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Revision No. 595 of 2016, reported in 2017 (III) MPJR 142**

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**167. CRIMINAL PROCEDURE CODE, 1973 – Section 195**

**Bar against taking cognizance – Expression 'public servant or his administrative superior' does not exclude High Court – Direction of investigation by High Court is at par with direction of an administrative superior to public servant to file a complaint in writing – Investigation ordered by High Court into allegation that motor accident claim was false – Bar under section 195 (i)(a) cannot be invoked.**

दंड प्रक्रिया संहिता, **1973 -** धारा **195**

संज्ञान लेने के विरूद्ध वर्जन - अभिव्यक्ति ''लोक सेवक या उसके प्रशासनिक वरिष्ठ'' उच्च न्यायालय को अपवर्जित नहीं करता है - उच्च न्यायालय द्वारा अन्वेषण का आदेश, एक लोक सेवक के प्रशासनिक वरिष्ठ के द्वारा लिखित में परिवाद दर्ज करने के आदेश के समतुल्य है - उच्च न्यायालय द्वारा मोटर दुर्घटना दावा के असत्य होने के अभिकथन पर अनुसंधान का आदेश - धारा 195 (i)(क) के वर्जन का अवलंब नही लिया जा सकता है।

**Central Bureau of Investigation v. M. Sivamani**
**Judgment dated 01.08.2017 passed by the Supreme Court in Criminal Appeal No. 1261 of 2017, reported in 2017 (3) Crimes 366**

**Relevant extracts from the Judgment:**

While the bar against cognizance of a specified offence is mandatory, the same has to be understood in the context of the purpose for which such a bar is created. The bar is not intended to take away remedy against a crime but only to protect an innocent person against false or frivolous proceedings by a private person. The expression "the public servant or his administrative superior" cannot exclude the High Court. It is clearly implicit in the direction of the High Court quoted above that it was necessary in the interest of justice to take cognizance of the offence in question. Direction of the High Court is at par with the direction of an administrative superior public servant to file a complaint in writing in terms of the statutory requirement. The protection intended by the Section against a private person filing a frivolous complaint is taken care of when the High Court finds that the matter was required to be gone into in public interest. Such direction cannot be rendered futile by invoking Section 195 to such a situation. Once the High Court directs investigation into a specified offence mentioned in Section 195, bar under section 195(1)(a) cannot be pressed into service.

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**168. CRIMINAL PROCEDURE CODE, 1973 – Section 228**
**INDIAN PENAL CODE, 1860 – Section 120-A**

**(i) Framing of charge – Scope – Trial court not to examine and assess materials placed on record by the prosecution in detail nor to consider sufficiency of material to establish offence against accused person.**

**(ii) Criminal conspiracy – Agreement to do illegal act – The ultimate offence if consists of chain of actions, it would not be necessary for the prosecution to establish that each of the conspirators had knowledge of what collaborator would do.**

दंड प्रक्रिया संहिता, **1973 -** धारा **228**

भारतीय दंड संहिता, **1860 -** धारा **120-**क

(i) आरोप विरचित करना - विस्तार - विचारण न्यायालय को न तो अभियोजन द्वारा अभिलेख पर प्रस्तुत सामग्री की विस्तृत परीक्षा एवं मूल्यांकन करने की एवं न ही अभियुक्त के विरूद्ध अपराध स्थापित करने के लिये सामग्री की पर्याप्तता पर विचार करने की आवश्यकता होती है।

(ii) आपराधिक षड़यंत्र - अवैध कार्य करने के लिये समझौता - अंतिम अपराध यदि कार्यों की श्रृंखला से निर्मित होता है तो अभियोजन पक्ष को यह स्थापित करने की आवश्यकता नहीं होगी कि प्रत्येक षड़यंत्रकारी को यह पता होना चाहिये कि सहयोगी क्या करेगा।

**State through Central Bureau of Investigation v. Dr. Anup Kumar Srivastava**

**Judgment dated 04.08.2017 passed by the Supreme Court in Criminal Appeal No. 1336 of 2017, reported in AIR 2017 SC 3698**

**Relevant extracts from the judgment:**

(i) The legal position is well settled that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the court is to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 of the Code seeking for the quashing of charge framed against him the court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. The court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section 24 exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case.

(ii) Conspiracy is an agreement between two or more persons to do an illegal act or an act which is not illegal by illegal means. The object behind the conspiracy is to achieve the ultimate aim of conspiracy. For a charge of conspiracy means knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question 20 may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do.

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***169. CRIMINAL PROCEDURE CODE, 1973 – Sections 372 and 378**

**Appeal against acquittal by victim, whether can be rejected on sole ground that leave to appeal was not granted to State – Substantive and independent right conferred upon victim by virtue of section 372 Cr.P.C. – Merely because leave to appeal was not granted to State to prefer an appeal against acquittal, appeal preferred by victim cannot be rejected.**

दंड प्रक्रिया संहिता, **1973 -** धाराएं **372** एवं **378**

क्या पीड़ित व्यक्ति द्वारा दोषमुक्ति के विरूद्ध अपील को केवल इस आधार पर नामंजूर किया जा सकता है कि राज्य को अपील के संबंध में अनुमति प्रदान नहीं की गई थी - धारा 372 दं.प्र.सं. पीड़ित को सारभूत एवं स्वतंत्र अधिकार प्रदान करती है - केवल इस आधार पर कि राज्य को दोषमुक्ति के विरूद्ध अपील करने की अनुमति प्रदान नहीं की गई, पीड़ित द्वारा की गई अपील को नामंजूर नहीं किया जा सकता है।

**Roopendra Singh v. State of Tripura and Anr.**
**Judgment dated 11.04.2017 passed by the Supreme Court in Criminal Appeal No. 690 of 2017, reported in 2017 (2) Crimes 314**

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***170. CRIMINAL PROCEDURE CODE, 1973 – Section 427(1)**

**Consecutive or Concurrent running of sentences – Person undergoing sentence of imprisonment in one case sentenced in subsequent case – Imprisonment for the subsequent case shall commence at the expiry of imprisonment of previous case – But, in a case where offences tried separately essentially constitute single transaction, also having common evidence – The Court must direct the sentences to run concurrently.**

दंड प्रक्रिया संहिता, **1973 -** धारा **427 (1)**

क्रमवर्ती या समवर्ती दण्डादेश का चलना - एक प्रकरण में दंडादेश भुगत रहे व्यक्ति का दूसरे प्रकरण में दंडित किया जाना - पश्चातवर्ती प्रकरण का दंडादेश पूर्ववर्ती प्रकरण के दंडादेश के समाप्त हो जाने के पश्चात प्रारंभ होगा - परंतु, ऐसे मामले में जहां अपराधों को पृथक रूप से विचारित किया जा रहा हो और वे आवश्यक रूप से एक ही संव्यवहार के भाग हों एवं उसमें साक्ष्य भी समान हो - न्यायालय को दंडादेशों को आवश्यक रूप से एक साथ भुगताये जाने के लिए निर्देशित करना चाहिए।

**P.N. Mohanan Nair v. State of Kerala**
**Judgment dated 11.07.2017 passed by the Supreme Court in Criminal Appeal No. 1102 of 2017, reported in 2017 Cri.L.J. 4319**

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

**Bail – Accusation of tampering of answer-sheets and interference with examination system – Documents of property worth Rs. 2.57 crore, Rs. 20 lakh cash, larger number of answer-sheets of students, stamps etc. recovered from the accused – Argument of long time in jail and parity – Held, accused charged with economic offences of huge magnitude – In cases of such serious offence, the period of jail for however long must not be a concern of the Courts – Also, co-accused released on bail being teachers on invigilation duty cannot be compared with accused who is alleged to be the king-pin of the entire crime – Bail rejected.**

दंड प्रक्रिया संहिता**, 1973 -** धारा **439**

जमानत - उत्तर पत्रकों में हेरफेर एवं परीक्षा प्रणाली में हस्तक्षेप करने का अभियोग- 2.57 करोड़ रूपये की संपत्ति संबंधी दस्तावेज, 20 लाख रूपये नगद, अत्यधिक संख्या में छात्रों के उत्तर-पत्रक, स्टांप आदि अभियुक्त से बरामद किये गये - समानता एवं जेल में लंबे समय तक रहने के तर्क - अभिनिर्धारित, अभियुक्त पर बड़े पैमाने पर आर्थिक अपराधों के आरोप हैं - ऐसे गंभीर अपराध के मामलों में जेल की लंबी अवधि न्यायालय के लिये चिंता का विषय नहीं होना चाहिये - इसके अतिरिक्त, जमानत पर उन्मुक्त सह-अभियुक्त जो कि शिक्षक होकर अन्वीक्षण कर्तव्य कर रहे थे, उनकी अभियुक्त के साथ तुलना नहीं की जा सकती जिसके ऊपर अपराध का सरगना होने का आरोप है - जमानत निरस्त की गई।

**State of Bihar and another v. Amit Kumar @ Bacha Rai**
**Judgment dated 20.04.2017 passed by the Supreme Court in Criminal Appeal No. 1762 of 2017, reported in AIR 2017 SC 2487**

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**172. CRIMINAL TRIAL : SENTENCING**

**Duty of the Court in imposing sentence – Must be exercised according to well established judicial principle – Money cannot assume the centre stage for all redemption – Undue sympathy to impose inadequate sentence would do more harm to the society – Also, mere gender may not be a mitigating factor – Principles governing sentencing policy, stated.**

आपराधिक विचारण: दंडादेश

दंडादेश को अधिरोपित करने में न्यायालय का कर्तव्य - सुस्थापित न्यायिक सिद्धांत के अनुसार ही प्रयोग किया जाना चाहिये - धन सभी दायित्वों से उन्मोचन के लिए केन्द्रीय भूमिका में नहीं माना जा सकता है - अपर्याप्त दंड अधिरोपित करने की अनुचित सहानुभूति समाज को अधिक नुकसान पहुंचायेगी - इसके अतिरिक्त मात्र लिंग, एक न्यूनकारी कारक नहीं हो सकता है - दंड नीति को नियंत्रित करने वाले सिद्धांत निर्दिष्ट किए गए।

**State of Himachal Pradesh v. Nirmala Devi**

**Judgment dated 10.04.2017 passed by the Supreme Court in Criminal Appeal No. 667 of 2017, reported in AIR 2017 SC 1981**

**Relevant extracts from the judgment:**

The offences for which the respondent is convicted prescribe maximum imprisonment and there is no provision for minimum imprisonment. Thus, there is a wide discretion given to the Court to impose any imprisonment which may be from one day (or even till the rising of the court) to ten years/life. However, at the same time, the judicial discretion which has been conferred upon the court, has to be exercised in a fair manner keeping in view the well established judicial principles which have been laid down from time to time, the prime consideration being reason and fair play. Some of the judgments highlighting the manner in which discretion has to be exercised were taken note of in ***Satish Kumar Jayanti Lal Dabgar v. State of Gujarat, 2015 7 SCC 359*** and I may reproduce the same:

"xxx xxx xxx

> Having discussed about the discretion, presently we shall advert to the duty of the court in the exercise of power while imposing sentence for an offence. It is the duty of the court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. The paramount principle that should be the guiding laser beam is that the punishment should be proportionate. It is the answer of law to the social conscience. In a way, it is an obligation to the society which has reposed faith in the court of law to curtail the evil. While imposing the sentence it is the court's accountability to remind itself about its role and the reverence for rule of law. It must evince the rationalised judicial discretion and not an individual perception or a moral propensity. But, if in the ultimate eventuate the proper sentence is not awarded, the fundamental grammar of sentencing is guillotined. Law cannot tolerate it; society does not withstand it; and sanctity of conscience abhors it. The old saying 'the law can hunt one's past' cannot be allowed to be buried in an indecent manner and the rainbow of mercy, for no fathomable reason, should be allowed to rule. True it is, it has its own room, but, in all circumstances, it cannot be allowed to occupy the whole accommodation. The victim, in this case, still cries for justice. We do not think that increase in fine amount or grant of compensation under the Code would be a justified answer in law. Money cannot be the oasis. It cannot assume the centre stage for all redemption. Interference in manifestly inadequate and

unduly lenient sentence is the justifiable warrant, for the Court cannot close its eyes to the agony and anguish of the victim and, eventually, to the cry of the society. Therefore, striking the balance we are disposed to think that the cause of justice would be best sub-served if the respondent is sentenced to undergo rigorous imprisonment for two years apart from the fine that has been imposed by the learned trial Judge."

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Following principles can be deduced from the reading of the aforesaid judgment:

(i) Imprisonment is one of the methods used to handle the convicts in such a way to protect and prevent them to commit further crimes for a specific period of time and also to prevent others from committing crime on them out of vengeance. The concept of punishing the criminals by imprisonment has recently been changed to treatment and rehabilitation with a view to modify the criminal tendency among them.

(ii) There are many philosophies behind such sentencing justifying these penal consequences. The philosophical/jurisprudential justification can be retribution, incapacitation, specific deterrence, general deterrence, rehabilitation, or restoration. Any of the above or a combination thereof can be the goal of sentencing.

(iii) Notwithstanding the above theories of punishment, when it comes to sentencing a person for committing a heinous crime, the deterrence theory as a rationale for punishing the offender becomes more relevant. In such cases, the role of mercy, forgiveness and compassion becomes secondary.

(iv) In such cases where the deterrence theory has to prevail, while determining the quantum of sentence, discretion lies with the Court. While exercising such a discretion, the Court has to govern itself by reason and fair play, and discretion is not to be exercised according to whim and caprice. It is the duty of the Court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience.

(v) While considering as to what would be the appropriate quantum of imprisonment, the Court is empowered to take into consideration mitigating circumstances, as well as aggravating circumstances.

When the Indian Penal Code provides discretion to Indian Judges while awarding the sentence, the Court will have undoubtedly regard to extenuating and mitigating circumstances. In this backdrop, the question is as to whether the respondent being a lady and having three minor children will be extenuating reasons? I may observe that in many countries of the world, gender is not a mitigating factor. Some jurists also stress that in this world of gender equality, women should be treated at par with men even as regards equal offences committed by them. Women are competing men in the criminal world; they are emulating them in all the crimes; and even surpassing men at times. Therefore, concept of criminal justice is not necessarily synonymous with social justice. Eugene Mc Laughlin shows a middle path. She finds that predominant thinking is that 'paper justice' would demand giving similar penalty for similar offences. However, when it comes to doing 'real justice', element of taking the consequences of a penalty cannot be ignored. Here, while doing 'real justice' consequences of awarding punishment to a female offender are to be seen. According to her, 'real justice' would consider the likelihood that a child might suffer more from a mother's imprisonment than that of his father's. Insofar as Indian judicial mind is concerned, I find that in certain decisions of this Court, gender is taken as the relevant circumstance while fixing the quantum of sentence. I may add that it would depend upon the facts of each case, whether it should be treated as a relevant consideration and no hard and fast rule can be laid down. For example, where a woman has committed a crime being a part of a terrorist group, mercy or compassion may not be shown.

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**173. EVIDENCE ACT, 1872 – Sections 8 and 27**

**Recovery of dead body on the basis of disclosure made by the accused – The spot shown by the accused was the place from where a body of an unknown person was recovered – Later, the body was recognised as the body of the deceased in the case – Disclosure made by the accused is admissible under Section 27 – Word "Fact" used in Section 27 is not limited to "actual physical material object" – Knowledge of the accused is also relevant and admissible – Also, conduct of leading the police officers to the spot and tap where he washed the clothes are relevant and admissible under Section 8.**

साक्ष्य अधिनियम**, 1872 -** धाराएं **8** एवं **27**

अभियुक्त द्वारा किये गये प्रकटीकरण के आधार पर मृत शरीर का प्रत्युद्धरण - अभियुक्त द्वारा बताया गया स्थान वह था जहां से एक अज्ञात व्यक्ति का शव प्रत्युद्धरित किया गया था – पश्चात् में शरीर को मृतक के शरीर के रूप में पहचाना गया था - अभियुक्त द्वारा किया गया प्रकटीकरण धारा 27 के अधीन ग्राह्य हैं - धारा 27 में प्रयुक्त ''तथ्य'' केवल ''वास्तविक भौतिक पदार्थ'' तक ही सीमित नहीं हैं - अभियुक्त की जानकारी भी सुसंगत एवं ग्राह्य है - इसके अतिरिक्त पुलिस अधिकारी को मौके

पर ले जाना एवं नल जहां उसने कपड़े धोये थे बताये जाने का आचरण भी धारा 8 के तहत सुसंगत एवं ग्राह्य है।

**Charandas Swami v. State of Gujarat**
**Judgment dated 10.04.2017 passed by the Supreme Court in Criminal Appeal No. 1549 of 2008, reported in AIR 2017 SC 1761**

**Relevant extracts from the judgment:**

As pointed out by the Privy Council in ***Pulukuri Kottaya and others v. Emperor, (AIR 1947 PC 67)*** "clearly the extent of the information admissible must depend on the exact nature of the fact discovered" and the information must distinctly relate to that fact.

Elucidating the scope of this section, the Privy Council speaking through Sir John Beaumont said:

> "Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused."

We have emphasised the word "normally" because the illustrations given by the learned Judge are not exhaustive. The next point to be noted is that the Privy Council rejected the argument of the counsel appearing for the Crown that the fact discovered is the physical object produced and that any and every information which relates distinctly to that object can be proved. Upon this view, the information given by a person that the weapon produced is the one used by him in the commission of the murder will be admissible in its entirety.

Such contention of the Crown's counsel was emphatically rejected with the following words:

> "If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect."

Then, Their Lordships proceeded to give a lucid exposition of the expression "fact discovered" in the following passage, which is quoted time and again by this Court:

> "In Their Lordships' view it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

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Additionally, another aspect can also be taken note of. The fact that the Appellant had led the police officer to find out the spot where the crime was committed, and the tap where he washed the clothes eloquently speak of his conduct as the same is admissible in evidence to establish his conduct. In this context we may refer with profit to the authority in ***Prakash Chand v. State(Delhi Admn.), (1979) 3 SCC 90*** wherein the Court after referring to the decision in ***H.P. Admn. v. Om Prakash, (1972) 1 SCC 249*** held thus:

> "8. ...There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible Under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police Officer in the course of an investigation which is hit by Section 162 of the Code of Criminal Procedure. What is excluded by Section 162, Code of Criminal Procedure is the statement made to a Police Officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police Officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a Police Officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, Under Section 8

of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act."

In ***A.N. Vekatesh and Anr.v. State of Karnataka, (2005) 7 SCC 714*** it has been ruled that:

"9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct Under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in ***Prakash Chand v. State*** (Delhi Admn.). Even if we hold that the disclosure statement made by the accused-Appellants (Exts. P-15 and P-16) is not admissible Under Section 27 of the Evidence Act, still it is relevant Under Section 8. The evidence of the investigating officer and PWs 1, 2, 7 and PW 4 the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence Under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible Under Section 8 of the Evidence Act."

The other decision relied upon is the case of ***Pandurang Kalu Patil and another v. State of Maharashtra, (1995) 1 SCC 142.***

It is not necessary to multiply the authorities on this aspect. In our opinion, the Courts below have rightly placed reliance on the fact discovered by the Investigating Officer (PW64) on the basis of the disclosure made by the Accused No.3 on 2nd April 1999, after his arrest on 29th March, 1999, as recorded in Exh. 188. The panchanama Exh.188 was proved by pancha witness PW30. The fact that PW30 was not on good terms with the accused cannot be the basis to discard his evidence. This aspect has been considered by the High Court and in our opinion, rightly, that the evidence of PW30 was relied upon for the limited purpose to prove the panchanama and not for any other relevant fact. We affirm the view taken by the courts below about the admissibility of disclosure of the spot where the dead body of Gadadharanandji was disposed of by Accused

No.3. The same stood corroborated from the recovery of a dead body of an unknown person from the same spot by the Rajasthan Police on 4th May, 1998 on the information provided by PW50. That dead body, on subsequent medical examination was found to be of none other than that of Gadadharanandji.

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***174. EVIDENCE ACT, 1872 – Section 45**

**Whether a party to the suit is entitled to produce expert's evidence under Section 45 is rebuttal – Held, Yes – Handwriting expert's report adduced in evidence by one party, other party should be allowed to obtain report from his own handwriting expert. (relied on *Jai Narayan v. Satya Narayan & others, 1991 MPLJ 768*).**

साक्ष्य अधिनियम, **1872 -** धारा **45**

क्या वाद में एक पक्षकार धारा 45 के अधीन खंडन करने के लिये विशेषज्ञ साक्षी की साक्ष्य प्रस्तुत करने का अधिकारी हैं - हाँ, अभिनिर्धारित कि एक पक्षकार द्वारा साक्ष्य में प्रस्तुत हस्तलिपि विशेषज्ञ की रिपोर्ट के संबंध में दूसरे पक्षकार को अपने हस्तलिपि विशेषज्ञ की रिपोर्ट प्राप्त करने की अनुमति दी जानी चाहिये। (*जय नारायण विरूद्ध सत्य नारायण एवं अन्य, **1991** एम.पी.एल.जे. **768*** अवलंबित)

**Chenram v. Banshilal**
**Order dated 21.03.2017 passed by the High Court of M.P. (Indore Bench) in Writ Petition No. 7789 of 2016, reported in 2017 (3) MPLJ 592**

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**175. EVIDENCE ACT, 1872 – Section 65 B**

**(i) Objection regarding method of proof of CDR at appellate stage, whether permissible – CDR marked exhibit in trial court without certificate – Certificate is mode of proof of CDR – Cannot be raised at appellate stage – If objections as to the mode of proof are permitted at appellate stage by a party, the other party will not have an opportunity to rectify defect.**

**(ii) Inadmissibility of document can be raised at any stage – objection as to mode of proof and objection regarding admissibility differentiated.**

**(iii) Waiver of right to objection to the mode of proof, whether permissible in criminal cases? No.**

साक्ष्य अधिनियम, **1872 -** धारा **65** बी

(i) क्या अपील के प्रक्रम पर सी.डी.आर. को प्रमाणित किये जाने के संबंध में आपत्ति अनुज्ञेय हैं - सी.डी.आर. को विचारण न्यायालय में प्रमाण पत्र के बिना प्रदर्शित किया गया - प्रमाण पत्र सी.डी.आर. को प्रमाणित करने का ढंग हैं - इसे अपील के प्रक्रम पर नहीं उठाया जा सकता है - यदि अपीलीय प्रक्रम पर एक पक्षकार

को प्रमाणित करने के ढंग के संबंध में आपत्ति करने की अनुमति दी गयी तो दूसरे पक्षकार को दोष को सुधारने का अवसर नहीं होगा।

(ii) दस्तावेज की अग्राह्यता किसी भी प्रक्रम पर उठायी जा सकती है - साबित करने के ढंग के संबंध में आपत्ति एवं ग्राह्यता के संबंध में आपत्ति को विभेदित किया गया।

(iii) क्या आपराधिक मामलों में साबित करने के ढंग पर आपत्ति के अधिकार का त्याग अनुज्ञात हैं? नहीं।

**Sonu @ Amar v. State of Haryana**
**Judgment dated 18.07.2017 passed by the Supreme Court in Criminal Appeal No. 1418 of 2013, reported in 2017 (3) Crimes 234**

**Relevant extracts from the Judgment:**

An electronic record is not admissible unless it is accompanied by a certificate as contemplated under Section 65B (4) of the Indian Evidence Act is no more res integra. The question that falls for our consideration in this case is the permissibility of an objection regarding inadmissibility at this stage. Admittedly,no objection was taken when the CDRs were adduced in evidence before the Trial Court. It does not appear from the record that any such objection was taken even at the appellate stage before the High Court. In ***Gopal Das v. Sri Thakurji, AIR 1943 PC 83,*** it was held that:

> "Where the objection to be taken is not that the document is in itself inadmissible but that the mode of proof put forward is irregular or insufficient, it is essential that the objection should be taken at the trial before the document is marked as an exhibit and admitted to the record. A party cannot lie by until the case comes before a Court of Appeal and then complain for the first time of the mode of proof."

In RVE Venkatachala Gounder, this Court held as follows:

> "Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been

admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court."

It would be relevant to refer to another case decided by this Court in ***PC Purshothama Reddiar v. S Perumal, (1972) 1 SCC 9.*** The earlier cases referred to are civil cases while this case pertains to police reports being admitted in evidence without objection during the trial. This Court did not permit such an objection to be taken at the appellate stage by holding that:

"Before leaving this case it is necessary to refer to one of the contentions taken by Mr. Ramamurthi, learned Counsel for the respondent. He contended that the police reports referred to earlier are inadmissible in evidence as the Head-constables who covered those meetings have not been examined in the case. Those reports were marked without any objection. Hence it is not open to the respondent now to object to their admissibility."

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

Another point which remains to be considered is whether the accused is competent to waive his right to mode of proof. Mr. Luthra's submission is that such a waiver is permissible in civil cases and not in criminal cases. He relies upon a judgment of the Privy Council in Chainchal Singh's case in support of the proposition. The Privy Council held that the accused was not competent to waive his right. Chainchal Singh's case may have no application to the case in hand at all. In that case, the issue was under Section 33 of the Evidence Act, and was whether evidence recorded in an earlier judicial proceeding could be read into, or not. The question was whether the statements made by a witness in an earlier judicial proceeding can be considered relevant for proving the truth or facts stated in a subsequent judicial proceeding. Section 33 of the Evidence Act allows for this inter alia where the witness is incapable of getting evidence in the subsequent proceeding. In Chainchal Singh, the accused had not objected to the evidence being read into in the subsequent proceeding. In this context, the Privy Council held that in a civil case, a party can waive proof but in a criminal case, strict proof ought to be given that the witness is incapable of giving evidence. Moreover, the judge must be satisfied that the witness cannot give evidence. Chainchal Singh also held that:

> "In a civil case a party can, if he chooses, waive the proof, but in a criminal case strict proof ought to be given that the witness is incapable of giving evidence".

The witness, who had deposed earlier, did not appear in the subsequent proceeding on the ground that he was unable to move from his house because of tuberculosis, as deposed by the process server. There was no medical evidence in this regard. The Court observed that the question of whether or not he was incapable of giving evidence must be proved in this context, and in the proof of such a fact it was a condition that statements given in an earlier proceeding can be taken as proved in a subsequent proceeding. Chainchal Singh's case therefore, does not lay down a general proposition that an accused cannot waive an objection of mode of proof in a criminal case. In the present case, there is a clear failure to object to the mode of proof of the CDRs and the case is therefore covered by the test in R.V.E. Venkatachala Gounder.

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**176. EVIDENCE ACT, 1872 – Section 116**
**CIVIL PROCEDURE CODE, 1908 – Order 8 Rules 3 and 5**

**(i) Principle of estoppel of tenant – Tenants put in possession of disputed premises by plaintiff/landlord under a lease deed – Title of the landlord and lease deed not specifically denied in written statement – Tenant estopped from denying the title of the landlord at belated stage by amendment.**

**(ii) Effect of evasive denial – Failure to make specific denial in written statement amounts to an admission of the allegations made in the plaint.**

साक्ष्य अधिनियम**, 1872 -** धारा **116**

सिविल प्रक्रिया संहिता**, 1908 -** आदेश **8** नियम **3** एवं **5**

(i) किरायेदार के विबंधन का सिद्धांत - किरायेदार को वादग्रस्त परिसर के आधिपत्य में वादी/भूस्वामी द्वारा पट्टा अनुबंध के तहत रखा गया - भूस्वामी के स्वत्व एवं पट्टा अनुबंध को लिखित कथन में विनिर्दिष्ट रूप से प्रत्याख्यान नहीं किया गया - किरायेदार को संशोधन के माध्यम से विलंबित प्रक्रम पर भूस्वामी के स्वत्व से इंकार करने से विबंधित किया गया।

(ii) वांग्छलपूर्ण प्रत्याख्यान का प्रभाव - लिखित कथन में विनिर्दिष्ट इंकार करने में असफलता वाद में किये गये अभिकथनों की स्वीकृति के समान है।

**Jaspal Kaur Cheemas and another v. Industrial Trade Links and others**
**Judgment dated 03.07.2017 passed by the Supreme Court in Civil Appeal No. 8384 of 2017, reported in (2017) 8 SCC 592**

**Relevant extracts from the Judgment:**

It is not in dispute that the respondents were put in possession of the premises by the appellants under the lease deed at Annexure P-1 dated 16.05.2006. The appellants in paragraph (1) of the eviction petition averred that they are the owners and landlords of the premises and that the premises was let out to the respondents through a lease deed dated 16.05.2006. In their written statement, the respondents have not raised a specific plea denying or disputing the ownership of the appellants. However, there is a general denial of the averments made in paragraph (1) of the eviction petition.

In terms of Order 8, Rule 3 of the Code of Civil Procedure, 1908 (for short 'the Code'), a defendant is required to deny or dispute the statements made in the plaint categorically, as evasive denial would amount to an admission of the allegation made in the plaint in terms of Order 8, Rule 5 of the Code. In other words, the written statement must specifically deal with each of the allegations of fact made in the plaint. The failure to make specific denial amounts to an admission. This position is clear from the decisions of this Court in ***Badat and Company v. East India Trading Company (1964) 4 SCR 19, Sushil Kumar v. Rakesh Kumar 2003(4) R.C.R.(Civil) 753 : (2003) 8 SCC 673 I,*** and ***M. Venkataramana Hebbar (dead by LRs) v. M. Rajagopal Hebbar 2007(2) R.C.R.(Civil) 404 : (2007) 6 SCC 401***.

xxx xxx xxx

Now, the question is whether it is permissible for the respondent-tenant to deny his landlord's title having regard to Section 116 of the Evidence Act.

xxx xxx xxx

Section 116 deals with estoppel of a tenant founded upon contract between the tenant and his landlord. It enumerates the principle of estoppel which is merely an extension of princi9ple that no person is allowed to approbate and reprobate at the same time. The tenant who has been let into possession cannot deny his landlord's title. In ***Bilas Kunwar v. Desraj Ranjit Singh, AIR 1915 PC 96 : 1919 SCC OnLine PC 34,*** it was held that a tenant who has been let into possession cannot deny his landlord's title. However, defective it may be so long as he has not openly restored possession by surrender to his landlord.

In the instant case, it is not disputed by the respondents that they were put in possession of the premises as tenants thereof by the appellants. In the circumstances, they cannot dispute the title of the landlord in respect of the said premises. The said plea was not raised by them in the written statement. They cannot be permitted to introduce the said plea by way of amendment, that too, at this belated stage. The Rent Controller was, therefore, right in rejecting their application for amendment.

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***177. HINDU MARRIAGE ACT, 1955 – Section 12(1)(C)**

**Husband sought annulment of the marriage on the ground of wife being minor at the time of marriage – Child marriage is voidable at the option of the spouse who was minor at the time of marriage – Wife who was minor can only seek annulment.**

हिन्दू विवाह अधिनियम**, 1955 -** धारा **12 (1) (**ग)

पति ने विवाह के समय पत्नी के अवयस्क होने के आधार पर विवाह को निष्प्रभावी करने की मांग की - बाल विवाह, उस व्यक्ति के विकल्प पर शून्यकरणीय हैं, जो विवाह के समय अवयस्क था - मात्र पत्नी, जो कि अवयस्क थी, विवाह निष्प्रभावी करने की मांग कर सकती हैं।

**Bhagwati alias Reena v. Anil Choubey**
**Judgment dated 01.03.2017 passed by the Supreme Court in Civil Appeal No. 4890 of 2017, reported in AIR 2017 SC 1957**

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**178. INDIAN PENAL CODE, 1860 – Section 120-B**
**PREVENTION OF CORRUPTION ACT, 1988 – Section 13 (1)(d)**

**(i) Criminal conspiracy – Essential ingredients – Existence of conspiracy and its objective can be inferred from surrounding circumstances and conduct of accused – Indulgence in illegal act or legal act by illegal means may be inferred from the knowledge itself.**

**(ii) Criminal misconduct – Sub-clauses (i), (ii) and (iii) of Section 13 (1) (d) are independent, alternative and disjunctive – Under Section 13(1)(d)(i) of P.C. Act obtaining any valuable thing or pecuniary advantage by corrupt or illegal means by public servant in itself would amount to criminal misconduct – Under Section 13(1)(d)(ii) obtaining a valuable thing or pecuniary advantage by abusing his official position as a public servant, either for himself or for any other person would amount to criminal misconduct.**

भारतीय दंड संहिता**, 1860 -** धारा **120-**ख

भ्रष्टाचार निवारण अधिनियम**, 1988 -** धारा **13 (1)(**घ)

(i) आपराधिक षड़यंत्र - आवश्यक तत्व - षड़यंत्र का अस्तित्व और उसके उद्देश्य को आस- पास की परिस्थितियों एवं अभियुक्त के आचरण से अनुमानित किया जा सकता है - अवैध कार्य या वैध कार्य को अवैध साधनों से कारित किये जाने में संलिप्तता का स्वतः ज्ञान से अनुमान लगाया जा सकता है।

(ii) आपराधिक कदाचार - धारा 13 (1)(घ) की उप धाराएं, (i), (ii) एवं (iii) आपस में स्वतंत्र, वैकल्पिक एवं वियोगी है - लोक सेवक द्वारा कोई मूल्यवान वस्तु या वित्तीय अभिलाभ भ्रष्ट या अवैध तरीके से प्राप्त किया जाता है तो यह धारा 13

(1)(घ)(i) भ्रष्टाचार निवारण अधिनियम में आपराधिक कदाचार की श्रेणी में आयेगा- धारा 13 (1)(घ)(ii) के अधीन एक लोक सेवक के रूप में अपने स्वयं के लिये या किसी अन्य व्यक्ति के लिये अपनी आधिकारिक स्थिति का दुरूपयोग करके मूल्यवान वस्तु या वित्तीय अभिलाभ प्राप्त करना आपराधिक कदाचार की श्रेणी में आता है।

**Rajiv Kumar v. State of U.P. and Another**
**Judgment dated 02.08.2017 passed by the Supreme Court in Criminal Appeal No. 251 of 2017, reported in AIR 2017 SC 3772**

**Relevant extracts from the judgment:**

The essential ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. It is extremely difficult to adduce direct evidence to prove conspiracy. Existence of conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. In some cases, indulgence in the illegal act or legal act by illegal means may be inferred from the knowledge itself.

45. After referring to ***Yash Pal Mittal v. State of PunjabAIR 1977 SC 2433 and Ajay Aggarwal v. Union of India and others, AIR 1993 SC 1637,*** in ***State of Maharashtra and Others v. Som Nath Thapa and others, AIR 1996 SC 1744*** in para (24), it was held as under:-

> "24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use."

The above judgment was quoted with approval in ***Ram Narain Popli v. Central Bureau of Investigation AIR 2003 SC 2748***.

For convicting the appellants under Section 120-B IPC and under Section 13(1)(d)(ii), there must be evidence on record that the accused obtained for himself or any other person any valuable thing or pecuniary advantage. The act of the appellants: (i) double conversion of the plot in violation of the rules and circular; (ii) conversion of "guest house" to "residential" and allotting the same to appellant Rajiv Kumar; (iii) conversion of plot No.B-86 in Sector-51 to the developed Sector-14A at a lower rate of Rs.1200/- plus Rs.400/- per sq.m. as against the huge premium of Rs.4500/- per sq.m. in Sector-14A; and (iv) after getting the allotment of a smaller plot, getting allotment of additional area, frequent alteration of the plots with the dishonest intention of the appellants gaining pecuniary advantage to themselves in altering the plots to their own advantage establishes prior concert of the appellants in manipulating the maps/records to suit their convenience. These facts manifest abuse of appellant's position as public servant obtaining valuable thing and pecuniary advantage for himself. Co-accused appellant Neera Yadav is associated in each and every aspect of these events which clearly bring home the charge of conspiracy of both the accused.

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**179. INDIAN PENAL CODE, 1860 – Sections 182 and 211**
**CRIMINAL PROCEDURE CODE, 1973 – Section 195**
**Whether a complainant can delegate the power to file complaint with respect to Section 182 IPC to any other person ? Held, No.**

भारतीय दंड संहिता**, 1860 -** धाराएं **182** एवं **211**

दंड प्रक्रिया संहिता**, 1973 -** धारा **195**

क्या परिवादी, किसी भी अन्य व्यक्ति को धारा 182 भा.दं.सं. के अधीन परिवाद संस्थित करने के संबंध में अपनी शक्तियों का प्रत्यायोजन कर सकता है ? - अभिनिर्धारित, नहीं।

**Darshan Singh v. State of Madhya Pradesh**
**Order dated 27.07.2017 passed by the High Court of M.P. (Gwalior Bench) in M.Cr. C. No. 6103 of 2014, reported in 2017 (III) MPJR 194**

**Relevant extracts from the order:**

The moot question for determination is that:-

> "Where the investigating officer after conducting the investigation has come to a conclusion that the complaint made by the complainant is false warranting his prosecution for offence under Sections 182 and 211 of IPC, then whether the complaint is to be filed by the investigating officer himself or whether he can delegate his authority to somebody else for filing the complaint?"

The question arising in this case is no more res integra. The Supreme Court in the case of ***P.D. Lakhani and another v. State of Punjab and another reported in (2008) 5 SCC 150*** has held as under:-

> "11. Section 182 of the Penal Code, 1860 indisputably, provides for an offence falling under Chapter X of the Penal Code. Section 195 provides for prosecution for contempt of lawful authority of public servant, for offences against public servant and for offences relating to documents given in evidence. It contains an embargo stating that "no court shall take cognizance of an offence punishable, inter alia, under the aforementioned provision except on the complaint in writing by the public servant concerned or by some other public servant to whom he is administratively subordinate".

"Contempt of a public servant" has a definite connotation. Such contempt must be provided for by law. It must be found to be false. The Station House Officer, Jalandhar did not act on the said complaint. He asked the Appellant 2 to bring the same to the notice of the Senior Superintendent Police, Jalandhar, Complaint Branch, which he did. It was, thus, a complaint to a higher authority.

The Senior Superintendent of Police only had asked the Superintendent of Police, Detective Branch to enquire into the matter and report within seven days. Shri Gian Singh, pursuant thereto was asked to carry out the necessary search of the premises of the second respondent.

The report of compliance by Gian Singh was made to the CIA staff. CIA staff, in turn, placed it before the Senior Superintendent of Police. The proceedings, therefore, were, indisputably, initiated by the Senior Superintendent of Police, Jalandhar and not by the Station House Officer. The Station House Officer would have jurisdiction to investigate into the matter provided a first information report was lodged by him in terms of the complaint made by the Appellant 2. Whatever action was taken in the matter was pursuant to the order of the Senior Superintendent of Police Jalandhar.

The High Court, in our opinion, thus, committed a manifest error insofar as it held that as the complaint was addressed to the SHO, he was the appropriate authority to lodge a complaint in respect of an offence punishable under Section 182 of the Penal Code.

The fact that the search was made pursuant to the directions issued by the Senior Superintendent of Police, Jalandhar is not in dispute. Section 195 contains a bar on the Magistrate to take cognizance of any offence. When a complaint is not made by the appropriate public servant, the Court will have no jurisdiction in respect thereof. Any trial held pursuant thereto would be wholly without jurisdiction. In a case of this nature, representation, if any, for all intent and purport was made before the Senior Superintendent of Police and not before the Station House Officer. No complaint, therefore, could be lodged before the learned Magistrate by the Station House Officer. Even assuming that the same was done under the directions of Senior Superintendent of Police, Jalandhar, Section 195, in no uncertain terms, directs filing of an appropriate complaint petition only by the public servant concerned or his superior officer. It, therefore,

cannot be done by an inferior officer. It does not provide for delegation of the function of the public servant concerned.

We may notice that in terms of sub-section (3) of Section 340 of the Code, a complaint may be signed by such an officer as the High Court may appoint if the complaint is made by the High Court. But in all other cases, the same is to be done by the presiding officer of the Court or by such officer of the Court as it may authorise in writing in this behalf.

Legislature, thus, wherever thought necessary to empower a court or public servant to delegate his power, made provisions therefore. As the statute does not contemplate delegation of his power by the Senior Superintendent of Police, we cannot assume that there exists such a provision. A power to delegate, when a complete bar is created, must be express; it being not an incidental power."

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Thus, it is clear that in absence of any provision permitting the delegation of power to file complaint, the complainant cannot delegate his powers to somebody else for filing a criminal complaint for offence under Sections 182 and 211 of IPC. In the present case, undisputedly the investigation was done by Dy.SP, AJK, Gwalior and, therefore, the complaint should have been filed by the Dy.SP, AJK, Gwalior for offence under Sections 182 of IPC because it was the investigating officer to whom the false information was given with an intent to cause the public servant to use his lawful power to the injury of another person.

So far as offence under Section 211 of IPC is concerned, the Magistrate cannot take cognizance of the said offence on a complaint filed by the SHO, Police Station Kampoo, District Gwalior. In view of the bar as contained in Section 195 (1) (b) of Cr.P.C., it is clear that no Court shall take cognizance of an offence under Section 211 of IPC except on the complaint in writing of that Court or by such officer of the Court, as the Court may authorize in writing in that behalf or by such other Court to which that Court is subordinate.

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**180. INDIAN PENAL CODE, 1860 – Section 300**

**Exception 4 of Section 300 – "Sudden fight" – It implies mutual provocation and blows on each side – Both the parties are more or less to be blamed – Also, there must be absence of premeditation –Other ingredients, explained.**

भारतीय दंड संहिता**, 1860 -** धारा **300**

धारा 300 का अपवाद 4 - ''अचानक झगड़ा''- इसका अर्थ है एक दूसरे को प्रकोपित करना और एक दूसरे पर वार करना - दोनों पक्षकारों को इसके लिये अधिक या कम उत्तरदायी ठहराया जाना है - इसके अतिरिक्त पूर्वचिन्तन का अभाव होना भी आवश्यक है - अन्य अंतर्वस्तुओं को स्पष्ट किया गया।

**Surain Singh v. State of Punjab**

**Judgment dated 10.04.2017 passed by the Supreme Court in Criminal Appeal No. 2284 of 2009, reported in AIR 2017 SC 1904**

**Relevant extracts from the judgment:**

Exception 4 to Section 300 of the IPC applies in the absence of any premeditation. This is very clear from the wordings of the Exception itself. The exception contemplates that the sudden fight shall start upon the heat of passion on a sudden quarrel. The fourth exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of provocation not covered by the first exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do.

There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon an equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue

advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

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The weapon used in the fight between the parties is 'Kirpan' which is used by 'Amritdhari Sikhs' as a spiritual tool. In the present case, the Kirpan used by the appellant-accused was a small Kirpan. In order to find out whether the instrument or manner of retaliation was cruel and dangerous in its nature, it is clear from the deposition of the Doctor who conducted autopsy on the body of the deceased that stab wounds were present on the right side of the chest and of the back of abdomen which implies that in the spur of the moment, the appellant-accused inflicted injuries using Kirpan though not on the vital organs of the body of the deceased but he stabbed the deceased which proved fatal. The injury intended by the accused and actually inflicted by him is sufficient in the ordinary course of nature to cause death or not, must be determined in each case on the basis of the facts and circumstances. In the instant case, the injuries caused were the result of blow with a small Kirpan and it cannot be presumed that the accused had intended to cause the inflicted injuries.

The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. It is clear from the materials on record that the incident was in a sudden fight and we are of the opinion that the appellant-accused had not taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this Exception provided he has not acted cruelly.

Thus, if there is intent and knowledge then the same would be a case of Section 304 Part I and if it is only a case of knowledge and not intention to cause murder and bodily injury then the same would fall under Section 304 Part II. We are inclined to the view that in the facts and circumstances of the present case, it cannot be said that the appellant- accused had any intention of causing the death of the deceased when he committed the act in question. The incident took place out of grave and sudden provocation and hence the accused is entitled to the benefit of Section 300 Exception 4 of the IPC.

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***181. INDIAN PENAL CODE, 1860 – Sections 302 and 309**
**MEDICAL JURISPRUDENCE – Strangulation**

**(i) Murder trial – Link in the chain of circumstantial evidence – Due to opposition in love affair, accused and deceased attempted to commit suicide by consuming poison – Subsequently deceased committed suicide by hanging herself**

**– Suicide note recovered – Note proved to be in handwriting of deceased – Cable wire used for hanging by deceased not sent to CFSL to confirm fingerprints of accused – Conduct of accused on day of incident creates a dent in prosecution case – Links in the chain of circumstances missing – Accused entitled benefit of doubt.**

**(ii) Criminal trial – Medical jurisprudence – Signs of cause of death due to strangulation or hanging, explained.**

भारतीय दंड संहिता, **1860 -** धाराएं **302** एवं **309**

चिकित्सा न्यायशास्त्र - गला घोंटना

(i) हत्या का विचारण - परिस्थितिजन्य साक्ष्य की श्रृंखला में कड़ी - प्रेम संबंध में विरोध के कारण अभियुक्त एवं मृतक ने जहर लेकर आत्महत्या करने का प्रयास किया - इसके बाद मृतिका ने स्वयं को फांसी लगाकर आत्महत्या की - आत्महत्या का पत्र प्रत्युद्धरित - पत्र मृतक के हस्तलेख का होना प्रमाणित - अभियुक्त के अंगुलिचिन्हों की पुष्टि करने के लिये मृतक द्वारा फांसी के लिये उपयोग किये जाने वाले केबल तार को सी.एफ.एस.एल. को नहीं भेजा गया - घटना के दिन अभियुक्त का आचरण अभियोजन मामले में एक संदेह उत्पन्न करता है - परिस्थितियों की श्रृंखला में कड़ियां खोयी हुयी है - अभियुक्त संदेह का लाभ प्राप्त करने का हकदार है।

(ii) आपराधिक विचारण - चिकित्सा न्यायशास्त्र - गला घोंटने या फांसी के कारण मृत्यु के लक्षणों को समझाया गया।

**Satish Nirankari v. State of Rajasthan**
**Judgment dated 09.07.2017 passed by the Supreme Court in Criminal Appeal No. 1074 of 2007, reported in (2017) 8 SCC 497**

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**182. INDIAN PENAL CODE, 1860 – Sections 323, 376, 109 and 376-D CRIMINAL PROCEDURE CODE, 1973 – Sections 161 and 164 Framing of charge – Whether a woman can be charged for offence of abetment of rape? Held, Yes – Husband of applicant took prosecutrix to his house and acted in obscene manner with her – The applicant helped her husband in committing crime – Hence, *prima facie* applicant committed offence under sections 376 r/w section 109 IPC – Trial Court directed to frame charges under section 376 /109 IPC instead of section 376D IPC.**

भारतीय दंड संहिता, **1860 -** धाराएं **323, 376, 109** एवं **376-**डी

दंड प्रक्रिया संहिता, **1973 -** धाराएं **161** एवं **164**

आरोप विरचित करना - क्या एक महिला को बलात्कार के दुष्प्रेरण के अपराध के लिये आरोपित किया जा सकता है ? अभिनिर्धारित, हाँ - आवेदक के पति ने अभियोक्त्री को

अपने घर में लाकर उसके साथ अश्लील तरीके से उसके साथ कार्य किया - आवेदक ने अपने पति की अपराध को कारित करने में मदद की - फलतः प्रथम दृष्ट्या आवेदक ने धारा 376 सहपठित धारा 109 भा.दं.सं. के अंतर्गत अपराध कारित किया है - विचारण न्यायालय को धारा 376 (घ) के बजाय धारा 376/109 भा.दं.सं. के तहत आरोप विरचित किये जाने का निर्देश दिया गया।

**Smt. Poorva Goyal v. The State of Madhya Pradesh**
**Order dated 02.01.2017 passed by the High Court of M.P. (Gwalior Bench) in Criminal Revision No. 607 of 2015 reported in 2017 (1) MPWN 79**

**Relevant extracts from the Order:**

The wordings of Section 376 of IPC start with 'a man'. Hence, the intention of legislature is ample clear that only a man can commit rape within the meaning of Section 376 of IPC. Thus, there is no scope to incorporate commission of rape by woman under Section 376-D of IPC. In case of ***Omprakash v. State of Haryana*** reported in ***(2015) 2 SCC 84*** the Hon'ble Supreme Court has held that :-

> "17. In the light of the above provisions of law, we have carefully gone through the record and considered the cases referred to above. We find that in the present case, there is positive evidence adduced by the prosecution that accused Chhoti has aided the commission of offence by asking the victim to go to her house to take "lassi" where accused Om Prakash and Kartar Singh bolted the room and subjected the victim to rape. From the record, it appears that for about an hour, the victim was not allowed to go out from the house where she was subjected to rape. It was the house of accused Chhoti and her husband where the incident is said to have taken place. As such, both the courts below have rightly concluded that it cannot be said that accused Chhoti has not abetted the crime in the manner suggested by the prosecution. We concur with the view taken by the courts below. Intentional aiding of the offence is covered by the third clause mentioned in Section 107 IPC."

From the above mentioned aspect, it is not worthy that a woman though cannot commit rape, can still be held liable for abetment under Section 109 of IPC. "abetment is separate and distinct offence than rape" and if the act abetted is committed in consequences of the abetment, then the person i.e. man or woman abeting such crime is liable to be punished under Section 109 of IPC. Thus, a woman can definitely be held liable for abetment to rape under Section 109 of IPC and can be punished accordingly.

No doubt, in the FIR and statements of the prosecutrix dated 08.11.2014 recorded under Section 161 of Cr.P.C., it was alleged that the husband of the

applicant Dheeraj Goyal caught hold her hand and acted in obscene manner with the prosecutrix. After some time the applicant came there and gave beating to the prosecutrix but in the statement recorded on 21.11.2014 under Section 164 of Cr.P.C. and on 22.12.2014 under Section 161 of Cr.P.C. prosecutrix alleged that the co-accused Dheeraj Goyal applied his hand over whole body of the prosecutrix. On her alarm the applicant came there and helped her husband in committing such crime.

On perusal of the statement of the prosecutrix recorded under Section 161 and 164 of Cr.P.C., prima facie it shows that an offence is made out against the applicant and at this stage, this Court has not to see whether the allegations made in the aforesaid statements are correct or not.

In my opinion, looking to the allegation made in the statements under Section 161 and 164 of Cr.P.C. by the prosecutrix, prima facie it seems that the applicant committed an offence under Section 323 and 376 read with Section 109 of IPC.

In view of aforesaid discussion, the impugned order is modified to the extent that instead of charge under Section 376-D of IPC, the trial Court is directed to frame the charge under Section 376/109 of IPC against the applicant, however, remaining part of the order shall remain intact.

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**183. INDIAN PENAL CODE, 1860 – Section 498A**

**Arrest in cases of cruelty – The complaints of cruelty filed in heat of passion and not *bonafide* have become rampant – Uncalled arrest may ruin the chances of settlement – Directions given to curb the misuse of Section 498-A. [referred *Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273* and *Lalita Kumari v. Govt. of UP, (2014) 2 SCC 1*]**

भारतीय दंड संहिता, **1860 -** धारा **498**ए

क्रूरता के मामलों में गिरफ्तारी - कभी-कभी आवेश के कारण संस्थित अथवा अप्रभावी क्रूरता संबंधी परिवाद अनियंत्रित होते जा रहे - अनावश्यक गिरफ्तारी, समाधान की संभावना को समाप्त कर सकती है - धारा 498-ए के दुरूपयोग को रोकने के लिये दिशा-निर्देश जारी किये गये। [*अरनेश कुमार विरूद्ध बिहार राज्य,* ***(2014) 8*** *एस.सी.सी.* ***273*** *एवं ललिता कुमारी विरूद्ध उ.प्र. राज्य,* ***(2014) 2*** *एस.सी.सी.* ***1*** अवलंबित]

**Rajesh Sharma & Ors.v. State of U.P. & Anr.**

**Judgment dated 27.07.2017 passed by the Supreme Court in Criminal Appeal No. 1265 of 2017, reported in 2017 (3) Crimes 268**

**Relevant extracts from the Judgment:**

Main contention raised in support of this appeal is that there is need to check the tendency to rope in all family members to settle a matrimonial dispute...

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..... It is a matter of serious concern that large number of cases continue to be filed under Section 498A alleging harassment of married women.....This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement.....

Following areas appear to require remedial steps:-

(i) Uncalled for implication of husband and his relatives and arrest.

(ii) Continuation of proceedings in spite of settlement between the parties since the offence is non-compoundable and uncalled for hardship to parties on that account.

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To remedy the situation, we are of the view that involvement of civil society in the aid of administration of justice can be one of the steps, apart from the investigating officers and the concerned trial courts being sensitized. It is also necessary to facilitate closure of proceedings where a genuine settlement has been reached instead of parties being required to move High Court only for that purpose.

Thus, after careful consideration of the whole issue, we consider it fit to give following directions:-

(i) (a) In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.

(b) The Committees may be constituted out of para legal volunteers/social workers/retired persons/wives of working officers/other citizens who may be found suitable and willing.

(c) The Committee members will not be called as witnesses.

(d) Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication.

(e) Report of such committee be given to the Authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.

(f) The committee may give its brief report about the factual aspects and its opinion in the matter.

(g) Till report of the committee is received, no arrest should normally be effected.

(h) The report may be then considered by the Investigating Officer or the Magistrate on its own merit.

(i) Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.

(j) The Members of the committee may be given such honorarium as may be considered viable.

(k) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.

(ii) Complaints under Section 498A and other connected offences may be investigated only by a designated Investigating Officer of the area. Such designations may be made within one month from today. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from today;

(iii) In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior Judicial Officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord;

(iv) If a bail application is filled with at least one clear day's notice to the Public Prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife/minor children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations, requirement of further arrest/custody and interest of justice must be carefully weighed;

(v) In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine;

(vi) It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the Court to whom all such cases are entrusted; and

(vii) Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial.

(viii) These directions will not apply to the offences involving tangible physical injuries or death.

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**184. LAND ACQUISITION ACT, 1894 – Sections 23 (1-A) and 23(2) Whether amended provisions of Sections 23 (1-A) and 23(2) applicable to the cases pending on the date of enforcement of such amendment ? Sections 23 (1-A) and 23(2) of the Act inserted in the statute w.e.f. 24.09.1984 – Duty of the reference court to grant interest and solatium as per amended provisions in cases which are decided on 24.09.1984 or afterwards – No provision in the Act regarding exclusion of applicability of amended provisions on such cases.**

भूमि अर्जन अधिनियम**, 1894 -** धाराएं **23 (1-**क) एवं **23 (2)**

क्या धारा 23 (1-क) एवं 23(2) के संशोधित प्रावधान उक्त संशोधन के प्रवर्तन की दिनांक को लंबित मामलों पर भी लागू होंगे - धारा 23 (1-क) एवं 23(2) को अधिनियम में दिनांक 24.09.1984 को सम्मिलित किया गया - निर्देश न्यायालय का यह कर्तव्य है कि वह 24.09.1984 या उसके बाद निर्णीत होने वाले प्रकरणों में संशोधित प्रावधानों के अनुसार ब्याज और क्षतिपूर्ति प्रदान करे - ऐसे प्रकरणों के संबंध में अधिनियम में संशोधित प्रावधानों की प्रयोज्यता के अपवर्जन का कोई प्रावधान नहीं है।

**Mst. Shyam Singh and others v. State of M.P.**
**Order dated 08.02.2017 passed by the High Court of M.P. in First Appeal No. 728 of 2000, reported in 2017 (3) MPLJ 687**

**Relevant extracts from the Order:**

In this case, benefit of section 23(1-A) of the Act has not been granted on the ground that this provision has been inserted in the Statute w.e.f. 24.9.1984 and the notification for acquisition was issued on 14.3.1979. Similarly, as per the provision of section 23(2) of the Act, in place of 30%, 15% solacium has been awarded on the same ground.

Learned counsel for the appellants/claimants has contended that the Reference Court has passed the judgment on 26.6.2000 and the reference proceedings was pending since 5.2.1982. The Apex Court has laid down the law in the case of ***Pannalal Ghosh and others vs. Land Acquisition Collector and others,*** reported in ***(2004)1 SCC 467,*** that in the aforesaid circumstances, the Reference Court will grant compensation, considering the amended provision of the Act, the aforesaid contention has a substance and learned court below has not considered the aforesaid position of law. The reference court is duty bound to grant interest and solatium as per amended provision in the cases which are decided on 24.9.1984 or afterward s as there is no provision of exclusion of applicability of amended provision on such cases.

In view of the above, it is held that the appellant/claimants are entitled to get benefit of section 23(1-A) and 23 (2) of the Act regarding interest and solatium. In other words, the appellants are entitled on the market value of the land, 12% interest from the date of publication of notification under section 4(1) of the Act, i.e. 14.3.1979 to the date of award of the Collector or the date of taking possession of the land, whichever is earlier and is also entitled to Solatium at the rate of 30% in place of 15%.

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**185. LIMITATION ACT, 1963 – Article 65, Explanation (b)**

**Application of Article 65 Explanation (b) – Word "entitled" means person entitled independently of right of Hindu female – Not applicable when legal heir claim through her title by way of inheritance – Limitation will not start from the date of death of female Hindu, but from the date of start of adverse possession otherwise.**

परिसीमा अधिनियम**, 1963 -** अनुच्छेद **65,** स्पष्टीकरण (ख)

अनुच्छेद 65 स्पष्टीकरण (ख) की प्रयोज्यता - शब्द ''हकदार'' का तात्पर्य है कि व्यक्ति हिन्दू महिला के अधिकार से स्वतंत्र रूप से हकदार है - जब विधिक वारिसान, उत्तराधिकार के माध्यम से उस महिला के अधिकारों का दावा करते हैं, तब यह लागू नहीं होगा - परिसीमा हिन्दू महिला की मृत्यु की दिनांक से प्रारंभ नही होगी, अपितु विरोधी आधिपत्य के प्रारंभ होने की तिथि से प्रारंभ होगी।

**Bapusahab Chimasahab Naik – Nimbaluar (D) Thr.L.Rs. v. Mahesh Vijay Sinha Raje Bhosale & ors.**

**Judgment dated 25.04.2017 passed by the Supreme Court in Civil Appeal No. 3110 of 2012, reported in AIR 2017 SC 2491**

**Relevant extracts from the judgment:**

It was submitted on behalf of the appellants that Anandibai became entitled to possession of the property on the death of Shakuntalabai in the year 1962. The name of Chimasaheb, original defendant, was mutated and possession of Chimasaheb became adverse w.e.f. the date of death of Shakuntalabai in the year 1962. Thus the suit preferred by the plaintiffs in the year 1979 beyond a period of 12 years, was hopelessly barred by limitation. We are unable to accept the submission as Explanation (b) to Article 65 of the Act is applicable only in the case where property is not claimed through the female but independently of woman who has died. The word "entitled" contained in Explanation (b) to Article 65 clearly means a person is entitled independently of the right of the Hindu or Mohammedan female.

In case she is absolute owner Article 65(b) will have no application. In other words, it is necessary to trace the right to someone else and not to the Hindu or Mohammedan female, as the case may be. In the instant case, Shakuntalabai, daughter of Shankara Rao became absolute owner of the property on 6.2.1958 and on her death on 1.10.1962, the right accrued to Anandibai on

the basis of inheritance made from Shakuntalabai who was the owner of the ½ share in question. When the property is claimed from a woman, Hindu or Mohammedan, who was the full owner, it could not be said that Anandibai or the plaintiffs became entitled to the property independently of the rights of female i.e. Shakuntalabai. Thus the suit filed by such heir of female for separate possession/partition would not be governed by Explanation (b) to Article 65. In such a case limitation would not commence as per Explanation (b) to Article 65 on death of female Hindu. However, the starting point of limitation for computation of 12 years would be the date of start of adverse possession otherwise.

xxx xxx xxx

Article 65(b) applies where the female was a 'limited owner' with regard to the disputed property. Hence, if the sale is not for legal purposes, it would not be binding on the estate, the husband's heirs who would be entitled to inherit the estate after the widow's death, would be entitled on such death to sue for the recovery of the property from the purchaser. As their right would be one derived from the husband and not from the widow, it would be independent of the widow and they would be the persons "entitled to sue for possession of the property on the death of the widow" within the meaning of Explanation (b) to Article 65. Hence, the above Explanation will apply to their suit and they would be entitled to a period of 12 years from the widow's death within which to bring the suit as held by Full Bench verdicts in ***Amar Singh & Ors. v. Sewa Ram & Ors., 1960 AIR(P&H) 530, Harak Singh v. Kailash Singh and Anr., 1958 AIR(Pat) 581*** and ***Mt. Lukai W/o Katikram and Ors. v. Niranjan Dayaram and Ors., 1958 AIR (MP) 160***.

In the instant case possession never became adverse to the plaintiffs. There is concurrent finding recorded that the plaintiffs were in joint possession of the disputed land on the date of filing of the suit. The defendants have taken the plea of ouster and the suit has been filed beyond 12 years of death of Shakuntalabai but they have not been able to prove their adverse possession. On the contrary the finding is that Chimasaheb admitted the title of Anandibai. The finding is that till 1976, Chimasaheb never denied the title of Anandibai. Be that as it may. As adverse possession has not been concurrently found by the three courts and in this case the starting point of limitation would not be the date of death of Shakuntalabai in the year 1962 as she was full owner, as such suit could not be said to be barred by limitation.

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***186. LIMITATION ACT, 1963 – Article 134**
**CIVIL PROCEDURE CODE, 1908 – Order 21 Rule 92**
**"Sale when becomes absolute" – Mere passing of order of confirmation of sale will not make the sale absolute – Limitation period shall run from the date of termination of proceedings to set aside order of confirmation of sale.**

परिसीमा अधिनियम, **1963 -** अनुच्छेद **134**

सिविल प्रक्रिया संहिता, **1908 -** आदेश **21** नियम **92**

विक्रय कब आत्यांतिक हो जायेगा - केवल विक्रय के पुष्टि के आदेश को पारित किये जाने मात्र से विक्रय आत्यांतिक नहीं हो जायेगा - विक्रय की पुष्टि के आदेश के अपास्त करने की कार्यवाही के समाप्त होने की तिथि से ही परिसीमा अवधि प्रारंभ होगी।

**United Finance Corporation v. M.S.M. Haneefa (D) thr. L.Rs.**
**Judgment dated 11.01.2017 passed by the Supreme Court in Civil Appeal No. 4204 of 2007, reported in (2017) 3 SCC 123**

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***187. MOTOR VEHICLES ACT, 1988 – Section 2(10)**

**Whether the holder of licence for LMV can drive tractor attached to the trolley? Held, Yes – No necessity to obtain separate endorsement – No breach of policy if separate endorsement is not obtained. (*Mukund Dewangan v. Oriental Insurance Co. Ltd. Etc., AIR 2017 SC 3668,* relied upon)**

मोटरयान अधिनियम, **1988 -** धारा **2 (10)**

क्या हल्का मोटरयान अनुज्ञप्ति धारक द्वारा ट्रेक्टर जिसमें ट्राली संलग्न हो, को चलाया जा सकता है ? - अभिनिर्धारित, हाँ - पृथक से पृष्ठाकंन प्राप्त करने की कोई आवश्यकता नहीं है -यदि पृथक से पृष्ठांकन प्राप्त नहीं किया गया है, तो पालिसी का भी कोई उल्लंघन नहीं है। (*मुकंद देवगन विरूद्ध ओरियंटल इंश्योरेंस कं. लि. अन्य, ए.आई.आर. **2017** एस.सी. **3668*** अवलंबित)

**Sant Lal v. Rajesh and Ors. etc.**
**Judgment dated 03.07.2017 passed by the Supreme Court in Civil Appeal No. 8395-8396 of 2017, reported in AIR 2017 SC 4054**

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**188. MOTOR VEHICLES ACT, 1988 – Section 166**
**LIMITATION ACT, 1963 – Section 5**

**Whether any limitation period is prescribed for filing of a claim petition of motor accident? Held, No – Motor Vehicles Act does not provide any specific period to raise claim but claim should be filed within reasonable time – further held that a stale and dead claim cannot be permitted whereas live and surviving claim may be permitted if the delay is explained – In this case, claim raised after 28 years – Held, it is a dead claim – Delay of 28 years, cannot be considered as a *prima facie* reasonable period.**

**Whether delay can be justified on the ground that claimants are poor persons and they have no knowledge about the law? Held, No.**

मोटरयान अधिनियम**, 1988 -** धारा **166**

परिसीमा अधिनियम**, 1963 -** धारा **5**

क्या वाहन दुघर्टना के संबंध में दावा याचिका प्रस्तुत करने के लिये कोई परिसीमा अवधि निर्धारित है ? अभिनिर्धारित, नहीं - मोटरयान अधिनियम दावा लगाने के लिये कोई अवधि निर्धारित नहीं करता है, परंतु दावे को उचित समयावधि में प्रस्तुत किया जाना चाहिये - आगे अभिनिर्धारित, यदि विलंब का स्पष्टीकरण दिया गया है तो सजीव एवं उत्तरजीवी दावे की अनुमति दी जा सकती है जबकि पुराने और मृत दावे की अनुमति नहीं दी जा सकती - इस प्रकरण में दावा 28 वर्ष बाद लगाया गया था - अभिनिर्धारित, यह मृत दावा है - 28 वर्ष के विलंब को प्रथम दृष्टया उचित समयावधि के रूप में मान्य नहीं किया जा सकता है। क्या विलंब को इस आधार पर न्यायोचित ठहराया जा सकता है कि दावेदार निर्धन व्यक्ति है और उन्हें विधि के बारे में कोई जानकारी नहीं है ? अभिनिर्धारित, नही।

**Purohit and Company v. Khatoonbee**

**Judgment dated 09.02.2017 passed by the Supreme Court in Civil Appeal No. 2555 of 2017, reported in AIR 2017 SC 1612 (Three Judges)**

**Relevant extracts from the Judgment:**

Drawing an analogy to the judgments rendered under the Consumer Protection Act, 1986, as also, under the Industrial Disputes Act, 1947, it was the submission of the learned counsel for the appellant, that even though no period of limitation remains prescribed, after the amendment of Section 166 of the Motor Vehicles Act, 1988, whereby sub-Section (3) of Section 166 came to be deleted (with effect from 14.11.1994), yet it would be imperative to determine, whether at the juncture when the claimant approached the Motor Accident Claims Tribunal, the claim was a live and surviving claim.

We are satisfied, that the submission advanced at the hands of the learned counsel for the appellant merits acceptance. The judgments on which the High Court had relied, and on which the respondents have emphasised, in our considered view, are not an impediment, to the acceptance of the submission canvassed on behalf of the appellant. We say so, because in ***Dhannalal v. D.P. Vijayvargiya, (1996) 4 SCC 652,*** the question of inordinate delay in approaching the Motor Accident Claims Tribunal, was not considered. In the second judgment in ***The New India Assurance Co.Ltd.v. C. Padma, (2003) 7 SCC 713,*** it was considered. And in the ***C. Padma's case,*** the first conclusion drawn in paragraph 12 was "... if otherwise the claim is found genuine...". We are of the considered view, that a claim raised before the Motor Accident Claims Tribunal, can be considered to be genuine, so long as it is a live and surviving claim. We are satisfied in accepting the declared position of law, expressed in the judgments relied upon by the learned counsel for the appellant. It is not as if, it can be open to all and sundry, to approach a Motor Accident Claims Tribunal, to raise a claim for compensation, at any juncture, after the accident had taken place. The individual concerned, must approach the Tribunal within a reasonable time.

The question of reasonability would naturally depend on the facts and circumstances of each case. We are however, satisfied, that a delay of 28 years, even without reference to any other fact, cannot be considered as a ***prima facie*** reasonable period, for approaching the Motor Accident Claims Tribunal. The only justification indicated by the respondents, for initiating proceedings after a lapse of 28 years, emerges from paragraph 4, contained in the application for condonation of delay, filed by the claimants, before the Tribunal. Paragraph 4 aforementioned is extracted hereunder:

> "4. That the Petitioners are poor person and they have no knowledge about the Law. Also the Respondent has not pay the single pie towards any compensation."

Having given our thoughtful consideration to the justification expressed at the behest of the respondents, for approaching the Tribunal, after a period of 28 years, we are of the view, that the explanation tendered, cannot be accepted. Undoubtedly, the claim (pertaining to an accident which had occurred on 02.02.1977), in the facts and circumstances of the instant case, was stale, and ought to have been treated as a dead claim, at the point of time, when the respondents approached the Tribunal by filing a claim petition, on 23.02.2005.

In view of the reasons recorded herein above, we hereby set aside the impugned order dated 07.07.2015, and allow the instant appeal, by holding, that the claim raised by the respondents before the Motor Accident Claims Tribunal, was not a surviving claim, when the respondents approached the said Tribunal.

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**189. NARCOTIC DRUGS & PSYCHOTROPHIC SUBSTANCES ACT, 1985 – Sections 35 and 54**

**Recovery of contraband – Rebuttable presumptions – It does not dispense with the obligation of the prosecution to prove the charge beyond all reasonable doubt – The presumptive provision with reverse burden of proof, does not sanction conviction on the strength of preponderance of probability [relied on *Noor Aga v. State of Punjab, (2008) 16 SCC 417*].**

स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम**, 1985 -** धाराएं **35** एवं **54**

विनिषिद्ध पदार्थ की बरामदगी - खंडनीय उपधारणा - यह अभियोजन पक्ष को आरोप के सभी उचित संदेह से परे प्रमाणित करने के दायित्व से विमुक्ति प्रदान नहीं करता है - उपधारणात्मक प्रावधान, जिसमें सबूत का भार उल्टा (प्रतिगामी) है, के आधार पर संभाव्यताओं की बाहुल्यता पर दोषसिद्ध की अनुमति प्रदान नहीं की जा सकती है [*नूर आगा विरूद्ध पंजाब राज्य,* ***(2008) 16*** *एस.सी.सी.* ***417*** अवलंबित]

**Naresh Kumar alias Nitu v. State of Himachal Pradesh**
**Judgment dated 27.07.2017 passed by the Supreme Court in Criminal Appeal No. 1053 of 2016, reported in 2017 (3) Crimes 266**

**Relevant extracts from the Judgment:**

The presumption against the accused of culpability under Section 35 and under Section 54 of the Act to explain possession satisfactorily, are rebuttable. It does not dispense with the obligation of the prosecution to prove the charge beyond all reasonable doubt. The presumptive provision with reverse burden of proof, does not sanction conviction on basis of preponderance of probability. Section 35 (2) provides that a fact can be said to have been proved if it is established beyond reasonable doubt and not on preponderance of probability. That the right of the accused to a fair trial could not be whittled down under the Act was considered in ***Noor Aga v. State of Punjab, 2008(3) R.C.R.(Criminal) 633 : 2008(4)Recent Apex Judgments (R.A.J.) 381 : (2008) 16 SCC 417,*** observing:-

> "58……An initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is "beyond all reasonable doubt" but it is "preponderance of probability" on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established.
>
> 59. With a view to bring within its purview the requirements of Section 54 of the Act, element of possession of the contraband was essential so as to shift the burden on the accused. The provisions being exceptions to the general rule, the generality thereof would continue to be operative, namely, the element of possession will have to be proved beyond reasonable doubt."

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***190. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138**

**Statutory notice issued demanding payment of Rs.43,000 – Complaint stated debt and cheque of Rs.4,30,000 – Argument of typographical error in the notice – Held, notice must demand the payment of "said amount of money" i.e. the cheque amount – Provisions of the Act being penal in nature, every technical formalities must be complied with strictly – Proceedings under Section 138 N.I. Act quashed.**

परक्राम्य लिखत अधिनियम**, 1881 -** धारा **138**

राशि रू. 43,000/- की मांग के संबंध में वैधानिक नोटिस जारी किया गया - परिवाद में राशि रू. 4,30,000/- का ऋण एवं चेक होना बताया गया - सूचना पत्र में टंकण त्रुटि का तर्क लिया गया - अभिनिर्धारित, सूचना पत्र में आवश्यक रूप से ''तथाकथित राशि'' अर्थात चेक में वर्णित राशि की माँग की जानी चाहिये - अधिनियम के प्रावधान दंडनीय प्रकृति के हैं, प्रत्येक तकनीकी औपचारिकताओं का अनुपालन कड़ाई से किया जाना चाहिये।

**Gokuldas v. Atal Bihari & Anr.**
**Order dated 04.04.2017 passed by the High Court of M.P. (Gwalior Bench) in M.Cr.C. No. 5458 of 2013, reported in 2017 (4) MPLJ 73**

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**191. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 142**
**CRIMINAL PROCEDURE CODE, 1973 – Section 319**

**(i) Complaint for dishonour of a cheque issued on behalf of a company – Signatory of the cheque on behalf of the company does not necessarily become drawer of the cheque – Disclosure of the name of the person drawing the cheque is essential – Offence under Section 138 is person specific and exception to the concept of taking cognizance of the offence and not offender.**

**(ii) Complaint without naming company as an accused – Application of Section 319 Cr.P.C. at a very delayed stage for adding the company – Company being the primary accused must be named as one of the accused from the very start – Delay cannot be condoned – Held, complaint liable to be dismissed.**

परक्राम्य लिखत अधिनियम**, 1881 -** धाराएं **138** एवं **142**

दंड प्रक्रिया संहिता**, 1973 -** धारा **319**

(i) कंपनी की ओर से जारी चेक के अनादरण के संबंध में परिवाद - कंपनी की ओर से चेक का हस्ताक्षरकर्ता आवश्यक रूप से चेक का लेखीवाल नहीं हो जाता है - चेक को जारी करने वाले व्यक्ति के नाम का प्रकटन आवश्यक है - धारा 138 के अंतर्गत अपराध व्यक्ति विशिष्ट है और अपराध का संज्ञान लेने के इस सिद्धांत का अपवाद है कि संज्ञान अपराध का लिया जायेगा न कि अभियुक्त का।

(ii) अभियुक्त के रूप में कंपनी के नाम के बिना परिवाद - कंपनी को जोड़ने के संबंध में अत्यधिक विलंबित प्रक्रम पर धारा 319 दं.प्र.सं. का आवेदन - प्राथमिक अभियुक्त होने के कारण कंपनी को प्रारंभ से ही अभियुक्त में से एक के रूप में नामित किया जाना चाहिये था - विलंब को क्षमा नहीं किया जा सकता है - अभिनिर्धारित, परिवाद अपास्त होने के लिये दायी है।

**N. Harihara Krishnan v. J. Thomas**
**Judgment dated 30.08.2017 passed by the Supreme Court in Criminal Appeal No. 1534 of 2017, reported in AIR 2017 SC 4125**

**Relevant extracts from the Judgment:**

The offence under Section 138 of the act is capable of being committed only by the drawer of the cheque. The logic of the High Court that since the offence is already taken cognizance of, there is no need to take cognizance of the offence against Dakshin is flawed. Section 141 stipulates the liability for the offence punishable under Section 138 of the act when the person committing such an offence happens to be a company - in other words when the drawer of the cheque happens to be a company. Relevant portion of Section 141 reads as follows:-

> "Section 141.Offences by companies.
>
> (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:"

This Court in Aneeta Hada, had an occasion to examine the question "whether an authorised signatory of a company would be liable for prosecution under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the Act") without the company being arraigned as an accused" and held as follows:-

> "59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself."

Yet the High Court reached a conclusion that the revision filed by the petitioner is not maintainable because Dakshin did not choose to challenge the trial court's order.

The High Court failed to appreciate that the liability of the appellant (if any in the context of the facts of the present case) is only statutory because of his legal status as the Director of Dakshin. Every person signing a cheque on behalf of a company on whose account a cheque is drawn does not become the drawer of the cheque. Such a signatory is only a person duly authorised to sign the cheque on behalf of the company/drawer of the cheque. If Dakshin/drawer of the cheque is sought to be summoned for being tried for an offence under Section 138 of the act beyond the period of limitation prescribed under the act,

the appellant cannot be told in view of the law declared by this Court in Aneeta Hada that he can make no grievance of that fact on the ground that Dakshin did not make any grievance of such summoning. It is always open to Dakshin to raise the defense that the initiation of prosecution against it is barred by limitation. Dakshin need not necessarily challenge the summoning order. It can raise such a defence in the course of trial.

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By the nature of the offence under Section 138 of The Act, the first ingredient constituting the offence is the fact that a person drew a cheque. The identity of the drawer of the cheque is necessarily required to be known to the complainant (payee) and needs investigation and would not normally be in dispute unless the person who is alleged to have drawn a cheque disputes that very fact. The other facts required to be proved for securing the punishment of the person who drew a cheque that eventually got dishonoured is that the payee of the cheque did in fact comply with each one of the steps contemplated under Section 138 of the act before initiating prosecution. Because it is already held by this Court that failure to comply with any one of the steps contemplated under Section 138 would not provide "cause of action for prosecution". Therefore, in the context of a prosecution under Section 138, the concept of taking cognizance of the offence but not the offender is not appropriate. Unless the complaint contains all the necessary factual allegations constituting each of the ingredients of the offence under Section 138, the Court cannot take cognizance of the offence. Disclosure of the name of the person drawing the cheque is one of the factual allegations which a complaint is required to contain. Otherwise in the absence of any authority of law to investigate the offence under Section 138, there would be no person against whom a Court can proceed. There cannot be a prosecution without an accused. The offence under Section 138 is person specific. Therefore, the Parliament declared under Section 142 that the provisions dealing with taking cognizance contained in the Cr.P.C. should give way to the procedure prescribed under Section 142. Hence the opening of non-obstante clause under Section 142. It must also be remembered that Section 142 does not either contemplate a report to the police or authorise the Court taking cognizance to direct the police to investigate into the complaint.

The question whether the respondent had sufficient cause for not filing the complaint against Dakshin within the period prescribed under the act is not examined by either of the courts below. As rightly pointed out, the application, which is the subject matter of the instant appeal purportedly filed invoking Section 319 Cr.P.C., is only a device by which the respondent seeks to initiate prosecution against Dakshin beyond the period of limitation stipulated under the Act.

No doubt Section 142 authorises the Court to condone the delay in appropriate cases. We find no reason to condone the delay. The justification advanced by the respondent that it is during the course of the trial, the respondent realized that the cheque in question was drawn on the account of Dakshin is a manifestly false statement. On the face of the cheque, it is clear that it was drawn on account of Dakshin. Admittedly the respondent issued a notice contemplated under clause (b) of the proviso to Section 138 to Dakshin. The fact is recorded by the High Court. The relevant portion is already extracted in para 16.

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**192. PREVENTION OF CORRUPTION ACT, 1988 – Sections 13(1)(e) & 13(2)**

**CRIMINAL PROCEDURE CODE, 1973 – Section 239**

**Direction of further investigation in respect to disproportionate assets in a case – Accused discharged with the direction of further investigation – Held, discharge of accused before the completion of further investigation is premature.**

भ्रष्टाचार निवारण अधिनियम**, 1988 -** धाराएं **13 (1) (**ड.) एवं **13 (2)**

दंड प्रक्रिया संहिता**, 1973 -** धारा **239**

अनानुपात संपत्ति के संबंध में प्रकरण में अतिरिक्त अनुसंधान के निर्देश - अभियुक्त को अतिरिक्त अनुसंधान के निर्देश के साथ उन्मोचित किया गया - अभिनिर्धारित, अतिरिक्त अनुसंधान के पूर्ण होने से पूर्व अभियुक्त का उन्मोचन समय पूर्व है।

**State represented by Deputy Superintendent of Police v. K.N. Nehru etc.**

**Judgment dated 21.07.2017 passed by the Supreme Court in Criminal Appeal No. 1222 of 2017, reported in 2017 (3) Crimes 257**

**Relevant extracts from the Judgment:**

The rival assertions have been duly considered. Having regard to the First Information Report, the explanation provided by the respondent No.1, the charge-sheet submitted as well as the indispensability of the scrutiny of the sources of income of Arun and his assets, we are of the view that the Courts below had rightly directed further investigation to verify the genuineness or otherwise of the source(s) of income of Arun and his assets and the bearing thereof, if any, on the charge leveled against the respondents. In this perspective, we are constrained to observe that the High Court having endorsed the direction for further investigation vis-a-vis Arun ought not to have recorded its findings of exoneration of the respondents at this stage. In fact, the discharge of the respondents flies in the face of the direction for further investigation into the affairs of Arun in order to verify the lawfulness or otherwise of his source of income and his assets. In our estimate, in view of the correlation of the explanation provided by the respondent No.1 to the imputation of disproportionate assets and the probe ordered into the affairs of Arun, to say the least, the

discharge of the respondents before the completion of the investigation is visibly prematured. The finding in particular that the respondent No.1 had proved that he had received the amount only from his son Arun and that the latter had received remuneration for which he had paid TDS under the Income Tax Act and therefore the question of disproportionateness of his assets did not arise, in the face of the pending investigation, amounts to prejudging the charge against the respondents. We have thus no hesitation to hold that the order of the High Court, discharging the respondents herein, pending the investigation against Arun, at this stage, is unsustainable in law as well as on facts.

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**193. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 17 and 19**

**Entitlement of residence order, pre-condition for – It has to be established by applicant/woman that applicant had lived in domestic relationship with respondent in household in question.**

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम**, 2005 -** धाराएं **17** एवं **19**

निवास के आदेश के अधिकार की पूर्ववर्ती शर्त - आवेदक/महिला द्वारा यह स्थापित करना चाहिए कि वह अनावेदक के साथ घरेलू नातेदारी में प्रश्नगत गृहस्थी में रही है।

**Manmohan Attavar v. Neelam Manmohan Attavar**

**Judgment dated 14.07.2017 passed by the Supreme Court in Civil Appeal No. 2500 of 2017, reported in (2017) 8 SCC 550**

**Relevant extracts from the Judgment:**

The facts of the present case are that the respondent has never stayed with the appellant in the premises in which she has been directed to be inducted. This is an admitted position even in answer to a court query by the respondent during the course of hearing. The “domestic relationship” as defined under Section 2 (f) of the D.V. Act refers to two persons who have lived together in a “shared household”. A “shared household” has been defined under Section 2(s) of the D.V. Act. In order for the respondent to succeed, it was necessary that the two parties had lived in a domestic relationship in the household. However, the parties have never lived together in the property in question. It is not as if the respondent has been subsequently excluded from the enjoyment of the property or thrown out by the appellant in an alleged relationship which goes back 20 years. They fell apart even as per the respondent more than 7 years ago. We may also note that till 22.2.2010 even the wife of the appellant was alive. We may note for the purpose of record that as per the appellant, he is a Christian and thus there could be no question of visiting any temple and marrying the respondent by applying “kumkum”, and that too when the wife of the appellant was alive.

We are thus unequivocally of the view that the nature of the ex parte order passed on 19-9-2016 permitting the respondent to occupy the premises of the appellant cannot be sustained and has to be set aside.

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**194. REGISTRATION ACT, 1908 – Section 49**
**STAMP ACT, 1899 – Sections 33, 35 and 38**
**Specific performance of agreement to sale – Admissibility of inadequately stamped and unregistered agreement to sale for collateral purpose – Said instrument contains a recital that possession has been handed over and therefore it is a 'conveyance' – Instrument cannot be admitted in evidence even for collateral purpose unless required duty and penalty is paid – So far as non-registration is concerned, instrument admissible under the proviso to section 49 of Registration Act [relied on *Akshay Doogad v. State of MP and others, 2016 (2) MPLJ 156*].**

रजिस्ट्रीकरण अधिनियम**, 1908 -** धारा **49**

स्टाम्प अधिनियम**, 1899 -** धाराएं **33, 35** एवं **38**

विक्रय के लिये संविदा का विर्निदिष्ट अनुपालन - संपार्शिवक संव्यवहार के लिये अपर्याप्त रूप से स्टांपित एवं अपंजीकृत विक्रय के अनुबंध की ग्राह्यता - कथित लिखत में यह विवरण अंतर्विष्ट था कि आधिपत्य प्रदान किया जा चुका है फलतः यह हस्तांतरण पत्र है - संपार्शिवक संव्यवहार के लिये भी लिखत ग्राह्य नहीं किया जा सकता है जब तक कि अपेक्षित शुल्क एवं शास्ति का भुगतान नहीं कर दिया जाता है - जहां तक अपंजीकृत होने का संबंध है, रजिस्ट्रीकरण अधिनियम की धारा 49 के परंतुक के प्रावधान अनुसार लिखत ग्राह्य है। [*अक्षय दोगड़ विरूद्ध म.प्र. राज्य एवं अन्य,* ***2016 (2)*** *एमपीएलजे* ***156*** अवलंबित]

**Radu and others v. Jhitra and others**
**Order dated 17.01.2017 passed by the High Court of M.P. (Indore Bench) in Writ Petition No. 4376 of 2016, reported in2017 (3) MPLJ 96**

**Relevant extracts from the Order:**

In the present case there is a controversy about the non registration as well as insufficiently stamped agreement dated 10.06.2002. So far as the registration of agreement to sell is concerned Division Bench of this Court in the case of ***Akshay Doogad vs. State of M.P and others*** reported in ***2016 (2) MPLJ 156*** has held that the said agreement can be looked into for limited collateral purpose. Para-9 of the said judgment is reproduced below:

"9. The Supreme Court has opined that when an unregistered document is tendered in evidence, not as evidence of a completed sale, but as proof of an agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to section 49 of the Act of 1908. The Court went to observe that admission of an unregistered sale deed by the Court in such cases would be in consonance with the proviso appended to section 49 of the Act of 1908. Considering this decision, the view taken by the trial Court on the issue under consideration will have to be overturned. The reason why the trial Court has not adverted to this Supreme Court decision has remained unexplained. We need not dilate on that matter as we have no hesitation in accepting the argument of the appellant that the sole basis on which the relief claimed by the appellant in the suit for specific performance has been rejected cannot be countenanced."

Trial Court has only directed that the said agreement to sell cannot be marked as exhibit unless the same is impounded under the provisions of the Indian Stamp Act. Admittedly, the agreement to sell dated 10.06.2002 contains a recital that possession has been handed over to the defendants, therefore, it is a “conveyance “ as provided under Article 23 of Schedule-IA chargeable with the duty of seven and half percent of market value of the property and penalty maximum up to ten times. This Court in the case of ***Umesh Kumar v. Rajaram*** reported in ***2010 (2) MPLJ 104*** and ***Atmaram v. Anil Kumar, 2011 (3) MPLJ 407*** has specifically held that party is required to pay the duty as well as penalty in accordance with sections 33, 35 and 38 of the Indian Stamp Act over the agreement to sell in a suit for specific performance when the possession was handed over at the time of execution of agreement. In view of the above discussion, impugned order passed by the trial Court is just and proper.

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**195. RENT CONTROL ACT, 1958 (Delhi) – Section 14(1)(B)**

**Proof of sub-letting – It is done behind the back of the landlord – Difficult to be proved by direct evidence – Payment of rent is essential for sub-lease but need not be proved by affirmative evidence – Court must draw inference upon facts of case – Also, once the landlord proves exclusive possession of sub-tenant then onus shifts upon the tenant to prove that it is not a case of sub-letting.**

किराया नियंत्रण अधिनियम, **1958 (**दिल्ली) - धारा **14 (1) (**ख)

उप किरायेदारी का प्रमाण - यह भवनस्वामी के पीठ पीछे किया जाता है - प्रत्यक्ष साक्ष्य द्वारा प्रमाणित करना कठिन है - उप-पट्टे के लिये किराये का भुगतान आवश्यक है परन्तु इसे सकारात्मक साक्ष्य से साबित किया जाना आवश्यक नहीं है - न्यायालय को प्रकरण के तथ्यों के आधार पर अनुमान करना चाहिये - इसके अतिरिक्त, यदि एक बार जब भवन स्वामी, उप किरायेदार के अनन्य आधिपत्य को साबित करता है तब प्रमाणित करने का भार किरायेदार पर आ जाता है कि यह मामला उप किरायेदारी का नहीं है।

**Prem Prakash v. Santosh Kumar Jain and Sons (HUF) and Another**

**Judgment dated 30.08.2017 passed by the Supreme Court in Civil Appeal No. 11106 of 2017, reported in AIR 2017 SC 4060**

**Relevant extracts from the judgment:**

In this regard, it is appropriate to quote a decision of this Court in ***Associated Hotels of India Ltd., Delhi v. S. B. Sardar Ranjit Singh, 1968 AIR, SC 933*** wherein it was held that when eviction is sought on the ground of sub-letting, the onus to prove sub-letting is on the landlord. If the landlord prima-facie shows that the occupant who was in exclusive possession of the premises let out for valuable consideration, it would then be for the tenant to rebut the evidence.

Again, in ***Kala and Anr.v. Madho Parshad Vaidya, 1998 6 SCC 573***, this Court reiterated the very same principle. It was observed that the burden of proof of sub-letting is on the landlord but once he establishes parting of possession by the tenant to third party, the onus would shift on the tenant to explain his possession. If he is unable to discharge that onus, it is permissible for the court to raise an inference that such possession was for monetary consideration.

In ***Vaishakhi Ram & Ors.v. Sanjeev Kumar Bhatiani, 2008 14 SCC 356,*** it was held as under:-

> "21. It is well settled that the burden of proving sub-letting is on the landlord but if the landlord proves that the sub-tenant is in exclusive possession of the suit premises, then the onus is shifted to the tenant to prove that it was not a case of sub-letting. Reliance can be placed on the decision of this Court in ***Joginder Singh Sodhi v. Amar Kaur***. Therefore, we are in full agreement with the High Court as well as the courts below that since Appellants 2 to 4 had been in exclusive possession of the suit shop and Appellant 1 could not prove that it was not a case of sub-letting, the suit shop had been sub-let by Appellant 1 in favour of Appellants 2 to 4. Therefore, no interference can be made with the

findings arrived at by the High Court as well as the courts below on the question of sub-letting."

Sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person in possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case.

In the present facts and circumstances of the case, we are of the opinion that the original owner-respondent No. 1 herein has proved beyond doubt that the property is in exclusive possession of the sub-tenant and the appellant herein has not been able to deny the claim of sub-tenancy in favour of Respondent No. 2. The absence of evidence and failure to discharge the onus lay heavy on appellant and there could be no presumption other than that the suit premises had been sublet and parted with possession by the appellant herein to the Respondent No. 2.

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**196. SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Section 14**
**CRIMINAL PROCEDURE CODE, 1973 – Sections 193, 209, 323 and 465**

**(i) Whether the Magistrate can commit a counter case to the case pending before the Special Court (SC/ST) arising out of same incident directly to Special Court ? Held, No.**

**(ii) Whether in those counter cases the Special Court (SC/ST) is competent to take cognizance directly without the case being committed? Held, No.**

**(iii) Trial by an Additional Sessions Judge on direct committal by a Magistrate – Mere irregularity will not vitiate the trial unless prejudice is established.**

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम**, 1989** धारा **14**

दंड प्रक्रिया संहिता**, 1973 -** धाराएं **193, 209, 323** एवं **465**

(i) क्या मजिस्ट्रेट एक ही घटना से उत्पन्न होने वाले, विशेष न्यायालय (एस.सी./एस.टी.) के समक्ष लंबित मामले के प्रति-प्रकरण को सीधे विशेष न्यायालय में सुपुर्द कर सकता है? - अभिनिर्धारित, नहीं।

(ii) क्या उन प्रति-प्रकरणों में, विशेष न्यायालय (एस.सी./एस.टी.) प्रकरण को सुपुर्द किये बिना सीधे ही संज्ञान में लेने के लिये सक्षम है? - अभिनिर्धारित, नहीं।

(iii) अतिरिक्त सत्र न्यायाधीष द्वारा, मजिस्ट्रेट द्वारा सीधे सुपुर्द किये गये मामले का विचारण मात्र अनियमितता है - विचारण को दूषित नहीं करता है जब तक प्रतिकूल प्रभाव को स्थापित नहीं किया जाता है।

**In Reference v. State of Madhya Pradesh**
**Judgment dated 19.07.2016 passed by the High Court of M.P. in Criminal Reference No. 01 of 2015, reported in 2017 (III) MPJR 124**

**Relevant extracts from the judgment:**

A Court of Session for every session division is established by the State Government, which has to be presided over by a Sessions Judge. Sub Section (3) of Section 9 enables the High Court to appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in Court of Sessions. This provision has been made for appointment of Judges in addition to the Sessions Judge in a Session division to man the work of the Court of Sessions, which could not be handled by the Sessions Judge alone. The Sessions Judge has power to transfer the cases to the Court of Additional Sessions Judge. As per Section 381 (2) and Section 400 of Cr.P.C. a Additional Sessions Judge can hear only such appeals and revision which are make over to them by Sessions Judge. Rule 574 of Criminal Rules and Orders provides a Register of Cases tried by Court of Sessions to be maintained only in Court of Sessions Judge. Therefore, it becomes clear that while the Sessions Judge presides over the session division, an Assistant Sessions Judge merely exercises jurisdiction in that session division. Ordinarily the expression Court of Sessions would include not only the Sessions Judge, but also Additional or Assistant Judge, the expression Sessions Judge cannot be treated to include an Additional Sessions Judge unless otherwise provided by law.

The power of taking cognizance of an offence by Sessions Court has been described in Sections 193 and 194 of of Cr.P.C. Section 193 of Cr.P.C. restricts a Sessions Court from taking cognizance of any offence except in certain cases, unless the case has been committed to it by a Magistrate. Sections 193 and 194 of Cr.P.C reads as under:-

"Section 193.....

Section 194....."

Section 194 is newly incorporated by the legislature by amending section 193 (2) of old Cr.P.C. 1898. The words "only as a State Government by the general or special order may direct that to try or" appearing in the Section 193 of old Cr.P.C. 1898 have been omitted. Further in sub section (2) the words "or as the High Court may by a special order direct him to try have been added." This change has been brought about to give power of distribution of work among the Courts in a district to Sessions Judge and High Court.

The expression "cognizance" used in Section 193 of Cr.P.C. indicates the point when a Court or a Magistrate takes judicial notice of an offence with a view to initiate proceeding in respect of such offence (See S.K. Sinha, Chief Enforcement Officer v. Videocon International, 2008 AIR (SC) 1213). Therefore, by conjoint reading of Sections 193 and 194 of Cr.P.C. it appears that the Sessions Judge is competent to take cognizance and initiate trial of a case exercising original jurisdiction after being committed by the Magistrate under Section 193 of Cr.P.C. but, Additional Sessions and Assistant Sessions Judge derives no jurisdiction, as a Court of original jurisdiction, to take cognizance of an offence exclusively triable by a Court of Sessions unless the Sessions Judge of that division by general or special order makes over to him such a cases for trial or unless the High Court, by a special order directs him to try.

Therefore, the cases involving offences exclusively triable by Court of Sessions or ought to be tried by Court of Sessions should be committed to Court of Sessions Judge because Additional Sessions Judge/Assistant Sessions Judge lacks jurisdiction to try the same without it is made over by Sessions Judge.

In the present case the Special Court constituted under SC/ST Act, 1989 is a Court of Additional Sessions Judge. The counter-cases have to be tried and decided separately and there will be no joint trial. In the present case all the counter-cases which are pending before the Magistrate are relating to offences under Sections 294, 323, 324, 506-B of IPC. These cases are triable by Judicial Magistrate First Class but being counter-cases of special cases registered under SC/ST Act, 1989 they have to be tried and decided by the Court of Special Judge. The Special Judge has to try above cases as Additional Sessions Judge following procedure envisaged under chapter XVIII of the Cr.P.C. Simply a case is being tried by the Special Court as counter-case it does not become a special case under SC/ST Act. The Special Judge is competent to take cognizance of offences under SC/ST Act, but not competent to take cognizance of offences

other than SC/ST Act, 1989 or offences under Penal Code, unless it is made over to him by Sessions Judge under Section 194 of Cr.P.C. Therefore, the counter-cases pending before the Magistrate ought to be committed to the Court of Sessions Judge with a request for their transfer to Special Court for trial.

Applying the above principle we arrive to following conclusion:-

i. If a counter-case involves offences not exclusively triable by Sessions Court then it will be committed to the Court of Sessions Judge under Sections 209 or 323 of Cr.P.C as the case may be, who can then transfer the case (i.e the counter-case) to the Court of Additional Sessions Judge/Special Court where the other case is pending for trial.
ii. The special Court under SC/ST Act, 1989 is not competent to take cognizance and initiate trial of the case not involving the offence under the special Act unless it is made over to it by Sessions Judge under Section 194 of Cr.P.C.
iii. The cases involving offences under Special Act can be committed directly to a Special Court if no special province be committed directly to a Special Court if no special provision for taking cognizance of offence is provided in a Special Act or it is not otherwise directed by High Court.

Therefore, we answer the reference as under:-

Magistrate cannot commit a case, arising out the same incident, cross to the case pending before the Special Court (SC/ST) directly to Special Court.

In those cross cases the Special Court (SC/ST) is even with the restriction under Section 193 of Cr.P.C., is not competent to take cognizance directly without the case being committed.

Here a question arises as to whether trial of a case not involving offences under the Special Act, which has been directly committed to Special Court (being a Court of Additional Sessions Judge) by Magistrate gets vitiated.

Section 465 of Cr.P.C. reads as under:-

"(1) Subject....."

Since, Additional Sessions Judge is competent to exercise jurisdiction in Court of Sessions, therefore, it is a Court of competent jurisdiction to try the offences under Penal Code. Ordinarily a case cannot be tried by an Additional Sessions Judge unless the same has been made over to him by Sessions Judge or has been directed to be tried by him by the High Court. But, a trial of case by Additional Sessions Judge on direct committal by Magistrate to him is not a illegality but would be an irregularity or an error and it may attract Section 465 of Cr.P.C. Hon'ble Supreme Court in the case of ***Rattiram and Others v. State of Madhya Pradesh, 2012 4 SCC 516*** held that cognizance taken by a Sessions Court directly without commitment of case by Magistrate in accordance with Section

193 of Cr.P.C., the trial will not automatically vitiated. The trial would only be vitiated if failure of justice has in fact been occasioned thereby or accused can established that he has been prejudiced thereby.

Therefore, it becomes clear that Magistrate shall not commit any case triable by the Court of Sessions or ought to be tried by the Court of Sessions (cross case) to an Additional or Assistant Sessions Judge and if it is so committed then such an error must be objected too at the earliest possible opportunity or else error may not be made a ground for interference with the finding of guilt etc., if no failure of justice is shown to have been occasioned by such an error.

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***197. SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Section 18**
**CRIMINAL PROCEDURE CODE, 1973 – Section 438**
**Cognizance by Magistrate against the accused in respect of offences under IPC and Special Act – Application for anticipatory bail on the ground that complaint is false and malicious – Such defence can only be considered at the stage of trial – Specific bar under Section 18 of the Act for invoking Section 438 Cr.P.C. – Order granting anticipatory bail by the High Court set aside.**

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम**, 1989 -** धारा **18**

दंड प्रक्रिया संहिता**, 1973 -** धारा **438**

भारतीय दंड संहिता और विशेष अधिनियम के अधीन अपराधों के संबंध में अभियुक्त के विरूद्ध मजिस्ट्रेट द्वारा संज्ञान - अग्रिम जमानत के लिये इस आधार पर आवेदन कि परिवाद झूठा और दुर्भावनापूर्ण है - ऐसी प्रतिरक्षा को केवल विचारण के समय विचार में लिया जा सकता है - धारा 438 द.प्र.सं. को लागू करने के लिये अधिनियम की धारा 18 में विर्निदिष्ट रूप से वर्जन है - उच्च न्यायालय द्वारा अग्रिम जमानत देने के आदेश को अपास्त किया गया।

**Manju Devi v. Onkrjit Singh Ahluwalia @ Omkarjeet Singh and others**
**Judgment dated 24.03.2017 passed by the Supreme Court in Criminal Appeal No. 570 of 2017, reported in AIR 2017 SC 1583**

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***198. STAMP ACT, 1899 – Articles 22 and 45**
**Power of attorney authorising the attorney holder to enter into agreement of sale and also to receive sale consideration – Contents and not the form is relevant for consideration of stamp duty – Contents show that it amounts to Power of Attorney for consideration with authorisation of sale – Will attract same duty as conveyance.**

स्टाम्प अधिनियम, **1899 -** अनुच्छेद **22** एवं **45**

मुख्तारनामें द्वारा मुख्तारनामे के धारक को विक्रय के अनुबंध में प्रवेश करने एवं विक्रय प्रतिफल को प्राप्त करने के लिये अधिकृत किया गया - अंतर्वस्तु न कि उसका प्रारूप स्टाम्प शुल्क के विचार के लिये सुसंगत है - अंतर्वस्तु यह दर्शित करती थी कि मुख्तारनामें में प्रतिफल सहित विक्रय के लिये अधिकृत किया गया था - हस्तांतरण पत्र के समान ही शुल्क देय होगा।

**M/s. D.K. Construction v. State of Madhya Pradesh**
**Order dated 06.02.2017 passed by the High Court of Madhya Pradesh in Writ Petition No. 15900 of 2011, reported in AIR 2017 MP 69**

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**199. SUCCESSION ACT, 1925 – Section 63**
**EVIDENCE ACT, 1872 – Section 68**

**(i) Execution of Will, proof of – Whether attesting witness can be allowed to identify thumb impression of testator? Thumb mark of testator is neither disputed on the Will nor alleged to be obtained by fraudulent manner – Petitioner permitted to prove the signature or affix of mark of testator but will not be allowed to identify the thumb mark by comparison of thumb impression as an expert – Attesting witness cannot be allowed to prove the disputed thumb impression as an expert if there is any dispute or denial to thumb mark of the testator.**

**(ii) Secondary evidence – Application to produce photographs as secondary evidence – Permission granted to lead secondary evidence – Objection that plaintiff is not entitled to state name of photographer in evidence in absence of specific pleading – Plaintiff already disclosed the name of photographer in the application which is admitted and equivalent of pleading in application – Plaintiff cannot be prevented from stating name of photographer in his evidence.**

उत्तराधिकार अधिनियम, **1925 -** धारा **63**

साक्ष्य अधिनियम, **1872 -** धारा **68**

(i) वसीयत के निष्पादन का प्रमाण - क्या अनुप्रमाणक साक्षी को वसीयतकर्ता के अंगुष्ठ चिन्ह को पहचानने की अनुमति दी जा सकती है - वसीयत पर वसीयतकर्ता का अंगुष्ठ चिन्ह न तो विवादित था और न ही उसे कपटपूर्वक प्राप्त किये जाने का आक्षेप था - याचिकाकर्ता को वसीयतकर्ता के हस्ताक्षर को प्रमाणित करने या अंगुष्ठ चिन्ह लगाये जाने को प्रमाणित करने की अनुमति है परन्तु उसे विशेषज्ञ के रूप में अगुष्ठ चिन्ह की तुलना द्वारा अगुष्ठ चिन्ह की पहचान हेतु अनुज्ञात नहीं किया जा सकता है - अनुप्रमाणक साक्षी को विवादित अगुष्ठ चिन्ह प्रमाणित करने हेतु विशेषज्ञ के रूप में अनुज्ञात नहीं किया जा

सकता यदि वसीयतकर्ता के अंगुष्ठ चिन्ह के संबंध में कोई विवाद या प्रत्याख्यान विद्यमान हो।

(ii) द्वितीयक साक्ष्य - छाया चित्र को द्वितीयक साक्ष्य के रूप में प्रस्तुत किये जाने का आवेदन - द्वितीयक साक्ष्य को प्रस्तुत करने की अनुमति प्रदान की गई - यह अपत्ति ली गयी कि वादी विनिर्दिष्ट अभिवचन के अभाव में फोटोग्राफर का नाम साक्ष्य में बताये जाने का अधिकारी नहीं है - वादी ने पूर्व से ही आवेदन में फोटोग्राफर के नाम का प्रकटन किया था, जिसे स्वीकार किया गया और वह अभिवचन के समतुल्य है - वादी को साक्ष्य में फोटोग्राफर के नाम को बताये जाने से रोका नहीं जा सकता है।

**Harinarayan and others v. Kusum Gupta and others**
**Order dated 27.03.2017 passed by the High Court of Madhya Pradesh in Writ Petition No. 9686 of 2016, reported in 2017 (3) MPLJ 214**

**Relevant extracts from the order:**

In the present case, I find force in the contention of the petitioner that the plaintiff cannot be precluded from adducing evidence to prove the execution of will and by attesting witness, he proposes to prove the thumb impression put by the testator, which is made in his presence and the other witnesses signed the same in the presence of testator. The place of the "will" showing the thumb impression of the testator was being questioned which is relevant to prove the execution of "will" and he is not being asked to prove thumb impression of the testator by comparing the other thumb impression or signatures of the testator as an expert. It is not disputed by him that the attesting witness cannot be allowed to prove the disputed thumb impression as an expert if there is any dispute or denial to the thumb mark of the testator, the Apex Court has held that the Attesting witness should speak not only about the testator's signature or affix his mark to the will but also that each of the witnesses had signed the will in the presence of the testator. It is not put forth before this court that the thumb mark of testator is disputed on the will or alleged to be obtained by fraudulent manner and the same has been sought to be examined by an expert witness.

Taking note of the law laid down by the Apex Court, I find that the impugned order Annexure P-5 accepting the objections of the respondents is not correct and the petitioner should be permitted to prove the signature or affix of the mark of the testator to the will but certainly he will not be allowed to identify the thumb mark by comparison with thumb impression on other document.

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**200. TRANSFER OF PROPERTY ACT, 1882 – Section 53-A**
**SPECIFIC RELIEF ACT, 1963 – Section 16**
**Suit for declaration of title and recovery of possession by the subsequent purchaser against the defendant in possession claiming previous agreement to sell in his favour – Protection of prospective buyer under Section 53-A – Only available if prospective**

**buyer was willing to perform his part – Not taking recourse of law in a long time by filing a suit for specific performance and absence of pleading of willingness in written statement is a relevant factor – Also the subsequent buyer must not have notice of the previous agreement – Defendant not entitled for benefit of Section 53-A read with Section 16 of Specific Relief Act.**

सम्पत्ति अन्तरण अधिनियम**, 1882 -** धारा **53-**क

विनिर्दिष्ट अनुतोष अधिनियम**, 1963 -** धारा **16**

स्वत्व की घोषणा एवं आधिपत्य के प्रत्युद्धरण के लिए पाश्चिक क्रेता के द्वारा ऐसे प्रतिवादी के विरूद्ध जो कि आधिपत्य मे होकर उसके पक्ष में पूर्व के अनुबंध पत्र के आधार पर दावा कर रहा था, के विरूद्ध वाद - धारा 53-ए के अधीन भावी क्रेता का संरक्षण - केवल तभी उपलब्ध है जबकि भावी क्रेता, अपने भाग का पालन करने के लिए रजामंद था - लम्बे समय तक विधि का सहारा लेकर संविदा के विनिर्दिष्ट पालन के लिए वाद का दायर न किया जाना एवं लिखित कथन में रजामंद होने के अभिवचन का अभाव सुसंगत कारक है - इसके अतिरिक्त पाश्चिक क्रेता को पूर्व के अनुबंध पत्र की जानकारी भी नहीं होनी चाहिए - प्रतिवादी धारा 53-क एवं सहपठित धारा 16 वि.अ.अ. का लाभ प्राप्त करने का अधिकारी नहीं है।

**Vasanthi v. Venugopal (D) thr.LRs.**

**Judgment dated 21.03.2017 passed by the Supreme Court in Civil Appeal No. 4311 of 2017, reported in AIR 2017 SC 1569**

**Relevant extracts from the judgment:**

Reverting to the availability of the protection of Section 53A of TP Act to the original defendant and on his death, to the present respondents, to reiterate, the evidence on record does proclaim that the agreement for sale dated 20.5.1975 had indeed been executed between the predecessors-in-interest of the vendors of the appellant/plaintiff and the respondents herein, pursuant whereto, an amount of Rs. 26,000/- in all had been paid by the proposed purchaser and the possession of the suit property had been handed over to him in consideration thereof. As a matter of fact, at the time of execution of said agreement, the suit property was in occupation of a tenant of the proposed seller i.e. the predecessor-in-interest of the vendors of the appellant/plaintiff and that following a compromise, the tenant delivered possession of the suit property to the predecessor-in-interest of the present respondents and since thereafter, they are in occupation thereof. The evidence on record, however, does not in very clear terms establish that the appellant/plaintiff had conscious notice or knowledge of this agreement for sale at the time of her purchase. Admittedly as well, neither the predecessor-in-interest of the respondents nor they had taken recourse to law for specific performance of the agreement. This assumes importance in view of the averment made in the written statement that even prior to the demise of the predecessor-in-interest of the vendors of the

appellant/plaintiff, he did not comply with the requests of the original defendant to get the sale deed executed and his legal heirs, after his demise, also adopted the same non-cooperative stance.

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As would be patent from the above quotes, the protection of a prospective purchaser/transferee of his possession of the property involved, is available subject to the following prerequisites:

(a) There is a contract in writing by the transferor for transfer for consideration of any immovable property signed by him or on his behalf, from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty;
(b) The transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract;
(c) The transferee has done some act in furtherance of the contract and has performed or is willing to perform his part of the contract.

xxx xxx xxx

The attendant facts and the evidence on record, though demonstrate that an agreement for sale of the suit property had been entered into on 20.5.1975 between the predecessor-in-interest of the vendors of the appellant/plaintiff and the original defendant and that an amount of Rs. 26,000/- had been paid by the latter for which the possession of the suit property had been delivered to him, to reiterate, adequate evidence is not forthcoming to convincingly authenticate that the proposed purchaser and thereafter his heirs i.e. the present respondents, had always been ready and willing to perform his/their part of the contract, which amongst others, is attested by his/their omission to enforce the contract in law. His/their readiness and willingness to perform his/their part of the contract is also not pleaded in the written statement in clear and specific term as required. Further the materials on record also do not testify in unequivocal terms that at the time of purchase, the appellant/plaintiff had the knowledge/information of such agreement for sale or the part performance as claimed, so as to repudiate her transaction to be neither bona fide nor one with notice of such contract or the part performance thereof, as comprehended in the proviso to Section 53A of the T.P. Act.

xxx xxx xxx

In ***A. Lewis and another v. M.T. Ramamurthy and others, 2007 14 SCC 87,*** it was propounded that the right to claim protection under Section 53A of T.P. Act would not be available, if the transferee remains passive without taking effective

steps and abstains from performing his part of the contract or conveying his readiness and willingness to that effect.

Added to this, to reiterate, is the proviso to Section 53A of T.P. Act which excludes from the rigour of the said provision a transferee for consideration, who has no notice of the contract or of the part performance thereof.

In the contextual facts, as obtained herein, the materials on record do not unmistakably demonstrate that the original defendant during his lifetime and on his demise, his heirs i.e. the respondents had been always and ever ready and willing to perform his/their part of the contract and that the appellant/plaintiff had notice either of the agreement for sale or the fact that the original defendant had been in occupation of the suit premises by way of part performance of the contract.

Apropos, Section 16 of the Act, 1963, specific performance of a contract cannot be enforced in favour of a person who, inter alia, fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him unless prevented or waived by the other party thereto. As mentioned hereinabove, though there is an averment in the written statement that before the death of the predecessor-in-interest of the vendors of the appellant/plaintiff, the original defendant had requested him to execute the sale deed and after his demise, he made similar demands with them, evidence is jejune to irrefutably establish the readiness and willingness of his, during his lifetime and after his death, of the respondents, to perform his/their part of the contract. It is also not the case of either the original defendant or the present respondents that his/their performance of the contract had been either prevented or waived by either the vendors of the appellant/plaintiff or their predecessor-in-interest at any point of time.

Noticeably, the sale deed executed in favour of the appellant/plaintiff and proved in evidence has not been annulled as on date and is thus valid and subsisting..... The respondants are not entitted to the benefit of the protection of Section 53-A of the T.P. Act read with Section 16 of the Act, 1963.

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# PART - II A

## GUIDELINES ON SECTION 498A IPC

Several enactments and provisions (Domestic Violence Act, 498A etc.) have been brought on the statute book during the last two or three decades to address the concerns of liberty, dignity and equal respect for women founded on the community perception that women suffer violence or deprived of their constitutional rights owing to several social and cultural factors. The insertion of Section 498A IPC was perceived as providing more teeth as it penalizes offensive conduct of the husband and his relatives towards the married woman. The provision together with provisions in Cr. P.C. are so designed as to impart an element of deterrence.

In 1983, Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. A punishment up to 3 years and fine has been prescribed. The expression 'cruelty' has been defined in wide terms so as to include inflicting physical or mental harm to the body or health of the woman and indulging in acts of harassment with a view to coerce her or her relations to meet any unlawful demand for any property or valuable security. Harassment for dowry falls within the sweep of latter limb of the section. Creating a situation driving the woman to commit suicide is also one of the ingredients of 'cruelty'.

The other aspect of the matter, the factual matrix cannot be ignored. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives.

The simplest way to harass is to get the husband and his relatives arrested under this provision. In quite a number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades were arrested and compelled to face trial.

In course of time, a spate of reports of misuse of the section by means of false /exaggerated allegations and implication of several relatives of the husband have been pouring in. Hon'ble Supreme Court and various High Courts has been giving Judgments on section 498A of IPC by showing their concern over this growing menance of misuse of the provision 498A, thus asked the Law Ministry to consider amending the same and has also given directions in the form of guidelines to check the false implication against relatives of the husband.

### Judicial Pronouncement on misuse of Section 498A

The judicial recognition of blatant misuse of these laws is not new, way back in 1987, in ***Balbir Singh v. The State of Punjab 1987 (1) Crimes 76,*** it was observed:

> "though the amendments introduced in the Penal Code are with the laudable object of eradicating the evil of Dowry, such provisions cannot be allowed to be misused by the parents and the relatives of a psychopath wife who may have chosen to end her life for reason which may be many other than cruelty. The glaring reality cannot be ignored that the ugly trend of false implications in view to harass and blackmail an innocent spouse and his relatives, i.e. fast emerging. It is the time to stop this unhealthy trend which results in unnecessary misery and torture to numerous effected persons."

In ***JasbirKaur v. State of Harayan (1990)2 Rec Cri.R. 243:*** the Punjab and Haryana High Court rightly observed that an estranged wife will go to any extent to rope in as many relatives of the husband as possible in a desperate effort to salvage whatever remains on an estranged marriage.

In ***Kanaraj v. State of Punjab 2000 CriLJ 2993*** the Apex Court observed:

> "for the fault of the husband the in-laws or other relatives cannot in all cases be held to be involved. The acts attributed to such persons have to be proved beyond reasonable doubt and they cannot be held responsible by mere conjectures and implications. The tendency to rope in relatives of the husband as accused has to be curbed".

In ***Savitri Devi v. Ramesh Chand 2003 CriLJ 2759,*** Delhi High Court, categorically stated:

> "These provisions were though made with good intentions butthe implementation has left a very bad test and the move has been centerproductive. There is a growing tendency amongst the women which is further perpetuated by their parents and relatives to rope in each and every relative including minors and even school going kids nearer or distant relatives and in some cases against every person of the family of the husband whether living away or in other town or abroad and married, unmarried sisters, sisters-in-law, unmarried brothers, married uncles and in some cases grandparents of as many as 10 o 15 or even more relatives of the husband."

In ***BhupinderKaur and others v. State of Punjab 2003 CriLJ 3394,*** Punjab and Haryana High Court, held:

> "From the reading of the FIR, it is evident that there is no specific allegation of any act against petitioners Nos. 2 and 3, which constitute offence under section 498A IPC I am satisfied that these two persons have been falsely

implicated in the present case, who were minors at the time of marriage and even at the time of lodging the present FIR. Neither of these two persons was alleged to have been entrusted with any dowry article nor they alleged to have ever demanded any dowry article. No specific allegation of demand of dowry, harassment and beating given to the complainant by the two accused has been made. The allegations made are vague and general. Moreover, it cannot be ignored that every member of the family of the husband has been implicated in the case. The initiation of criminal proceedings against them in the present case is clearly an abuse of the process of law".

In case of ***Preeti Gupta v. State of Jharkhand (2010) 7 SCC 667,*** the Supreme Court has observed that a serious relook of the provision is warranted by the Legislature. The Court said:

> "It is a matter of common knowledge that exaggerated versions of the incidents are reflected in a large number of complaints". The Court took note of the common tendency to implicate husband and all his immediate relations.

In case of ***Sushil Kumar Sharma v. Union of India (2005) 6 SCC 281,*** Supreme court has expressed concern regarding misuse of section 498A in following words:

> "The object of the provision of prevention of the dowry menace. But as has been rightly contented by the petitioner that many instances have come to light where the complaints are not bonafide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work.
>
> But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not an assassin's weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually

> dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre-conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view."

The Delhi High Court in ***Chander Bhan v. State (2008) 151 DLT, 691 and the Madras High Court in Tr. Ramaiah vs. State (order dated 7.7.2008 and 4.8.2008 in MP No. 1 of 2008 in Crl. O.P. No. 10896 of 2008***) has observed, the menance of section 498A with reference to conditions of child, that

> "there is no iota of doubt that most of the complaints are filed in the heat of the moment over trifling fights and ego clashes. It is also a matter of common knowledge that in their tussle and ongoing hostility, the hapless children are the worst victims".

**WHETHER REGISTRATION OF FIR IS MANDATORY IN 498A CASES –**

Now question arises whether in frivolous cases of Section 498A, whether it is mandatory for the police officer to register FIR without conducting preliminary inquiry? Although offence under Section 498A is cognizable in nature but in ***Lalita Kumari v. State of U.P. (2014) 2, SCC 1*** Constitutional Bench consisting of five Hon'ble Judges held that as a general rule registration of FIR is mandatory under section 154, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. Further, it is also laid down that however in matrimonial disputes/family disputes where information received does not disclose a cognizable offence a preliminary inquiry may be conducted to ascertain whether cognizable offence is disclosed or not but scope of such preliminary inquiry is limited not only to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence. It was also held that the proper stage for such verification

of veracity of the information received is only after the registration of FIR, and not before the registration of FIR.

**GUIDELINES ISSUE TO POLICE AUTHORITIES:**

Various High Courts of the States have also noted that in several instances, omnibus allegations are made against the husband and his relations and the complaints are filed without proper justification. The need to exercise caution in the case of arrest of the husband and his relatives has been stressed while observing that after the arrest, the possibility of reconciliation becomes remote and problematic. In some of the cases, directions were given by the High Courts for regulating the power of arrest and for taking necessary steps to initiate conciliatory effort at the earliest point of time. In the case of ***Chander Bhan v. State of Delhi*** (supra), several guidelines were issued to the police authorities to curb false filing of FIRs which are as follows:

1. FIR should not be registered in a routine manner.
2. Endeavour of the police should be to scrutinize complaints carefully and then register FIR.
3. No case under section 498-A/406 IPC should be registered without the prior approval of DCP/Addl. DCP.
4. Before the registration of FIR, all possible efforts should be made for reconciliation and in case it is found that there is no possibility of settlement, then, necessary steps should, in the first instance, be taken to ensure return of sthridhan and dowry articles to the complainant.
5. Arrest of main accused be made only after thorough investigation has been conducted and with the prior approval of the ACP/DCP)
6. In the case of collateral accused such as in-laws, prior approval of DCP should be there on the file.

The directives given by the Madras High Court in the case of ***Tr. Ramiah v. State*** (supra) are as follows:

i) Except in cases of dowry death/suicide and offences of serious nature, the Station House Officers of the All Women Police Stations are to register F.I.R. only on approval of the Dowry Prohibition Officer concerned.

ii) Social workers/mediators with experience may be nominated and housed in the same premises of All Women Police Stations along with Dowry Prohibition Officers.

iii) Arrest in matrimonial disputes, in particular arrest of aged, infirm, sick persons and minors, shall not be made by the Station House Officers of the All Women Police Stations.

iv) If arrest is necessary during investigation, sanction must be obtained from the Superintendent of Police concerned by forwarding the reasons recorded in writing.

v) Arrest can be made after filing of the final report before the Magistrate concerned if there is non-cooperation and abscondance of accused persons, and after receipt of appropriate order (Non-Bailable Warrant).
vi) Charge sheet must be filed within a period of 30 days from the date of registration of the F.I.R. and in case of failure, extension of time shall be sought for from the jurisdiction Magistrate indicating the reasons for the failure.
vii) No weapon including lathis/physical force be used while handling cases at the All Women Police Stations.
viii) Complainants/victims should be provided with adequate security/ accommodation at Government Home and interest of the children must be taken care of.
ix) Stridana properties/movables and immovable to be restored at the earliest to the victims/complainants and legal aid may be arranged for them through Legal Services Authority for immediate redressal of their grievances."

In case of ***Arnesh Kumar v. State of Bihar &Anr (2014) 8 SCC 273,*** the Supreme Court laid down the guidelines for arrest and has instructed police officers not to automatically arrest a person under Section 498A of IPC but under the parameters of Section 41 of CrPC.

The guidelines given in ***Arnesh Kumar*** (supra) in respect to arrest are as follows :

(1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;
(2) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);
(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/ producing the accused before the Magistrate for further detention;
(4) The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;
(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

(6) 11.6 Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;
(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.
(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court."

Recently again Hon'ble the Supreme Court in ***Rajesh Sharma and others v. State of U.P. and another 2017 (3) Crimes 268,*** has expressed their concern in the following words:

"It is matter of serious concern that large number of cases continue to be filed under Section 498A alleging harassment of married women…..

Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement."

The Apex court in case of ***Rajesh Sharma & ors v. State of U.P. 2017 SCC Online SC 821*** while referring the guidelines laid down in ***Chander Bhan*** (supra) and ***Arnesh Kumar*** (supra) once again issued following directions for curbing the menance and abuse of section 498A:-

i) (a) In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.

(b) The Committees may be constituted out of para legal volunteers/social workers/retired persons/wives of working officers/other citizens who may be found suitable and willing.

(c) The Committee members will not be called as witnesses.

(d) Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication.

(e) Report of such committee be given to the Authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.
(f) The committee may give its brief report about the factual aspects and its opinion in the matter.
(g) Till report of the committee is received, no arrest should normally be effected.
(h) The report may be then considered by the Investigating Officer or the Magistrate on its own merit.
(i) Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.
(j) The Members of the committee may be given such honorarium as may be considered viable.
(k) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.

ii) Complaints under Section 498A and other connected offences may be investigated only by a designated Investigating Officer of the area. Such designations may be made within one month from today. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from today;

iii) In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior Judicial Officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord;

iv) If a bail application is filled with at least one clear day's notice to the Public Prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife/minor children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations, requirement of further arrest/ custody and interest of justice must be carefully weighed;

v) In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine;

vi) It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the Court to whom all such cases are entrusted; and

vii) Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial.

viii) These directions will not apply to the offences involving tangible physical injuries or death.

धारा **498-**क के संबंध में राजेश शर्मा व अन्य विरूद्व
स्टेट आफ यू.पी. एवं अन्य में पारित दिशा निर्देश

i) a) प्रत्येक जिले में एक या दो परिवार कल्याण समिति का गठन, जिला विधिक सेवा प्राधिकरण के द्वारा किया जायेगा, जो 3 सदस्यीय होगी। ऐसी समितियों के गठन एवं कार्य का समय-समय पर और वर्ष में कम से कम एक बार मूल्यांकन, जिला एवं सत्र न्यायाधीश के द्वारा, जो कि उस जिले के जिला विधिक सेवा प्राधिकरण का चेयरमैन भी होगा, के द्वारा किया जायेगा।

b) समिति का गठन पैरा लीगल वालंटियर/समाज सेवक/सेवा निवृत्त व्यक्ति/सेवारत अधिकारियों की पत्नियों को मिलाकर, जो इस कार्य हेतु उपयुक्त एवं इच्छुक हो, किया जाएगा।

c) समिति के सदस्य साक्षी के रूप में नहीं बुलाये जायेंगे।

d) धारा 498ए भा.द.सं. के अधीन पुलिस को या मजिस्ट्रेट को प्राप्त होने वाली प्रत्येक शिकायत, ऐसी समिति को प्रेषित की जावेगी और जो उस पर कार्य करेगी। समिति के द्वारा पक्षकारों से व्यक्तिगत रूप से दूरभाष या किसी अन्य इलेक्ट्रानिक संचार के माध्यम से चर्चा की जायेगी।

e) समिति के द्वारा अपनी रिपोर्ट, रिपोर्ट प्राप्ति के दिनांक से एक माह के भीतर, ऐसे प्राधिकारी को प्रेषित की जायेगी। जिससे वह शिकायत प्राप्त हुई थी।

f) समिति प्रकरण से संबंधित संक्षिप्त तथ्यात्मक रिपोर्ट एवं अपनी राय देगी।

g) जब तक ऐसी समिति की रिपोर्ट प्राप्त न हो जाये। तब तक उस प्रकरण में साधारणतया गिरफ्तारी नहीं की जायेगी।

h) समिति की रिपोर्ट को उसके स्वयं के गुण-दोष पर अनवेषणकर्ता अधिकारी या मजिस्ट्रेट के द्वारा विचार में लिया जा सकेगा।

i) समिति के सदस्यों को विधिक सेवा प्राधिकरण के द्वारा समय-समय पर आवश्यकतानुसार आधारभूत प्रशिक्षण दिया जा सकेगा।

j) समिति के सदस्यों को स्वीकारयोग्य मानदेय दिया जा सकेगा।

k) जिला एवं सत्र न्यायाधीश के लिये यह समीचीन होगा कि उसके द्वारा निधि का खर्चों के संबंध में, आवश्यकतानुसार एवं सही रूप से उपयोग किया जा सकेगा।

ii) धारा 498-क एवं उससे संबद्ध अन्य अपराधों का अनवेषण क्षेत्र विशेष के लिए यथानिर्दिष्ट अनवेषण अधिकारी के द्वारा किया जाएगा। ऐसे अधिकारियों की पदस्थापना, आज दिनांक से 1 माह के भीतर की जाएगी। ऐसा यथानिर्दिष्ट अधिकारी, 1 सप्ताह से कम नहीं होने वाली अवधि के लिए एवं जो भी आवश्यक हो, प्रशिक्षण प्राप्त करेगा। प्रशिक्षण आज दिनांक से चार माह के भीतर पूर्ण किया जाएगा।

iii) ऐसे प्रकरण जिसमें समझौता हो गया हो, तब प्रारंभिक रूप से वैवाहिक मतभेद की दशा में जिला एवं सत्र न्यायाधीश या उसके द्वारा नाम निर्दिष्ट किसी अन्य वरिष्ठ न्यायिक अधिकारी के द्वारा उस दांडिक प्रकरण को बंद करने का निर्देश दिया जा सकेगा।

iv) जमानत याचिका प्रस्तुत होने पर, एक दिवस की पूर्ण समय अवधि की नोटिस लोक अभियोजन या शिकायतकर्ता को देने के उपरांत, जमानत याचिका का निराकरण यथा संभव उसी दिन किया जाएगा। जब तक की पत्नी या वयस्क बच्चों के भरण पोषण या अन्य अधिकारों को अन्यथा सुरक्षित रखा जा सकता है। ऐसी दशा में दहेज में दी गई वस्तुओं की बरामदगी जमानत निरस्त करने का आधार नहीं होगी।

v) भारत के बाहर निवास करने वाले व्यक्तियों के पासपोर्ट जमा करने या उनके विरूद्व रेड कार्नर नोटिस जारी करना एक नियमित प्रक्रिया के अधीन नहीं किया जाएगा।

vi) जिला एवं सत्र न्यायाधीश या उसके द्वारा नामित किसी वरिष्ठ न्यायिक अधिकारी के द्वारा यह समीचीन होगा कि पक्षकारों के वैवाहिक विवादों से संबंधित सभी प्रकरणों को एकरूपीय दृष्टिकोण रखने के लिए किसी एक न्यायालय को विचारण हेतु सौंप दे।

vii) परिवार के सभी सदस्यों और दूरस्थ निवास करने वाले सदस्यों के लिए सुनवाई हेतु व्यक्तिगत उपस्थिति आवश्यक नहीं होगी और विचारण न्यायालय उनकी उपस्थिति से छूट प्रदान कर सकेगा या उनकी उपस्थिति विचारण के दौरान वीडियो कान्फ्रेसिंग के द्वारा किए जाने की अनुमति प्रदान कर सकेगा।

viii) स्पष्ट शारीरिक चोट या मृत्यु की दशा में यह निर्देश लागू नहीं होंगे।

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# PART - IV

## IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

### THE MADHYA PRADESH DOWRY PROHIBITION RULES, 2004

***(Published vide Notification No. F-10-9-2003-L-2., in M.P. Rajpatra dated 25-6-2004 at p. 450(6))***

**Notification No. F-10-9-2003-L-2. -** In exercise of the powers conferred by sub-sections (1) and (2) of Section 10 read with clause (d) of sub-section (2) of Section 8-B of the Dowry Prohibition Act, 1961 (No. 28 of 1961), and in rescission of the Madhya Pradesh Dowry Prohibition Rules, 1999, published in the "Madhya Pradesh Gazette" (Extraordinary), dated 16th March, 1999, the State Government hereby make the following Rules for carrying out the purposes of the said Act, namely:-

**1. Short title and commencement. -** (i) These rules may be called The Madhya Pradesh Dowry Prohibition Rules, 2004.

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

**2. Definitions. -** In these rules, unless the context otherwise requires,-

(a ***"Act"*** means the Dowry Prohibition Act, 1961 (No. 28 of 1961);

(b) ***"Advisory board"*** means an advisory board constituted in accordance with sub-section (4) of Section 8-B of the Act, to advise and assist Dowry Prohibition Officers;

(c) ***"Chief Dowry Prohibition Officer"*** means an officer of the State Government entrusted with the duties and responsibilities under these rules;

(d) ***"Dowry Prohibition Officer"*** means an officer appointed as such by the State Government under Section 8-B of the Act;

(e) ***"Probation Officer"*** means a Probation Officer appointed under the Probation of Offenders Act, 1958 (No. 20 of 1958);

(f) ***"Police Officer"*** means an officer in the State Police Department;

(g) ***"Recognised Welfare Institution or Organization"*** means an institution or organization recognised as such under explanation to subsection (1) of Section 7 of the Act;

(h) ***"District Magistrate"*** and "complaint" shall have the same meaning as respectively assigned to them and defined under the Code of Criminal Procedure, 1973 (2 of 1974);

(i) The words and expressions used in these rules but not defined shall have the same meanings as respectively assigned to them in the Act.

**3. Jurisdiction of Dowry Prohibition Officer.** – The area in respect of which the Dowry Prohibition Officer has to exercise jurisdiction and power under sub-section (1) of Section 8-B of the Act shall be the area specified for the purpose by a notification of the State Government in the Official Gazette.

**4. Procedure for filing complaints. –** A complaint may be filed by any aggrieved person or parents or other relative of such person or by any recognised welfare institution or organization in writing to Dowry Prohibition Officer, either in person or through a messanger or by post.

**5. Additional functions to be performed by the Dowry Prohibition Officer. –** The Dowry Prohibition Officer shall perform the following additional functions, namely:-

(i) He shall endeavor to create awareness among the public by organizing camps, publicity through Public Relation Department, Panchayat Samiti and other media against Dowry and to involve local people for prevention of Dowry;

(ii) He shall conduct surprise checks and discreet enquiries to ascertain whether there has been any violation of the provisions of the Act or the rules made thereunder;

(iii) He shall receive complaints for any offence under the Act from any of the parties to a marriage or person aggrieved or any other person or organization;

(iv) He shall maintain a register for the purpose of the Act to record all complaints, enquiries and results thereof and other relevant information connected therewith in the prescribed Form-1. He shall also maintain separate files with relevant records for each individual case;

(v) He shall act as the Member Secretary/Convenor of the Board. He shall maintain regular contact with the members of the Advisory Board for necessary advice and assistance from them. He shall inform the District Magistrate or any other person authorized by the State Government for the purpose, about all the affairs relating to operation of the Act, as and when necessary;

(vi) He shall keep in his custody all the lists of presents submitted by any of the parties to a marriage and make entries relating thereto in a register to be maintained for the purpose. He shall also examine these lists and ensure compliance of the provisions of the Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985;

(vii) He shall discharge his duties with due care, decorum, privacy and in a manner to uphold the dignity and harmony of family relationships;

(viii) His approach shall be primarily preventive and remedial and prosecution shall be recommended or resorted to only if all other

measures and directions are found ineffective or parties fail to comply with the orders or directions within the stipulated time;

(ix) Every such complaint received by him shall be serially numbered and duly registered in a register if Form No. 2 annexed to these rules;

(x) He shall scrutinize the complaint and if it is found that the nature and the contents of the complaint is such apparently coming within the purview of Section 3 or 4 or 4A or 5 or 6 of the Act, he will immediately conduct an enquiry to collect such evidence from the parties as to the genuineness of complaint;

(xi) He shall send quarterly report to the Chief Dowry Prohibition Officer as to the number of complaints received under the Act and the action taken or the nature of settlement of the issue in Form No. 2 annexed to these rules. He shall send such details or reports, as may be required by Chief Dowry Prohibition Officer or the State Government from time to time;

(xii) He shall conduct an on the spot investigation and can collect such evidence either oral or in writing from the parties or witnesses or he can fix up a hearing of the parties and witnesses in his office or in a place convenient to him without causing much inconvenience or hardship to the parties;

(xiii) He shall intimate or serve notices to the parties and witnesses of the date, time and place of hearing of the complaints in Form 3 annexed to these rules;

(xiv) Every petition shall be enquired into and heard and come to a finding within a month from the date of its receipt;

(xv) Where on the date fixed for hearing of the complaint or petition or on any other date to which such hearing may be adjourned, the complainant or petitioner does not appear, the Dowry Prohibition Officer, may, in its descretion, either dismiss the complaint or petition for default or hear and come to a finding as to its merit, which shall be recorded in the case file;

(xvi) He may utilize the services of Probation Officer of the area for collecting information or conducting enquiries or assisting in any stage of enquiries or proceedings relating to a complaint, petition or application under the Act;

(xvii) On receipt of requisition from the Dowry Prohibition Officer, the Probation Officer shall conduct necessary enquiries, collect information and furnish such details, and report promptly as requested by him;

(xviii) Where any dowry is received by any person other than the woman and complaint is received in respect of non-transfer of such dowry to the woman who is entitled to it in accordance with Section 6 of the

Act, he shall issue directions to parties to transfer the same within the stipulated time;

(xix) He shall specifically make it clear that marriages performed within his jurisdiction are likely to be visited by him or his staff alongwith police officers to see that the provisions of the Act are not contravened;

(xx) He shall make necessary enquiries regarding non-observance of the provisions of the Act in respect of the marriage held or proposed to be held within his jurisdiction;

(xxi) He shall ascertain and confirm by suitable means in respect of as many number of marriages as are held within his jurisdiction as to whether the provisions of the Act are being followed and are not being contravened;

(xxii) While making enquiries under the Act or attending any marriage for the purposes of making enquiries he may take the assistance of any police officer or other officers to assist him in the performance of his functions and it shall be the duty of the police officer to render all assistance required by him;

(xxiii) He shall render assistance to the police in investigating the complaint filed under the Act and the Court in the trial of the case;

(xxiv) He shall seek the guidance of Advisory Board in matters relating to his functioning under the Act;

(xxv) He shall send a copy of the proceeding of each meeting of the Advisory Board, within a fortnight from the date of meeting to the District Magistrate with a copy to the State Government for information and necessary action; and

(xxvi) He shall also perform such other duties as may be assigned in this regard by the State Government.

**6. Method of appointment, duties and functions of Chief Dowry Prohibition Officer. –** (1) The State Government shall designate the senior officer of the concerned Department as the Chief Dowry Prohibition Officer to administer and co-ordinate the work relating to dowry prohibition throughout the State.

(2) The Chief Dowry Prohibition Officer shall co-ordinate the work of Dowry Prohibition Officers and shall be responsible for creating consciousness and awareness to prevent dowry system among the public and to set out programmes with a view to uproot the evil of dowry system.

(3) The Chief Dowry Prohibition Officer shall be responsible for the preparation and submission of an annual report on the progress of implementation of the Act and related matters and of such statistics, as may, from time to time, be required by State Government.

(4) The Chief Dowry Prohibition Officer shall issue instructions to all the Departments of the State Government of the following effect-

(i) Every Government Servant shall after his marriage furnish a declaration stating that he has not taken any dowry to Head of the Department. The declaration shall be signed by the wife, father and father-in-law.

(ii) One specified day in a year to be observed as Dowry Prohibition Day; and

(iii) Pledge to be administered to the students in schools and colleges and other institutions not to give or take dowry.

**7. Submission of list of presents by any of the parties to a marriage. –** Any of the parties to a marriage or any of the parents or either of them shall furnish to the concerned Dowry Prohibition Officer within one month from the date of marriage, a copy of the list of presents prepared in accordance with the Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985.

**8. Procedure for prosecution of offenders. –** In all cases of complaints investigated by Dowry Prohibition Officers, when there is a prima facie finding as to the commission of an offence, the report shall be submitted to the competent Magistrate for prosecuting the offenders alongwith the statement recorded, all other connected documents of the proceedings and a brief account of his findings. This report shall be deemed to be a report under Section 173 of Code of Criminal Procedure, 1973 (No. 2 of 1974).

**9. Recognition of Welfare Institutions. –** (1) A Welfare Institution or Organisation primarily devoted to any of the following kinds of work and has rendered remarkable service in the field for a period of not less than three years shall be eligible for seeking recognition under explanation to sub-section (1) of Section 7 of the Act, namely-

(i) Social Welfare including care, protection and training of Women;

(ii) Society or Organisation of Women at State level or all India level;

(iii) Social Defence including care and protection oi destitutes, rescue women and children; and

(iv) Any Organisation of Lawyers interested in eradicating social evils.

(2) Any Welfare Institution or Organization eligible under sub-rule (1) and desiring recognition shall make an application to the State Government in Form 4 annexed to these rules together with a copy of each of the Rules, Bye-laws, Articles of association, lists of its members and office bearers and report regarding its activities and past record of social or community service.

(3) The State Government may, after making enquiry by a senior officer of the concerned department and after considering the report as to the nature and past record of service of such organisation or institution, which has presented

the application in this regard, grant recognition for a period of five years, which can be renewed after submitting a renewal application.

(4) An application for renewal of certificate of recognition shall be submitted in Form 5 annexed to these rules in the manner prescribed in sub-rule (2) of Rule 9, which shall be processed as per the procedure laid down in sub-rule (3) and recognition shall be granted /renewed in cases, where the working of the institution or organization is reported to be fairly satisfactory.

(5) The State Government may withdraw the recognition granted to an institution or organization, if the working of the institution or organization is found or reported to be unsatisfactory by the Chief Dowry Prohibition Officer or otherwise.

**10. Limitation and Conditions subject to which a Dowry Prohibition Officer may exercise powers of Police Officer. –** (1) Save and except the provisions of Chapter-V of the Code of Criminal Procedure, 1973 (2 of 1974), namely, the power of arrest of a person without warrant, the Dowry Prohibition Officer shall have the powers of a Police Officer under the said code for the purpose of investigation and submission of report before the competent Magistrate.

(2) Wherever the Dowry Prohibition Officer has reasonable ground to believe that an offence punishable under the Act has been or is being or is about to be committed within his jurisdiction and that the search of any premises with warrant cannot be made without undue delay, he may, after sending the grounds of his belief to the District Magistrate, search such premises without a warrant.

(3) Before making a search under sub-rule (2), the Dowry Prohibition Officer shall call upon two or more residents of the locality where the place to be searched is situated, to attend and witness the search, and may issue an order in writing to them or any of them to do so.

(4) Any person, without reasonable cause, refuses or neglects to attend and witness a search under sub-rule (3) when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under Section 187 of the Indian Penal Code, 1860 (No. 45 of 1860).

**11. Dowry Prohibition Officer to be a public servant. –** Every Dowry Prohibition Officer shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860 (No. 45 of 1860).

**12. Protection of action taken in good faith. –** No suit or other legal proceeding shall lie against the Government, Chief Dowry Prohibition Officer, Dowry Prohibition Officer and any Police Officer or person assisting him and Probation Officer in respect of anything which is done in good faith or intended to be done in pursuance of the Act or the rules made thereunder.

**13. Interpretation. –** In any question arised relating to the interpretation of these rules, it shall be referred to the State Government for decision.

**14. Repeal and Savings. –** (1) The Madhya Pradesh Dowry Prohibition Rules, 1999 are hereby repealed.

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

## Form 1
## [See Rule 5 (iv)]
## Register of Complaints/petitions

| S.No. | List of Complaints | Name and address of complaina | Relationship with the married couple | Date of marriage fixed of or held | Date of receipt of petition/ complain | Date of hearing | Nature of disposal | Initials of officer | Remarks |
|---|---|---|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) |

## Form 2
## [See Rule 5 (ix) and (xi)]
## Quarterly Progress Report Regarding the Implementation of Dowry Prohibition Act, 1961

| S.No. | Details of Petition/ complaint a received | From whom name and address | Nature of complaints / petition | Date of Registration | Action taken | Nature of settlement of issue | Dated initials of the officers | Remarks |
|---|---|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |

Dowry Prohibition Officer

## Form 3
## [See Rule 5 (xiii)]
## Notice to Appear Before Dowry Prohibition Officer

To,

**(Name of person against whom complaint has been received and address).**

Whereas, your attendance is necessary to collect information and gather evidence to a complaint of..... (state shortly the alleged offence) you are hereby required to appear in person before the Dowry Prohibition Officer on the day of..... at..... (time) in the office of the..... (place)

Date the..... day of 200.....

Dowry Prohibition Officer
(Office Seal)

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**Form 4**

**[See Rule 9(2)]**

**Form of Application for Recognition of Welfare Institution/organisation**

1. Name of the welfare Institution / Organisation .....
2. Full address .....
3. Aims and objectives .....
4. Name and address of the Head of the Institution/Organization .....
5. Brief account of its activities .....
6. Justification for granting recognition .....
7. Has any such application been made previously, if so, its results together with its date, month and year .....
8. Any other particulars .....

Enclosures:

(1)

(2)

(3)

Place : .....Signature of the Head of the Welfare Institution/Organisation

**Form 5**

**[See Rule 9(4)]**

**Form of Application for Renewal of Certificate of Recognition**

1. Name of the Welfare Institution / Organisation.....
2. Full address .....
3. Brief Account of the achievements during last five years .....
4. Name and address of the Head of the Institution/Organization .....
5. Certificate No., date and date of expiry .....
6. Any other particular .....

Place:

Date: Signature of the Head of the Welfare Institution/Organisation

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**Notification dated 14/15 July, 2004 of the Ministry of Women and Child Development regarding appointing all Legal Aid Officers of the Districts of M.P. State Legal Services Authority as Dowry Prohibition Officers**

क्रं. एफ.-10-14-1998-पचास-2.-दहेज प्रतिषेध अधिनियम, 1961 (1961 का 28) की धारा 8-ख की उपधारा (1) द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए तथा इस विभाग की अधिसूचना क्रमांक एफ.-10-9-2003-पचास-2, दिनांक 8 जुलाई 2003 को अतिष्ठित करते हुए राज्य सरकार, एतद् द्वारा, मध्यप्रदेश राज्य विधिक सेवा प्राधिकरण के समस्त जिला विधिक सहायता अधिकारियों को उनकी अपनी अपनी अधिकारिता के भीतर, उपर्युक्त अधिनियम तथा उसके अधीन बनाए गये नियमों के अधीन शक्तियों का प्रयोग करने के लिये दहेज प्रतिषेध अधिकारी के रूप में नियुक्त करती है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
यू.एस.विसेन, उपसचिव,

भोपाल, दिनांक 14/15 जुलाई 2004

क्रं. एफ.-10-14-1998-पचास-2-भारत के संविधान के अनुच्छेद 348 के खण्ड (3) के अनुसरण में, इस विभाग की समसंख्यक अधिसूचना, दिनांक 14 जुलाई 2004 का अंग्रेजी अनुवाद राज्यपाल के प्राधिकार से एतद् द्वारा प्रकाशित किया जाता है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
यू.एस.विसेन, उपसचिव,

Bhopal, the 14th/15th July, 2004

No.F.-10-14-1998-L-2-In exercise of the powers conferred by sub-section (1) of Section 8-B of the Dowry Prohibition Act, 1961 (28 of 1961), and in supersession of this Department's Notification No.F.-10-9-2003-L-2, dated the 8th July 2003, the State Government hereby appoints all Legal Aid Officers of the Districts of the Madhya Pradesh State Legal Services Authority, as Dowry Prohibition Officers, within their respective jurisdictions, for exercising the powers under the afforesaid Act and the rules made their under.

By order and in the name of the Government of Madhya Pradesh,
U.S. Bisen, Dy.Secy.

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## THE DOWRY PROHIBITION (MAINTENANCE OF LISTS OF PRESENTS TO THE BRIDE AND BRIDEGROOM) RULES, 1985

**G.S.R. 664 (E), dated 19th August, 1985.–** In exercise of the powers conferred by Sec.9 of the Dowry Prohibition Act, 1961 (28 of 1961), the Central Government hereby makes the following rules, namely:

1. **Short title and commencement.–** (1) These rules may be called the Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985.

(2) They shall come into force on the 2nd day of October, 1985, being the date appointed for the coming into force of the Dowry Prohibition (Amendment) Act, 1984 (63 of 1984).

**2. Rules in accordance with which lists of presents are to be maintained. –** (1) The list of presents which are given at the time of the marriage to the bride shall be maintained by the bride.

(2) The list of present which are given at the time of the marriage to the bridegroom shall be maintained by the bridegroom.

Every list of presents referred to in sub-rule (1) or sub-rule (2),-

(a) shall be prepared at the time of the marriage or as soon as possible after the marriage:

(b) shall be in writing;

(c) shall contain,-

(i) a brief description of each present;

(ii) the approximate value of the present;

(iii) the name of the person who has given the present; and

(iv) where the person giving the present is related to the bride or bridegroom, a description of such relationship;

(d) shall be signed by both the bride and the bridegroom.

***Explanation.*** 1.- Where the bride is unable to sign, she may affix her thumb impression in lieu of her signature after having the list read out to her and obtaining the signature on the list, of the person who has so read out the particulars contained in the list.

***Explanation*** 2.- Where the bridegroom is unable to sign he may affix his thumb-impression in lieu of his signature after having the list read out to him and obtaining the signature on the list of the person who has so read out the particulars contained in the list.

(4) The bride or the bridegroom may, if she or he so desires, obtain on either or both of the lists referred to in sub-rule (1) or sub-rule (2) the signature or signatures of any relations of the bride or the bridegroom or of any other person or persons present at the time of the marriage. Source:

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मध्यप्रदेश उच्च न्यायालय, जबलपुर

# मध्य प्रदेश राज्य न्यायिक अकादमी

मध्यप्रदेश उच्च न्यायालय, जबलपुर - 482 007