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न्यायिक अधिकारी प्रशिक्षण एवं अनुसंधान संस्थान

मध्य प्रदेश उच्च न्यायालय, जबलपुर – 482 007

JUDICIAL OFFICERS' TRAINING & RESEARCH INSTITUTE

HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

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FROM EDITOR'S DESK

C.V. Sirpurkar,
Director, JOTRI

Esteemed Readers

Have you noticed that the state judiciary of Madhya Pradesh has received massive infusion of fresh talent since the year 2007. In fact more than 50% of our total strength was inducted in past seven years. In other words, service period of more than half of the total strength of subordinate Judges in the state, is seven years or less. Continuing the trend, we welcomed amongst our midst, 94 Civil Judges of 2013 batch during the months of April and May 2013. The sheer number of new entrants compels us to take a breath and ponder. Each one of us has to think whether he or she is doing his or her bit to mould these inductees into respectable Judges or we are simply depending upon JOTRI to do the needful. Let me make it clear at the outset that the responsibility of sculpting a Judge from the raw talent is joint and several and has to be shouldered by the JOTRI and the members of District Judiciary already serving, in equal measure.

To take the story forward, JOTRI on its part, has invited the Trainee Judges of 2013 to attend Four Week Induction Course in two batches. The Induction course for the first batch is already over. The Course for the second batch is scheduled to commence from 13-8-2013. I was pleasantly surprised to observe the level of knowledge, many of them possessed. I also did not fail to note that a sizeable number of them have acquired sound legal education. A large number of them are proficient in English, which has been our Achilles' heel for some decades now. They are energetic, enthusiastic and eager to learn. In these circumstances, we cannot complain this time around that we did not get quality raw material to work upon. Now it is for us and by "us" I do not mean JOTRI alone, to mould and chisel them into high class Judges, who would be honest, upright, diligent, erudite and self-confident. They are the future of state judiciary and we have to ensure that our future is not compromised in any manner.

We have one year to impart judicial education (and not merely training to them). Out of this period of one year, the newly recruited Civil Judges shall stay with JOTRI for three months in all. There is no doubt that judicial education imparted by Judicial Academies to Judges play a key role in shaping the quality of justice delivery; therefore, the Officers of the Institute are striving hard to chalk out different strategies of learning in order to maximize the retention of knowledge transmitted during the Induction Course. Though, the Institute has tried hard to introduce methods like power point presentations, group discussions and exercises etc., regrettably, lecture based methods continue to be the main component of judicial education. However, sincere effort is made to involve the participants in the topic of the lecture and make the deliberations as much interactive as possible.

The curriculum of the Induction Course has been devised in such a way that the participants acquire broad acquaintance with the provisions of substantive

laws which they would encounter in their day-to-day working and thorough knowledge of procedural law, so that they are in a position to control the Court proceedings. The effort is also made to inculcate in the participants other judicial skills like art of giving proper hearing, expeditious disposal of interlocutory applications, marshalling and appreciation of evidence and judgment writing. Time is also devoted to administrative skills such as time and self management, case management, board management and relationship with bar and staff. A lot of stress is laid upon virtues like integrity, honesty, judicial independence, impartiality, proper attitude, humility, patience and detachment. However, the JOTRI is under no illusion that it can do everything that needs to be done in this regard.

The trainee Judges are going to work in the field for the rest of the nine months of their training period. Our duty demands that we spare as much of our time for them as we feasibly can because they need, not only our guidance but also our affection, care and encouragement at this critical juncture of their carrier. We have to see to it that the Trainees put in practice, what they have learnt in JOTRI. It is essential that the ideas picked up by the Trainees in the Institute are translated into action in the field. It would be your duty to ensure that in the field, they do not deviate from the path of virtue, besides they must acquire right attitude and generally display moral and ethical qualities that go on to make a good Judge. We have to pass high traditions of judiciary on to them, just as our seniors had passed them on to us.

We must realize that the practical aspect of the judicial education has to be emphasized in the field. It would help immensely if the District Judge takes upon himself to oversee the training. We realize that the District Judges are extremely busy. So it is inevitable that they would entrust task to some worthy Additional District Judge. All we are trying to emphasize is that such Additional District Judge ought to be carefully selected. Having done that, some thought should also be spared at the time of choosing the Judges, with whom the Trainee shall sit. The Trainee Judges should be allowed to observe the working of different Courts, so that they adopt the best practices followed by such Courts. They can then synthesize their unique style of working, which should ideally be the blend of best components in the different styles of working observed by them as trainees. Help and guide them we must, but we ought not to be too prescriptive. They should be encouraged to think independently. It should not be taken otherwise if they disagree with us on the points of law because nobody is infallible. The District Judge should involve himself in these tasks. The experience tells us that whenever and wherever the District Judge has evinced interest in training, the results have been remarkable.

So friends, I sincerely hope that this joint venture between JOTRI and serving members of district judiciary would convert these raw trainees into honest, impartial, independent, erudite, efficient, polite and humble yet self-confident Judges, capable of attaining the cherished constitutional goal of dispensation of speedy, inexpensive and efficacious justice.

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HON'BLE SHRI JUSTICE R.C. MISHRA & HON'BLE SHRI JUSTICE MOHAMMAD ANWAR SIDDIQUI DEMIT OFFICE

Hon'ble Shri Justice R.C. Mishra demitted office on 03.06.2013 on His Lordship's attaining superannuation. Bornon 03.06.1951. Joined M.P. State Judicial Service as Civil Judge Class II on 08.07.1975. Was promoted to the post of Additional District Judge on 22.06.1989. Worked as Commissioner of Departmental Enquiries, GAD, Bhopal from 07.07.2001 and as Registrar, National Judicial Academy, Bhopal from 25.09.2001 onwards. Was Presiding Judge, Family Court from 25.9.2004. Was District & Sessions Judge, Jabalpur from 07.05.2005 prior to his elevation. Took oath as Additional Judge, High Court of Madhya Pradesh on 11th September, 2006 and as Permanent Judge on 16.07.2009.Was accorded farewell ovation on 17.05.2013.

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Hon'ble Shri Justice Mohammad Anwar Siddiqui demitted office on 30.06.2013 on His Lordship's attaining superannuation. Was Born on 01.07.1951. Joined the legal practice as an Advocate in the year 1974. Also worked as part-time Law Lecturer in Saifia College from 1975 to 1976. Was Head of the Department, Faculty of Law Ravindra College Bhopal for two years before joining Judicial Services. Joined Judicial Service as Civil Judge Class II on 07.08.1978 and was promoted as Additional District Judge on 09.08.1991. Was granted

Selection Grade on 08.05.1999 and Super Time Scale on 01.04.2005. Worked in different capacities at different places i.e. Sehore, Bilashpur, Shujalpur, Beohari, Jawad, Basoda, Jagdalpur, Betul, Shajapur, Alirajpur, Gwalior, Chhatarpur, Tikamgarh, Sehore and Mandla. Was Director, Public Prosecution, Bhopal prior to elevation. Took oath as Additional Judge, High Court of Madhya Pradesh on 13.09.2010 and as Permanent Judge on 11.09.2012.Was accorded farewell ovation on 28.06.2013.

We on behalf of JOTI Journal wish Their Lorddhips a healthy, happy and prosperous life.

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FIRST INDIAN HIGH COURT JUDGE

Rama Prasad Roy, son of the great social reformer Raja Ram Mohan Roy was the first Indian to be appointed a judge of the High Court (Calcutta High Court) in British India. However, he could not take his seat as a judge because he died before the letter of appointment arrived in India. The distinction of being the first Indian High Court Judge (Calcutta High Court again) fell to Sumboo Nath Pundit.

Courtesy: '**Legends in Law'** by V. Sudhish Pai

न्यायालय का मासिक निरीक्षण

प्रदीप कुमार व्यास,
संकाय सदस्य,
न्या. अधि. प्रशि. एवं अनु. संस्थान

प्रत्येक न्यायालय के पीठासीन अधिकारी को उनके न्यायालय का प्रतिमाह निरीक्षण करना चाहिए। मासिक निरीक्षण करने से पीठासीन अधिकारी का न्यायालय के कर्मचारीगण एवं उनके कार्य पर उचित नियंत्रण रहता है। मासिक निरीक्षण से पत्रावलियाँ गुमने, गायब होने, अर्थदंड की राशि संबंधी गड़बड़ियाँ होने की संभावना कम हो जाती हैं। यहाँ हम मासिक निरीक्षण के समय देखे जाने व ध्यान देने योग्य बातों पर विचार करेंगे।

दांडिक शाखा

शाखा की पंजियाँ या रजिस्टर

इस शाखा में पदस्थ लिपिक को निष्पादन लिपिक या फौजदारी रीडर कहते हैं। इस लिपिक का एक कार्य शाखा में रखी जाने वाली पंजियों का संधारण करना होता है। इस लिपिक द्वारा नियम 570 मध्य प्रदेश नियम एवं आदेश (आपराधिक) में उल्लेखित पंजियाँ या रजिस्टर रखे जाते हैं। प्रत्येक न्यायालय में नियम 570 में उल्लेखित पंजियों की एक सूची बनाकर उसे किसी सहजदृश्य स्थान पर लगाया जाना चाहिए एवं पीठासीन अधिकारी को भी सूची की एक प्रति अपने पास रखना चाहिए, ताकि मासिक निरीक्षण के समय उसका उपयोग किया जा सके। जिन पंजियों का निरीक्षण पीठासीन अधिकारी को करना चाहिए उन पंजियों के नाम एवं उनके निरीक्षण में ध्यान रखे जाने योग्य तथ्य इस प्रकार हैं:–

1. अर्थदंड पंजी – "ए" इस पंजी में प्रत्येक प्रकार का अर्थदंड तथा अर्थदंड के रूप में वसूली योग्य राशि जैसे धारा 359 दं.प्र.सं. के अंतर्गत असंज्ञेय प्रकरणों में दिलवाया गया व्यय, धारा 250 दं.प्र.सं. के अंतर्गत दिलवाया गया प्रतिकर, धारा 357 दं.प्र.सं. के अंतर्गत दिलवाया गया प्रतिकर, धारा 446 दं.प्र.सं. के अंतर्गत जमानत एवं बंध पत्र से जप्त राशि आदि का उल्लेख किया जाता है। **उक्त सभी राशियाँ चाहे वसूल हुई हों या न हुई हों, उनका उल्लेख इस पंजी में किया जाता है।**

नियम 578 मध्य प्रदेश नियम एवं आदेश (आपराधिक) के अनुसार प्रत्येक वर्ष के प्रारंभ में एक नई अर्थदंड पंजी 'ए' खोली जाती है, जिसमें पूर्व की पंजी की वे समस्त प्रविष्टियाँ लाल स्याही से लिखी जाती हैं, जो वसूल या वितरित होनी शेष हों।

यदि पूर्व वर्ष की पंजी में पर्याप्त कोरे पृष्ठ शेष हों, तो उसी पंजी में कुछ पृष्ठ छोड़ कर नवीन वर्ष की प्रविष्टियाँ प्रारंभ की जा सकती हैं।

जिन राशियों की वसूली होना है, उनके लिए विविध आपराधिक प्रकरण पंजीबद्ध किया जाना चाहिए एवं उस प्रकरण के क्रमांक का उल्लेख इस पंजी के स्कंभ क्रमांक 27 में किया जाना चाहिए।

मासिक निरीक्षण के समय पीठासीन अधिकारी को यह देखना चाहिए कि क्या नियम 578 के पालन में जिन राशियों की वसूली या वितरण शेष है, उन्हें पंजी के प्रारंभ में लाल स्याही में लिखा गया है, या नहीं।

इस पंजी में कुल 27 स्कंभ होते हैं। इस पंजी के स्कंभ क्रमांक एक में क्रम संख्या, स्कंभ क्रमांक दो में प्रकरण क्रमांक एवं उसका वर्ष तथा निराकरण दिनांक, स्कंभ क्रमांक तीन में जिस व्यक्ति से अर्थदंड, प्रतिकर, अर्थदंड के रूप में वसूली योग्य राशि, जमानत एवं बंध पत्र से जप्त राशि वसूल होना है, उसका नाम, पिता का नाम व पता, स्कंभ क्रमांक चार में अर्थदंड की राशि, स्कंभ क्रमांक पाँच में धारा 359 दं.प्र.सं. के अंतर्गत दिलवाई गई राशि तथा व जिस व्यक्ति को राशि अदा की जाना है, उसका नाम, पिता का नाम एवं पता, स्कंभ क्रमांक छः में अर्थदंड से दिलाये गये प्रतिकर के अतिरिक्त अन्य प्रतिकर जैसे धारा 357 (3) दं.प्र.सं. के अंतर्गत दिलवाया गया प्रतिकर व जिस व्यक्ति को प्रतिकर दिया जाना है, उसका नाम, पिता का नाम एवं पता, स्कंभ क्रमांक सात में धारा 446 दं.प्र.सं. के तहत जप्त राशि का उल्लेख किया जाता है।

स्कंभ क्रमांक आठ में विधि का नाम एवं धारा, स्कंभ क्रमांक नौ में अर्थदंड में से दिलवाया गया प्रतिकर तथा वह प्रतिकर जिस व्यक्ति को दिया जाना है, उसका नाम, पिता का नाम एवं पता लिखा जाता है, जबकि स्कंभ क्रमांक दस में पीठासीन अधिकारी के लघु हस्ताक्षर करवाये जाते हैं।

उक्त राशियाँ वसूल हुई हो या न हुई हों दोनों ही दशाओं में स्कंभ क्रमांक एक से नौ की प्रविष्टियाँ, जिस दिन ये राशि अधिरोपित की जाती है, उसी दिन से की जानी चाहिए। मासिक निरीक्षण में पीठासीन अधिकारी को यह जांच करना चाहिए कि क्या अर्थदंड पंजी 'ए' के स्कंभ क्रमांक एक से नौ की प्रविष्टियाँ उसी दिन की जाती है, या नहीं।

पंजी के स्कंभ क्रमांक एक से नौ की प्रविष्टियां नियंत्रित करने के लिए पीठासीन अधिकारी को पंजी के स्कंभ क्रमांक दस में अपने हस्ताक्षर के नीचे तिथि अंकित करने का अभ्यास विकसित कर लेना चाहिए।

पंजी के स्कंभ क्रमांक ग्यारह एवं उसके बाद की प्रविष्टि, स्कंभ क्रमांक 14 को छोड़कर, तब की जाती है जब ये राशियाँ वसूल हो जाती हैं।

पंजी के स्कंभ क्रमांक ग्यारह में अर्थदंड एवं जमानत मुचलका जप्ती की राशि एवं स्कंभ क्रमांक बारह में प्रतिकर, धारा 359 दं.प्र.सं. के अंतर्गत दिलवाई गई राशि एवं स्कंभ क्रमांक तेरह में इन राशियों की वसूली की तिथि का उल्लेख किया जाता है।

पंजी के स्कंभ क्रमांक 14 में वसूली के लिए जारी आदेशिका एवं उसकी तिथि का उल्लेख करते हैं, जबकि पंजी के स्कंभ क्रमांक 15 एवं 16 में कोषालय के जिस शीर्ष में राशि जमा करवाई जा रही है, उसका उल्लेख करते हैं। पंजी के स्कंभ क्रमांक 18 में चालान क्रमांक एवं तिथि का उल्लेख करते हैं, जिसके द्वारा राशि कोषालय में जमा करवाई गई है।

पंजी के स्कंभ क्रमांक 19 एवं 20 में अपील या पुनरीक्षण न्यायालय से कम की गई राशि का उल्लेख किया जाता है, जबकि पंजी के स्कंभ क्रमांक 21 से 24 में वितरित की गई राशियों के संबंध में उल्लेख होता है। पंजी के स्कंभ क्रमांक 25 में जेल अधिकारी को अर्थदंड वसूली की तिथि की सूचना भेजने का उल्लेख किया जाता है, पंजी के स्कंभ क्रमांक 26 में ऐसी राशि, जो अब वसूली योग्य न होना पाई गई है, उस संबंधी आदेश एवं आदेश की तिथि का उल्लेख करते हैं।

पंजी के स्कंभ क्रमांक 24 में, जिस व्यक्ति को भुगतान किया गया है या जिसे भुगतान वाउचर दिया गया है, उसकी रसीद ली जाती हैं। पीठासीन अधिकारी को नियम 581 मध्य प्रदेश नियम एवं आदेश (आपराधिक) के अंतर्गत ऐसी रसीद के नीचे स्कंभ क्रमांक 24 में ही प्रमाणीकरण के रूप में स्वयं के हस्ताक्षर भी करने चाहिए।

प्रत्येक न्यायालय के पीठासीन अधिकारी को मासिक निरीक्षण के समय इस पंजी के उक्त स्कंभ क्रमांक 1 से 26 में संबंधित स्कंभ में संबंधित प्रविष्टि, लिपिक द्वारा की जा रही है या नहीं, इसकी जांच करनी चाहिए एवं यदि ऐसा नहीं किया जा रहा हो, तो आवश्यक निर्देश देना चाहिए।

माह में निराकृत प्रकरणों को निरीक्षण के समय सामने रखना चाहिए, ताकि यह मिलान हो सके कि प्रकरणों में किये गये अर्थदंड, दिलवाये गये प्रतिकर, बंध पत्र एवं प्रतिभूति की जप्त राशि का उल्लेख अर्थदंड पंजी 'ए' में उचित रीति से किया है, या नहीं।

2. अर्थदंड पंजी – ''बी''– इस पंजी में अर्थदंड या अर्थदंड के रूप में वसूली योग्य प्रत्येक जमा राशि का उल्लेख किया जाता है।

इस पंजी में कुल 17 स्कंभ होते हैं। पंजी के स्कंभ क्रमांक 1 में तिथि, स्कंभ क्रमांक 2 में प्रारंभिक शेष या का उल्लेख करते हैं, जबकि स्कंभ क्रमांक 3 से 6 जमा राशि के बारे में होते हैं, स्कंभ क्रमांक 3 में प्रकरण क्रमांक तथा उसका वर्ष एवं निराकरण दिनांक, स्कंभ क्रमांक 4 में जिस व्यक्ति ने राशि जमा करवाई है, उसका नाम, स्कंभ क्रमांक 5 में राशि एवं स्कंभ क्रमांक 6 में उस दिन के कुल जमा के योग का उल्लेख करते हैं, जबकि स्कंभ क्रमांक 7 में स्कंभ क्रमांक 2 से 6 का योग लिखते हैं।

स्कंभ क्रमांक 8 से 15 जमा राशि के व्यय के विषय में होते हैं। स्कंभ क्रमांक 8 में प्रकरण क्रमांक, उसका वर्ष एवं निराकरण दिनांक, स्कंभ क्रमांक 9 एवं 10 में कोषालय के जिस शीर्ष में राशि जमा की गई, उसका उल्लेख, स्कंभ क्रमांक 11 में संबंधित अधिनियम जिसमें अर्थदंड किया गया, उसका उल्लेख, स्कंभ क्रमांक 12 में यदि किसी स्थानीय निकाय को अर्थदंड लौटाया हो, तो उसका उल्लेख एवं स्कंभ क्रमांक 13 में रेल प्रशासन को भुगतान किया गया हो, तो उसका उल्लेख करते हैं। स्कंभ क्रमांक 14 में स्कंभ क्रमांक 9 से 13 के कुल व्यय का योग लिखते हैं, जबकि स्कंभ क्रमांक 15 में स्कंभ क्रमांक 7 की राशि में से स्कंभ क्रमांक 14 की राशि घटाने पर अवशेष राशि का उल्लेख करते हैं। स्कंभ क्रमांक 16 में पीठासीन अधिकारी के हस्ताक्षर करवाये जाते हैं।

नियम 583 मध्य प्रदेश नियम एवं आदेश (आपराधिक) के अनुसार पीठासीन अधिकारी को प्रतिदिन अर्थदंड पंजियों की जांच करनी चाहिए एवं प्रतिदिन की प्रविष्ठियों पर लघु हस्ताक्षर करने चाहिए।

मासिक निरीक्षण के समय पीठासीन अधिकारी को धन प्राप्ती की रसीद पुस्तिका, जो कि नियम 590 मध्य प्रदेश नियम एवं आदेश (आपराधिक) के अनुसार रखी जाती है, उसे सामने रखना चाहिए एवं यह जांच करना चाहिए कि धन प्राप्ती की रसीद में जितनी धन राशि दर्शायी गई है, उतनी अर्थ दंड पंजी 'बी' में उल्लेखित है या नहीं एवं साथ ही अर्थ दंड पंजी 'ए' के स्कंभ क्रमांक 11 से 13, 15 से 18 में भी ''जमा'' की आवश्यक प्रविष्टियां की गई हैं, या नहीं।

3. धन प्राप्ती की रसीद पुस्तकः– नियम 590 मध्य प्रदेश नियम एवं आदेश (आपराधिक) के अनुसार फौजदारी प्रस्तुतकार जो भी धन राशि प्राप्त करता है, उसकी रसीद जमाकर्ता को देता है। यह रसीद दो प्रति में बनाई जाती है। मूल प्रति जमा कर्ता को दी जाती है एवं कार्बन प्रति अभिलेख में रखी जाती है। इस रसीद पुस्तक में राशि शब्दों व अंकों, दोनों में लिखी जानी चाहिए।

पीठासीन अधिकारी को यह सर्वोत्तम प्रयास करना चाहिए कि शब्दों या अंकों में से एक राशि वे स्वयं अपने हाथ से लिखें, ताकि जितनी राशि जमा की गई है, उतनी राशि की ही रसीद संबंधित को मिले, यह सुनिश्चत हो सके व इसमें गड़बड़ी की संभावना समाप्त हो जाये।

धन प्राप्ति रसीद पुस्तक में प्रकरण क्रमांक, जमा कर्ता का पूर्ण विवरण, संबंधित अधिनियम एवं उसकी धारा अंकित करवाना चाहिए।

4. चालान बुक :– किसी भी दांडिक न्यायालय में जमा राशि जैसे अर्थदंड, जमानत एवं बंधपत्र की जप्ती राशि आदि चालान के द्वारा कोषालय या बैंक में अगले ही दिन जमा करवाई जाती है।

पीठासीन अधिकारी को मासिक निरीक्षण के समय अर्थदंड पंजी 'ए', अर्थ दंड पंजी 'बी', धन प्राप्ति की रसीद पुस्तक व चालान बुक सामने रखकर यह जांच करना चाहिए कि क्या किये गये अर्थदंड, प्रतिकर आदि की प्रविष्टि अर्थदंड पंजी ए में एवं जमा अर्थदंड आदि की प्रविष्टि अर्थदंड पंजी 'बी' में नियमानुसार की गई है। धन प्राप्ती रसीद बुक से जमा का मिलान एवं जमा राशि का चालान बुक से बैंक या कोषालय में जमा राशि का मिलान करना चाहिए एवं यह देखना चाहिए कि समय पर राशि कोषालय या बैंक में जमा करवाई है, या नहीं।

संबंधित कोषालय अधिकारी या बैंक के शाखा प्रबंधक से जमा राशि की पुष्टि भी उचित अंतराल में करवाते रहना चाहिए।

यदि पीठासीन अधिकारी मासिक निरीक्षण के समय उक्त चारों पंजियों का सावधानी से निरीक्षण करें एवं इसके संबंध में सतर्क रहें, तो अर्थदंड एवं उसके जमा करवाने में होने वाली अनियमितताओं से बचा जा सकता है।

मासिक निरीक्षण के समय पीठासीन अधिकारी को यह भी देखना चाहिए कि अर्थदंड पंजी ''ए'' अर्थदंड पंजी ''बी'' धन प्राप्ती की रसीद पुस्तक एवं चालान बुक की जांच न्यायालय अधीक्षक या न्यायालय उप–अधीक्षक से करवाई गई है या नहीं एवं यदि ऐसा नहीं किया गया है, तो इस विषय में आवश्यक निर्देश देना चाहिए।

5. न्यायिक दैनन्दिनी या ज्यूडिशियल डायरी :– इसे बोर्ड डायरी भी कहा जाता है। इस डायरी में स्कंभ क्रमांक 1 में प्रकरण क्रमांक, उसका वर्ष, पक्षकारों के संक्षिप्त नाम लिखते हैं, जबकि स्कंभ क्रमांक 2 में किसी प्रकरण में साक्ष्य अंकित करने में लगा समय, अंतिम तर्क सुनने में लगा समय एवं अन्य महत्वपूर्ण कार्यवाहियों में लगा समय अंकित किया जाता है। पंजी के स्कंभ क्रमांक 3 में प्रकरण में उस दिन हुई प्रगति या कार्यवाही एवं आगामी तिथि, यदि लगाई हो, तो अंकित की जाती है।

पीठासीन अधिकारी को मासिक निरीक्षण के समय यह देखना चाहिए कि इस पंजी में किसी दिन विशेष को नियत सभी प्रकरण अंकित किये गये हैं, या नहीं। कोई भी प्रकरण इस पंजी में अंकित होने से बचना नहीं चाहिए। स्कंभ क्रमांक 2 में उक्त अनुसार साक्ष्य अंकित करने, अंतिम तर्क सुनने आदि में लगा समय दर्ज किया है या नहीं, यह भी देखना चाहिए।

नियम 10 मध्य प्रदेश नियम एवं आदेश (आपराधिक) के अनुसार यह पंजी रखी गई है, या नहीं, देखना चाहिए। इस डायरी में आगे नियत प्रकरणों को चढ़ाया गया है या नहीं, यह भी देखना चाहिए।

बोर्ड डायरी किसी भी न्यायालय के द्वारा किसी दिन विशेष में किये गये कार्य का दर्पण होती है, अतः इस डायरी को बहुत सावधानी से एवं शुद्ध रूप से संधारित करवाया जाना चाहिए।

इस डायरी में पीठासीन अधिकारी को पीठ पर आसीन होने एवं पीठ से उठने का समय अंकित करना चाहिए एवं प्रतिदिन इस पंजी पर अपने हस्ताक्षर करने चाहिए।

मासिक निरीक्षण के समय इस पंजी का सावधानी से परीक्षण किया जाना चाहिए। आगे नियत प्रकरणों का एक बंडल लेकर यह मिलान करना चाहिए कि क्या उसमें रखे सभी प्रकरणों का उल्लेख बोर्ड डायरी में उस दिनांक में किया है, या नहीं।

बोर्ड डायरी में जो प्रकरण निराकृत दिखाए गये हैं, वे वास्तव में निराकृत हुए हैं या नहीं, इसकी भी जांच करना चाहिए।

बोर्ड डायरी का गंभीरता से निरीक्षण करने से प्रकरणों के गायब होने, गुमने आदि की संभावनाओं को समाप्त किया जा सकता है।

6. विविध कार्यवाहियों का रजिस्टर :– इसे एम.जे.सी. रजिस्टर भी कहते हैं। इसमें नियम 575 मध्य प्रदेश नियम एवं आदेश (आपराधिक) में उल्लेखित प्रकरणों की प्रविष्ठि की जाती है, जैसे धारा 125 दं.प्र.सं. के भरण पोषण के प्रकरण, उनकी वसूली के प्रकरण, धारा 446 दं.प्र.सं. के प्रकरण, धारा 82, 83 दं.प्र.सं. के प्रकरण, धारा 350 दं.प्र.सं. के प्रकरण, धारा 250 दं.प्र.सं. के प्रकरण, धारा 12 घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम 2005 का आवेदन आदि दर्ज किये जाते हैं।

इस पंजी में कुल 10 स्कंभ होते हैं। स्कंभ क्रमांक 1 में क्रमांक संख्या, स्कंभ क्रमांक 2 में तिथि, स्कंभ क्रमांक 3 में आवेदक का नाम एवं विवरण, स्कंभ क्रमांक 4 में अनावेदक का नाम एवं विवरण, स्कंभ क्रमांक 5 में आवेदन की विशिष्टयाँ, स्कंभ क्रमांक 6 में संबंधित अधिनियम एवं उसकी धारा

जिसमें आवेदन किया गया है, स्कंभ क्रमांक 7 में सुनवाई की तिथि, स्कंभ क्रमांक 8 में अन्तिम आदेश का सारांश एवं स्कंभ क्रमांक 9 में अंतिम आदेश की तिथि का उल्लेख करते है, जबकि स्कंभ क्रमांक 10 रिमार्क का होता है।

मासिक निरीक्षण में पीठासीन अधिकारी को यह देखना चाहिए कि पंजी के उक्त स्कंभ में उचित रीति से प्रविष्ठि की गई है, या नहीं। निराकृत प्रकरणों का उल्लेख स्कंभ क्रमांक 8 एवं 9 में किया गया है, या नहीं।

7. प्रारंभिक प्रकरणों का रजिस्टर :– यह पंजी सत्र न्यायालय एवं अतिरिक्त सत्र न्यायालय के अलावा अन्य सभी दांडिक न्यायालयों में रखी जाती थी, परंतु वर्तमान में केन्द्रीय पंजीकरण या सेन्ट्रल रजिस्ट्रेशन के कारण जिला स्तर पर सभी नियमित आपराधिक प्रकरणों का पंजीकरण इसी पंजी में मुख्य न्यायिक मजिस्ट्रेट के न्यायालय में होता है एवं यह पंजी मुख्य न्यायिक मजिस्ट्रेट के न्यायालय में रखी जाती है।

तहसील स्तर पर वरिष्ठतम मजिस्ट्रेट के न्यायालय में यह पंजी रखी जाती है एवं वहाँ सभी नियमित आपराधिक प्रकरणों का पंजीकरण होता है।

सभी मूल दाण्डिक प्रकरणों का उल्लेख, चाहे वे पुलिस चालान के रूप में पेश हुये हों, परिवाद के रूप में पंजीबद्ध हुये हों, या अंतरित होकर प्राप्त हुये हों, इस पंजी में करते हैं।

इस पंजी में ग्यारह स्कंभ होते हैं। स्कंभ क्रमांक 1 में क्रम संख्या, स्कंभ क्रमांक 2 में प्रकरण संस्थित होने का दिनांक, स्कंभ क्रमांक 3 में परिवादी का नाम, पिता का नाम, जाति, साथ ही एस.सी., एस.टी., ओ.बी.सी. के बारे में उल्लेख, व्यवसाय एवं निवास तथा स्कंभ क्रमांक 4 में अभियुक्त/अभियुक्तगणों का नाम, पिता का नाम, साथ ही एस.सी., एस.टी., ओ.बी.सी. के बारे में उल्लेख, व्यवसाय एवं निवास एवं स्कंभ क्रमांक 5 में भारतीय दण्ड संहिता या अन्य विधि का नाम एवं जिस धारा का अभियुक्त पर आरोप है, उसका उल्लेख किया जाता है।

यदि प्रकरण अंतरित हो जाता है तो उस संबंध में उल्लेख, पंजी के स्कंभ क्रमांक 6 में किया जाता है। पंजी के स्कंभ क्रमांक 7 में प्रकरण में पारित अंतिम आदेश की तिथि जबकि स्कंभ क्रमांक 8 में आदेश, दण्ड या अर्थदण्ड आदि का उल्लेख करते हैं। पंजी के स्कंभ क्रमांक 9 में अपील या रिवीजन न्यायालय द्वारा पारित आदेश एवं उसकी तिथि का उल्लेख करते हैं।

पंजी के स्कंभ क्रमांक 10 में प्रकरण की मालखाना वस्तु का क्रमांक एवं उसके निराकरण के आदेश का उल्लेख करते हैं, जबकि पंजी का स्कंभ क्रमांक 11 टिप्पणी का स्कंभ होता है।

प्रत्येक दण्ड न्यायालय के पीठासीन अधिकारी को मासिक निरीक्षण के समय यह देखना चाहिए कि क्या इस पंजी के उक्त सभी स्कंभों में संबंधित तथ्यों का उल्लेख किया गया है, या नहीं । किसी माह विशेष में निराकृत प्रकरणों का बंडल सामने रखकर यह देखना चाहिए कि प्रकरण के अंतिम आदेश की तिथि, अंतिम आदेश, मालखाना क्रमांक एवं मालखाने का निराकरण आदेश स्पष्ट रूप से लिखा है, या नहीं । प्रायः यह देखा जाता है कि प्रकरण निराकृत हो जाता है, परंतु निराकरण का उल्लेख पंजी

में या तो नहीं किया जाता है या अधूरा किया जाता है। साथ ही संपत्ति के निराकरण के आदेश का उल्लेख पंजी के स्कंभ क्रमांक 10 में नहीं किया जाता है। परिवादी एवं अभियुक्त का केवल नाम लिख दिया जाता है, उनके पिता का नाम, जाति, व्यवसाय एवं पता नहीं लिखा जाता है, इसे लिखवाया जाना आवश्यक है।

पंजी के स्कंभ क्रमांक 10 में संपत्ति के निराकरण के संबंध में स्पष्ट उल्लेख करवा लेने से अनेक अवसर पर मालखाने में संपत्ति के निराकरण में सहयोग मिलता है। चूँकि इस पंजी में जिला स्तर पर सभी मजिस्ट्रेटों के न्यायालयों के प्रकरणों का केन्द्रीय पंजीकरण होता है, अतः संबंधित मजिस्ट्रेट को निरीक्षण के समय यह देखना चाहिए कि क्या उनके न्यायालयों से संबंधित प्रकरणों के संस्थापन एवं निराकरण की प्रविष्टियाँ विधिवत् की गई हैं, या नहीं एवं यदि ऐसा नहीं किया है, तो पूर्ति करवाई जानी चाहिए।

8. आदेशिका शुल्क एवं आहार व्यय की पंजी – यह रजिस्टर समस्त दण्ड न्यायालयों में संधारित किया जाता है। नियम 592 मध्य प्रदेश नियम एवं आदेश (आपराधिक) के अनुसार इस पंजी में, आहूत किये गये प्रत्येक साक्षी एवं उसके आहार व्यय की प्रविष्टी की जाती है एवं यह पंजी राशि सहित, उसी दिन नाजिर को भेजी जाती है, जिस दिन राशि जमा होती है। नाजीर से राशि की प्राप्ति के हस्ताक्षर पंजी के स्कंभ क्रमांक 9 में लिये जाते हैं।

इस पंजी में कुल 10 स्कंभ होते हैं। स्कंभ क्रमांक 1 में आदेशिका का क्रमांक, स्कंभ क्रमांक 2 में प्रकरण क्रमांक एवं उसका वर्ष, स्कंभ क्रमांक 3 में आदेशिका शुल्क देने की तिथि, स्कंभ क्रमांक 4 में जिस व्यक्ति से राशि जमा करवायी गयी है, उसका पूरा नाम एवं पता, स्कंभ क्रमांक 5 में जिस व्यक्ति को समन जाना है उसका पूर्ण विवरण, स्कंभ क्रमांक 6 में प्रोसेस का विवरण, स्कंभ क्रमांक 7 में प्रोसेस फीस की राशि, स्कंभ क्रमांक 8 में साक्षी के आहार व्यय, आवागमन व्यय, जो जमा करवाये गये हैं एवं नाजिर को भेजे गये हैं, उनका उल्लेख करते हैं, जबकि स्कंभ क्रमांक 10 में आदेशिका शुल्क को पूरे या आंशिक रूप से कम करने संबंधी आदेश का उल्लेख किया जाता है।

निरीक्षण के समय पीठासीन अधिकारी को यह देखना चाहिए कि जिस व्यक्ति से साक्षी का आहार व्यय लिया गया है, उसे रसीद दी गई या नहीं एवं जितनी राशि की रसीद दी गयी है, उतनी ही राशि इस पंजी के स्कंभ क्रमांक 8 में अंकित की गई या नहीं। यह भी देखा जाना चाहिये की उतनी ही राशि नाजीर को भेजकर नाजीर की रसीद पंजी के स्कंभ क्रमांक 9 में ली गयी है, या नहीं।

इस पंजी का सतर्कता पूर्वक निरीक्षण करने से साक्षीगण के आहार व्यय संबंधी गड़बड़ियाँ रोकी जा सकती हैं।

9. छोड़े गये विक्षिप्तों की पंजी :– नियम 584 के अनुसार धारा 330 द.प्र.स. के अंतर्गत प्रतिभूति पर स्वतंत्र किये गये सभी विक्षिप्त व्यक्तियों का उल्लेख इस पंजी में किया जाता है।

10. निरीक्षण पुस्तिका :– प्रत्येक दण्ड न्यायालय को यह पंजी संधारित करनी होती है। यदि कोई अभिभाषक किसी अभिलेख का निरीक्षण करता है, तो उसका उल्लेख इस पंजी में किया जाता है।

निम्नलिखित पंजियाँ केवल सत्र न्यायालय में रखी जाती हैं :–

11. सत्र विचारणों का रजिस्टर :– यह रजिस्टर केवल सत्र न्यायालय के द्वारा रखा जाता है। धारा 209 दण्ड प्रक्रिया संहिता के अंतर्गत सत्र न्यायालय को उपार्पित होकर प्राप्त सभी प्रकरणों का उल्लेख इस पंजी में किया जाता है।

इस पंजी में कुल 18 स्कंभ होते हैं। पंजी के स्कंभ क्रमांक 1 में क्रमांक संख्या, पंजी के स्कंभ क्रमांक 2 में उपार्पण की तिथि या अंतरण पर प्रकरण प्राप्त होने की तिथि, स्कंभ क्रमांक 3 में मजिस्ट्रेट के न्यायालय का दाण्डिक प्रकरण क्रमांक, मजिस्ट्रेट का नाम व जिले का नाम, स्कंभ क्रमांक 4 में अभियुक्त का नाम, पिता का नाम, जाति, उम्र एवं निवास स्थान, स्कंभ क्रमांक 5 में अभियुक्त पर जिन अपराधों का आरोप है, उनकी धाराएँ एवं भारतीय दण्ड संहिता या अन्य विधि का नाम, स्कंभ क्रमांक 6 में विचारण के लिए नियत तिथि, स्कंभ क्रमांक 7 में प्रकरण के निराकरण की तिथि, स्कंभ क्रमांक 8 में प्रकरण कितने दिनों में निराकृत हुआ, उसका उल्लेख, स्कंभ क्रमांक 9 में अभियुक्त जिन अपराधों में दोषसिद्ध या दोषमुक्त हुआ, उसका उल्लेख, स्कंभ क्रमांक 10 में निष्कर्ष एवं दण्ड एवं अर्थदण्ड का उल्लेख करते हैं।

पंजी के स्कंभ क्रमांक 10 में जितने अभियुक्त प्रकरण में मरे, फरार हुये, अंतरित हुये उनका उल्लेख, जबकि पंजी के स्कंभ क्रमांक 17 में प्रकरण में परिक्षित साक्षीगण की संख्या का उल्लेख करते हैं।

पंजी के स्कंभ क्रमांक 12 से 16 अनावश्यक प्रतीत होते हैं।

प्रत्येक सत्र न्यायाधीश को इस पंजी का सावधानी पूर्वक निरीक्षण करना चाहिए एवं उसके संबंधित स्कंभ में विधिवत् प्रविष्टियाँ की गई है, या नहीं इसकी भी जाँच करनी चाहिए।

चूँकि यह पंजी सत्र न्यायालय में रहती है, अतः अतिरिक्त सत्र न्यायालय को निरीक्षण के समय यह देखना चाहिए कि क्या संबंधित लिपिक ने प्रकरण के निराकरण के बाद सत्र न्यायालय में जाकर प्रकरण के निराकरण संबंधी आवश्यक प्रविष्टियाँ की है, या नहीं एवं यदि नहीं की हैं, तो पालन करवाना चाहिए।

12. अपीलों की पंजी :– यह पंजी अपीलीय शक्ति का प्रयोग करने वाले समस्त दाण्डिक न्यायालयों के द्वारा रखी जाती है। इस पंजी में कुल 15 स्कंभ होते हैं।

स्कंभ क्रमांक 1 में क्रमांक, स्कंभ क्रमांक 2 में अपील संस्थित होने की तिथि, स्कंभ क्रमांक 3 में अपीलार्थी का नाम, पिता का नाम, जाति या निवास स्थान, जिस मजिस्ट्रेट का आदेश है, उसका नाम स्कंभ क्रमांक 4 में, स्कंभ क्रमांक 5 में मजिस्ट्रेट के न्यायालय का प्रकरण क्रमांक, वर्ष एवं निराकरण की तिथि, जिस आदेश के विरूद्ध अपील की गयी है उसका सार, स्कंभ क्रमांक 6 में, स्कंभ क्रमांक 7 में अपील के निराकरण की तिथि, स्कंभ क्रमांक 8 में अपील के निराकरण में लगे दिन लिखते हैं। यदि अपील निराकरण अपीलार्थी की मृत्यु, फरारी या अंतरण के कारण हुआ हो, तो उसका उल्लेख स्कंभ क्रमांक 9 में करते हैं। यदि अपील संक्षिप्त रूप से खारिज कर दी जाती है, तो उसका उल्लेख

पंजी के स्कंभ क्रमांक 10 में करते हैं। यदि अपील खारिज की जाती है या निष्कर्ष परिवर्तित कर दिया जाता है एवं दण्ड यथावत् रखा जाता है, तो उसका उल्लेख पंजी के स्कंभ क्रमांक 11 में करते हैं। यदि दण्ड या आदेश परिवर्तित किया जाता है या उसके स्वरूप में परिवर्तन किया जाता है, तो उसका उल्लेख स्कंभ क्रमांक 12 में करते है। यदि दण्ड को परिवर्तित करके अभियुक्त को दोषमुक्त या उन्मोचित किया जाता है, तो उसका उल्लेख पंजी के स्कंभ क्रमांक 13 में करते हैं।

संबंधित अपील न्यायालय को माह में निराकृत सभी अपीलों को सामने रखकर यह देखना चाहिए कि क्या पंजी के सभी स्कंभों में आवश्यक प्रविष्टियाँ की गई है, या नहीं।

नियम 586 के अनुसार संस्थापन दिनांक हमेशा प्रारंभिक ही रहता है, भले ही अपील अंतरित की गई हो।

13. पुनरीक्षण की पंजी :– यह पंजी पुनरीक्षण की शक्ति का प्रयोग करने वाले समस्त दण्ड न्यायालयों के द्वारा संधारित की जाती है। इस पंजी में कुल 17 स्कंभ होते हैं। संबंधित न्यायालय को निरीक्षण के समय यह देखना चाहिए कि पंजी के सभी स्कंभों में आवश्यक प्रविष्ठियाँ की गई है, या नहीं।

प्रकरणों का अभिलेख

मासिक निरीक्षण में पीठासीन अधिकारी को यह देखना चाहिए कि क्या प्रकरणों का अभिलेख उचित रीति से रखा गया है। सत्र न्यायालय में अभिलेख नियम 442 एवं 443 मध्य प्रदेश नियम एवं आदेश (आपराधिक) के अनुसार व्यवस्थित करना होता है। मजिस्ट्रेट के न्यायालय में वारंट प्रकरणों में नियम 445 एवं 446, समन प्रकरणों में नियम 448 एवं 449, जबकि संक्षिप्त विचारण प्रकरणों में नियम 451 के अनुसार अभिलेख की व्यवस्था करनी होती है। प्रत्येक पीठासीन अधिकारी को मासिक निरीक्षण के समय यह देखना चाहिए कि क्या उक्त नियमों के अनुसार अभिलेख में प्रपत्र रखे गये हैं। नमूने के रूप में कुछ लंबित एवं निराकृत प्रकरण देखे जा सकते हैं।

अभिलेख का समय पर प्रतिलिपि शाखा में भेजा जाना

प्रत्येक पीठासीन अधिकारी को मासिक निरीक्षण के समय यह देखना चाहिए कि प्रतिलिपि शाखा में अभिलेख अनुचित विलंब के बिना भिजवाये जाते हैं या नहीं । ऐसी परिपाटी विकसित की जानी चाहिए कि प्रतिलिपि शाखा से आवेदन प्राप्त होने के बाद या तो उसी दिन या अगले दिन अभिलेख प्रतिलिपि शाखा में भिजवा दिया जाये। इससे पक्षकारों को समय पर प्रतिलिपियाँ मिल जाती हैं।

पीठासीन अधिकारी एक पंजी भी संधारित करवा सकते हैं, जिसमें निम्नलिखित स्कंभ रखे जा सकते हैं :–

क्रम संख्या, आवेदन पत्र क्रमांक, आवेदन न्यायालय में प्राप्त होने की तिथि एवं समय, आवेदन अभिलेख सहित या आवश्यक आपत्ति के साथ भेजने की तिथि एवं समय तथा टिप्पणी।

यदि उक्त पंजी संधारित की जाती है, तो उससे यह पता लग सकेगा कि कोई आवेदन किस तिथि एवं समय पर प्राप्त हुआ एवं उसका अभिलेख किस तिथि एवं समय पर भिजवाया गया।

लिपिक एवं प्रतिलिपिकार को कार्यालयीन आदेश के द्वारा हस्ताक्षर के नीचे तिथि एवं समय अंकित करने के निर्देश दिये जा सकते हैं।

ये तथ्य दांडिक एवं व्यवहार दोनों ही शाखाओं में निरीक्षण के समय देखने चाहिए एवं उक्त दोनों शाखाओं की संयुक्त पंजी भी बनवायी जा सकती है।

अभिलेखों का जिला अभिलेखागार में भेजा जाना

प्रत्येक न्यायालय के पीठासीन अधिकारी को मासिक निरीक्षण के समय यह देखना चाहिए कि गत माह में निराकृत प्रकरणों का अभिलेख तैयार करवा कर अभिलेखागार में जमा करवा दिया है या नहीं। नियम 488 मध्य प्रदेश नियम एवं आदेश (आपराधिक) के अनुसार माह की 3 तारीख को या सेशन न्यायाधीश द्वारा नियत अन्य सुविधापूर्ण तिथि तक न्यायालय का गत माह का निर्णित प्रकरणों का अभिलेख अभिलेखागार में जमा होने की सूचना सांख्यिकीय लेखक के पास भेजी जाना चाहिए।

पीठासीन अधिकारी को निरीक्षण के समय इस तथ्य की जांच करना चाहिए एवं यदि रिकार्ड उक्त समय पर जमा नहीं करवाया गया है, तो इस संबंध में भविष्य के लिए आवश्यक निर्देश देना चाहिए।

नियम 340 म.प्र. सिविल न्यायालय नियम, 1961 के अनुसार विभिन्न प्रकार के निराकृत सिविल प्रकरणों का अभिलेख तैयार करके निर्धारित सूचियों के साथ माह की 5 तारीख को अभिलेखागार में भेज दिया जाना चाहिए। तहसील स्तर के न्यायालय के लिए जिला न्यायाधीश उच्च न्यायालय की पूर्व स्वीकृति से इस नियम में शिथिलता देकर 20 तारीख नियत कर सकते हैं।

इस तरह निराकृत प्रकरणों का अभिलेख समय पर जमा होने का तथ्य दांडिक एवं सिविल दोनों शाखाओं के संबंध में देखना चाहिए।

प्रायः यह देखा जाता है कि दोनों ही शाखाओं में कई पुराने रजिस्टर, लूज पेपर्स, पुराने फार्मस, आदि अलमारियों के उपर रखे रहते हैं एवं उन पर धूल जमा हो जाती है। निरीक्षण के समय ऐसे पुराने रजिस्टर जिनका अब शाखा में कोई काम नहीं है, तैयार करवाकर रिकार्ड रूम में जमा करवाने के निर्देश दिये जाने चाहिए, ताकि न्यायालय में अनावश्यक अभिलेख न रहे व आवश्यक अभिलेख रखने की जगह बन सके।

नियत पत्रक, विवरण पत्र एवं भौतिक सत्यापन के विषय में

प्रत्येक पीठासीन अधिकारी को मासिक निरीक्षण के समय यह देखना चाहिए कि क्या दांडिक शाखा एवं व्यवहार शाखा नियत पत्रक एवं विवरण पत्र पीरियोडिकल रिर्टन एवं स्टेटमेन्ट के समय पर भेजे जाते हैं या नहीं।

किसी भी स्थान पर पदस्थ होने के बाद कुछ ही दिनों के भीतर प्रत्येक पीठासीन अधिकारी को एक बार दोनों ही शाखाओं के अभिलेखों का भौतिक सत्यापन करना चाहिए एवं दोनों ही शाखाओं के लंबित प्रकरणों की एक वर्षवार सूची अपने निर्देशन में बनवानी चाहिए। ऐसा करने से न्यायालय में वास्तव में प्रत्येक प्रकार के कितने प्रकरण लंबित हैं इसका सही आंकड़ा आ सकेगा एवं यही संख्या विवरण पत्र या स्टेटमेन्ट में भी दर्शाई जानी चाहिए। भौतिक सत्यापन करने से पीठासीन अधिकारी को यह भी पता लग जाएगा कि उनके न्यायालय में किस वर्ष के एवं किस प्रकार के कितने प्रकरण लंबित हैं। अभिलेखों के भौतिक सत्यापन से प्रकरणों का गायब होना, गुमना आदि पर भी प्रभावी नियंत्रण हो सकेगा।

भौतिक सत्यापन में दोनों शाखाओं में कई पुराने निराकृत प्रकरण, अपील न्यायालय से या पुनरीक्षण न्यायालय से लौटे प्रकरण भी मिलेंगे, जिनके बारे में भी आवश्यक निर्देश निरीक्षण में दिये जाने चाहिए।

प्रत्येक पीठासीन अधिकारी को दोनों ही शाखाओं से भेजे जाने वाले मासिक, अर्धवार्षिक, एवं वार्षिक विवरण पत्रक एवं नियत कालीन पत्रकों की एक सूची एवं उन्हें किस तिथि तक भिजवा देना चाहिए, इसकी जानकारी अपने टेबल ग्लास के नीचे व दोनों ही शाखाओं के कर्मचारी गण के टेबल ग्लास के नीचे भी रखवाना चाहिए, ताकि उसे देखते ही यह पता लग जाये कि कौन–कौन से विवरण पत्रक कब तक भेज देना चाहिए।

मासिक निरीक्षण में समय पर विवरण पत्रक एवं नियत कालीन पत्रक भेजे जाने संबंधी परीक्षण करना चाहिए।

सिविल शाखा

शाखा की पंजियाँ

इस शाखा में पदस्थ लिपिक को सिविल रीडर कहा जाता है। प्रत्येक न्यायालय के पीठासीन अधिकारी को शाखा के निरीक्षण के समय सिविल रीडर द्वारा रखी जाने वाली पंजियों का निरीक्षण करना चाहिए। इस शाखा में नियम 369 म.प्र. सिविल न्यायालय नियम 1961 के अनुसार पंजियाँ रखी जाती हैं। प्रत्येक न्यायालय में नियम 369 में उल्लेखित पंजियों की एक सूची बनवाकर उसे सिविल शाखा में किसी आसानी से देखे जा सकने वाले स्थान पर लगवा देना चाहिए एवं पीठासीन अधिकारी को भी सूची की एक प्रति अपने पास रखना चाहिए, ताकि मासिक निरीक्षण के समय उसका उपयोग किया जा सके।

पीठासीन अधिकारी को निम्नलिखित पंजियों का निरीक्षण करना चाहिएः–

1. सिविल वादों का रजिस्टर भाग ''ए'' :– इस पंजी में अचल संपत्ति संबंधी वाद, घोषणा, स्थाई निषेधाज्ञा, विभाजन, अनुबंध पालन, निष्कासन आदि प्रविष्ट किये जाते हैं।

2. सिविल वादों का रजिस्टर भाग ''बी'' :– इस पंजी में चल संपत्ति एवं धन वसूली संबंधी वाद प्रविष्ट किये जाते हैं।

पीठासीन अधिकारी को मासिक निरीक्षण में यह देखना चाहिए कि इन दोनों ही पंजियों या रजिस्टर के आवश्यक स्कंभों की पूर्ति की गई है या नहीं।

इन पंजियों में कुल 25 स्कंभ होते हैं। पंजी के स्कंभ क्रमांक 1 में वाद प्रस्तुत करने की तिथि एवं जिस तहसील से वाद संबंधित है, उसका नाम लिखा जाता है। स्कंभ क्रमांक 2 में प्रकरण क्रमांक, स्कंभ क्रमांक 3 में वादी का नाम, स्कंभ क्रमांक 4 में वादी का अन्य विवरण, एवं स्कंभ क्रमांक 5 में वादी का निवास या पता जबकि स्कंभ क्रमांक 6 में प्रतिवादी का नाम, स्कंभ क्रमांक 7 में प्रतिवादी का विवरण, स्कंभ क्रमांक 8 में प्रतिवादी का पता, स्कंभ क्रमांक 9 में दावे की विशिष्टियां, स्कंभ क्रमांक 10 में वाद का मूल्य, स्कंभ क्रमांक 11 में वाद कारण उत्पन्न होने का समय, स्कंभ क्रमांक 12 में पक्षकारों की उपस्थिति की तिथि अंकित की जाती है।

पंजी के स्कंभ क्रमांक 1 से 12 की प्रविष्टियाँ वाद पंजीबद्ध होते ही कर ली जानी चाहिए। पंजी के स्कंभ क्रमांक 13 से 15 की प्रविष्टियाँ प्रकरण का निर्णय हो जाने पर करते हैं, स्कंभ क्रमांक 13 में निर्णय की तिथि, स्कंभ क्रमांक 14 में किसके पक्ष में निर्णय दिया गया है, जबकि स्कंभ क्रमांक 15 में क्या निर्णय दिया गया है इसका उल्लेख करते हैं। पंजी के स्कंभ क्रमांक 16 एवं 17 की प्रविष्टियाँ अपील का निराकरण हो जाने के बाद की जाती हैं।

पंजी के स्कंभ क्रमांक 18 से 22 की प्रविष्टियाँ निष्पादन के विषय में की जाती हैं, जबकि पंजी के स्कंभ क्रमांक 23 से 25 की प्रविष्टियाँ निष्पादन लौटाने के बारे में की जाती हैं।

पीठासीन अधिकारी को निरीक्षण के समय यह देखना चाहिए कि ये पंजियाँ नियम 371 के अनुसार रखी जा रही है या नहीं।

3. विविध न्यायिक प्रकरणों का रजिस्टर :– इस रजिस्टर में नियम 372 में उल्लेखित 51 प्रकार के प्रकरण पंजीबद्ध किये जाते हैं।

नियम 372 (51) म.प्र. सिविल न्यायालय नियम 1961 के अनुसार ऐसे प्रार्थना पत्र जिनके पंजीबद्ध करने के बारे में अन्य कोई उपबंध नहीं है वे भी इस पंजी में प्रविष्ट किये जा सकते हैं।

इस पंजी में कुल 10 स्कंभ होते हैं। स्कंभ क्रमांक 1 में क्रमांक संख्या, स्कंभ क्रमांक 2 में आवेदन की तिथि, स्कंभ क्रमांक 3 में आवेदक का नाम एवं विवरण, स्कंभ क्रमांक 4 में अनावेदक का नाम एवं विवरण, स्कंभ क्रमांक 5 में आवेदन की विशिष्टयाँ, स्कंभ क्रमांक 6 में जिस अधिनियम में वह आवेदन पेश हुआ है, उसका नाम एवं उसकी धारा एवं स्कंभ क्रमांक 7 में सुनवाई की तिथि अंकित करते हैं।

स्कंभ क्रमांक 1 से 7 की प्रविष्टियाँ आवेदन पंजीबद्ध होते ही कर लेना चाहिए। स्कंभ क्रमांक 8 एवं 9 की प्रविष्टि प्रकरण के निराकरण के समय की जाती है, जबकि स्कंभ क्रमांक 10 में मूलवाद का नम्बर लिखते हैं।

पीठासीन अधिकारी को मासिक निरीक्षण के समय यह देखना चाहिए कि क्या इस पंजी के संबंधित स्कंभों में आवश्यक प्रविष्टियाँ की गई है या नहीं।

4. भारतीय उत्तराधिकार अधिनियम के अधीन प्रार्थना पत्रों का रजिस्टर :– धारा 192, 276, 278, 372 भारतीय उत्तराधिकार अधिनियम के प्रार्थना पत्र इस पंजी में पंजीबद्ध किये जाते हैं। पीठासीन अधिकारी को मासिक निरीक्षण के समय यह देखना चाहिए कि क्या पंजी के संबंधित स्कंभ में आवश्यक प्रविष्टियाँ की गई हैं।

5. आदेशिका शुल्क एवं आदेशिकाओं का रजिस्टर :– यह पंजी नियम 377 म.प्र. सिविल न्यायालय नियम, 1961, में दिये निर्देशों के अनुसार संधारित करना चाहिए। जिन साक्षियों के लिए आदेशिका जारी करनी होती है उनका भी उल्लेख इस पंजी में करते हैं।

पीठासीन अधिकारी को मासिक निरीक्षण में यह भी देखना चाहिए कि क्या धन प्राप्ति की पुस्तक में जितना भोजन व्यय जमा हुआ है, वह इस पंजी के संबंधित स्कंभ में चढ़ाकर आदेशिका के साथ नाजिर को भेजा गया है।

6. धन प्राप्ति की पुस्तक :– जब कोई पक्षकार भोजन व्यय जमा करवाता है, तब रसीद दो प्रतियों में तैयार की जाती है। दोनों प्रतियों के बीच कार्बन लगाते हैं। मूल प्रति राशि जमा करवाने वाले व्यक्ति को दी जाती है एवं कार्बन प्रति अभिलेख में रहती है। इस पंजी को नियम 379 म.प्र. सिविल न्यायालय नियम के अनुसार संधारित करना चाहिए एवं इसकी राशि को नाजिर को समय पर भेजना चाहिए।

पीठासीन अधिकारी को निरीक्षण के समय यह देखना चाहिए कि इस पंजी की विधिवत जांच न्यायालय अधीक्षक या न्यायालय उप अधीक्षक से करवाई गई है या नहीं एवं यदि ऐसा नहीं किया गया है, तो इस संबंध में आवश्यक निर्देश देना चाहिए।

7. मनीआर्डर द्वारा प्राप्त आहार व्यय की पंजी :– यह पंजी आदेशिका लेखक संधारित करता है एवं इसे नियम 378 म.प्र. सिविल न्यायालय नियम 1961 के अनुसार संधारित करना चाहिए। मासिक निरीक्षण के समय पीठासीन अधिकारी को इस पंजी की जांच करनी चाहिए।

8. स्टेशन डाक–बुकः– इस पंजी में संबंधित न्यायालय से अन्य न्यायालयों या कार्यालयों में भेजे जाने वाले प्रपत्र चढ़ाये जाते हैं। पीठासीन अधिकारी को इस पंजी का सावधानी से निरीक्षण करना चाहिए एवं यह देखना चाहिए कि समय पर प्रपत्र प्रेषित किये जाते हैं या नहीं।

यदि संबंधित न्यायालय को अपील न्यायालय की शक्तियाँ भी प्राप्त हैं तब निम्नलिखित पंजियाँ भी संधारित की जाती हैं :–

9. नियमित अपीलों का रजिस्टर :– यह पंजी भाग ''ए'' एवं भाग ''बी'' के रूप में अलग–अलग संधारित की जाती है। पंजी भाग ''ए'' में अचल संपत्ति संबंधी अपीलें एवं पंजी भाग ''बी'' में चल संबंधी या धन वसूली संबंधी अपीलें पंजीबद्ध की जाती हैं।

इस पंजी में कुल 16 स्कंभ होते हैं। स्कंभ क्रमांक 1 में अपील संस्थित होने की तिथि, स्कंभ क्रमांक 2 में अपील क्रमांक, स्कंभ क्रमांक 3 में अपीलार्थी का नाम, स्कंभ क्रमांक 4 में अपीलार्थी का विवरण एवं स्कंभ क्रमांक 5 में अपीलार्थी का निवास या पता अंकित करते हैं इसी तरह स्कंभ क्रमांक

6 से 8 में प्रत्यर्थी के संदर्भ में उक्त प्रविष्टियाँ अर्थात प्रत्यर्थी का नाम, विवरण एवं पता दर्ज करते हैं। जिस न्यायालय के आदेश के विरूद्ध अपील है, उसका नाम, स्कंभ क्रमांक 9 में अंकित करते हैं। स्कंभ क्रमांक 10 में मूल वाद का क्रमांक, स्कंभ क्रमांक 11 में आदेश की विशिष्टियाँ, स्कंभ क्रमांक 12 में अपील का मूल्यांकन एवं स्कंभ क्रमांक 13 में पक्षकारों की उपथिति की तिथि अंकित करते हैं।

स्कंभ क्रमांक 1 से 13 की प्रविष्टियाँ अपील पंजीबद्ध होते ही कर लेना चाहिए। पीठासीन अधिकारी को मासिक निरीक्षण में यह देखना चाहिए कि क्या संबंधित स्कंभ में उचित रीति से प्रविष्टि की गई हैं।

स्कंभ क्रमांक 14 से 16 की प्रविष्टियाँ अपील के निराकरण पर की जाती हैं।

10. विविध अपीलों का रजिस्टर :– इस पंजी में नियम 385 म.प्र. सिविल न्यायालय नियम 1961 में उल्लेखित अपीलें दर्ज की जाती हैं। इस पंजी में भी कुल 16 स्कंभ होते हैं, जिनमें नियमित अपीलों की पंजी में ऊपर बतलाई गई प्रविष्टियाँ की जाती हैं।

पीठासीन अधिकारी को मासिक निरीक्षण के समय इस पंजी की भी जांच करना चाहिए एवं देखना चाहिए कि पंजी में संबंधित स्कंभ में आवश्यक प्रविष्टियाँ की गई हैं या नहीं।

उक्त दोनों शाखाओं में मुख्य रूप से उपरोक्त पंजियाँ रखी जाती हैं। कुछ पंजियाँ ऐसी हैं, जो बहुत कम प्रचलन में हैं। ऐसी पंजियों का निरीक्षण उन पीठासीन अधिकारियों को करना चाहिये, जिनके न्यायालय में वे रखी जाती है। ऐसी पंजियों में दिवालियेपन की याचिकाओं आदि की पंजियाँ सम्मिलित हैं।

दोनों शाखाओं की उक्त समस्त पंजियों में मासिक निरीक्षण के समय यह देखना चाहिए कि क्या प्रत्येक पंजी के प्रथम पृष्ठ पर पीठासीन अधिकारी से पंजी में संलग्न पृष्ठों की संख्या के बारे में प्रमाण पत्र लिया गया है। यह प्रमाण पत्र निम्नानुसार होता है :–

यह प्रमाणित किया जाता है कि इस पंजी में पृष्ठ क्रमांक 1 से 125 तक कुल 125 (एक सौ पच्चीस) पृष्ठ संलग्न हैं।

ए, बी, सी,
व्यवहार न्यायाधीश वर्ग 1/2 या
न्यायिक मजिस्ट्रेट प्रथम श्रेणी

ऐसा प्रमाण पत्र प्रत्येक पंजी के प्रथम पृष्ठ पर होना चाहिए। यदि ऐसा नहीं है, तो पालन करवाया जाना चाहिए।

प्रत्येक पंजी के प्रत्येक पृष्ठ पर पृष्ठ क्रमांक अंकित है या नहीं, यह भी निरीक्षण में देखना चाहिए एवं ऐसा न होने पर पालन करवाना चाहिए।

उक्त प्रमाण पत्र एवं पृष्ठ क्रमांक अंकित करवाने से पंजी की प्रविष्टियाँ सुरक्षित रहती है। अतः निरीक्षण के समय इस तथ्य पर ध्यान देना चाहिए। निरीक्षण में यह भी देखना चाहिए कि दोनों शाखाओं

की पंजियाँ अच्छी स्थिति में रखी गई हैं या नहीं एवं ऐसा नहीं हो, तो उन्हें ठीक करवाना चाहिए, ताकि पंजियाँ सुरक्षित रह सकें।

प्रकरणों का अभिलेख

मासिक निरीक्षण में पीठासीन अधिकारी को यह देखना चाहिए कि क्या प्रकरणों का अभिलेख उचित रीति से रखा गया है।

वर्ग ''ए'' के दावे का अभिलेख 5 भागों में रखा जाता है, जिन्हें क्रमशः फाईल ए, फाईल ए–1, फाईल सी–1, फाईल सी–2 एवं फाईल डी कहते हैं।

पीठासीन अधिकारी को मासिक निरीक्षण में यह देखना चाहिए कि वर्ग ''ए'' के दावे का अभिलेख उक्त अनुसार 5 भागों में संधारित है या नहीं। फाईल ए में नियम 298, फाईल ए–1 में नियम 299, फाईल सी–1 में नियम 300, फाईल सी–2 में नियम 301 एवं फाईल डी में नियम 302 म.प्र. सिविल न्यायालय नियम, 1961 में उल्लेखित दस्तावेज रखे जाते हैं।

मासिक निरीक्षण के समय नमूने के तौर पर कुछ लंबित एवं कुछ निराकृत प्रकरण का निरीक्षण करके यह देखना चाहिए कि अभिलेख में संबंधित भाग में संबंधित प्रपत्र रखा गया है या नहीं।

द्वितीय वर्ग के अभिलेख में दो फाईल होती हैं, जो कि फाईल – बी एवं फाईल –डी कहलाती है। फाईल बी में नियम 303 के अनुसार प्रथम वर्ग की फाईल ए, ए–1, सी–1, सी–2 में उल्लेखित दस्तावेज रखे जाते है। अन्य दस्तावेज फाईल डी में रखे जाते हैं।

पीठासीन अधिकारी को नियम 305 से 308 के अनुसार अभिलेख व्यवस्थित है या नहीं यह भी निरीक्षण में देखना चाहिए।

मोटर दुर्घटना दावा प्रकरण के अभिलेख को नियम 304 एवं 305 म.प्र. सिविल न्यायालय नियम 1961 के अनुसार रखने के निर्देश माननीय म.प्र. उच्च न्यायालय के ज्ञापन क्रमांक – एफ/3032 जबलबुर दिनांक 10.08.2010 के माध्यम से दिये गये हैं।

कई बार लिपिक यह कहते हैं कि प्रकरण के निराकरण के बाद ही उसे तैयार किया जाता है, ऐसे में लिपिकगण का ध्यान नियम 309 म.प्र. सिविल न्यायालय 1961 की ओर आकर्षित करवाया जाना चाहिए, जिसमें यह कहा गया है कि जैसे–जैसे प्रकरण की प्रगति होती है, वैसे–वैसे अभिलेख प्रारंभ से ही सुव्यवस्थित करना चाहिए।

अभिलेख यदि उचित रीति से व्यवस्थित रहे, तो कार्यवाही के समय अनावश्यक समय नष्ट नहीं होता है, अतः मासिक निरीक्षण के समय अभिलेख की व्यवस्था को सावधानी से देखना चाहिए।

मांग पत्र व अन्य जानकारी का अनुपालन

प्रत्येक पीठासीन अधिकारी को मासिक निरीक्षण में यह देखना चाहिए कि उनके न्यायालय में अपील न्यायालय, पुनरीक्षण न्यायालय या अन्य न्यायालयों से प्राप्त मांग पत्रों पर अभिलेख समय से भेजा जाता है या नहीं एवं यदि ऐसा नहीं किया जाता है, तो आवश्यक निर्देश देना चाहिए।

वरिष्ठ न्यायालय के द्वारा न्यायालय से जो भी जानकारी मांगी जाती है, उसे तत्काल भेजा जाना चाहिए। मासिक निरीक्षण में इस तथ्य की भी जांच करना चाहिए।

समन, वारंट एवं आदेशिकों के विषय में

प्रत्येक पीठासीन अधिकारी को मासिक निरीक्षण में यह देखना चाहिए कि उनके द्वारा दिये गये आदेश के अनुसार समय पर गवाहों, अभियुक्त गण, प्रतिवादी, प्रतिवादीगण आदि को समन, वारंट या अन्य आदेशिकाएं जारी होती हैं या नहीं। यदि ऐसा नहीं होता है, तो आवश्यक निर्देश देना चाहिए। समय पर आदेशिकाएँ जारी हो जाने से उनके निर्वाह की संभावना बढ़ जाती है।

पीठासीन अधिकारी को यह भी देखना चाहिए कि जो समन या वारंट जारी किये जा रहे हैं वे पठनीय हों।

पीठासीन अधिकारी को निरीक्षण में यह भी देखना चाहिए कि निर्वाहित या अर्निवाहित समन या वारंट संबंधित पत्रावली में समय पर लगाएं जाते हैं या नहीं।

न्यायालय में प्राप्त डाक

प्रत्येक पीठासीन अधिकारी को अपने सभी अधीनस्थ कर्मचारियों को कार्यालय आदेश के द्वारा यह निर्देश देना चाहिए कि जो भी डाक न्यायालय में प्राप्त हो, उसे तत्काल पीठासीन अधिकारी के समक्ष रखा जावे, ताकि पीठासीन अधिकारी को न्यायालय में प्राप्त होने वाले प्रत्येक पत्र, मांग पत्र, अभिलेख आदि जानकारी रहे। कई बार यह देखा जाता है कि कर्मचारीगण प्राप्त पत्र की गंभीरता को समझे बिना उसे वैसे ही रखे रहते हैं। उक्त प्रथा से यह कमी दूर की जा सकती है।

मालखाना संपत्ति के विषय में

किसी प्रकरण के निराकरण के बाद उसकी मालखाना संपत्ति के निराकरण के विषय में मालखाना नाजिर को माह के अन्त में मालखाना परचे पर आदेश लिखकर जानकारी भेजी जानी चाहिए। प्रायः इसका पालन नहीं होता है, अतः पीठासीन अधिकारी को मासिक निरीक्षण में इस ओर भी ध्यान देना चाहिए एवं आवश्यक निर्देश भी देना चाहिए। जिन प्रकरणों में मालखाना पर्चा न मिलने का तथ्य लिपिक बतलाते हों, उनमें डुपलीकेट पर्चा भी बनवाया जा सकता है, परंतु प्रकरण के निराकरण के बाद मालखाना वस्तु के निराकरण का आदेश मालखाना नाजिर को अवश्य भिजवाना चाहिए।

न्यायालय का ग्रंथालय

प्रत्येक न्यायालय की विधि पुस्तकों का एक ग्रंथालय होता है, जिसे सिविल रीडर, साक्ष्य लेखक या स्टेनो में से किसी एक के द्वारा संधारित किया जाता है।

मासिक निरीक्षण में पीठासीन अधिकारी को यह देखना चाहिए कि क्या विधि पुस्तकों को उचित रीति से रजिस्टर में दर्ज किया गया है एवं उनके प्रथम पृष्ठ पर नियम 692 म.प्र. नियम एवं आदेश

आपराधिक के अनुसार पृष्ठांकन किया है। नियम 685 से 695 म.प्र. नियम एवं आदेश आपराधिक के अनुसार लाईब्रेरी का रख रखाव है या नहीं, इसकी जांच निरीक्षण के समय पीठासीन अधिकारी को करनी चाहिए एवं इस बारे में आवश्यक निर्देश भी देना चाहिए।

कार्य संतुलन

पीठासीन अधिकारी को मासिक निरीक्षण में यह भी देखना चाहिए कि कर्मचारियों के मध्य कार्य का संतुलन है अथवा नहीं। जिस कर्मचारी के पास अधिक काम हो, उसकी मदद के लिए कार्यालय आदेश के माध्यम से उन कर्मचारियों को निर्देशित करना चाहिए जिनके पास कम काम है। इससे न्यायालय के कार्य में संतुलन रहेगा व कम कार्य वाले कर्मचारी का समुचित उपयोग हो सकेगा।

पक्षकार के बैठने व पानी आदि के विषय में

मासिक निरीक्षण में यह भी देखना चाहिए कि न्यायालय में पक्षकारगण के लिए पीने के पानी, बैठने आदि की उचित व्यवस्था है या नहीं एवं यदि ऐसा नहीं है, तो इस बारे में भी आवश्यक कार्यवाही करना चाहिए एवं जिला जज महोदय से निवेदन करना चाहिए।

स्टेशनरी

मासिक निरीक्षण में पीठासीन अधिकारी को यह देखना चाहिए कि उनके न्यायालय में कोरे कागज, जजमेन्ट पेपर, अभियुक्त कथन, साक्षीगण के कथन, आर्डरशीट, अभिलेख के मुख्य पृष्ठ, गवाह या अभियुक्त के समन वारंट आदि के प्रपत्र, कार्टरेज, टाइपरिबन आदि उपलब्ध हैं एवं न होने पर क्या उन्हें समय पर मांग पत्र भेजकर मंगवाया जाता है एवं यदि ऐसा नहीं किया जाता है, तो इसके बारे में संबंधित कर्मचारी को आवश्यक निर्देश देना चाहिए।

न्यायालय की सफाई

मासिक निरीक्षण में पीठासीन अधिकारी को यह देखना चाहिए कि बोर्ड, चेम्बर, न्यायालय कक्ष, टॉईलेट की उचित सफाई है या नहीं एवं यदि नहीं पाई जाती है तो आवश्यक निर्देश देना चाहिए। समय–समय पर लोक निर्माण विभाग से अपने न्यायालय कक्ष के रंग रोगन के बारे में भी कार्यवाही करनी चाहिए।

न्यायालय कक्ष के पर्दे, टेबल क्लॉथ आदि समय–समय पर धुलवाये जाते हैं या नहीं यह भी देखना चाहिए।

न्यायालय कक्ष वह स्थान होता है जहाँ पीठासीन अधिकारी को अपने अधीनस्थ कर्मचारियों के साथ लगभग सात से आठ घंटे कार्य करना होता है, अतः निरीक्षण में इस स्थान की सफाई के लिए आवश्यक निर्देश अवश्य देना चाहिए।

यह बोर्ड प्यून का कर्तव्य है कि वह न्यायालय को स्वच्छ रखे एवं स्वीपर तथा फर्राश से न्यायालय की नियमित सफाई करवाये या स्वयं करे। मासिक निरीक्षण में यह देखना चाहिए कि क्या इस कर्तव्य का पालन किया जा रहा है।

अलमारियों पर पहले सूखे एवं फिर गीले कपड़े से सफाई करवाई जा सकती है, ताकि अलमारियाँ भी साफ–सुथरी दिखें।

निरीक्षण में यह देखना चाहिए कि न्यायालय कक्ष के पर्दे, टेबल क्लॉथ व फर्नीचर पर्याप्त व सही स्थिति में है व यदि ऐसा नहीं है, तो इस बारे में आवश्यक कार्यवाही करना चाहिए।

पूर्व निरीक्षणों के निर्देशों का पालन

पीठासीन अधिकारी को यह भी देखना चाहिए कि पूर्व में किये गये मासिक निरीक्षण में दिये गये निर्देशों का अनुपालन किया गया है या नहीं। साथ ही जिला जज व अन्य वरिष्ठ न्यायाधीशगण द्वारा किये गये निरीक्षणों के निर्देशों का पालन हुआ है या नहीं एवं ऐसा नहीं होने पर आवश्यक निर्देश देना चाहिए।

मासिक निरीक्षण का दिन

मासिक निरीक्षण किसी भी अकार्य शनिवार के दिन किया जा सकता है, ताकि मासिक निरीक्षण को पर्याप्त समय दिया जा सके एवं प्रत्येक बात गंभीरता से देखी जा सके।

कई बार मासिक निरीक्षण न करने का तथ्य पीठासीन अधिकारी की गोपनीय चरित्रावली पर अंकित कर दिया जाता है। नियमित रूप से मासिक निरीक्षण कर इस स्थिति से बचा जा सकता है। मासिक निरीक्षण में दिये गये निर्देशों के पालन के उपरांत इसे अवलोकनार्थ जिला जज महोदय को प्रतिमाह समय पर भेजना चाहिए।

मासिक निरीक्षण केवल एक औपचारिकता नहीं है। यदि किसी पीठासीन अधिकारी को अपने न्यायालय के कार्य पर उचित नियंत्रण स्थापित करना है, तो मासिक निरीक्षण इसका एक अत्यंत प्रभावशाली उपाय हो सकता ळें

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MENS REA REQUIRED FOR THE APPLICATION OF SECTION 3 (2) (V) OF THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

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We rarely come across a society, in which crime is not committed by a person on another. There are number of penal laws to punish the offenders of such crimes. Such laws apply to every offender, irrespective of his caste or creed. However, taking into consideration the indignities to which persons belonging to scheduled castes or scheduled tribeS were and are subjected and atrocities committed on them only on the ground that such persons belonged to such caste, the Parliament has enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, to prevent atrocities on the persons belonging to scheduled castes or scheduled Tribes. The object behind clause (v) of Section 3(2) of the Act is to punish the persons, who commit offences under the Indian Penal Code punishable for a term of ten years or more, against a member of Scheduled Castes or Scheduled Tribes on the ground that such person belongs to Scheduled Castes or Scheduled Tribes or such property belongs to such person, by higher and more severe punishment.

The High Court of Madhya Pradesh in ***Karansingh v. State of M.P. (1992 Cri. L. J. 3054)*** has observed that as special and stricter provisions have been made in the Act, it is the duty of the prosecution to examine the case more carefully. Registration of the offence under the Act, only because the complainant party belonged to a Scheduled Tribe and the accused persons did not belong to a Scheduled Tribe or Scheduled Caste was a mechanical exercise of authority and it has to be deprecated. It is also observed that the courts have to see immediately after a case is brought to it, whether an offence under the Act is made out prima facie on the material available in the case diary. According to the Apex Court, (***State of Madhya Pradesh v. Chunnilal alias Chunnisingh, reported in 2009 AIR SCW 5335***), when a case relating to any offence punishable under Scheduled Castes and Scheduled Tribes Act, is not investigated by a competent officer under the provisions of section 9 of the Act and rule 7 of the Rules made there under, the entire investigation become illegal and invalid, as no officer below the rank of Deputy Superintendant of Police can act as Investigating officer even when such investigation is supervised by an officer in the rank of Superintendent of Police. According to the said provision all offences punishable under the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989, are to be investigated by a police officer not below the rank of Deputy Superintendent having past experience, abilities and sense of justice to perceive the implications of the case.

Presently, the issues relating to the provision of Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989, are being discussed, in the light of recent judgment of High Court of Madhya

Pradesh in the case of ***Azad v. State of Madhya Pradesh,*** Criminal appeal number 1251/2013 decided on 29th July, 2013.

For ready reference, the provision is being reproduced hereinbelow.

Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -

(i) to (iv) *****s

(v) Commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

(Emphasis supplied)

From the language used by the Legislature in Section 3(2)(v) of the Act, it is clear that this Section does not constitute any substantive offence and if any person not being a member of a Scheduled Caste or a Scheduled tribe commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of Scheduled Caste or Scheduled Tribe or such property belongs to such member, then enhanced punishment of life imprisonment would be awarded in such cases, meaning thereby that conviction and sentence under Section 3(2)(v) SC/ST Act, simpliciter is not permissible and in cases where an offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more is committed against a person or property on the ground that such person is a member of a Scheduled Caste or Scheduled Tribe or such property belongs to such member, then in such a case the accused will be convicted and sentenced for the offence under Indian Penal Code read with Section 3(2)(v) SC/ST Act, with imprisonment for life and also with fine. Thus, in order to attract the provision of Section 3(2)(v), the following ingredients must be established :

(1) The offender should not be a member of a Scheduled Caste or a Scheduled Tribe;

(2) He must commit an offence under the Indian Penal Code punishable with imprisonment for a term of 10 years or more;

(3) The commission of such offence must be against a person or property of a member of a Scheduled Caste or a Scheduled Tribe;

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

The words **"on the ground"** have not been used anywhere in the Act, except in clause (v) of Section 3(2) of the Act. It will be seen that only serious offences under the Indian Penal Code which are punishable with imprisonment for a term of 10 years or more are covered by clause (v). However, the provisions

of the I.P.C. are universally applicable whereas clause (v) is applicable only where the victim is a person belonging to a Scheduled Caste or Scheduled Tribe. The law therefore, expects a graver kind of mens rea denoted by the words " on the ground", to render already serious offences under the Indian Penal Code more serious, which has the effect of making it punishable by no less a punishment than imprisonment for life. In order to constitute an offence under Section 3(2) (v), something more than 'intention' is needed – the offence against the victim must have been committed with a particular object., i.e., it must have been committed **'on the ground'** that he was a member of a Scheduled Caste or Scheduled Tribe.

The expression "on the ground" has been subject matter of decision in a number of cases decided under the SC/ST (P.A.) Act. In the case of ***Masumsha Hasanasha Musalman v. State of Maharashtra, reported in AIR 2000 SC 1786*** it was held that to attract the provisions of Section 3(2)(v) of the Act, the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under the Indian Penal Code is committed against him **on the basis** that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under Section 3(2) (v) of the Act is constituted. In the case of ***Dinesh alias Buddha v. State of Rajasthan,*** (reported in AIR 2006 SC 1267) in paragraph no. 15, it was held as follows:

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

In the case of ***Ramdas and Ors. v. State of Maharashtra,*** (reported in AIR 2007 SC 155) in paragraph no. 10, it has been held that:

> "At the outset we may observe that there is no evidence whatsoever to prove the commission of offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The mere fact that the victim happened to be a girl belonging to a Scheduled Caste does not attract the provisions of the Act. Apart from the fact that the prosecutrix belongs to the Pardhi Community, there is no other evidence on record to prove any offence under the said enactment. The High Court has also not noticed any evidence to support the charge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and was perhaps persuaded to affirm the conviction on the basis that the prosecutrix belongs to a Scheduled Caste community. The conviction of the appellants under section 3(2)(v) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 must, therefore, be set aside."

Thus the words **'on the ground'** show that the prosecution is required to prove that the target of crime was selected 'on the ground' that he/she belonged to Scheduled Caste or Scheduled Tribe, or that crime was committed for the reason that such person belonged to such community or tribe. In other words it must be shown that if the victim would not have belonged to Scheduled Castes or Scheduled Tribes, the crime would not have been committed. The cause for the offence must contain an element of caste/racial prejudice. Unless it is demonstrated that the accused offended the sensibilities of the victim in relation to his caste, the offence under Section 3(2)(v) is not constituted. If an accused committed rape on a woman belonging to a Scheduled Caste only to satisfy his sexual lust, without any prejudice of caste to which the women belonged or if sexual intercourse was committed by the accused with the consent of Scheduled caste girl, who was a minor under 18 years of age, he would be guilty of an offence of rape under Section 376 IPC but he would not be guilty of the offence under Section 3(2)(v), as he did not commit sexual intercourse with the girl on the ground she was a Scheduled cast girl. Even when accused persons allegedly inflicted injuries on victim and fled away after calling him "CHAMAR" then also in the absence of evidence to show that injuries were inflicted on ground that victim belongs to Scheduled Caste community, the offence under Section 3(2)(v) cannot be said to have been made out. (***Amir v. State of Madhya Pradesh,*** 2004 Cri. L.J. 3686). Similarly, mere knowledge that the victim belongs to Scheduled Caste or Schedule Tribe community is not sufficient to constitute an offence under Section 3(2)(v) of the Act (***Mekala Raji Reddy v. State of Andhra Pradesh,*** 2002 Cr.L.J. 3407)

Conclusions :-

(1) The provision of Section 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, does not constitute a substantive offence. Accused cannot be convicted and sentenced only for offence under Section 3(2)(v) of the Act. The provision can be pressed into service only for enabling the Court to pass a sentence of imprisonment for life and a fine when a person has been found guilty of committing an offence under the IPC which is punishable with imprisonment of a term of 10 years or more against a person belonging to a Scheduled Caste or a Scheduled Tribe.

(2) To attract the above mentioned provisions of Section 3(2)(v), mere knowledge that the victim belonged to a Scheduled Caste or a Scheduled Tribe community or mere intention to commit an offence against a member of a Scheduled Caste or Scheduled Tribe is not sufficient but something more is needed i.e. a graver kind of mens rea denoted by the phrase **"on the ground"** in the provision, is required.

(3) For application of Section 3(2)(v) of the Act, it must be demonstrated that the target of crime was selected **'on the ground'** that he/she belonged to a Scheduled Caste or Scheduled Tribe, or that crime was committed for the reason that such person belonged to such caste or tribe and that if the victim had not belonged to a Scheduled Castes or Scheduled Tribe, the crime would not have been committed. The cause for the offence must contain an element of racial prejudice.

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भारत के संविधान के अनुच्छेद 21 में निहित प्राण एवं दैहिक स्वतंत्रता के मौलिक अधिकार

न्यायिक अधिकारीगण
जिला – टीकमगढ़, खण्डवा एवं झाबुआ

बन्दियों के अधिकार

संविधान का अनुच्छेद 21 यह उपबंधित करता है, कि **''किसी व्यक्ति को उसके प्राण या दैहिक स्वाधीनता से विधि द्वारा स्थापित प्रक्रिया के अनुसार ही वंचित किया जाएगा अन्यथा नहीं।''**

वैयक्तिक स्वतंत्रता के अधिकार को मूल अधिकारों में सर्वोच्च माना गया है। इस संबंध में यह ठीक ही कहा गया है, कि ''स्वतंत्रता ही जीवन है'', क्योंकि इस अधिकार के अभाव में मनुष्य के लिए अपने व्यक्तित्व का विकास करना संभव नहीं है, इसी मूल भावना को दृष्टिगत रखते हुए भारतीय संविधान ने अनुच्छेद 21 में व्यक्ति के प्राण एवं दैहिक स्वतंत्रता की रक्षा का प्रावधान किया है। न्यायमूर्ति श्री पी.एन. भगवती ने मेनका गांधी के प्रकरण में अनुच्छेद 21 के क्षेत्र को विस्तृत करते हुए यह कहा है कि ''दैहिक शब्दावली अत्यंत व्यापक अर्थ वाली पदावली है, इसमें ऐसे बहुत से अधिकार सम्मिलित हैं, जिनसे व्यक्ति की दैहिक स्वतंत्रता का गठन होता है। प्राण का अधिकार केवल भौतिक अस्तित्व तक ही सीमित नहीं है, बल्कि इसमें मानव गरिमा को बनाए रखते हुए जीने का अधिकार भी सम्मिलित है।

अनुच्छेद 21 के अंतर्गत प्राण एवं दैहिक स्वतंत्रता के अधिकार के अंतर्गत बंदियों को शीघ्र विचारण का अधिकार एवं विधिक सहायता के अधिकार की व्याख्या करते हुए माननीय उच्चतम न्यायालय के द्वारा विभिन्न न्याय दृष्टांतों में अभिमत दिए गए हैं। अनुच्छेद 21 के अंतर्गत सामान्य व्यक्ति के अतिरिक्त बंदी व्यक्तियों के अधिकार भी सम्मिलित हैं।

माननीय उच्चतम न्यायालय ने न्याय दृष्टांत ***सुनील बत्रा वि. दिल्ली प्रशासन (ए.आई.आर. 1980 सुको 1579)*** में बंदियों के अधिकारों की विवेचना करते हुए उनको सुरक्षित रखने के संबंध में निम्नानुसार मार्गदर्शक सिद्धांत दिए हैं :–

- आपराधिक प्रकरणों में विचाराधीन बंदियों को, सिद्धदोष बंदियों से अलग रखने का अधिकार है। उन्हें साथ रखना विचाराधीन बंदियों के अधिकारों का उल्लंघन है। विचाराधीन बंदियों को तब तक निर्दोष माना जाना चाहिए, जब तक कि उन्हें दोषसिद्ध नहीं कर दिया जाता।
- सश्रम कारावास में युक्तियुक्त श्रम करवाये जाने का अधिकार है, इसके अंर्तगत अन्यायपूर्ण अथवा क्षति कारित करने वाला श्रम सम्मिलित नहीं है। बंदियों से युक्तियुक्त श्रम करवाया जाना तो उचित है, किन्तु उनके शारीरिक एवं मानसिक तत्व को नुकसान करने वाले श्रम की अनुज्ञा नहीं है।

- कम उम्र के बंदियों को अधिक उम्र के बंदियों से पृथक रखा जाना चाहिए, ताकि उनका शोषण न हो सके।
- बंदियों को अन्य बंदियों के साथ रहने का अधिकार है। बंदियों को एकांत निरोध में नहीं रखा जाना चाहिए, जब तक कि इस संबंध में पृथक दण्ड न दिया गया हो।
- बंदियों को उनके परिवारजनों एवं मित्रों से मिलने का अधिकार है, इस संबंध में व्यवस्था की जानी चाहिए।
- बंदियों को अयुक्तियुक्त कारण से पूरे समय हथकड़ी व अन्य प्रकार से लोहे के उपकरणों से बांध कर नहीं रखा जाना चाहिए, जब तक कि इस संबंध में कोई गंभीर परिस्थिति न हो।

माननीय उच्चतम न्यायालय ने न्याय दृष्टांत ***रामामूर्ति वि. कर्नाटक राज्य (ए.आई.आर. 1997 सुको 1739)*** में जेलों में क्षमता से अधिक बंदियों को रखा जाना भी उनके अधिकार का उल्लंघन माना है तथा इससे उनके स्वास्थ्य पर विपरीत प्रभाव को देखते हुए बंदियों को क्षमता से अधिक जेलों में न भरने के संबंध में निर्देश जारी किए हैं।

माननीय उच्चतम न्यायालय ने ***आर.डी. उपाध्याय वि. आंध्रप्रदेश राज्य (ए.आई.आर. 2006 सु.को. 1946)*** में महिला बंदियों को अपने साथ बच्चों को रखने के अधिकार को मानते हुए इस संबंध में निर्देश जारी किए हैं कि उनके स्वास्थ्य, खान पान आदि का उचित ध्यान रखा जावे, छः वर्ष से अधिक उम्र के बच्चों को बंदी महिलाओं के साथ जेल में नहीं रखा जावें तथा जेल में जन्म लिए बच्चों के जन्म प्रमाण पत्र में जन्म स्थान जेल नहीं लिखा जावे।

माननीय उच्चतम न्यायालय ने ***हुस्नआरा खातून वि. बिहार राज्य (ए.आई.आर. 1979 सु.को. 1369)*** में बंदियों को उनके अपराध में अधिकतम सजा से अधिक अवधि तक जेल में निरूद्ध रखने के तथ्य को उनके अधिकारों का उल्लंघन मानते हुए अधिकतम अवधि से अधिक जेल में नहीं रखे जाने के संबंध में निर्देश जारी किए हैं।

प्रेम शंकर शुक्ला बनाम दिल्ली प्रशासन, ए.आई.आर 1980 एस.सी. 1535 के मामले में पंजाब पुलिस रूल्स के कुछ प्रावधानों की विधिमान्यता को इस आधार पर चुनौती दी गई थी कि वे अनुच्छेद 14, 19, 21 का अतिक्रमण करते हैं। न्यायाधिपति श्री कृष्ण अय्यर ने बहुमत का निर्णय सुनाते हुए यह अभिनिर्धारित किया कि उक्त उपबंध संविधान के अनुच्छेद 14, 19, 21 का अतिक्रमण करते हैं, अतः वे असंवैधानिक हैं। उक्त नियमों के अधीन प्रत्येक कैदी को जेल से न्यायालय लाते हुए हथकड़ी लगाकर लाने का उपबंध था। न्यायालय ने निर्णय दिया कि हथकड़ी (Handcuffing) का प्रयोग तभी किया जा सकता है जब कैदी के पुलिस अभिरक्षा से भागने का स्पष्ट और वर्तमान खतरा (clear & present) हो और यदि ऐसा होता हो तो उसके कारणों का स्पष्ट उल्लेख किया जाना चाहिए। इस प्रकार विशिष्ट परिस्थितियों में हथकड़ी का प्रयोग किया जा सकता है, किन्तु अभिरक्षा प्राधिकारी को इसके लिए कारणों का उल्लेख करना आवश्यक होगा अन्यथा विहित प्रक्रिया अनुच्छेद 21 के अधीन, अनुचित और अवैध हो जाएगी।

बंदियों की गिरफ्तारी के पूर्व के अधिकार की स्थितिः–

- जब किसी व्यक्ति को वारंट के अधीन गिरफ्तार किया जाता है, तब पुलिस अधिकारी के द्वारा उसे गिरफ्तार किये जाने के विषय में सूचित किया जाएगा या अपेक्षित हो तो उसे वारंट दिखाया जाएगा।
- दण्ड प्रक्रिया संहिता की धारा 50 के अनुसार जब किसी व्यक्ति को वारंट के बिना गिरफ्तार किया जाता है, तो उसे गिरफ्तारी के आधार और अपराध की पूर्ण विशिष्टियां बताई जानी चाहिए और यदि अपराध जमानती है, तो वहां जमानत पर छोड़े जाने का अधिकारी है। पुलिस अधिकारी ऐसे कारण को छिपा नहीं सकता।
- संहिता की धारा 50(क) के अनुसार गिरफ्तार करने वाला प्रत्येक पुलिस अधिकारी या अन्य अधिकृत व्यक्ति ऐसी गिरफ्तारी और स्थान के बारे में जहां गिरफ्तार किया गया व्यक्ति रखा जा रहा है, उसकी जानकारी उसके मित्रों, नातेदारों या ऐसे अन्य व्यक्ति को जो गिरफ्तार किये गये व्यक्ति द्वारा जानकारी देने के प्रयोजन के लिए नाम निर्दिष्ट किया जाए, उसे तत्काल जानकारी देगा।
- पुलिस अधिकारी गिरफ्तार किये गये व्यक्ति को जैसे ही पुलिस थाने में लाता है, उसे उसके अधिकारों के बारे में सूचित करेगा।
- संहिता की धारा 51 के अनुसार गिरफ्तार शुदा व्यक्ति की व्यक्तिगत तलाशी के पूर्व, तलाशी अधिकारी और उसके सहायक को पहले अपनी व्यक्तिगत तलाशी अभियुक्त व्यक्ति को देना चाहिए और उसके बाद अभियुक्त की तलाशी लेना चाहिए और ऐसी तलाशी स्वतंत्र और सम्माननीय साक्षियों के समक्ष ली जानी चाहिए। जब कभी किसी स्त्री की तलाशी लेना आवश्यक हो, तो ऐसी तलाशी शिष्टता को ध्यान में रखते हुए किसी अन्य स्त्री के द्वारा ली जावेगी। जब किसी स्त्री का शारीरिक परीक्षण है, तो ऐसा परीक्षण केवल रजिस्ट्रीकृत महिला चिकित्सा व्यवसायी के द्वारा किया जाना चाहिए।
- संहिता की धारा 54 गिरफ्तार व्यक्ति को महत्वपूर्ण अधिकार प्रदान करती है, जिसके अंतर्गत गिरफ्तार व्यक्ति चिकित्सा परीक्षण कराने का अधिकारी है एवम् यदि वह पुलिस अभिरक्षा के दौरान शारीरिक दुर्व्यवहार की शिकायत मजिस्ट्रेट से करता है, तो मजिस्ट्रेट का कर्तव्य होगा कि वह गिरफ्तार व्यक्ति को सूचित करें कि उसे अपना चिकित्सकीय परीक्षण कराने का अधिकार है।
- संहिता की धारा 56 के अनुसार व्यक्ति को गिरफ्तारी के 24 घंटे के अंदर मजिस्ट्रेट के समक्ष उपस्थित किया जाना आवश्यक है और 24 घंटे की कालावधि के पश्चात् मजिस्ट्रेट के आदेश के बिना उसे अभिरक्षा में निरूद्ध नहीं रखा जा सकता है।

बंदियों के गिरफ्तारी के पूर्व के अधिकार के संबंध में न्याय दृष्टांत ***जोगेन्दरसिंह बनाम उत्तर प्रदेश राज्य, 1994 भाग–4 एस.सी.सी. 260*** के मामले में माननीय उच्चतम न्यायालय ने यह अभिनिर्धारित किया है, कि किसी व्यक्ति को किसी अपराध में सहभागी होने के संदेह मात्र पर गिरफ्तार नहीं किया जा सकता है। किसी व्यक्ति को गिरफ्तार करते समय पुलिस अधिकारी को इस बात से संतुष्ट होना आवश्यक है कि उसे गिरफ्तार करने का युक्तियुक्त औचित्य है।

पुलिस अधिकारी वारंट के बिना गिरफ्तार किये गये व्यक्ति को उससे अधिक अवधि के लिए अभिरक्षा में निरूद्ध नहीं रखेगा, जो उस मामले की सब परिस्थितियों में उचित है तथा ऐसी अवधि मजिस्ट्रेट के न्यायालय तक यात्रा के लिए आवश्यक समय को छोड़कर, 24 घंटे से अधिक की नहीं होगी, इस संबंध में न्याय दृष्टांत ***डी.के. बासु विरूद्ध पश्चिम बंगाल राज्य, ए.आई.आर. 1997 सुप्रीम कोर्ट 610 एवं जोगेन्द्रसिंह विरूद्ध उत्तरप्रदेश राज्य, 1994 भाग–4 सुप्रीम कोर्ट केसेस 260*** अवलोकनीय है। माननीय उच्च न्याायालय द्वारा अपने ऐतिहासिक निर्णय में यह अभिनिर्धारित किया गया है कि :–

- गिरफ्तार करने वाले या जांच करने वाले पुलिस कर्मचारी का पद–नाम प्रकट और स्पष्ट होना चाहिए। ऐसे सभी पुलिस कर्मचारियों का, जो गिरफ्तार व्यक्ति से पूछताछ करते हैं, विवरण रजिस्टर में दर्ज होना चाहिए।
- गिरफ्तार करने वाला पुलिसकर्मी गिरफ्तारी के समय एक मेमो बनायेगा जो कम से कम दो साक्षियों के द्वारा प्रमाणित होगा एवम् जो गिरफ्तार व्यक्ति के परिवार या मोहल्ले के प्रतिष्ठित व्यक्ति होंगे।
- गिरफ्तार व्यक्ति को अधिकार होगा कि उसके मित्र, संबंधी या किसी अन्य व्यक्ति, जिसको वह जानता हो, या जो उसकी कुशलता में हितबद्ध हो, को गिरफ्तारी की सूचना दी जाए।
- पुलिस, गिरफ्तारी के समय व अभिरक्षा के स्थान की सूचना, गिरफ्तार व्यक्ति को देगी या यदि वह जिले से बाहर रहता है, तो विधिक सहायता संस्थान या उस क्षेत्र के पुलिस केन्द्र के माध्यम से तार द्वारा गिरफ्तारी की सूचना 8 से 12 घंटे के भीतर अवश्य देगी।
- गिरफ्तार व्यक्तियों को इस अधिकार के बारे में जानकारी होना चाहिए कि गिरफ्तारी की सूचना यथाशीघ्र किसी को दी गई है।
- निरोध के स्थान पर गिरफ्तारी की सूचना डायरी में दर्ज करनी होगी, जिसमें उस मित्र के नाम का उल्लेख होगा, जिसे गिरफ्तारी की सूचना दी गई है और उस पुलिस कर्मचारी के नाम और विवरण का उल्लेख होगा, जिसकी अभिरक्षा में गिरफ्तार व्यक्ति है।
- गिरफ्तार व्यक्ति यदि प्रार्थना करता है कि उसकी जांच करायी जाए, तो उसके शरीर में पायी गई बड़ी और छोटी चोटों को भी दर्ज किया जाना चाहिए।
- व्यक्ति की गिरफ्तारी के 48 घंटों में किसी प्रशिक्षित डॉक्टर के द्वारा या अनुमोदित डॉक्टरों के द्वारा जांच कराई जानी चाहिए।
- सभी दस्तावेजों जिसमें मेमो भी शामिल है, की प्रतिलिपि क्षेत्र के मजिस्ट्रेट को रिकार्ड के लिए प्रेषित की जावेगी।
- गिरफ्तार व्यक्ति को पूछताछ के दौरान अधिवक्ता से मिलने का अधिकार है।
- सभी जिलों और राज्यों के मुख्यालयों में पुलिस नियत्रंण कक्ष बनाया जाना चाहिए, जहां गिरफ्तारी और अभिरक्षा के स्थान की सूचना, गिरफ्तार करने वाले पुलिस अधिकारी को

12 घंटे के भीतर देनी होगा, जिसे पुलिस नियत्रंण कक्ष में सहजदृश्य स्पष्ट स्थान पर प्रदर्शित करना होगा।

बंदियों की गिरफ्तारी के पश्चात् की स्थिति :–

- बंदियों की गिरफ्तारी के पश्चात् प्रत्येक बंदी को कारागार से न्यायालय तक ले जाते समय हथकड़ी नहीं लगायी जावेगी। कारागार अधिनियम, 1894 के तहत कारागार नियम 1968 के नियम 684, 694 के अधीन प्रत्येक बंदी को माह में एक बार अपने परिवार के सदस्यों या विधिक सलाहकार से अधिकतम 20 मिनट तक मुलाकात करने का प्रावधान है। इसके अलावा बंदी को अध्ययन करने का पूरा अधिकार प्राप्त है। बंदियों को विद्यालय तथा विश्वविद्यालय द्वारा आयोजित स्नातक/स्नात्कोत्तर परीक्षा में सम्मिलित होने का पूर्ण अधिकार है। बंदी को अपने रिश्तेदारों या रिश्ते के अन्य कैदियों को पत्र भेजने का अधिकार है। इसके अतिरिक्त कैदी किताबे लिखने और उन्हें प्रकाशित करवाने और उचित प्रतिबंध के अधीन प्रेस साक्षात्कार देने के अधिकार रखते हैं।
- बंदी को यह भी अधिकार है कि उसे अपने प्रकरणों के निराकरण के समय व्यक्तिगत रूप से न्यायालय के समक्ष सुनवाई हेतु उपस्थित रखा जावे। म.प्र. कारागार नियम 1968 के नियम 745 एवं अन्य कारागार नियम के अधीन बंदियों को खेलने–कूदने एवं मनोरंजन सुविधाओं में भाग लेने का पूर्ण अधिकार है। बंदी प्रतिदिन निर्धारित समय में अपनी रूचि अनुसार खेल में भाग ले सकता है एवं रात्रि में निर्धारित समय में टी.वी. देख सकता है।
- म.प्र. कारागार के नियम 554, 555 के अंतर्गत जेल में निरूद्ध व्यक्तियों को धर्म पालन की स्वतंत्रता दी गयी है। इसके अंतर्गत वे अपने धर्म ग्रंथ जेल अधीक्षक के अनुमति उपरांत, अपनी बैरक में रख सकते हैं। वे त्यौहार पर उपवास व पूजन आदि करने के लिए भी पूर्ण रूप से स्वतंत्र हैं।
- बंदी की गिरफ्तारी के पश्चात् एवं प्रकरण के लम्बित रहने के दौरान जमानत पर रिहा होने के लिए जमानत याचिका सक्षम न्यायालय में जहां उसका प्रकरण लम्बित है अथवा जमानत की याचिका पहली अदालत से निरस्त होने की दशा में उस न्यायालय से उच्चतम न्यायालय तक जमानत याचिका प्रस्तुत करने का अधिकार बंदी को है।

शीघ्र विचारण का अधिकार

शीघ्र विचारण, प्रत्येक व्यक्ति का मूल अधिकार है, क्योंकि देरी मानसिक पीड़ा की ओर ले जाती है। इसका उद्देश्य अनुचित दण्ड से निर्दोष लोगों की रक्षा करना है।

शीघ्र विचारण का अधिकार अभियुक्त को सभी स्तरों पर अर्थात अन्वेषण जांच, परीक्षण, पुनरीक्षण पर प्राप्त है, इस संबंध में न्याय दृष्टांत ***हुस्नआरा खातून बनाम होम सेक्रेटरी, बिहार राज्य, ए.आई.आर. 1979 सुप्रीम कोर्ट 1360*** के मामले में माननीय उच्च न्यायालय ने यह अभिनिर्धारित किया है कि शीघ्र परीक्षण और निःशुल्क विधिक सहायता के अधिकार अनुच्छेद 21 द्वारा प्रदत्त दैहिक स्वतंत्रता के मूल अधिकार के आवश्यक तत्व हैं। इस संबंध में माननीय उच्चतम न्यायालय के द्वारा ***श्री निवास गोपाल वि. अरूणाचल प्रदेश राज्य, 1988 (4) एस.सी.सी. 36*** में यह

अभिनिर्धारित किया गया है कि शीघ्र न्याय अनुच्छेद 21 का एक अनिवार्य तत्व है तथा इसका उल्लंघन दाण्डिक अभियोजन को असंवैधानिक बना देता है।

माननीय उच्चतम न्यायालय द्वारा ***ए.आर. अंतुले वि. आर.एस. नायक, ए.आई.आर. 1984 एस.सी. 718*** के मामले में आपराधिक मामलों में आरोपियों के शीघ्रतर परीक्षण के लिए विस्तृत मार्गदर्शक सिद्धांत प्रतिपादित किए हैं। जिनके अनुसार अनुच्छेद 21 के अंर्तगत प्राप्त शीघ्र विचारण का अधिकार सभी स्तरों अर्थात जांच, अन्वेषण, परीक्षण, अपील, पुनरीक्षण वगैरह पर प्राप्त है।

एस.सी. लीगल एड कमीटी रिप्रेजेन्टिंग अंडर ट्रायल प्रिजनर्स बनाम यूनियन ऑफ इंडिया (1994) 6 एस.सी.सी. 731 के मामले में नारकोटिक ड्रग्स एंड साइकोट्रोपिक सब्सटेंसेस एक्ट, 1985 के अधीन निरूद्ध विचाराधीन व्यक्तियों के विरूद्ध अभियोजन चलाने में इसलिए विलंब हो रहा था, क्योंकि उनके परीक्षण के लिए विशिष्ट न्यायालयों की स्थापना नहीं हुई थी। अतः यह अभिनिर्धारित किया गया कि शीघ्रतर परीक्षण का अधिकार अनुच्छेद 21 के अधीन एक मूल अधिकार है और राज्य सरकार को निर्देश दिया कि पुनरावलोकन समिति बैठाकर ऐसे व्यक्तियों के मामलों को शीघ्रताशीघ्र निपटाया जाए, किंतु जहां प्रत्यर्थी अपने मामले के परीक्षण में स्वयं विलंब में योगदान देता है, तो वह अनुच्छेद 21 के अंर्तगत शीघ्र परीक्षण के मूल अधिकार का दावा नहीं कर सकता है। वह अपनी गलती का लाभ उठाकर अभियोजन से नहीं बच सकता है। इस संबंध में न्याय दृष्टांत ***यूनियन आफ इंडिया विरूद्ध अशोक कुमार मित्रा, (1995) 2 एस.सी.सी. 768*** अवलोकनीय है।

विधिक सहायता का अधिकार

अधिकांशतः यह देखा जाता है कि कई व्यक्ति निर्धनता के कारण स्वयं की प्रतिरक्षा के लिए अधिवक्ता नियुक्त नहीं कर पाते हैं। जिस वजह से वे अपना पक्ष उचित रूप से न्यायालय के समक्ष नहीं रख पाते हैं तथा अपनी निर्दोषिता स्थापित नहीं कर पाते हैं, ऐसी दशा में उन्हें अनावश्यक रूप से दण्डित होकर अपनी दैहिक स्वतंत्रता से वंचित होना पड़ता है।

दण्ड प्रक्रिया संहिता में धारा 304 के अंतर्गत यह प्रावधान किया गया है कि ''आपराधिक मामलों में जहां अभियुक्त का प्रतिनिधित्व किसी अधिवक्ता के द्वारा नहीं किया जाता है, तथा न्यायालय को यह प्रतीत होता है, कि आरोपी के पास अधिवक्ता नियुक्त करने के पर्याप्त साधन नहीं है, वहां राज्य की ओर से राज्य के व्यय पर अधिवक्ता उपलब्ध करवाया जावेगा।

विधिक सहायता के अधिकार के संबंध में विधिक सेवा प्राधिकरण अधिनियम, 1987 के अंतर्गत बंदियों को दाण्डिक न्यायालय, सत्र न्यायालय, उच्च न्यायालय एवं उच्चतम न्यायालय में उनके विचाराधीन प्रकरण या प्रकरण का पूरा व्यय तथा निःशुल्क अधिवक्ता शासन द्वारा उपलब्ध कराया जाता है।

एम.एम. होसकोट विरूद्ध महाराष्ट्र राज्य, ए.आई.आर. 1978 एस.सी. 1548 के मामले में उच्चतम न्यायालय ने यह अभिनिर्धारित किया है कि सिद्धदोष व्यक्ति को उच्च न्यायालय में ''अपील फाइल'' करने का मूल अधिकार है तथा उसे निर्णय की निःशुल्क प्रतिलिपि एवं कानूनी सहायता का अधिकार प्राप्त है, इन शर्तों के उल्लंघन से अनुच्छेद 21 में प्रदत्त दैहिक स्वतंत्रता के अधिकार का अतिक्रमण होता है।

सुपरिन्टेन्डेन्ट एंड रिमेम्ब्रान्सर आफ लीगल अफेयर्स वेस्ट बंगाल विरूद्ध एस. भौमिक, ए.आई.आर. 1981 एस.सी. 917 में न्यायालय ने हुस्नआरा खातून (नं. 01) के निर्णय का अनुसरण करते हुए यह अभिनिर्धारित किया है कि निःशुल्क विधिक सहायता प्राप्त करने का अधिकार अनुच्छेद 21 के अधीन युक्तियुक्त एवं ऋजु प्रक्रिया का एक आवश्यक तत्व है, जिसके अभाव में प्रक्रिया अयुक्तियुक्त हो जाएगी।

सुखदास विरूद्ध संघ राज्य क्षेत्र अरूणाचल प्रदेश, (1986) 2 एस.सी.सी. 401 मामले में यह अभिनिर्धारित किया गया है कि निःशुल्क विधिक सहायता प्रदान करने में विफलता जब तक कि अभियुक्त ने इंकार न कर दिया हो, परीक्षण को अवैध बना देती है। अभियुक्त को इसके लिए आवेदन देने की आवश्यकता नहीं है। निःशुल्क विधिक सहायता अभियुक्त का एक मूल अधिकार है और अनुच्छेद के अधीन युक्तियुक्त ऋजु और उचित प्रक्रिया का एक तत्व है। राज्य का यह कर्तव्य है कि वह उसे सूचित करे कि उसे निःशुल्क सहायता प्राप्त करने का अधिकार है। प्रस्तुत मामले में अभियुक्त निर्धनता के कारण परीक्षण के समय अधिवक्ता की सेवाएं प्राप्त करने में असमर्थ रहा था। उच्च न्यायालय ने यह निर्णय दिया कि उसका परीक्षण अवैध नहीं था, क्योंकि उसने विधिक सहायता के लिए आवेदन नहीं दिया था। उच्चतम न्यायालय ने अपील में उच्च न्यायालय के निर्णय को उलट दिया और यह निर्णय दिया चूंकि परीक्षण के समय अभियुक्त को निःशुल्क सहायता नहीं दी गई थी, अतः उसका परीक्षण अनुच्छेद 21 का उल्लंघन करता था।

सर्वोच्च न्यायालय के द्वारा न्याय दृष्टांत ***मोहम्मद अजमल आमिर कसाब विरूद्ध महाराष्ट्र राज्य, (2012) 9 एस.सी.सी. 1*** में यह धारित किया गया है कि किसी व्यक्ति को विधिक सहायता प्राप्त करने का अधिकार, विधि व्यवसायी से परामर्श करने का अधिकार एवं उसके द्वारा बचाव किये जाने का अधिकार उसी समय उत्पन्न हो जाता है जब उसे किसी संज्ञेय अपराध में गिरफ्तार कर मजिस्ट्रेट के समक्ष प्रस्तुत किया जाता है। जिस मजिस्ट्रेट के समक्ष किसी संज्ञेय अपराध के अभियुक्त को प्रस्तुत किया जाता है, उसका यह वैधानिक कर्तव्य है कि वह ऐसे व्यक्ति को किसी विधि व्यवसायी के द्वारा बचाव किये जाने के एवं विधि व्यवसायी से परामर्श करने के उसके अधिकार से पूर्णतः अवगत कराये एवं यदि उसके पास अपनी पसंद का अधिवक्ता नियुक्त करने के लिये साधन नहीं है, तो उसे शासन के व्यय पर विधिक सहायता से एक अधिवक्ता प्रदान करवाये। सर्वोच्च न्यायालय के द्वारा 31 वर्ष पूर्व देश के अकिंचन एवं अधिकारविहीन व्यक्तियों को प्रदत्त यह अधिकार उस समय भी छीना नहीं जा सकता है, जबकि न्यायालय किसी आतंकवादी के प्रकरण पर विचार कर रहा हो। यह अधिकार संविधान के अनुच्छेद 21 एवं 22 (1) से प्रवाहित होता है एवं इसका कड़ाई से पालन करवाया जाना आवश्यक है। तद्नुसार सर्वोच्च न्यायालय के द्वारा देश के सभी मजिस्ट्रेटों को यह निर्देशित किया गया कि वे अपने उपरोक्त वैधानिक कर्तव्य का निर्वहन पूरी निष्ठा से करें एवं सर्वोच्च न्यायालय के द्वारा यह भी स्पष्ट किया गया की कर्तव्य का पूर्णतः निर्वहन करने में असफलता कर्तव्य की अवहेलना मानी जावेगी एवं संबंधित मजिस्ट्रेट को विभागीय कार्यवाही का भागी बनायेगी।

माननीय सर्वोच्च न्यायालय के द्वारा यह भी स्पष्ट किया गया कि विधि व्यवसायी से परामर्श करने एवं उसके द्वारा बचाव किये जाने के अधिकार का अर्थान्वयन इस प्रकार से नहीं किया जायेगा की अधिवक्ता को पुलिस के द्वारा की जाने वाली पूछताछ के समय उपस्थित रहने का अधिकार अथवा छूट है। हमारी विधिक प्रणाली के अनुसार अधिवक्ता की भूमिका मुख्यतः न्यायालयीन कार्यवाहियों पर

केन्द्रित है। किसी अभियुक्त को अधिवक्ता की आवश्यकता आरक्षी अथवा न्यायिक निरोध का विरोध करने के लिये, प्रतिभूति प्राप्त करने के लिये, यदि अभियुक्त धारा 164 दण्ड प्रक्रिया संहिता के अंतर्गत संस्वीकृति कथन करना चाहता हो, तो उसके वैधानिक परिणामों को स्पष्ट करने के लिये, न्यायालय के द्वारा अभियोग पत्र का परीक्षण किये जाते समय एवं भविष्य में की जाने वाली कार्यवाही की दशा निर्धारित किये जाते समय अभियुक्त का प्रतिनिधित्व करने के लिये, आरोप विरचित किये जाते समय अभियुक्त का प्रतिनिधित्व करने के लिये एवं विचारण के समय होती है। इस प्रकार यह देखा जाना चाहिये की इस देश में विधिक सहायता का अधिकार निरांडा सिद्धांतों पर, स्वअभिशंसा के विरूद्ध संरक्षण पर, जिसके लिये भारतीय विधि में पहले से ही पर्याप्त उपबंध है, आधारित नहीं है। विधिक सहायता का अधिकार, विशिष्ट रूप से भारतीय संविधान एवं कानूनों से प्रवाहित होता है एवं यह सुनिश्चित करने के आशयित है कि वे प्रावधान निष्ठापूर्वक लागू किये जा रहे है।

अजमल कसाब वाले उपरोक्त प्रकरण में यह धारित किया गया था कि ऐसे प्रत्येक अभियुक्त को, जिसकी ओर से कोई अधिवक्ता नियुक्त नहीं है, विचारण के प्रारंभ में ही संपूर्ण विचारण के प्रयोजन हेतु अधिवक्ता प्रदान कर दिया जाना चाहिये। यदि कोई अभियुक्त मौन रहता है एवं अधिवक्ता की मांग नहीं करता है, तो भी न्यायालय का यह वैधानिक दायित्व है कि वह विचारण प्रारंभ होने के पूर्व उसे अधिवक्ता प्रदान करे, जब तक की अभियुक्त समस्त जानकारी के आधार पर स्वेच्छापूर्वक निर्णय लेकर न्यायालय को स्पष्ट एवं निश्चित शब्दों में यह नहीं बताता है कि वह किसी अधिवक्ता की सहायता लेना नहीं चाहता है, बल्कि वह व्यक्तिगत रूप से स्वयं का बचाव करेगा। विचारण पूर्व अवस्था में अधिवक्ता प्रदान करने का न्यायालय का कर्त्तव्य संपूर्ण है, परंतु विचारण पूर्व अवस्था में अभियुक्त को अधिवक्ता प्रदान न किये जाने के परिणाम स्वरूप विचारण का दूषित होना आवश्यक नहीं है। इसका परिणाम यह हो सकता है कि दोषी मजिस्ट्रेट विभागीय कार्यवाही का भागी होगा तथा अभियुक्त को यह अधिकार उत्पन्न हो जायेगा की वह विधिक सहायता प्रदान न करने के लिये राज्य से क्षतिपूर्ति प्राप्त कर सके, परंतु इससे विचारण दूषित नहीं होगा, जब तक कि यह दर्शा न दिया जाये की विचारण पूर्व अवस्था में विधिक सहायता प्रदान किये जाने में हुई असफलता से विचारण के दौरान अभियुक्त के हित सारभूत रूप से प्रभावित हुये है। इस बात का निर्णय प्रकरण के तथ्यों में किया जायेगा।

विचारण की अवस्था में अभियुक्त को विधिक सहायता प्रदान न किये जाने का परिणाम यह होगा कि विचारण तथा परिणामिक दोषसिद्धि एवं सजा दूषित हो जायेगी।

निष्कर्ष

उपरोक्त समस्त विवेचन से स्पष्ट है कि अनुच्छेद 21 के अनुसार प्रदत्त प्राण एवं दैहिक स्वतंत्रता के अधिकार के अंतर्गत बंदियों को शीघ्र विचारण का अधिकार एवं निःशुल्क विधिक सहायता प्राप्त करने का अधिकार सम्मिलित है। इन अधिकारों के बिना किसी व्यक्ति को आपराधिक विचारण के दौरान उसकी गरिमा एवं व्यक्तिगत स्वतंत्रता से अयुक्तियुक्त रूप से वंचित होना पड़ता है। अतः उपरोक्त तीनों अधिकार किसी भी आपराधिक विचारण में व्यक्ति कि दैहिक स्वतंत्रता के लिए अत्यंत ही आवश्यक है, जिन्हें सुरक्षित करना संविधान की भावना भी है।

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PART – II

NOTES ON IMPORTANT JUDGMENTS

151. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Sections 7, 8, 9, 10, 10 (2) and 10 (4)

(i) Standard Rent – It is determined under the municipal assessment, which is not static or stagnant and is subject to periodical re-assessment and enhancement.

(ii) Meaning of Standard Rent – As 'mentioned in Section 7 (3) of the Act' – It is dependent upon the annual rent determined under the municipal assessment which is revised from time to time under the municipal laws.

(iii) Reasonable Rent – Determined by the Rent Controlling Authority under section 10 is not limited, fixed or confined to the meaning of the words 'standard rent' nor is it fixed in perpetuity – Can be increased as and when such a request is made in accordance with the provisions of **the Act.**

(iv) Enhancement of Standard Rent – Section 7 of the Act, does not fix but only elaborates the meaning of "standard rent" and does not deprive the Rent Controlling Authority of the discretion, power and authority to determine a reasonable rent as standard rent of an accommodation – Standard rent once fixed can be increased on an application being filed by the landlord or tenant, as the case may be under section 9 of the Act.

Santosh Kumar v. Purushottam Soni and anr.
Judgment dated 26.02.2013 passed by the High Court of M.P. in S.A. No. 1037 of 2009, reported in ILR (2013) M.P. 635

Extracts from Judgment:

A bare perusal of the provisions of section 7 (3) of the Act makes it clear that the term "standard rent" in respect of an accommodation which is separately assessed to municipal assessment would mean the annual rent in accordance with such municipal assessment plus 15% thereof and therefore, it is apparent and clear that the meaning of the term 'standard rent' in respect of an accommodation falling under section 3 (a) of the Act, would depend upon the annual rent of the accommodation which, in turn, is determined under the municipal assessment which is not static or stagnant and is subject to periodical re-assessment and enhancement under the provisions of M.P. Municipalities Act, 1961 or the M.P. Municipal Corporation Act, 1956, as the case may be.

What emerges from an analysis of the provisions of sections 7(3), 8, 9 and 10 of the Act, is that the meaning of 'standard rent' mentioned in section 7(3) of the Act, is dependent upon the annual rent determined under the municipal assessment which is revised from time to time under the municipal laws; that

the landlord is entitled to lawfully increase the rent by 10% per year in cases which fall under sub section (1) of section 8 of the Act, while he is entitled to lawfully increase the rent for recovering any charges towards electricity, water or other charges levied by the local authority as well as the tax by getting the standard rent fixed on re-assessment of the tax or by incorporating such a term in the agreement under section 8(2) of the Act; that the Rent Controlling Authority has the power under section 10 of the Act, not just to fix the standard rent but also to increase the same as referred to in section 8 of the Act; that the Rent Controlling Authority has the power to fix a reasonable amount as standard rent even apart from the provisions of section 7 of the Act, in accordance with the guidelines as laid down in section 10(2) and (4) of the Act; that the standard rent, fixed by the Rent Controlling Authority, would be only for a tenancy of 12 months under section 10(5) of the Act, and that a conjoint reading of various sub-sections of section 10 of the Act makes it abundantly clear that reasonable rent determined by the Rent Controlling Authority under section 10 (2) or section 10(4) of the Act is not limited, fixed or confined to the meaning of the words 'standard rent' contained in section 7 of the Act nor is it fixed for perpetuity but can be sought to be increased as and when such a request is made in accordance with the provisions of the Act.

I am of the considered opinion that section 7 of the Act, does not fix but only elaborates the meaning of "standard rent" and does not deprive the Rent Controlling Authority of the discretion, power and authority to determine a reasonable rent as standard rent of an accommodation under section 10 (2) or 10(4) of the Act. I am also of the considered opinion that the standard rent once fixed can be increased on an application being filed by the landlord or tenant, as the case may be under section 9 of the Act, and that the increase can be sought on the following amongst other grounds, namely, in case the annual rent for the purpose of assessment of tax by the municipal authority is changed or revised as provided under section 7(3)(a) of the Act, in case the landlord undertakes construction, addition, alteration etc., then, to the extent of 10% as provided under section 8 (1) of the Act, in cases where the landlord is required to pay electricity, water or other charges to the local authority or in case of enhancement of tax by incorporating such a clause in the agreement as provided under section 8(2) of the Act or on the basis of the factors mentioned under section 10(4) of the Act where it is not possible to determine the standard rent in accordance with the provisions of section 7 of the Act. The rent of the accommodation may also be increased in accordance with the guidelines and norms issued by the Supreme Court in paragraph 21 of the judgment rendered in the case of ***Mohammad Ahmad and another v. Atma Ram Chauhan and others, (2011)7 SCC 755.***

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152. ADVOCATES:

Free electricity to the Bar – Profession of an advocate is not a mere profession – The advocates are officers of the Court, they have their duty towards their clients and also towards the Court and an efficient and intelligent bar is necessary for the effective administration of justice – The members who are working in the High Court, District Courts and Tahsil Courts are eligible to get free electricity in the Bar Rooms officially provided in the Court premises.

Vinod Kumar Bhardwaj v. State of M P and others
Order dated 24.1.2013 passed by the High Court of M.P. in W.P. No. 5007 of 2012, reported in 2013 (I) MPJR 260

Extracts from Order :

It is well settled principle of law that the profession of an advocate is not mere a profession. The advocates are officers of the Court, they have their duty towards their clients and also towards the Court and an efficient and intelligent bar is necessary for the effective administration of justice. If the bar does not have proper facilities in the Court premises, then the administration of justice would be affected adversely as observed by the Hon'ble Supreme Court in the case of ***Supreme Court Bar Association and others v. B.D. Kaushik, (2011) 13 SCC 774.*** The Supreme Court is providing four huge libraries, three canteens, two lounges, several rooms as consultation rooms, parking places and free use of electricity supply to the members of the Supreme Court's Bar Association. It is a common knowledge that the members of the Supreme Court Bar Association have been earning much more than the members of the High Court Bar Association or District Court Bar Association or Tahsil Court Bar Association, when they are being provided facilities of free electricity, then certainly the members who are working in the High Court, District Courts and Tahsil Courts are also eligible to get free electricity in the Bar Rooms officially provided in the Courts premises. The State Government cannot ignore this aspect of administration of justice to the effect that for providing facilities to the advocates in practising so that they can effectively practise before the Courts. During court working hours, the advocates have a facility to sit in the bar rooms, which is officially provided by the Courts. In the aforesaid Bar rooms, they used to sit when they are not required to appear in the Court, they use to read the files and law books and also use to consult with their clients and when it is held that the profession of the advocates is not merely a profession but the advocates are officers of the Court, then certainly they are entitled to get some facilities, consequently it naturally follows the electricity charges of the electricity consumed in the bar rooms officially provided by the Court shall be paid by the State Government. It does not mean that the State Government has to provide Air Conditioning charges in the Bar Rooms. It is obligatory on the part of the Government to bear electricity expenses of fans, tube-lights and bulbs and also of coolers during summer season in the Bar Rooms of High Court, District Courts and Tahsil Courts officially provided by the Court.

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153. CIVIL PROCEDURE CODE, 1908 – Section 9
SARFAESI ACT, 2002 – Section 34
Inherent lack of jurisdiction – If a court finds that it has no jurisdiction to entertain the suit, it is obligatory on the part of the court not to pronounce the judgment on other issues.

Ashok Kumar Jain and ors v. Punjab and Sindh Bank and ors.
Judgment dated 03.04.2013 passed by the High Court of M.P. in F.A. No. 348 of 2011, reported in 2013 (II) MPJR 99

Extracts from Judgment :

It is well settled principle of law that if the court has held that it has no jurisdiction to entertain the suit, then it is obligatory on the part of the court not to pronounce the judgment on other issues because the court lacks the jurisdiction. In the present case, the trial Court has held that it has no jurisdiction to entertain the suit in view of Section 34 of SARFAESI Act. In such circumstances in our opinion, it was obligatory on the part of the court not to pronounce the judgment on other issues about the merits of the case.

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***154. CIVIL PROCEDURE CODE, 1908 – Section 115 and Order 9 Rule 9**
LIMITATION ACT, 1963 – Section 5

(i) If on the date, counsel of the party did not appear then instead of dismissing the suit or proceeding exparte, the duty of the court is to inform the party through summons by fixing the case on some future date – If party did not appear on that day then the court may pass order either for dismissal of the suit or for proceeding exparte – In such circumstances, trial court ought to have allowed the application under section 5 of Limitation Act and Order 9 Rule 9 C.P.C.

(ii) Condonation of delay – Besides considering all other things, the court is also bound to consider the stake of litigation.

Riyaj Khan and ors. v. Kasam Khan and ors.
Judgment dated 01.03.2013 passed by the High Court of M.P. in C. R. No. 20 of 2012, reported in ILR (2013) M.P. S.N. 17

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155. CIVIL PROCEDURE CODE, 1908 – Order 23 Rule 1(3)

(i) Meaning of expression 'formal defect' – It connotes defects of various kinds not affecting the merits of the case i.e. a defect in the nature prescribed by rules of procedure.

(ii) Cause of action for seeking partition of the joint family property is a recurring cause of action – When one suit is dismissed as withdrawn, second suit for partition of the property is not barred in law.

Kunwar Bai wd/o Ram Prasad Keer and others v. Gangaram S/o Baliram Keer and another
Order dated 24.01.2013 passed by the High Court of M.P. in C.R. No. 259 of 2012, reported in 2013 (2) MPLJ 173

Extracts from Order:

According to me, the provision envisaged under Order XXIII Rule 1(3) CPC can be set in motion and the permission to withdraw the suit with liberty to file fresh suit can be granted only when the defect pointed out is formal one and not substantial one. I may further add that the object of this provision is not to permit the plaintiff to file a fresh suit if he has failed to conduct the suit with care and diligence but to prevent technical defect in rendering justice. The expression 'formal defect' connotes defects of various kinds not affecting the merits of the case, which according to me, would mean a defect in the nature prescribed by rules of procedure. If the procedural rules under Order I CPC are seen, this Court finds that the Order I CPC pertains to the impleadment of the parties to the suit and Rule 3 prescribes that all the persons may be joined in one suit as defendants where any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative and further if separate suits were brought against such persons, any common question of law and fact would arise. At that same time, while considering the said application the Court should see that the object to allow this application as to whether with care and diligence without impleading some of the coparceners in the suit was filed for which the withdrawal is sought with liberty to file fresh suit.

The cause of action for seeking partition of joint Hindu family property is a recurring cause of action and even if one suit is dismissed as withdrawn second suit for partition of the property is not barred because in a partition suit the defendant who is entitled to a particular share is also in the position of plaintiff.

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156. CRIMINAL PROCEDURE CODE, 1973 – Section 125
HINDU ADOPTIONS AND MAINTENANCE ACT, 1956 – Section 18 (2)
Proceeding under section 125 Cr.P.C. is summary in nature and intended to provide a speedy remedy to the wife and an order passed under section 125 Cr.P.C. by compromise or otherwise cannot foreclose the remedy available to a wife u/s 18 (2) of Hindu Adoption and Maintenance Act.

Nagendrappa Natikar v. Neelamma
Judgment dated 15.03.2013 passed by the Supreme Court in Special Leave Petition (Civil) No. 11800 of 2013, reported in AIR 2013 SC 1541

Extracts from Judgment:

The question that is raised for consideration in this case is whether a compromise entered into by husband and wife under Order XXIII, Rule 3 of the

Code of Civil Procedure, agreeing for consolidated amount for permanent alimony, thereby giving up any future claim for maintenance, accepted by the Court in a proceeding under Section 125 of the Code of Criminal Procedure would preclude the wife from claiming maintenance in a suit filed under Section 18 of the Hindu Adoption and Maintenance Act, 1956 (for short "the Act")?.

Section 125 Cr.P.C. is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the status and personal rights of parties, which is in the nature of civil proceeding, though are governed by the provisions of the Cr.P.C and the order made under Section 125 Cr.P.C. is tentative and is subject to final determination of the rights in a civil court.

Section 25 of the Contract Act provides that any agreement which is opposed to public policy is not enforceable in a Court of Law and such an agreement is void, since the object is unlawful. Proceeding under Section 125 Cr.P.C. is summary in nature and intended to provide a speedy remedy to the wife and any order passed under Section 125 Cr.P.C. by compromise or otherwise cannot foreclose the remedy available to a wife under section 18(2) of the 1956 Act.

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157. CRIMINAL PROCEDURE CODE, 1973 – Sections 154, 156 (3) and 200

(i) More than one FIR, permissibility of – There cannot be two FIRs registered for the same offence – The possibility that more than one piece of information is given to the Officer-in-Charge of a police station in respect of the same incident involving more than one cognizable offence, cannot be ruled out – The Court in order to examine the impact of one or more FIR has to rationalize the fact and circumstance of each case and then apply the test of "sameness" to find out whether both the FIRs relate to the same incident or two incidents or two or more parts of the same transaction.

(ii) Whether an accused is entitled to be heard before registration of a FIR? Held, No – The rule of *audi alteram partem* is subject to exceptions – At the stage of registration of FIR or passing of a direction u/s 156 (3), the law does not contemplate the opportunity of any hearing to a suspect.

(iii) Order of investigation u/s 156 (3) – A Magistrate is competent to treat even a complaint as an application and pass orders u/s 156 (3), but where it takes cognizance, there, it would have to be treated as a regular complaint to be tried in accordance with Chapter XV of the Code.

Anju Chaudhary v. State of Uttar Pradesh and another
Judgment dated 13.12.2012 passed by the Supreme Court in Criminal Appeal No. 2039 of 2012, reported in (2013) 6 SCC 384

Extracts from Judgment

On the plain construction of the language and scheme of Sections 154, 156 and 190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of Section 154 suggest that every information relating to commission of a cognizable offence shall be reduced into writing by the officer-in-charge of a Police Station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code. It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of Section 154 of the Code. These safeguards can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by the investigating authority of the police. Therefore, second FIR for the same incident cannot be registered. Of course, the Investigating Agency has no determinative right. It is only a right to investigate in accordance with the provisions of the Code. The filing of report upon completion of investigation, either for cancellation or alleging commission of an offence, is a matter which once filed before the court of competent jurisdiction attains a kind of finality as far as police is concerned, may be in a given case, subject to the right of further investigation but wherever the investigation has been completed and a person is found to be prima facie guilty of committing an offence or otherwise, re-examination by the investigating agency on its own should not be permitted merely by registering another FIR with regard to the same offence. If such protection is not given to a suspect, then possibility of abuse of investigating powers by the Police cannot be ruled out. It is with this intention in mind that such interpretation should be given to Section 154 of the Code, as it would not only further the object of law but even that of just and fair investigation. More so, in the backdrop of the settled canons of criminal jurisprudence, re-investigation or de novo investigation is beyond the competence of not only the investigating agency but even that of the learned Magistrate. The courts have taken this view primarily for the reason that it would be opposed to the scheme of the Code and more particularly Section 167(2) of the Code. [Ref. ***Rita Nag v. State of West Bengal, (2009) 9 SCC 129*** and ***Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762*** of the same date].

It has to be examined on the merits of each case whether a subsequently registered FIR is a second FIR about the same incident or offence or is based upon distinct and different facts and whether its scope of inquiry is entirely different or not. It will not be appropriate for the Court to lay down one

straightjacket formula uniformly applicable to all cases. This will always be a mixed question of law and facts depending upon the merits of a given case.

Section 154 of the Code places an unequivocal duty upon the police officer in charge of a police station to register FIR upon receipt of the information that a cognizable offence has been committed. It hardly gives any discretion to the said police officer. The genesis of this provision in our country in this regard is that he must register the FIR and proceed with the investigation forthwith. While the position of law cannot be dispelled in view of the three Judge Bench Judgment of this Court in ***State of Uttar Pradesh v. Bhagwant Kishore Joshi, AIR 1964 SC 221,*** a limited discretion is vested in the investigating officer to conduct a preliminary inquiry pre-registration of a FIR as there is absence of any specific prohibition in the Code, express or implied. The subsequent judgments of this Court have clearly stated the proposition that such discretion hardly exists. In fact the view taken is that he is duty bound to register an FIR. Then the question that arises is whether a suspect is entitled to any pre-registration hearing or any such right is vested in the suspect.

The rule of audi alteram partem is subject to exceptions. Such exceptions may be provided by law or by such necessary implications where no other interpretation is possible. Thus rule of natural justice has an application, both under the civil and criminal jurisprudence. The laws like detention and others, specifically provide for post-detention hearing and it is a settled principle of law that application of this doctrine can be excluded by exercise of legislative powers which shall withstand judicial scrutiny. The purpose of the Criminal Procedure Code and the Indian Penal Code is to effectively execute administration of the criminal justice system and protect society from perpetrators of crime. It has a twin purpose; firstly to adequately punish the offender in accordance with law and secondly to ensure prevention of crime. On examination, the scheme of the Criminal Procedure Code does not provide for any right of hearing at the time of registration of the First Information Report. As already noticed, the registration forthwith of a cognizable offence is the statutory duty of a police officer in charge of the police station. The very purpose of fair and just investigation shall stand frustrated if pre-registration hearing is required to be granted to a suspect. It is not that the liberty of an individual is being taken away or is being adversely affected, except by the due process of law. Where the Officer in-charge of a police station is informed of a heinous or cognizable offence, it will completely destroy the purpose of proper and fair investigation if the suspect is required to be granted a hearing at that stage and is not subjected to custody in accordance with law. There would be the pre-dominant possibility of a suspect escaping the process of law. The entire scheme of the Code unambiguously supports the theory of exclusion of audi alteram partem pre-registration of an FIR. Upon registration of an FIR, a person is entitled to take recourse to the various provisions of bail and anticipatory bail to claim his liberty in accordance with law. It cannot be said to be a violation of the principles of natural justice for two different reasons. Firstly, the Code does not provide for any such right at that

stage. Secondly, the absence of such a provision clearly demonstrates the legislative intent to the contrary and thus necessarily implies exclusion of hearing at that stage. This Court in the case of ***Union of India v. W.N. Chadha, (1993) Suppl. (4) SCC 260*** clearly spelled out this principle in paragraph 98 of the judgment that reads as under:

> "98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary."

In the case of ***Samaj Parivartan Samuday v. State of Karnataka, (2012) 7 SCC 407,*** a three-Judge Bench of this Court while dealing with the right of hearing to a person termed as 'suspect' or 'likely offender' in the report of the CEC observed that there was no right of hearing. Though the suspects were already interveners in the writ petition, they were heard. Stating the law in regard to the right of hearing, the Court held as under :

> "There is no provision in CrPC where an investigating agency must provide a hearing to the affected party before registering an FIR or even before carrying on investigation prior to registration of case against the suspect. CBI, as already noticed, may even conduct pre-registration inquiry for which notice is not contemplated under the provisions of the Code, the Police Manual or even as per the precedents laid down by this Court. It is only in those cases where the Court directs initiation of investigation by a specialised agency or transfer investigation to such agency from another agency that the Court may, in its discretion, grant hearing to the suspect or affected parties. However, that also is not an absolute rule of law and is primarily a matter in the judicial discretion of the Court. This question is of no relevance to the present case as we have already heard the interveners."

While examining the above-stated principles in conjunction with the scheme of the Code, particularly Section 154 and 156 (3) of the Code, it is clear that the law does not contemplate grant of any personal hearing to a suspect who attains the status of an accused only when a case is registered for committing a particular offence or the report under Section 173 of the Code is filed terming the suspect an accused that his rights are affected in terms of the Code. Absence of specific

provision requiring grant of hearing to a suspect and the fact that the very purpose and object of fair investigation is bound to be adversely affected if hearing is insisted upon at that stage, clearly supports the view that hearing is not any right of any suspect at that stage.

Even in the cases where report under Section 173(2) of the Code is filed in the Court and investigation records the name of a person in column (2), or even does not name the person as an accused at all, the Court in exercise of its powers vested under Section 319 can summon the person as an accused and even at that stage of summoning, no hearing is contemplated under the law.

Of course, situation will be different where the complaint or an application is directed against a particular person for specific offence and the Court under Section 156 dismisses such an application. In that case, the higher court may have to grant hearing to the suspect before it directs registration of a case against the suspect for a specific offence. We must hasten to clarify that there is no absolute indefeasible right vested in a suspect and this would have to be examined in the facts and circumstances of a given case. But one aspect is clear that at the stage of registration of a FIR or passing a direction under Section 156(3), the law does not contemplate grant of any hearing to a suspect.

Investigation into commission of a crime can be commenced by two different modes: first, where the police officer registers an FIR in relation to commission of a cognizable offence and commences investigation in terms of Chapter XII of the Code, the other is when a Magistrate competent to take cognizance in termss of Section 190 may order an investigation into commission of a crime as per the provisions of that Chapter XIV. Section 156 primarily deals with the powers of a police office to investigate a cognizable case. While dealing with the application or passing an order under Section 156(3), the Magistrate does not take cognizance of an offence. When the Magistrate had applied his mind only for ordering an investigation under Section 156(3) of the Code or issued a warrant for the said purpose, he is not said to have taken cognizance. It is an order in the nature of a pre-emptory reminder or intimation to the police to exercise its primary duty and power of investigation in terms of Section 151 of the Code. Such an investigation embraces the continuity of the process which begins with collection of evidence under Section 156 and ends with the final report either under Section 159 or submission of chargesheet under Section 173 of the Code. [Refer ***Mona Pawar v. High Court of Judicature of Allahabad [2011) 3 SCC 496***].

Still another situation that can possibly arise is that the Magistrate is competent to treat even a complaint termed as an application and pass orders under Section 156(3), but where it takes cognizance, there it would have to be treated as a regular complaint to be tried in accordance with the provisions of Section 200 onwards falling under Chapter XV of the Code. There also the Magistrate is vested with the power to direct investigation to be made by a police officer or by such other person as he thinks fit for the purposes of deciding

whether or not there is sufficient ground for proceeding. This power is restricted and is not as wide as the power vested under Section 156(3) of the Code. The power of the Magistrate under Section 156(3) of the Code to order investigation by the police have not been touched or affected by Section 202 because these powers are exercised even before the cognizance is taken. In other words, Section 202 would apply only to cases where Magistrate has taken cognizance and chooses to enquire into the complaint either himself or through any other agency. But there may be circumstances where the Magistrate, before taking cognizance of the case himself, chooses to order a pure and simple investigation under Section 156(3) of the Code. These cases would fall in different class. This view was also taken by a Bench of this Court in the case of ***Rameshbhai Pandurao Hedau v. State of Gujarat, (2010) 4 SCC 185.*** The distinction between these two powers had also been finally stated in the judgment of this Court in the case of ***Srinivas Gundluri and Ors. v. SEPCO Electric Power Construction Corporation, (2010) 8 SCC 206*** wherein the Court stated that:

> "... to proceed under Section 156(3) of the Code, what is required is a bare reading of the complaint and if it discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is sufficient ground for proceeding, may direct the police for investigation.

But where it takes cognizance and decides as to whether or not there exists a ground for proceeding any further, then it is a case squarely falling under Chapter XV of the Code.

Thus, the Magistrate exercises a very limited power under Section 156(3) and so is its discretion. It does not travel into the arena of merit of the case if such case was fit to proceed further. This distinction has to be kept in mind by the court in different kinds of cases.

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158. CRIMINAL PROCEDURE CODE, 1973 – Sections 154 and 162
EVIDENCE ACT, 1872 – Section 134
Second FIR, meaning of – Telephonic information that gave no details of the commission of the crime as to who committed the crime and how the occurrence took place – On reaching the place of occurrence Investigating Officer got particulars of the incident and even the names of the person who had committed the crime – Telephonic call was not FIR but was an information to invite them to the place of occurrence – Thus, FIR subsequently registered was not second FIR.
Yanob Sheikh alias Gagu v. State of West Bengal
Judgment dated 13.12.2012 passed by the Supreme Court in Criminal Appeal No. 905 of 2009, reported in (2013) 6 SCC 428

Extracts from Judgment

First and foremost, we may examine the question whether FIR, Ex.1/3, can be treated by the Courts as the First Information Report and if so, what is the effect of Ex.7 in law, keeping in view the facts and circumstances of the present case. It is clearly established on record that the occurrence took place in the evening of 19th December, 1984. The occurrence was a result of an altercation and the abuses hurled at PW1 and the deceased by Yanab near the water tank. Immediately upon the altercation, the accused had ran to his house and returned along with Najrul and threw a bomb at the deceased. PW1, brother of the deceased, PW5, Basera Bibi, wife of the deceased and PW6 Abdus Sukur, cousin of the deceased are the eye-witnesses and they said that they had seen the appellant throwing a bomb upon the deceased and that the accused, Yanab, had taken the said bomb from the bag of Najrul. After the incident, PW6 had gone to the Duni Gram Post Office and informed the police about the incident over the telephone. He informed the police that there had been a murder in the village and they should come. When the police arrived, he was in the village and he met the police at the house of the deceased Samim. This phone call was taken and the G.D. Entry was registered by PW14, SI R.P. Biswas.

According to PW14, on 19th December, 1984 at about the 0805 hours, he had received a telephonic information and noted the information in General Diary No. 708 and thereafter he had proceeded towards village Lauria along with PW15, SI S. Chaterjee. Ex.7 had been recorded by PW14 and he had received the written complaint by PW1, Sadek Ali, and the same was submitted to him after he had reached the village Lauria and was addressed to the Officer In-charge, Rampurath Police Station. This written complaint was Ex.1. The cumulative effect of the statements of PW1, PW6 and PW14 clearly indicate that Ex.7 was not the First Information Report of the incident. It gave no details of the commission of the crime as to who had committed the crime and how the occurrence took place. A First Information Report normally should give the basic essentials in relation to the commission of a cognizable offence upon which the Investigating Officer can immediately start his investigation in accordance with the provisions of Section 154, Chapter XII of the Code. In fact, it was only upon reaching the village Lauria that PW14 got particulars of the incident and even the names of the persons who had committed the crime. A written complaint with such basic details was given by PW1 under his signatures to the police officer, who then made endorsement as Ex.1/1 and registered the FIR as Ex.1/3. In these circumstances, we are unable to accept the contention that Ex.7 was, in fact and in law, the First Information Report and that Ex.1/3 was a second FIR for the same incident/occurrence which was not permissible and was opposed to the provisions of the Section 162 of the Code.

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159. CRIMINAL PROCEDURE CODE, 1973 – Sections 154 and 173

(i) Second FIR – When permissible? The earliest or the first information in regard to the commission of a cognizable offence satisfies the requirement of Section 154 CrPC – Thus, there can be no second FIR and consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same offence or the same incident giving rise to one or more offences.

(ii) "Consequence test" – Applicability of – To determine whether a different offence ought to be treated as part of the same transaction, the "consequence test" may be taken aid of – If an offence forming part of the second FIR arises as a consequence of the offence alleged in the first FIR, then offence covered by both the FIRs are the same, accordingly, the second FIR will be impermissible.

Amitbhai Anilchandra Shah v. Central Bureau of Investigation and another

Judgment dated 08.04.2013 passed by the Supreme Court in Writ Petition (Crl.) No. 149 of 2012, reported in (2013) 6 SCC 348

Extracts from Judgment

The various provisions of the Code of Criminal Procedure clearly show that an officer-in-charge of a police station has to commence investigation as provided in Section 156 or 157 of the Code on the basis of entry of the First Information Report, on coming to know of the commission of cognizable offence. On completion of investigation and on the basis of evidence collected, Investigating Officer has to form an opinion under Section 169 or 170 of the Code and forward his report to the concerned Magistrate under Section 173(2) of the Code.

Even after filing of such a report, if he comes into possession of further information or material, there is no need to register a fresh FIR, he is empowered to make further investigation normally with the leave of the Court and where during further investigation, he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports which is evident from sub-section (8) of Section 173 of the Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. Thus, there can be no second FIR and, consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.

Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering FIR in the Station House Diary, the officer-in-charge of the police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Code. Sub-section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report (s) to the Magistrate. A case of fresh investigation based on the second or successive FIRs not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, is liable to be interfered with by the High Court by exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution.

First Information Report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/event because whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR.

(ii) This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In ***T.T. Anthony v. State of Kerala, (2001) 6 SCC 181*** this Court has categorically held that registration of second FIR (which is not a cross case) is violative of Article 21 of the Constitution. The following conclusion in paragraph Nos. 19, 20 and 27 of that judgment are relevant which read as under:

> "19. The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 CrPC.

20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.

* * *

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In ***Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322*** it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way

> or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution."

The above referred declaration of law by this Court has never been diluted in any subsequent judicial pronouncements even while carving out exceptions.

Learned ASG, by referring ***T.T. Anthony*** (supra) submitted that the said principles are not applicable and relevant to the facts and circumstances of this case as the said judgment laid down the ratio that there cannot be two FIRs relating to the same offence or occurrence. Learned ASG further pointed out that in the present case, there are two distinct incidents/occurrences, inasmuch as one being the conspiracy relating to the murder of Sohrabuddin with the help of Tulsiram Prajapati and the other being the conspiracy to murder Tulsiram Prajapati – a potential witness to the earlier conspiracy to murder Sohrabuddin. We are unable to accept the claim of the learned ASG. As a matter of fact, the aforesaid proposition of law making registration of fresh FIR impermissible and violative of Article 21 of the Constitution is reiterated, re-affirmed in the following subsequent decisions of this Court: (1) ***Upkar Singh v. Ved Prakash, (2004) 13 SCC 292, (2) Babubhai v. State of Gujarat and Ors., (2010) 12 SCC 254, (3) Chirra Shivraj v. State of A.P., AIR 2011 SC 604, (4) C. Muniappan v. State of Tamil Nadu, (2010) 9 SCC 567.*** In ***C. Muniappan*** (supra), this Court explained "consequence test", i.e., if an offence forming part of the second FIR arises as a consequence of the offence alleged in the first FIR then offences covered by both the FIRs are the same and, accordingly, the second FIR will be impermissible in law. In other words, the offences covered in both the FIRs shall have to be treated as a part of the first FIR.

In the case on hand, in view of the principles laid down in the above referred decisions, in particular, ***C. Muniappan*** (supra) as well as in ***Chirra Shivraj*** (supra), apply with full force since according to the CBI itself it is the case where:

(i) The larger conspiracy allegedly commenced in November, 2005 and culminated into the murder of Tulsiram Prajapati in December, 2006 in a fake encounter;

(ii) The alleged fake encounter of Tulsiram Prajapati was a consequence of earlier false encounter of Sohrabuddin and Kausarbi since Tulsiram Prajapati was an eye witness to the abduction and consequent murders of Sohrabuddin and Kausarbi; and

(iii) Tulsiram Prajapati was allegedly kept under the control of accused police officers, as a part of the same conspiracy, till the time he was allegedly killed in a fake encounter.

In view of the factual situation as projected by the CBI itself, the ratio laid down by this Court in ***C. Muniappan*** (supra), viz., merely because two separate

complaints had been lodged did not mean that they could not be clubbed together and one chargesheet could not be filed [See ***T.T. Anthony*** (supra)].

In view of the consistent stand taken by the CBI, at this juncture, CBI may not be permitted to adopt a contradictory stand.

Learned counsel for the petitioner has placed reliance on the following decisions of this Court which explained "same transaction": ***(i) Babulal Choukhani v. King Emperor , AIR 1938 PC 130, (ii) S. Swamirathnam v. State of Madras, AIR 1957 SC 340, (iii) State of A.P. v. Kandimalla Subbaiah and Anr., AIR 1961 SC 1241, (iv) State of A.P. v. Cheemalapati Ganeswara Rao and Anr., AIR 1963 SC 1850***

> In ***Babulal*** (supra), the Privy Council has held that
>
> "...if several persons conspire to commit offences, and commit overt acts in pursuance of the conspiracy (a circumstance which makes the act of one the act of each and all the conspirators), these acts are committed in the course of the same transaction, which embraces the conspiracy and the acts done under it."

The common concert and agreement which constitute the conspiracy, serve to unify the acts done in pursuance of it.

In ***Swamirathnam*** (supra), the following conclusion in para 7 is relevant:

> "7. On behalf of the appellant Abu Bucker it was contended that there has been misjoinder of charges on the ground that several conspiracies, distinct from each other, had been lumped together and tried at one trial. The Advocate for Swamirathnam, however, did not put forward this submission. We have examined the charge carefully and find no ground for accepting the contention raised. The charge as framed, discloses one single conspiracy, although spread over several years. There was only one object of the conspiracy and that was to cheat members of the public. The fact that in the course of years others joined the conspiracy or that several incidents of cheating took place in pursuance of the conspiracy did not change the conspiracy and did not split up a single conspiracy into several conspiracies. It was suggested that although the modus operandi may have been the same, the several instances of cheating were not part of the same transaction. Reliance was placed on the case of ***Sharpurji Sorabji v. Emperor, AIR 1936 Bom 154*** and on the case of ***Choragudi Venkatadari v. Emperor, ILR 33 Mad 502.*** These cases are not in point.
>
> In the Bombay case, no charge of conspiracy had been framed and the decision in the Madras case was given

> before Section 120-B was introduced into the Indian Penal Code. In the present case, the instances of cheating were in pursuance of the conspiracy and were therefore parts of the same transaction."

In ***Kandimalla Subbaiah*** (supra), this Court held where the alleged offence have been committed in the course of the same transaction, the limitation placed by Section 234 (1) CrPC, 1898 cannot operate.

In ***Cheemalapati Ganeswara Rao*** (supra), while considering the scope of Section 239 of the old Code (Section 220 in the new Code), this Court held:

> "The decision of the Allahabad High Court in ***T.B. Mukherji v. State, AIR 1954 All 501*** is directly in point and is clearly to the effect that the different clauses of Section 239 are mutually exclusive in the sense that it is not possible to combine the provisions of two or more clauses in any one case and to try jointly several persons partly by applying the provisions of one clause and partly by applying those of another or other clauses. A large number of decisions of the different High Courts and one of the Privy Council have been considered in this case. No doubt, as has been rightly pointed out in this case, separate trial is the normal rule and joint trial is an exception. But while this principle is easy to appreciate and follow where one person alone is the accused and the interaction or intervention of the acts of more persons than one does not come in, it would where the same act is committed by several persons, be not only inconvenient but injudicious to try all the several persons separately. This would lead to unnecessary multiplicity of trials involving avoidable inconvenience to the witnesses and avoidable expenditure of public time and money.
>
> No corresponding advantage can be gained by the accused persons by following the procedure of separate trials. Where, however, several offences are alleged to have been committed by several accused persons it may be more reasonable to follow the normal rule of separate trials. But here, again, if those offences are alleged not to be wholly unconnected but as forming part of the same transaction the only consideration that will justify separate trials would be the embarrassment or difficulty caused to the accused persons in defending themselves. We entirely agree with the High Court that joint trial should be founded on some "principle". …."

The learned ASG placed reliance on the following decisions: ***(i) Anju Chaudhary v. State of U.P. and Anr., (2013) 6 SCC 384 (ii) Babubhai v. State of Gujarat, (2010) 12 SCC 254, (iii) Surender Kaushik and Ors. v. State of U.P. and***

Ors., (2013) 5 SCC 148, (iv) Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441, (v) Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322, (vi) Upkar Singh v. Ved Prakash and Ors., (2004) 13 SCC 292, (vii) Kari Choudhary v. Mst. Sita Devi and Ors., (2002) 1 SCC 714.

In ***Anju Chaudhary*** (supra) this Court was concerned with a case in which the second FIR was not connected with the offence alleged in the first FIR. After carefully analyzing the same, we are of the view that it has no relevance to the facts of the present case.

In ***Babubhai*** (supra), the very same Bench considered the permissibility of more than one FIR and the test of sameness. After explaining FIR under Section 154 of the Code, commencement of the investigation, formation of opinion under Sections 169 or 170 of the Code, police report under Section 173 of the Code and statements under Section 162 of the Code, this Court, has held that:

> "the Court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents having two or more parts of the same transaction."

This Court further held that if the answer is in affirmative, the second FIR is liable to be quashed. It was further held that in case the contrary is proved, where the version in the second FIR is different and is in respect of the two different incidents/crimes, the second FIR is permissible. This Court further explained that in case in respect of the same incident the accused in the first FIR comes forward with a different version or counterclaim, investigation on both the FIRs has to be conducted. It is clear from the decision that if two FIRs pertain to two different incidents/crimes, second FIR is permissible. In the light of the factual position in the case on hand, the ratio in that decision is not helpful to the case of the CBI.

CBI has also placed reliance on a recent decision of this Court in ***Surender Kaushik*** (supra). A careful perusal of the facts which arose in the said case would disclose that three FIRs which formed the subject matter of the said case were registered by three different complainants. Two of the FIRs consisted of cross cases inasmuch as the complainant of the first FIR was accused in the other while the accused in the first FIR was the complainant in the second FIR. The third FIR was filed by a third person citing both the complainants of first two FIRs as accused persons. In view of the above peculiar facts situation arising in the said case that the second and third FIRs were not quashed by the High Court, which decision was upheld by this Court, we are satisfied that the said decision has no relevance to the facts of the present case.

In ***Nirmal Singh Kahlon*** (supra), this Court has carved out an exception for filing a second FIR. As per the exception carved out in the said case, the second

FIR lies in a case where the first FIR does not contain any allegations of criminal conspiracy. On the other hand, in the case on hand, the first FIR itself discloses an offence of alleged criminal conspiracy and it was this conspiracy which the CBI was directed to unearth in the judgment dated 12.01.2010 (***Rubabbuddin Sheikh v. State of Gujarat, (2010) 2 SCC 200***) based on which the CBI filed its first FIR, hence, the CBI cannot place reliance on this judgment to justify the filing of the second FIR and a fresh charge sheet.

In ***Ram Lal Narang*** (supra) was cited to be an authority carving out an exception to the general rule that there cannot be a second FIR in respect of the same offence. This Court, in the said decision, held that a second FIR would lie in an event when pursuant to the investigation in the first FIR, a larger conspiracy is disclosed, which was not part of the first FIR.

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160. CRIMINAL PROCEDURE CODE, 1973 – Section 216
INDIAN PENAL CODE, 1860 – Sections 304-B and 302
Addition of a charge under Section 302 IPC to a case in which the accused are charged with Section 304-B – Only permissible if the evidence otherwise permits – Directions in *Rajbir v. State of Haryana, (2010) 15 SCC 116* clarified – The direction was not meant to be followed mechanically and without regard to the nature of the evidence available in the case.

Jasvinder Saini and others v. State (Government of NCT of Delhi)
Judgment dated 02.07.2013 passed by the Supreme Court in Criminal Appeal No. 819 of 2013, reported on (2013) 7 SCC 256

Extracts from Judgment:

Be that as it may, the common thread running through both the orders is that this Court had in ***Rajbir v. State of Haryana, (2010) 15 SCC 116*** directed the addition of a charge under Section 302 IPC to every case in which the accused are charged with Section 304-B. That was not, in our opinion, the true purport of the order passed by this Court. The direction was not meant to be followed mechanically and without due regard to the nature of the evidence available in the case. All that this Court meant to say was that in a case where a charge alleging dowry death is framed, a charge under Section 302 can also be framed if the evidence otherwise permits. No other meaning could be deduced from the order of this Court.

It is common ground that a charge under Section 304-B IPC is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304-B also there is a death involved. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304-B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC the trial court can and

indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304-B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial court in that view of the matter acted mechanically for it framed an additional charge under Section 302 IPC without adverting to the evidence adduced in the case and simply on the basis of the direction issued in ***Rajbir case*** (supra). The High Court no doubt made a half-hearted attempt to justify the framing of the charge independent of the directions in ***Rajbir case*** (supra), but it would have been more appropriate to remit the matter back to the trial court for fresh orders rather than lending support to it in the manner done by the High Court.

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161. CRIMINAL PROCEDURE CODE, 1973 – Sections 230, 231 and 309

CRIMINAL TRIAL :

Adjournments – Need to comply with Section 309 of the Code in letter and spirit – Criminal trial must proceed from day to day – The instructions issued in the case of *Rajdeo Sharma v. State of Bihar, 1998 Cri L.J. 4596* and reiterated in the case of *State of U.P. v. Shambhu Nath, (2001) 4 SCC 667* to be followed by the trial courts scrupulously – High Courts are advised to use their machinery in the respective State Judicial Academy to achieve the desired result.

Akil alias Javed v. State (NCT of Delhi)

Judgement dated 06.12.2012 passed by the Supreme Court in Criminal Appeal No.1735 0f 2009, reported in (2013) 7 SCC 125

Extracts from Judgment:

In this context some of the decisions which have specifically dealt with such a situation which has caused serious inroad into the criminal jurisprudence can referred to. In one of the earliest cases reported in ***Badri Prasad v. Emperor, (1912) 13 Cri.L.J. 861*** (All.), a Division Bench of the Allahabad High Court has stated the legal position as under:

> "....Moreover, we wish to point out that it is most inexpedient for a Sessions trial to be adjourned. The intention of the Code is that a trial before a Court of Session should proceed and be dealt with continuously from its inception to its finish. Occasions may arise when it is necessary to grant adjournments, but such adjournments should be granted only on the strongest possible ground and for the shortest possible period.....

In a decision reported in ***Chandra Sain Jain and others v. The State, 1982 Cri.L.J. NOC 86*** (All) a Single Judge has held as under while interpreting Section 309 of Cr.P.C.:

> "Merely because the prosecution is being done by C.B.I. or by any other prosecuting agency, it is not right to grant adjournment on their mere asking and the Court has to justify every adjournment if allowed, for, the right to speedy trial is part of fundamental rights envisaged under Art. 21 of the Constitution. ***1979 Cri.L.J. 1036 (SC)***, Followed."

In the decision reported in ***The State v. Bilal Rai and others, 1985 Cri. L.J. NOC 38 (Delhi)*** it has been held as under:

> "When witnesses of a party are present, the court should make every possible endeavour to record their evidence and they should not be called back again. The work fixation of the Court should be so arranged as not to direct the presence of witnesses whose evidence cannot be recorded. Similarly, cross-examination of the witnesses should be completed immediately after the examination in chief and if need be within a short time thereafter. No long adjournment should be allowed. Once the examination of witnesses has begun the same should be continued from day to day".

In the decision reported in ***Lt. Col. S.J. Chaudhary v. State (Delhi Administration), (1984) 1 SCC 722,*** this Court has held as under :

> "We think it is an entirely wholesome practice for the trial to go on from day-to-day. It is most expedient that the trial before the Court of Session should proceed and be dealt with continuously from its inception to its finish. Not only will it result in expedition, it will also result in the elimination of manoeuvre and mishchief. It will be in the interest of both the prosecution and the defence that the trial proceeds from day-to-day. It is necessary to realise that Sessions cases must not be tried piecemeal. Before commencing a trial, a Sessions Judge must satisfy himself that all necessary evidence is available. If is not, he may postpone the case, but only on the strongest possible ground and for the shortest possible period. Once the trial commences, he should, except for a very pressing reason which makes an adjournment inevitable, proceed de die in diem until the trial is concluded.
>
> We are unable to appreciate the difficulty said to be experienced by the petitioner. It is stated that his Advocate

is finding it difficult to attend the court from day-to-day. It is the duty of every Advocate, who accepts the brief in a criminal case to attend the trial from day-to-day. We cannot over-stress the duty of the Advocate to attend to the trial from day-to-day. Having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend. The criminal miscellaneous petition is, therefore, dismissed."

In a recent decision of the Delhi High Court in ***State v. Ravi Kant Sharma and Ors., (2005) 120 DLT 213,*** a Single Judge of the High Court has held as under:

"True the Court has discretion to defer the cross-examination. But as a matter of rule, the Court cannot order in express terms that the examination-in-chief of the witnesses is recorded in a particular month and his cross-examination would follow in particular subsequent month. Even otherwise it is the demand of the criminal jurisprudence that criminal trial must proceed day-to-day. The fixing of dates only for examination-in-chief of the lengthy witnesses and fixing another date i.e. 3 months later for the purpose of cross-examination is certainly against the criminal administration of justice. Examination-in-chief if commenced on a particular date, the Trial Judge has to ensure that his cross-examination must conclude either on the same date or the next day if cross-examination is lengthy or can continue on the consecutive dates. But postponing the cross-examination to a longer period of 3 month is certainly bound to create legal complications as witnesses whose examination-in-chief recorded earlier may insist on refreshing their memory and therefore such an occasion should not be allowed to arise particularly when it is the demand of the criminal law that trial once commence must take place on day-to-day basis. For these reasons, the order passed by the learned Additional Sessions Judge to that extent will not hold good in the eyes of law and therefore the same is liable to be set aside. Set aside as such. Learned Additional Sessions Judge should re-fix the schedule of dates of examination of prosecution witnesses and shall ensure that examination-in-chief once commences, cross-examination is completed without any interruption."

In a comprehensive decision of this Court in ***State of U.P. v. Shambhu Nath Singh and others, (2001) 4 SCC 667*** the legal position on this aspect has been dealt with in extenso. Useful reference can be made to paragraphs 10, 11 to 14 and 18:

"10. Section 309 of the Code of Criminal Procedure (for short "the Code") is the only provision which confers power on the trial court for granting adjournments in criminal proceedings. The conditions laid down by the legislature for granting such adjournments have been clearly incorporated in the section. It reads thus:

309. * * *

11. The first sub-section mandates on the trial courts that the proceedings shall be held expeditiously but the words "as expeditiously as possible" have provided some play at the joints and it is through such play that delay often creeps in the trials. Even so, the next limb of the sub-section sounded for a more vigorous stance to be adopted by the Court at a further advanced stage of the trial. That stage is when examination of the witnesses begins. The legislature which diluted the vigour of the mandate contained in the initia llimb of the Sub-section by using the words "as expeditiously as possible" has chosen to make the requirement for the next stage (when examination of the witnesses has started) to be quite stern. Once the case reaches that stage the statutory command is that such examination "shall be continued from day to day until all the witnesses in attendance have been examined". The solitary exception to the said stringent rule is, if the court finds that adjournment "beyond the following day to be necessary" the same can be granted for which a condition is imposed on the court that reasons for the same should be recorded. Even this dilution has been taken away when witnesses are in attendance before the court. in such situation the court is not given any power to adjourn the case except in the extreme contingency for which the second proviso to sub-section (2) has imposed another condition,

"provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing"

12. Thus, the legal position is that once examination of witnesses started, the court has to continue the trial from day to day until all witnesses in attendance have been examined (except those whom the party has given up). The Court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in court, as the requirement then is that the court has to

examine them. Only if there are “Special reasons”, which reasons should find a place in the order for adjournment, that alone can confer jurisdiction on the court to adjourn the case without examination of witnesses who are present in court.

13. Now, we are distressed to note that it is almost a common practice and regular occurrence that trial courts flout the said command with impunity. Even when witnesses are present, cases are adjourned on far less serious reasons or even on flippant grounds. Adjournments are granted even in such situations on the mere asking for it. Quite often such adjournments are granted to suit the convenience of the advocate concerned. We make it clear that the legislature has frowned at granting adjournments on that ground. At any rate inconvenience of an advocate is not a “special reason” for by passing the mandate of Section 309 of the Code.

14. If any court finds that the day-to-day examination of witnesses mandated by the legislature cannot be complied with due to the non-cooperation of the accused or his counsel the court can adopt any of the measures indicated in the sub-section i.e. remanding the accused to custody or imposing cost on the party who wants such adjournments (the cost must be commensurate with the loss suffered by the witnesses, including the expenses to attend the court). Another option is, when the accused is absent and the witness is present to be examined, the court can cancel his bail, if he is on bail (unless an application is made on his behalf seeking permission for his counsel to proceed to examine the witnesses present even in his absence provided the accused gives an undertaking in writing that he would not dispute his identity as the particular accused in the case.)

18. It is no justification to glide on any alibi by blaming the infrastructure for skirting the legislative mandates embalmed in Section 309 of the Code. A judicious judicial officer who is committed to his work could manage with the existing infrastructure for complying with such legislative mandates. The precept in the old homily that a lazy workman always blames his tools, is the only answer to those indolent judicial officers who find fault with the defects in the system and the imperfections of the existing infrastructure for their tardiness in coping with such directions.”

We direct the Registry to forward a copy of this decision to all the High Courts to specifically follow the instructions issued by this Court in the decision reported in ***Rajdeo Sharma*** (supra) and reiterated in ***Shambhu Nath*** (supra) by issuing appropriate circular, if already not issued. If such circular has already been issued, as directed, ensure that such directions are scrupulously followed by the trial Courts without providing scope for any deviation in following the procedure prescribed in the matter of a trial of sessions cases as well as other cases as provided under Section 309 of Cr.P.C. in this respect, the High Courts will also be well advised to use their machinery in the respective State Judicial Academy to achieve the desired result. We hope and trust that the respective High Courts would take serious note of the above directions issued in the decisions reported in ***Rajdeo Sharma*** (supra) which has been extensively quoted and reiterated in the subsequent decision of this Court reported in ***Shambhu Nath*** (supra) and comply with the directions at least in the future years.

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162. CRIMINAL PROCEDURE CODE, 1973 – Sections 231 and 309
CRIMINAL TRIAL:
Duty and role of Bench and Bar in the criminal justice dispensation system, reiterated – Strict adherence to the procedure prescribed under the provisions contained in section 231 along with Section 309 CrPC is emphasized for controlling the trial and preventing unnecessary adjournments – Mandate of section 309 Cr.P.C. of completing the trial by examining the witnesses from day-to-day, is not to be flouted.

Gurnaib Singh v. State of Punjab
Judgment dated 10.5.2013 passed by the Supreme Court in Criminal Appeal No. 744 of 2013, reported in (2013) 7 SCC 108

Extracts from Judgment:

In spite of our modifying the conviction we are compelled to proceed to reiterate the law and express our anguish pertaining to the manner in which the trial was conducted as it depicts a very disturbing scenario. As is demonstrable from the record, the trial was conducted in an extremely haphazard and piecemeal manner. Adjournments were granted on a mere asking. The cross-examination of the witnesses were deferred without recording any special reason and dates were given after a long gap. The mandate of the law and the views expressed by this Court from time to time appears to have been totally kept at bay. The learned trial Judge, as is perceptible, seems to have ostracised from his memory that a criminal trial has its own gravity and sanctity. In this regard, we may refer with profit to the pronouncement in ***Talab Haji Hussain v. Madhukar Purshottam Monadkar, AIR 1958 SC 376*** wherein it has been stated that an accused person by his conduct cannot put a fair trial into jeopardy, for it is the primary and paramount duty of the criminal courts to ensure that the risk to fair trial is removed and trials are allowed to proceed smoothly without any interruption or obstruction.

In ***Krishnan v. Krishnaveni, AIR 1997 SC 987*** it has been observed that the object behind the criminal law is to maintain law, public order, stability as also peace and progress in the society. The object of the criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The Court further proceeded to state that the recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement and these malpractices need to be curbed.

In ***Swaran Singh v. State of Punjab, AIR 2000 SC 2017,*** Wadhwa, J., in his concurring opinion, expressed his anguish pertaining to the adjournments sought in a criminal case which is built on the edifice of evidence that is admissible in law and the plight of the witnesses in a criminal trial in the following manner:

> "….. It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only is a witness threatened, he is abducted, he is maimed, he is done away with, or even bribed. There is no protection for him. In adjourning the matter without any valid cause a court unwittingly becomes party to miscarriage of justice."

In the present case, as the documents brought on record would reveal, that in the midst of examination of PW 1, the learned counsel for the defence stated that he was not feeling well and was unable to stand in the court and the court adjourned the matter to 8.5.1999 for a period of four weeks. The said witness was not examined on the adjourned date but on 7.2.2000 and on that day, after the examination-in-chief was over, the cross-examination was deferred at the instance of the learned counsel for the defence. Similarly, when PW 4 was examined, the case was adjourned on a prayer being made by the learned counsel for the defence. It is interesting to note that the cross-examination of PW 4 eventually took place on 2.8.2000. On a perusal of the dates of examination-in-chief and cross-examination and the adjournments granted, it neither requires Solomon's wisdom nor Aurgus-eyed scrutiny to observe that the trial was conducted in an absolute piecemeal manner as if the entire trial was required to be held at the mercy of the counsel. This was least expected of the learned trial Judge. The Criminal-dispensation system casts a heavy burden on the trial Judge to have control over the proceedings. The Criminal-justice system has to be placed on a proper pedestal and it cannot be left to the whims and fancies of the parties or their counsel. A trial Judge cannot be a moot spectator to the trial being controlled by the parties, for it is his primary duty to monitor the trial and such a monitoring has to be in consonance with the Code of Criminal Procedure.

In this context, a useful reference may be made to the decision in ***Ambika Prasad v. State (Delhi Admn.), AIR 2000 SC 718***. This Court, while commenting on the threat meted out to the informant in that case and adjournment sought by the counsel for the defence to cross-examine the said witness, opined as follows:

> "At this stage, we would observe that the Sessions Judge ought to have followed the mandate of Section 309 CrPC of completing the trial by examining the witnesses from day to day and not giving a chance to the accused to threaten or win over the witnesses so that they may not support the prosecution."

Thereafter, the Court took note of the fact that after examination-in-chief of PW 4 was over on 6-2-1984, the counsel representing the accused requested the court that because of his uncle's demise, he would not be in a position to cross-examine the witness and, therefore, recording of further cross-examination might be adjourned. Thereafter, the witness was cross-examined in the month of July 1985. This Court observed that it was highly improper and even if the request for adjournment of the learned counsel for the accused was accepted, the cross-examination ought not to have been deferred beyond two or three days.

In ***State of U.P. v. Shambhu Nath Singh, (2001) 4 SCC 667,*** the Court, while not appreciating the practice of a Sessions Court adjourning the case in spite of the presence of the witnesses willing to be examined fully, ruled thus :

> "We make it abundantly clear that if a witness is present in court he must be examined on that day. The court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of bhatta (allowance) which a witness may be paid by the Court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment towards duty".

In ***Shabhu Nath case*** (supra) the Court referred to the conditions laid down by the legislature under Section 309 of the Code of Criminal Procedure which deals with the power to postpone or adjourn proceedings and proceeded to state that the first sub-section of Section 309 of the Code mandates on the trial

courts that the proceedings shall be held expeditiously but the words "as expeditiously as possible" have provided some play at the joints and it is through such play that delay often creeps in the trials. Even so, the second limb of the sub-section warrants for a more vigorous stance to be adopted by the court at a further advanced stage of the trial. That stage is when the examination of the witnesses begins. The legislature which diluted the vigour of the mandate contained in the initial limb of the sub-section by using the words "as expeditiously as possible" has chosen to make the requirement for the next stage (when examination of the witnesses has started) to be quite stern. Once the case reaches that stage, the statutory command is that such examination "shall be continued from day to day until all the witnesses in attendance have been examined". The solitary exception to the said stringent rule is, if the court finds that adjournment "beyond the following day to be necessary" the same can be granted for which a condition is imposed on the court that reasons for the same should be recorded. Even this dilution has been taken away when the witnesses are in attendance before the court. After so stating, the Court held that in such situations, the court is not given any power to adjourn the case except in extreme contingency for which the second proviso to sub-section (2) has imposed another condition by providing further that when the witnesses are in attendance, no adjournment or postponement shall be granted without examining them, except for special reasons to be recorded in writing. It is apt to note here that this Court expressed its distress that it has become a common practice and regular occurrence that the trial courts flout the legislative command with impunity.

In ***Mohd Khalid v. State of W.B., (2002) 7 SCC 334,*** a three-Judge Bench did not approve the deferment of the cross-examination of the witness for a long time and, deprecating the said practice, it observed as follows:

> "….. Unnecessary adjournments give a scope for a grievance that the accused persons get a time to get over the witnesses. Whatever be the truth in this allegation, the fact remains that such adjournment lack the spirit of Section 309 of the Code. When a witness is available and his examination-in-chief is over, unless compelling reasons are there, the trial court should not adjourn the matter on the mere asking."

Recently, in ***Akil v. State (NCT of Delhi), (2013) 7 SCC 125***, the Court after surveying the earlier pronouncements, has stressed on the compliance with the procedure and expressed its anguish that the trials are not strictly adhering to the procedure prescribed under the provisions contained in Section 231 along with Section 309 CrPC, and further emphasised that such adherence can ensure speedy trial of cases and also rule out the possibility of any manoeuvring taking place by granting undue long adjournment for a mere asking.

We have expressed our anguish, agony and concern about the manner in which the trial has been conducted. We hope and trust that the trial courts shall keep in mind the statutory provisions and the interpretation placed by this Court and not be guided by their own thinking or should not become mute spectators when a trial is being conducted, by allowing the control to the counsel for the parties. They have their roles to perform. They are required to monitor. They cannot abandon their responsibility. It should be borne in mind that the whole dispensation of criminal justice at the ground level rests on how a trial is conducted. It needs no special emphasis to state that dispensation of criminal justice is not only a concern of the Bench but has to be the concern of the Bar. The administration of justice reflects its purity when the Bench and the Bar perform their duties with utmost sincerity. An advocate cannot afford to bring any kind of disrespect to fairness of trial by taking recourse to subterfuges for procrastinating the same.

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

Recalling of witnesses – Once a witness was examined fully, the witness should not have been recalled and re-examined to deny the evidence he had already given before the court, even though that witness had given an inconsistent statement before any other court or forum subsequently – A witness could be confronted only with a previous statement made by him.

(*Mishrilal and others v. State of M.P. and others, (2005) 10 SCC 701,* relied on)

Udai Singh v. State of M.P. through Police Station Deepar, Distt. Datia
Order dated 08.01.2013 passed by the High Court of M.P. in M.Cr.C. No. 3 of 2013, reported in 2013 (II) MPJR 79

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164. CRIMINAL PROCEDURE CODE, 1973 – Section 357

(i) While the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case.

(ii) The occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused.

(iii) Capacity of the accused to pay the compensation constitutes an important aspect of any order under Section 357 Cr.P.C. – It would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so – Such an enquiry can precede an order on sentence.

Ankush Shivaji Gaikwad v. State of Maharashtra
Judgment dated 03.05.2013 passed by the Supreme Court in Criminal Appeal No. 689 of 2013, reported in AIR 2013 SC 2454

Extracts from Judgment:

While the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357, Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

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165. CRIMINAL PROCEDURE CODE, 1973 – Section 374

Appeal from conviction – Proper mode of disposal – The Appellate Court is required to deal with each and every question raised on behalf of the appellants.

P. Nagesh and another v. State of Kanataka
Judgment dated 09.07.2013 passed by the Supreme Court in Criminal Appeal No. 887 of 2013, reported in (2013) 7 SCC 285

Extracts from Judgment:

The Division Bench (appellate court) recorded in paras 3 and 4 of the impugned judgment, the circumstances which the prosecution relied on to prove the guilt of the accused and the submission on behalf of the appellants. The same is quoted hereunder:

> "3. The prosecution has relied upon the following circumstances to prove the guilt:
>
> (i) Motive – causing death for robbing motorcycle.
>
> (ii) The accused being found in possession of the motorcycle. The number plate of the said motorcycle, although displayed a different registration number, but the engine and chassis number of the seized vehicle tallies with the motorcycle of the accused bearing No. NRX KA 02 EF 3103.

(iii) The discovery of the dead body at the voluntary instance of the accused persons. The dead body was buried in a land at Bhaktharahlli Village, Kunigal Taluk.

(iv) The exhumation proceedings conducted by the TEM in the presence of the IO and the doctor led to discovery of the buried dead body.

(v) The identity of the dead body (corpus delecti) is established by the evidence of PW 10, father of the deceased and PW 11, brother of the deceased, who identified the dead body on the basis of the clothing found on it.

(vi) The dead body, although fully decomposed, the post-mortem report and the evidence of the doctor would show that death is possible by strangulation by rope.

4. Counsel for the appellant submitted the following discrepant circumstances to assail the order of conviction:

(1) The theory of recovery of motorcycle from the accused by the police is false and concocted.

(2)The recovery of the dead body at the voluntary instance of the accused is false and concocted.

(3) The evidence of PW 4 discloses that the police had visited the place earlier to the exhumation.

(4) The medical evidence does not disclose the cause of death.

(5) The doctor has given opinion only on the basis of the attending circumstances."

After hearing the counsel for the parties, the Division Bench held that the accused persons have failed to explain the circumstances under which they had come in possession of the motorcycle belonging to PW 1 which had been used by the deceased and, therefore, the presumption would arise against the accused under Section 106 of the Evidence Act.

Having heard the learned counsel for the parties, we are of the opinion that the High Court being the appellate court, was required to deal with each and every question raised on behalf of the appellants. Though the aforesaid questions were raised before the trial court as well as the High Court, we find that the High Court failed to discuss and decide the questions raised by the appellants.

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166. CRIMINAL PROCEDURE CODE, 1973 – Section 391

Additional Evidence – The whole scheme of this section suggests that like civil cases an application for taking additional evidence on record should be considered and disposed of after hearing the criminal appeal on merits – Such application should not be decided in isolation i.e. without hearing the appeal on merits – If so, there may be cases of failure of justice.

Pramod Gupta v. State of Madhya Pradesh

Order dated 08.03.2013 passed by the High Court of M.P. in M.Cr.C. No. 1675 of 2013, reported in 2013 (II) MPJR 9

Extracts from Order :

From a reading of Section 391 of Cr.P.C., it is evident that the opening words of sub-section (1) of Section 391 clearly suggests that the application moved under Section 391 of Cr.P.C. should be considered by the Appellate Court while dealing with the criminal appeal and when it comes to the conclusion that this additional evidence is necessary, such application can only be dealt with after going through the entire record of the Trial Court and after hearing both the parties. Therefore, the provisions of Section 391 of Cr.P.C. suggests that the application moved under this section should not be considered in isolation but should be considered after hearing the parties on merits. If after hearing parties on merits, the Court if comes to the conclusion that the additional evidence is unnecessary then while deciding the appeal, application moved under Section 391 Cr.P.C. can be dismissed. If such additional evidence appears necessary for rendering decision of the matter and without which the appeal cannot be disposed of, then such additional evidence may be taken on record either by the Appellate Judge himself or by the Trial Court. The Appellate Court may also remand back the matter to the trial Court for the purpose of recording additional evidence as provided under sub-section (2) of the said section 391 of Cr.P.C., therefore, the whole scheme of Section 391 of Cr.P.C. suggests that like civil cases an application for taking additional evidence on record under Section 391 of Cr.P.C. should also be considered and disposed of after hearing the criminal appeal on merits and such application should not be disposed of in isolation without hearing the appeal on merits because if such applications are disposed of without hearing the appeal on merits, then there may be cases of failure of justice. (***Dharmendra s/o Chandan Singh v. State of M.P., 2006 (1) MPLJ 436*** referred to).

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167. CRIMINAL PROCEDURE CODE, 1973 – Sections 397 (2), 401(2) and 319

(i) An order passed by the Trial Court, refusing to issue summons on the application filed by the complainant under section 319 Cr.P.C, is not an interlocutory order – A revision under section 397 Cr.P.C lies against such order.

(ii) Requirement of notice and opportunity of hearing – Where order of trial Court refusing to issue summons on an application filed

under section 319 of the Cr.P.C. by the complainant is challenged, the Revisional Court should, as contemplated under sub-section (2) of section 401 Cr.P.C, issue notice to the persons sought to be arrayed as accused persons.

Mohit alias Sonu and another v State of Uttar Pradesh and another
Judgment dated 01.07.2013 passed by the Supreme Court in Criminal Appeal No. 814 of 2013, reported on (2013) 7 SCC 789

Extracts from Judgment:

In the light of the ratio laid down by this Court referred to here in above ***(Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551, Amar Nath v. State of Haryana, (1977) 4 SCC 137*** and ***MCD v. Ram Kishan Rohtagi, (1983) 1 SCC 1),*** we are of the considered opinion that the order passed by the trial court refusing to issue summons on the application filed by the complainant under Section 319 Cr.P.C, cannot be held to be an interlocutory order within the meaning of sub-section (2) of Section 397 Cr.P.C. Admittedly, in the instant case, before the trial court the complainant's application under Section 319 CrPC was rejected for the second time holding that there was no sufficient evidence against the appellants to proceed against them by issuing summons. The said order passed by the trial court decides the rights and liabilities of the appellants in respect of their involvement in the case. As held by this Court in ***Amar Nath case*** (supra), an order which substantially affects the rights of the accused or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order as contemplated under Section 397(2) Cr.P.C.

Indisputably, a valuable right accrued to the appellants by reason of the order passed by the Sessions Court refusing to issue summons on the ground that no prima facie case has been made out on the basis of evidence brought on record. As discussed hereinabove, when the Sessions Court order has been challenged, then it was incumbent upon the Revisional Court to give notice and opportunity of hearing as contemplated under sub-section (2) of Section 401 Cr.P.C.

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168. CRIMINAL PROCEDURE CODE, 1973 – Section 427 (1)
Offender already undergoing a sentence of imprisonment – Sentenced on a subsequent conviction to imprisonment or imprisonment for life – Discretionary power is conferred upon the court to make the sentences concurrent – Exercise of discretion would depend upon the nature of the offence or offences committed, and the fact situation in which the question of concurrent running of the sentences arises – No straitjacket approach can be laid down – Where there was a single transaction constituting offences, even if different complaints were filed in relation thereto, sentences can be directed to run

concurrently – But where the transaction is different, then the concession of running sentences concurrently is not to be extended.

V.K. Bansal v. State of Haryana and another
Judgment dated 05.07. 2013 passed by the Supreme Court in Criminal Appeal No.836 of 2013, reported on (2013) 7 SCC 211

Extracts from Judgment:

Section 427 of the Code of Criminal Procedure deals with situations where an offender who is already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life. It provides that such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence. Section 427 may at this stage be extracted:

> "***427. Sentence on offender already sentenced for another offence –***
>
> (1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the court directs that the subsequent sentence shall run concurrently with such previous sentence:
>
> Provided that where a person who has been sentenced to imprisonment by an order under Section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.
>
> (2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

That upon a subsequent conviction the imprisonment or imprisonment for life shall commence at the expiration of the imprisonment which has been previously awarded is manifest from a plain reading of the above. The only contingency in which this position will not hold good, is where the Court directs otherwise. The proviso to sub-section (1) to Section 427 is not for the present relevant as the same deals with cases where the person concerned is sentenced to imprisonment by an order under Section 122 in default of furnishing security which is not the position in the case at hand. Similarly sub-section (2) to Section

427 deals with situations where a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life. Sub-section (2) provides that the subsequent sentence shall in such a case run concurrently with such previous sentence.

We are in the case at hand concerned more with the nature of power available to the Court under Section 427 (1) of the Code, which in our opinion stipulates a general rule to be followed except in three situations: one falling under the proviso to sub-section (1) to Section 427; the second falling under sub-section (2) thereof; and the third where the court directs that the sentences shall run concurrently. It is manifest from Section 427(1) that the Court has the power and the discretion to issue a direction but in the very nature of the power so conferred upon the Court the discretionary power shall have to be exercised along the judicial lines and not in a mechanical, wooden or pedantic manner. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. There is no cut and dried formula for the Court to follow in the matter of issue or refusal of a direction within the contemplation of Section 427(1).Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed and the fact situation in which the question of concurrent running of the sentences arises.

High Court in this country have, therefore, invoked and exercised their discretion to issue directions for concurrent running of sentence as much as they have declined such benefit to the prisoners. For instance a direction for concurrent running of the sentence has been declined by the ***Gujarat High Court in Sumlo v. State of Gujarat, 2007 Cr.L.J. 634 (Guj)*** that related to commission of offences at three different places resulting in three different prosecutions before three different courts. The High Court observed :

> "The rule of 'single transaction' even if stretched to any extent will not bring the cases aforesaid under the umbrella of 'single transaction' rule and therefore, this application fails. The application is rejected."

Similarly a direction for concurrent running of sentence has been declined by the same High Court in ***State of Gujarat v. Zaverbhai Kababhai, 1996 Cr.L.J. 1296 (Guj)*** which related to an offences of rape committed at different places resulting in conviction in each one of those offences in different prosecutions. The High Court observed :

> "..... It is that it is left to the discretion of the Court while ordering the sentence to run either consecutively or concurrently. However, such discretion has to be exercised judicially, having regard to the facts and circumstances of the case. As observed by the Supreme Court, the rule with regard to sentencing concurrently will have no application, if the transaction relating to offence is not the same and the facts constituting the two offences are quite different.

> The respondent accused is found to be guilty for the offence punishable under Section 376 of the Penal Code in two different and distinct occurrences on two different dates, and the transactions relating to the commission of the offences have no nexus with each other."

There are also cases where the High Courts have depending upon whether facts forming the basis of prosecution arise out of a single transaction or transactions that are akin to each other directed that the sentences awarded should run concurrently. As for instance the High Court of Allahabad has in ***Mulaim Singh v. State [1974 Cri.LJ 1397(All)]*** directed the sentence to run concurrently since the nature of the offence and the transactions thereto were akin to each other. Suffice it to say that the discretion vested in the Court for a direction in terms of Section 427 can and ought to be exercised having regard to the nature of the offence committed and the facts situation, in which the question arises.

We may at this stage refer to the decision of this Court in ***Mohd. Akhtar Hussain v. Collector of Customs [(1988) 4 SCC 183]*** in which this Court recognised the basic rule of convictions arising out of a single transaction justifying concurrent running of the sentence. The following passage is in this regard apposite:

> "10. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentence. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different."

In ***State of Punjab v. Madan Lal, (2009) 5 SCC 238*** this Court relied upon the decision in ***Akhtar Hussain case*** (supra) and affirmed the direction of the High Court for the sentences to run concurrently. That too was a case under Section 138 of the Negotiable Instruments Act. The State was aggrieved of the direction that the sentences shall run concurrently and had appealed to this Court against the same. This Court, however, declined to interference with the order passed by the High Court and upheld the direction issued by the High Court.

In Conclusion, we may say that the legal position favours exercise of discretion to the benefit of prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.

We, however, see no reason to extend that concession to transactions in which the borrowing company is different no matter the appellant before us is the promoter/Director of the said other company also.

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169. CRIMINAL TRIAL:

Case involving death sentence – Duty of court – In a case involving death sentence, the court cannot afford to leave any detail, howsoever small and apparently insignificant, fully explored.

Ram Deo Prasad v. State of Bihar

Judgement dated 11.04.2013 passed by the Supreme Court in Criminal Appeal No.1354 0f 2012, reported in (2013) 7 SCC 725

Extracts from Judgment:

The appellant Ram Deo Prasad has been awarded death penalty for raping and inflicting injuries to a four year old child causing her death.

The prosecution case is based on the statement of one Mohd. Kamruddin Mian made before Sub-Inspector Birendra Kumar Pandey of Siwan Town Police Station on 21-12-2004 at 8.15 a.m. at Sadar Hospital, Siwan Mohd. Kamruddin stated that on the previous night after finishing their meal at about 8.30 p.m. His family had gone to sleep at his house in Village Badka Gaon, Police Station Pachkrukhi, District Siwan. His four year old daughter Laila Khatoon was sleeping by the side of her grandmother on the outer veranda of the house and on the other side of the straw bed, the girl's mother was sleeping with her infant child. In the middle of the night, the informant who was sleeping in an inside room came out to relieve himself and found Laila Khatoon missing from the side of her grandmother. A search started for the girl and then his neighbour, Suman Kumar Sah (PW 2) told them that just a little while ago he had seen the appellant swiftly running away towards east, carrying a girl child in his arms who was crying. As informed by Suman Sah, he (the informant) and the villagers assembled there and proceeded towards east in search (of the child). After going for about a kilometre, they heard the sound of heavy footsteps and on going in the direction of the sound, they saw that the appellant, who was fleeing away with the child, flung the child in the wheat field (by the side of the pathway) and ran away. On going to the child, he found that it was his missing daughter. She was moaning and bleeding from her private parts. The informant further stated that he fully believed that the appellant after committing rape on the child, was taking her away with intent to kill her and to hide the body somewhere.

At the commencement of the trial, the court framed the charge against the appellant. It is relevant to see what was said in the charge which is reproduced below:

> "*First* – That on or about 21-12-2004 at Badaka Gaon you committed rape on Laila Khatoon hardly aged about 4 years and thereby committed an offence punishable under Section 376 of the Penal Code and within my cognizance.
>
> *Secondly* – That you on or about same date/day of same month and same place you committed murder intentionally and knowingly that the act of rape was likely to cause death

of Laila Khatoon and that thereby committed an offence punishable under Section 302 of the Penal Code and within my cognizance.

And I hereby direct that you be tried by the said court on the said charge.

The charge was read over and explained to the accused in Hindi to which he pleaded not guilty and claimed to be tried.

Dated this 19th day of April, 2007."

It is, thus, to be seen that the charge is completely silent in regard to the First part of the prosecution case that immediately after the child was found missing, the appellant was seen running away carrying in his arms a girl child who was crying. There was no charge under Section 366-A or Section 367 of the Penal Code.

At the conclusion of the prosecution evidence, the court examined the appellant under Section 313 of the Code of Criminal Procedure. It is also important to see how the examination under Section 313 took place; hence, the full examination under Section 313 is quoted below:

"Question : Have you heard the statement of the witnesses?

Answer : Yes.

Question : Against you the charge and evidence are that on 20-12-2004 in the night at 12.00 you went to the house of Kamruddin Miyan, s/o Babujaan Miyan, Village Badka Gaon, Police Station Pachrukhi, District Siwan and abducted his daughter Laila Khatoon (6 years)

Answer : No.

Question : There is also evidence against you that you committed rape on her and flung her in the field and as a result she died.

Answer : No

Question : Do you have anything to say in your defence?

Answer : I have been falsely implicated. The villagers have wrongly declared me as mad."

This is all! The first question was an empty formality and the second question was evidently asked even without looking to the charge as there was no charge of abducting the child from her father's house against that appellant. The whole of Section 313 was, thus, squeezed into the third and the last question. We shall advert back to this aspect of the matter later but there is something else in the appellant's statement under Section 313 which we cannot fail to notice. There is an allusion to the villagers' calling him "mad". Unfortunately, this aspect of the matter received absolutely no attention either in investigation or during trial. We may here clarify that on the basis of that isolated fragment of a sentence we are not suggesting that the appellant was of unsound mind. But

what we wish to emphasise is that in a case involving death sentence, the court cannot afford to leave any detail, howsoever small and apparently insignificant, fully explored.

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170. CRIMINAL TRIAL: Investigation

EVIDENCE ACT, 1872 – Sections 146 and 157

(i) Testimony of witness – Reliability – Effect of omission from evidence – Absence of any question in cross – examination with regard to the fact – Omission of this fact from the evidence is no ground to doubt the veracity of evidence.

(ii) Corroboration of testimony of witness in court – Former statement that can be proved – Former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact may be proved.

(iii) Defective investigation – Acquittal of accused on defective investigation – When permissible?

Ganga Singh v. State of Madhya Pradesh

Judgment dated 04.07.2013 passed by the Supreme Court in Criminal Appeal No. 1118 of 2004, reported on (2013) 7 SCC 278

Extracts from Judgment:

Section 146 of the Indian Evidence Act also provides that when a witness is cross-examined, he may be asked any question which tend to test his veracity. Yet no question was put to PW-5 (prosecutrix) in cross-examination on the articles seized in her presence. In the absence of any question with regard to the seizure of the blouse, dhoti and broken bangles in presence of PW-5, omission of this fact from her evidence is no ground to doubt the veracity of her evidence.

The evidence of PW-5, in this case, is also corroborated by other evidence. Section 157 of the Indian Evidence Act provides that in order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact may be proved. The evidence of PW-5 is corroborated by the evidence of her mother-in-law (PW-2) before whom she stated about the commission of the rape by the appellant soon after the incident the very same evening. The evidence of PW-5 is also corroborated by the FIR (Ex.9) before the Investigating Officer, PW-10, before whom she lodged the complaint one day after the incident.

We are also unable to accept the submission of Mr. Mehrotra that the investigation by the police is shoddy and hasty and there are defects in the investigation and therefore benefit of doubt should be given to the appellant and he should be acquitted of the charge of rape. The settled position of law is that the prosecution is required to establish the guilt of the accused beyond

reasonable doubt by adducing evidence. Hence, if the prosecution in a given case adduces evidence to establish the guilt of the accused beyond reasonable doubt, the court cannot acquit the accused on the ground that there are some defects in the investigation, but if the defects in the investigation are such as to cast a reasonable doubt in the prosecution case, then of course the accused is entitled to acquittal because of such doubt. In the present case, as we have seen, the evidence of PW-5 as corroborated by the evidence of PW-2 and the FIR establish beyond reasonable doubt that the appellant has committed rape on PW-5 and thus the appellant is not entitled to acquittal.

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171. CRIMINAL TRIAL:

Non-examination of material witness – When not fatal to prosecution case.

Harivadan Babubhai Patel v. State of Gujarat
Judgment dated 01.07.2013 passed by the Supreme Court in Criminal Appeal No. 1044 of 2010, reported on (2013) 7 SCC 45

Extracts from Judgment:

The submission is that Gulia to whose house the deceased was taken to has not been examined by the prosecution and non-examination of such a material witness makes the whole case of the prosecution unacceptable. The learned trial Judge, dealing with the said contention, has opined that during the test identification parade, Shaikh Gulamhusssain had not identified the accused persons and that is the reason the prosecution was of the view that the said witness would not support the case of the complainant and, accordingly, chose not to examine him. In ***State of H.P. v. Gian Chand, (2001) 6 SCC 71,*** it has been opined that:

> "... Non- examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record, howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses are available for being examined in the court and were yet withheld by the prosecution."

The three-Judge Bench further proceeded to observe that the court is required first to assess the trustworthiness of the evidence available on record and if the court finds the evidence adduced worthy of being relied on, then the testimony has to be accepted and acted upon though there may be other witnesses available who could also have been examined but were not examined.

In ***Takhaji Hiraji v. Thakore Kubersing Chamansing and others, (2001) 6 SCC145,*** the Court has opined thus:

> "...It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non- examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself – whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses."

In ***Dahari and others v. State of Uttar Pradesh, (2012)10 SCC 256,*** while discussing about the non-examination of material witness, the Court expressed the view that when he was not the only competent witness who would have been fully capable of explaining the factual situation correctly and the prosecution case stood fully corroborated by the medical evidence and the testimony of other reliable witnesses, no adverse inference could be drawn against the prosecution. Be it noted, the Court also took note of the fact that during the cross-examination of the Investigating Officer, none of the accused persons had voiced their concerns or raised any apprehension regarding the non-examination of the material witness therein.

In the case at hand, it was A-1 who had announced that he was taking the deceased to the house of Gulia. On a search being conducted, nothing has been found from the house of Gulia. There has been no cross-examination of the Investigating Officer about the non-examination of Gulia. On the contrary, it

was A-1 who had led to the discovery of the dead body and other articles. Thus, when the other evidence on record are cogent, credible and meet the test of circumstantial evidence laid down in ***Sharad Birdhichand Sarda v. State of Mararashtra, (1984) 4 SCC 116, State v. Saravanan, (2008) 17 SCC 587, Sunil Kumar Sambhudayal Gupta v. State of Maharashtra, (2010) 13 SCC 657,*** and further reiterated in ***Jagroop Singh v. State of Punjab, (2012) 11 SCC 768,*** there is no justification to come to hold that the prosecution has deliberately with held a witness that creates a concavity in the concept of fair trial.

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172. CRIMINAL TRIAL:

INDIAN PENAL CODE, 1860 – Section 302 r/w/s 34 – Appreciation of evidence

CRIMINAL PROCEDURE CODE, 1973 – Section 157

(i) Plea of alibi – Where eyewitness to the incident specifically made a mention of the presence of the appellant/accused – Standard of proof required to establish the plea of alibi – Laid down.

(ii) Delay in forwarding FIR – FIR placed before the Court discloses that the same was reported at 6:00 p.m. on 13.06.1979 and was forwarded on the very next day i.e 16.06.1979 – No case of any prejudice was shown or raised on behalf of the appellant/accused based on alleged violation of Section 157 CrPC – Thus, the submission in this regard is liable to be rejected.

Sheo Shankar Singh v. State of U.P.

Judgment dated 02.07.2013 passed by the Supreme Court in Criminal Appeal No. 1020 of 2004, reported in 2013 (3) Crimes 1 (SC)

Extracts from Judgment

As far as the plea made on behalf of the appellant in Crl.A.No.1020 of 2004 that he was not present at the time of the occurrence and that he was attending a wedding in the place of D.W.1 is concerned, we find that it was a desperate attempt made on behalf of the appellant by raising the plea of alibi, which was rightly rejected by the Courts below.

We have perused the evidence of D.W.1. We find that his evidence was not precise in its substance in order to rely upon the same for accepting the plea of alibi. According to D.W.1, his daughter got married on 12.06.1979 and that the marriage party had arrived on 12.06.1979 and left his house on 14.06.1979. As far as the appellant in Crl.A.No.1020 of 2004 is concerned, according to D.W.1, though he was not related to him, his acquaintance was through his grandfather and his father and because of the said long standing friendship, the appellant stayed in his house at 12.30 hours on 13.06.1979 and left his house only by 5.00 P.M. on the said date. D.W.1 was tendered for examination on 03.03.1981 i.e., nearly 1½ years after the date of occurrence. In the cross-examination, he admitted that nearly 400 people attended the wedding and that he is not in a

position to state as to who came at what time and remained in the premises, where the wedding was held. He would further admit that from the village to which the appellant belonged viz., Ghazipur, except the appellant, nobody else were known to him. He also claimed that the appellant gifted Rs.51/- to his daughter, which was recorded in a sheet of paper. He is stated to have mentioned about the said fact to many others in his village.

When we considered the above version of D.W.1 in the absence of any proof of wedding taken place either by way of production of invitation card or the proof of registration of the marriage of his daughter with any statutory authority or any other supporting evidence, it will be highly risky to rely upon such a feeble evidence in order to accept the plea of alibi to discharge the appellant from the alleged crime. It will have to be borne in mind that the eyewitnesses to the incident specifically made a mention about the presence of the appellant in Crl.A.No.1020 of 2004 and the overt act alleged against him in the matter of killing of the deceased. The appellant was closely related to the first accused and was stated to have been hand in glove in the elimination of the deceased. Having regard to the various missing links and lack of sufficient materials to support the version of D.W.1, the Trial Court rightly rejected the said defence plea on behalf of the appellant in Crl.A.No.1020 of 2004, which was also approved by the High Court in the impugned judgment. We are also fully convinced of the above conclusion and we are not inclined to disturb the same.

One other submission made on behalf of the appellants was that in the absence of any proof of forwarding the F.I.R. copy to the jurisdiction Magistrate, violation of Section 157 of Cr.P.C. has crept in and thereby, the very registration of the F.I.R. becomes doubtful. The said submission will have to be rejected, in as much as the F.I.R. placed before the Court discloses that the same was reported at 4.00 p.m. on 13.06.1979 and was forwarded on the very next day viz., 14.06.1979. Further, a perusal of the impugned judgments of the High Court, as well as the Trial Court discloses that no case of any prejudice was shown nor even raised on behalf of the appellants based on alleged violation of Section 157 Cr.P.C. Time and again, this Court has held that unless serious prejudice was demonstrated to have been suffered as against the accused, mere delay in sending the F.I.R. to the Magistrate by itself will not have any deteriorating effect on the case of the prosecution. Therefore, the said submission made on behalf of the appellants cannot be sustained. In this context, we would like to refer to a recent decision of this Court in ***Sandeep v. State of Uttar Pradesh*** reported in ***(2012) 6 SCC 107*** wherein the said position has been explained as under in paragraph Nos.62 and 63 :

> "62. It was also feebly contended on behalf of the appellants that the express report was not forwarded to the Magistrate as stipulated under Section 157, Cr.P.C. instantaneously. According to learned counsel FIR which was initially registered on 17.11.2004 was given a number on

19.11.2004 as FIR No.116 of 2004 and it was altered on 20.11.2004 and was forwarded only on 25.11.2004 to the Magistrate. As far as the said contention is concerned, we only wish to refer to the reported decision of this Court in ***Pala Singh and anr. v. State of Punjab, (1972) 2 SCC 640*** wherein this Court has clearly held that where the FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the Court then, however improper or objectionable the delay in receipt of the report by the Magistrate concerned be, in the absence of any prejudice to the accused it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.

63. Applying the above ratio in ***Pala Singh*** (supra) to the case on hand, while pointing out the delay in the forwarding of the FIR to the Magistrate, no prejudice was said to have been caused to the appellants by virtue of the said delay. As far as the commencement of the investigation is concerned, our earlier detailed discussion discloses that there was no dearth in that aspect. In such circumstances we do not find any infirmity in the case of the prosecution on that score. In fact the above decision was subsequently followed in ***Sarwan Singh and ors. v. State of Punjab, Anil Rai v. State of Bihar and Aqeel Ahmad v. State of U.P.***"

Having regard to our above conclusions, we do not find any merit in these appeals. The appeals fail and the same are dismissed.

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173. CRIMINAL TRIAL:

EVIDENCE ACT – Sections 8, 114 and 155

(i) Conduct of a witness – If conduct of a witness is unnatural and is not in accordance with the acceptable human behavior even allowing for variations, then the testimony of such a witness becomes questionable and is likely to be discarded.

(ii) Non-examination of Investigating Officer – Effect of – Non-examination of Investigating Officer is not fatal to prosecution case specially, when no prejudice is likely to be suffered by the accused – However, there may be certain circumstances where the examination of Investigatng Officer becomes vital – Where the informant has stated that the signature was taken while he was in a drunken state and the panch witness has become hostile and some of the evidence adduced in the Court does not find mention in the statement recorded under Section 161 CrPC, it

was held that the Investigating Officer should have been examined and his non-examination creates a lacuna in the case of the prosecution.

Lahu Kamlakar Patil and another v. State of Maharashtra
Judgment dated 14.12.2012 passed by the Supreme Court in Criminal Appeal No. 114 of 2008, reported in (2013) 6 SCC 417

Extracts from Judgment

The testimony of PW 1 has to be appreciated. He has admitted his signature in the F.I.R. but has given the excuse that it was taken on a blank paper. The same could have been clarified by the Investigating Officer, but for some reason, the Investigating Officer has not been examined by the prosecution. It is an accepted principle that non-examination of the Investigating Officer is not fatal to the prosecution case. In ***Behari Prasad v. State of Bihar, (1996) 2 SCC 317,*** this Court has stated that non-examination of the Investigating Officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In ***Bahadur Naik v. State of Bihar, (2000) 9 SCC 153*** it has been opined that when no material contradictions have been brought out, then non-examination of the Investigating Officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial judge nor the High Court has delved into the issue of non-examination of the Investigating Officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded under Section 161 of the Code. Thus, this Court in ***Arvind Singh v. State of Bihar, (2001) 6 SCC 407, Rattanlal v. State of Jammu and Kashmir, (2007) 13 SCC 18*** and ***Ravishwar Manjhi and others v. State of Jharkhand, (2008) 16 SCC 561*** has explained certain circumstances where the examination of Investigating Officer becomes vital. We are disposed to think that the present case is one where the Investigating Officer should have been examined and his non-examination creates a lacuna in the case of the prosecution.

(ii) It is vivid that witnesses to certain crimes may run away from the scene and may also leave the place due to fear and if there is any delay in their examination, the testimony should not be discarded. That apart, a court has to keep in mind that different witnesses react differently under different situations. Some witnesses get a shock, some become perplexed, some start wailing and some run away from the scene and yet some who have the courage and conviction come forward either to lodge an FIR or get themselves examined immediately. Thus, it differs from individuals to individuals. There cannot be uniformity in human reaction. While the said principle has to be kept in mind, it is also to be borne in mind that if the conduct of the witness is so unnatural and

is not in accord with acceptable human behaviour allowing variations, then his testimony becomes questionable and is likely to be discarded.

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174. EVIDENCE ACT, 1872 – Sections 6, 11, 24, 25, 26 and 30

(i) A confessional statement is admissible only as against an accused who has made it – There is only one exception of this rule i.e, wherein it is permissible to use a confessional statement, even against person (s) other than the one who made it – The aforesaid exception has been provided for in Section 30 of the Evidence Act.

(ii) Confession made by other accused in a different case – Relevant under Section 11 but would be admissible only through the person who made it and not through the person who recorded it.

State of Maharastra v. Kamal Ahmad Mohammed Vakil Ansari and ors. Judgment dated 12.03.2013 passed by the Supreme Court in Criminal Appeal No. 445 of 2013, reported in AIR 2013 SC 1441

Extracts fromJudgment:

..... A confessional statement is admissible only as against an accused who has made it. There is only one exception of this rule i.e, wherein it is permissible to use a confessional statement, even against person (s) other than the one who made it. The aforesaid exception has been provided for in Section 30 of the Evidence Act.... Insofar as the present controversy is concerned, the substantive provision of Section 30 has clearly no applicability because Sadiq Israr Shaikh, Arif Badaruddin Shaikh and Ansar Ahmad Badshah have not implicated any of the accused–respondent herein. Therefore, even though Section 30 is not strictly relevant, insofar as the present controversy is concerned, yet the principle of admissibility, conclusively emerging from Illustration (b) under Section 30 of the Untitled Document Evidence Act, persuades us to add the same to the underlying common thread, that finds place in the provisions of the Evidence Act, pertaining to admissions/confessions. That, an admission/ confession is admissible only as against the person who has made it.

In order to be relevant under Section 11 of the Evidence Act, such statement ought to be “a statement about the existence of a fact”, and not “a statement as to its existence”.

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175. EVIDENCE ACT, 1872 – Section 65-B

Admissibility of Electronic Evidence – Public Prosecutor desired to exhibit the C.D. – Objection as to the admissibility of C.D. was raised which was rejected by the Trial Court – Held, the Court is required to properly appreciate the requirement of section 65-B of the Act, more particularly the requirement of the certificate as contained in section

65-B (4) of the Act – Order of Trial Court set aside with a direction to decide the objection afresh in the light of provisions of Section 65-B of the Act.

Satish Meharwal v. State of M.P.
Order dated 28.08.2012 passed by the High Court of M.P. in W.P. No. 5547 of 2012, reported in ILR (2013) M.P. 777

Extracts from Order

The petitioner vide application dated 26.4.2012 had raised the specific objection that the conditions enumerated in Section 65-B of the Act are not complied with; therefore, the CD is not admissible in evidence. Learned Special Judge is required to properly appreciate the requirement of Section 65-B of the Act more particularly the requirement of the certificate as contained in 65-B (4) of the Act which he has failed to appreciate in the present matter. It is also found that though the learned Special Judge has taken note of the judgment of this Court in the matter of ***Kailash v. Suresh Chandra*** reported in ***2012 (1) MPLJ 452*** but has not examined the ratio of the said judgment and its effect in the present case.

Having considered the aforesaid aspect of the matter, we find that the impugned order passed by the learned Special Judge cannot be sustained and is hereby set aside with a direction to the learned Special Judge to decide the petitioner's objection afresh keeping in view the provisions of Section 65-B of the Act and the aforesaid judgment of this Court and other relevant judgments on this point

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176. EVIDENCE ACT, 1872 – Sections 90, 68 and 71
SUCCESSION ACT, 1925 – Section 63 (c)

(i) Presumption as to documents thirty years old – Doesn't apply to a Will – A Will has to be proved in terms of Section 63 (C) of the Succession Act read with Section 68 of the Evidence Act.

(ii) Sole available attesting witness did not state that he had seen the other attesting witness signing the Will in the presence of the testatrix though he said that the other witness had also signed the Will – Permissibility of aid of Section 71 – Deficiency in the statement can be made up by looking to evidence of attendant circumstances.

M.B. Ramesh by LRs. v. K.M. Veerje Urs by LRs. and others
Judgment dated 03.05.2013 passed by the Supreme Court in Civil Appeal No. 1071 of 2006, reported in (2013) 7 SCC 490

Extracts from Judgment:

We cannot accept the submission on behalf of the respondents as well that merely because the will was more than 30 years old, a presumption under

Section 90 of the Evidence Act, 1872 ("the Evidence Act", for short) ought to be drawn that the document has been duly executed and attested by the persons by whom it purports to have been executed and attested. As held by this Court in ***Bharpur Singh v. Shamsher Singh, (2009) 3 SCC 687,*** a presumption regarding documents 30 years old does not apply to a will. A will has to be proved in terms of Section 63(c) of the Succession Act read with Section 68 of the Evidence Act.

In ***Janki Narayan Bhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91,*** this Court has explained the inter-relation between Section 63 (c) of the Succession Act, 1925 and Sections 68 and 71 of the Evidence Act, 1872. In that matter only one attesting witness to the will was examined to prove the will, but he had not stated in his deposition that the other attesting witness had attested the will in his presence. The other attesting witness, though alive and available, was not examined. The Court noted the relevant facts in para 5 of the judgment as follows:

> "5..... Prabhakar Sinkar, the attesting witness, in this deposition stated that he did not know whether the other attesting witness Ramkrishna Wagle was present in the house of the respondent at the time of execution of the will. He also stated that he did not remember as to whether himself and Raikar were present when he put his signature. He did not see the witness Wagle at the time; he did not identify the person who had put the thumb impression on the will. The scribe Raikar in his evidence stated that he wrote the will and he also stated that he signed on the will deed as a scribe. He further stated that the attesting witnesses, namely, Wagle and Prabhakar Sinkar are alive."

In this background, the Court held at the end of para 6 of the judgment that:

> "6..... It is true that although a will is required to be attested by two witnesses it could be proved by examining one of the attesting witnesses as per Section 68 of the Evidence Act".
>
> But it also noted in para 9 that:
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> "9..... that one of the requirements of due execution of a will is its attestation by two or more witnesses, which is mandatory."

In paras 11 and 12 of the Judgment, the Court noted the relevance of Section 71 of the Evidence Act by stating that:

> "11..... Aid of Section 71 can be taken only when the attesting witnesses, who have been called, deny or fail to recollect the execution of the document to prove it by other evidence.....

> 12.....Section 71 has no application when the one attesting witness, who alone has been summoned, has failed to prove the execution of the will and the other attesting witness though available has not been examined."

In the facts of the case, therefore, the Court held that the attestation of the will as required by Section 63 of the Succession Act was not established which was equally necessary.

In the present case, we may note that in Para 21 of his cross-examination, P. Basavaraje Urs has in terms stated, "Mr Mallaraje Urs and Smt Nagammanni, myself and one Sampat Iyanger were present while writing the will". One Mr. Narayanmurti was also present. In para 22 he has stated that Narayanmurti had written Ext. 3 (will) in his own handwriting continuously. The fact that M. Mallaraje Urs was present at the time of execution of the will is not contested by defendants by putting it to PW 2 that M. Mallaraje Urs was not present when the will was executed. As held by a Divison Bench of the Calcutta High Court in a matter concerning a will, in para 10 of ***A.E.G. Carapiet v. A.Y. Derderian, AIR 1961 Cal 359:***

> "10.....Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all..... it is a rule of essential justice."

The issue of validity of the will in the present case will have to be considered in the context of these facts. It is true that in the case at hand, there is no specific statement by PW2 that he had seen the other attesting witness sign the will in the presence of the testatrix, but he has stated that the other witness had also signed the document. He has proved his signature, and on the top of it he has also stated in the cross-examination that the other witness (Mr Mallarje Urs), Smt Nagammani, himself and one Sampat Iyanger and the writer of the will were all present while writing the will on 24-10-1943 which was registered on the very next day. This statement by implication and inference will have to be held as proving the required attestation by the other witness. This statement along with the attendant circumstances placed on record would certainly constitute proving of the will by other evidence as permitted by Section 71 of the Evidence Act.

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177. INDIAN PENAL CODE 1860 – Sections 40 and 141 *Third*

Principle of *ejusdem generis* doesn't apply to the interpretation of Section 141 Third –The expression "other offence" used therein for the purpose of ascertaining the common object of a person in an unlawful assembly, is not relatable only to a minor offences of mischief or trespass – Main clause of Section 40 would straightaway apply, in which event, the expression "other offence" used in Section 141 "Third", will have to be construed as any offence for which punishment is prescribed under the Code.

Manga v. State of Uttarakhand
Judgment dated 03.05.2013 passed by the Supreme Court in Criminal Appeal No. 1156 of 2008, reported in (2013) 7 SCC 629

Extracts fromJudgment:

A conspectus reading of Section 40 makes the position abundantly clear that for all offences punishable under the Penal Code, the main clause of Section 40 would straightaway apply in which event the expression "other offence" used in Section 141 "Third", will have to be construed as any offence for which punishment is prescribed under the Code. To put it differently, whomsoever is proceeded against for any offence punishable under the provisions of the Penal Code, Section 40 clause 1 would straightaway apply for the purpose of construing what the offence is and when it comes to the question of offence under any other special or local law, the aid of clauses 2 and 3 will have to be applied for the purpose of construing the offence for which the accused is proceeded against. Therefore, having regard to clause 1 of Section 40 of the Code read along with Section 141 "Third", the argument of the learned Senior Counsel for the appellants will have to be rejected. We are, therefore, of the firm view that only such a construction would be in tune with the purport and intent of the law-makers while defining an unlawful assembly for commission of an offence with a common object, as specified under Section 141 of the Code. In the case on hand, since no special law or local law was attracted and the accused were charged only for the offence under the Penal Code, Section 40(1) gets attracted along with Section 141 "Third" IPC. Having regard to such a construction of ours on Section 141, read along with Section 40 IPC, the offence found proved against the appellants, namely, falling under Section 302 read with Section 149, Section 307 read with Section 149 along with Sections 147 and 148 of the Code for which the conviction and sentence imposed by the court below cannot be found fault with.

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178. INDIAN PENAL CODE, 1860 – Sections 186/332 and 302
CRIMINAL TRIAL
Murder trial – Witness from the Police Department – Cannot *per se* be said to be untruthful and unreliable – Probative force of his statement would depend upon the veracity, credibility and unimpeachability of his testimony – A witness from the Department of Police should not be viewed with distrust at the outset.

Pramod Kumar v. State (Government of NCT of Delhi)
Judgment dated 01.07.2013 passed by the Supreme Court in Criminal Appeal No. 562 of 2010, reported in (2013) 6 SCC 588

Extract from Judgment

In the plea advanced under Section 313 CrPC, it has been stated by the appellant-accused that as the public became angry due to the conduct of Samar

Singh, they assaulted him and in order to save him, the investigating agency chose not to cite any independent witness though many witnesses were present who had seen the occurrence. There is no denial of the fact that the occurrence had taken place in the house of Chander Pal who has turned hostile. However, from his testimony and other evidence brought on record, it is evident that the occurrence took place in his house. His turning hostile does not affect the case of the prosecution. The witnesses from the department of police cannot per se be said to be untruthful or unreliable. It would depend upon the veracity, credibility and unimpeachability of their testimony.

This Court, after referring to ***State of U.P. v. Anil Singh, 1988 Supp SCC 686, State (Govt. of NCT of Delhi) v. Sunil, (2001) 1 SCC 652*** and ***Ramjee Rai v. State of Bihar, (2006) 13 SCC 229*** has laid down recently in ***Kashmiri Lal v. State of Haryana, 2013 AIR SCW 3102*** that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence.

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179. INDIAN PENAL CODE, 1860 – Sections 304B and 498A
EVIDENCE ACT, 1872 – Section 113B
DOWRY PROHIBITION ACT, 1961 – Section 2

(i) Cruelty as defined in explanation to S. 498A of IPC is essential ingredient of offence punishable under S.498A. The onus of proving it beyond reasonable doubt is upon the prosecution.

(ii) For the Court to draw the presumption under Section 113B of the Evidence Act, besides demand for dowry, it is essential to prove that harassment or cruelty was done soon before her death.

(iii) Where the demand was not in connection with the marriage Section 2 of Dowry Prohibition Act is not attracted.

Vipin Jaiswal (A-1) v. State of A. P.
Judgment dated 13.03.2013 passed by the Supreme Court in Criminal Appeal No. 1431 of 2007, reported in AIR 2013 SC 1567

Extracts fromJudgment :

Onus was on the prosecution to prove beyond reasonable doubt the ingredient of Section 498A IPC and the essential ingredient of offence under Section 498A is that the accused, as the husband of the deceased, has subjected

her to cruelty as defined in the Explanation to Section 498A, IPC. Similarly, for the Court to draw the presumption under Section 113B of the Evidence Act that the appellant had caused dowry death as defined in Section 304B, IPC, the prosecution has to prove besides the demand of dowry, harassment or cruelty caused by the accused to the deseased soon before her death. Since the prosecution has not been able to prove beyond reasonable doubt this ingredient of harassment or cruelty, neither of the offences under Sections 498A and 304B,IPC has been made out by the prosecution.

Both the Trial Court and the High Court failed to appreciate that the demand, if at all made by the appellant on the deceased for purchasing a computer to start a business six months after the marriage, was not in a connection with the marriage and was not really a 'dowry demand' within the meaning of Section 2 of the Dowry Prohibition Act, 1961. This Court has held in ***Appasaheb and Anr. v. State of Maharastra, AIR 2007 SC 763***

…….. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of Interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning.

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180. INDIAN PENAL CODE, 1860 – Sections 304B and 498A

(i) Where there is illegal demand, which is not connected with the marriage, whether conviction under section 304B is maintainable? Held, No.

(ii) Illegal demand of money – Harassment made out – Case covered u/s 498A read with Explanation (b).

Modinsab Kasimsab Kanchagar v. State of Karnataka and another

Judgment dated 11.03.2013 passed by the Supreme Court in Criminal Appeal No. 512 of 2007, reported in AIR 2013 SC 1504

Extracts fromJudgment:

This Court in ***Appasaheb and another v. State of Maharastra, AIR 2007 SC 763*** has referred to the provisions of Section 304B, IPC and in particular explanation appended to sub-section (1) thereof which says that the word "dowry" under Section 304B will have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 and has held that the word "dowry" in Section 304B of the IPC would, therefore, mean 'any property or valuable security given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the parties'. In this case, the amount of Rs. 10,000 was demanded by the appellant through the deceased was for repayment of a society loan of the appellant and it had no connection with the

marriage of the appellant and the deceased. Hence, even if, there was demand of Rs. 10,000 by the appellant, it was not a demand in connection with the dowry and the offence under Section 304B was not attracted.

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181. INDIAN PENAL CODE, 1860 – Sections 375, 417 and 90

(i) Consent – What is? Consent may be express or implied, coerced or misguided, obtained willingly or through deceit – Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side.

(ii) Difference between mere breach of a promise and not fulfilling a false promise – Latter falls within the ambit of cheating or deception which leads to "misconception of fact" but former does not always amount to "misconception of fact" – In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance – Sexual indulgence by accused with victim's consent given under misconception of fact, falls within ambit of rape – Mere breach of promise on account of circumstance which the accused could not have foreseen, or which were beyond his control; and was therefore, unable to marry her, despite having every intention to do so, must be treated differently.

Deepak Gulati v. State of Haryana
Judgment dated 20.05.2013 passed by the Supreme Court in Criminal Appeal No. 2322 of 2010, reported in (2013) 7 SCC 675

Extracts from Judgment:

Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a

conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

There must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.

The prosecutrix had left her home voluntarily, of her own free will to get married to the appellant. She was 19 years of age at the relevant time and was, hence, capable of understanding the complications and issues surrounding her marriage to the appellant. According to the version of events provided by her, the prosecutrix had called the appellant on a number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. She also waited for him for a long time, and when he finally arrived she went with him to Karna Lake where they indulged in sexual intercourse. She did not raise any objection at this stage and made no complaints to anyone. Thereafter, she also went to Kurukshetra with the appellant, where she lived with his relatives. Here too, the prosecutrix voluntarily became intimate with the appellant. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the appellant at Birla Mandir. Thereafter, she even proceeded with the appellant to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married in the court at Ambala. However, here they were apprehended by the police.

If the prosecutrix was in fact going to Ambala to marry the appellant, as stands fully established from the evidence on record, we fail to understand on what basis the allegation of "false promise of marriage" has been raised by the prosecutrix. We also fail to comprehend the circumstances in which a charge of deceit/rape can be levelled against the appellant, in light of aforementioned fact situation.

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182. JUVENILE JUSTICE (CARE AND PROTECTION OF CHLDREN) RULES, 2007 – Rule 12

Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, the aforesaid statutory provision should be the basis for determining age, even of a child who is a

victim of crime – There is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime – Therefore, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix as well.

Jarnail Singh v. State of Haryana
Judgment dated 01.07.2013 passed by the Supreme Court in Criminal Appeal No.1209 of 2010, reported in (2013) 7 SCC 263

Extracts from Judgment:

On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as "the 2007 Rules"). The aforestated 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under:

> "***12.Procedure to be followed in determination of age*** – (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.
>
> (2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.
>
> (3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –
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> (a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;
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> (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
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> (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;
>
> (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for

the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, recorded a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule(3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For , in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12 (3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an

option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is for determining the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion.

Following the scheme of Rule 12 of the 2007 Rules, it is apparent that the age of the prosecutrix VW, PW 6 could not be determined on the basis of the matriculation (or equivalent) certificate as she had herself deposed, that she had studied up to Class 3 only, and thereafter, had left her school and had started to do household work. The prosecution in the facts and circumstances of this case, had endeavoured to establish the age of the prosecutrix VW, PW 6 on the next available basis in the sequence of options expressed in Rule 12(3) of the 2007 Rules. The prosecution produced Satpal (PW 4) to prove the age of the prosecutrix VW, PW6. Satpal (PW 4) was the Head Master of Government High School, Jathlana, where the prosecutrix VW, PW 6 had studied up to Class 3. Satpal (PW 4) had proved the certificate Ext. PG, as having been made on the basis of the school records indicating that the prosecutrix VW, PW 6 was born on 15.5.1977. In the scheme contemplated under Rule 12(3) of the 2007 Rules, it is not permissible to determine age in any other manner, and certainly not on the basis of an option mentioned in a subsequent clause. We are therefore of the view that the High Court was fully justified in relying on the aforesaid basis for establishing the age of the prosecutrix VW, PW 6. It would also be relevant to mention that under the scheme of Rule 12 of the 2007 Rules, it would have been improper for the High Court to rely on any other material including the ossification test, for determining the age of the prosecutrix VW, PW 6. The deposition of Satpal, PW 4 has not been contested. Therefore, the date of birth of the prosecutrix VW, PW 6 (indicated in Ext. PG as 15-7-1977) assumes finality. Accordingly it is clear that the prosecutrix VW, PW 6, was less than 15 years old on the date of occurrence i.e. on 25-3-1993.

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183. LIMITATION ACT, 1963 – Section 5

(i) Condonation of delay in filing appeal – Application under section 5 is required to be considered with a pragmatic and liberal approach – But the approach should be justice oriented.

Application for condonation of delay based on false averment – Delay cannot be condoned.

(ii) Condonation of delay – Discretion of Court – The Courts do not enjoy the unlimited and unbridled discretionary powers and the discretion of judicial power should be exercised within reasonable bounds known to law.

Bhagchand Yadav @ Girdharilal Yadav v. State of M.P. and ors.
Order dated 08.01.2013 passed by the High Court of M.P. in C.R. No. 427 of 2011, reported in ILR (2013) M.P. 696

Extracts from Order:

It is true that an order condoning the delay in filing the appeal is a discretionary one but it is equally true that if the discretion has been exercised on the wrong principles by giving undue liberal approach which is not at all justice oriented, the learned First Appellate Court has acted illegally with material irregularity in exercise of its jurisdiction and, therefore, interference in the impugned order is needed in this revision application. I may further hold that the discretion should be exercised in favour of a person who comes with clean hands without concealing reality by placing true facts. From the aforesaid discussion, it is as clear like a noon day that in para 3 of the application to condone the delay, a false ground has been tried to be demonstrated to be true and, therefore, according to me, by exercising the discretion in favour of a party which has come with a false case and not with the clean hands, the learned Lower Appellate Court has acted illegally with material irregularity in exercise of its jurisdiction.

An application under Section 5 of the Limitation Act is required to be considered with a pragmatic and liberal approach and especially when it is being filed by the State Government but it is equally true that such approach should be justice oriented. If the alleged sufficient cause to condone the abnormal delay of 2026 days is condoned on the aforesaid facts when they are ex facie false and when it is based upon false averments made in the application filed by the State Government by labelling it to be a liberal approach, it cannot be condoned. To me, the liberal approach should be justice oriented. The Courts do not enjoy the unlimited and unbridled discretionary powers and the discretion of judicial power should be exercised within reasonable bounds known to law. In this regard, the recent decision of Supreme Court in ***Lanka Venkateshwarlu (Dead) by LRs v. State of Andhra Pradesh and Others, 2011(4) SCC 363*** may be seen.

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184. MOTOR VEHICLES ACT, 1988 – Section 2 (28)

Motorised cart "Jugaad" – the "jugaad" is covered in the definition of the motor vehicle under section 2 (28) of the Act – They have become a menace to public safety as they are causing a very large number of accidents – The statutory authorities directed to enforce the law and restrain the plying of "jugaad" – In case any "jugaad" is found on the road and is seized by the police authorities, it could not be released in favour of its owner either by the law-enforcing agency or even by the Magistrate.

Chairman, Rajasthan State Road Transport Corporation and others v. Santosh and others
Order dated 10.05.2013 passed by the Supreme Court in SLP (C) No. 3265 of 2012, reported in (2013) 7 SCC 94

Extracts from Order:

The Allahabad High Court in ***Kishun Ram v. State of U.P. [Writ tax No. 573 of 2011, order dated 21.04.2011 (ALL)***] held that "juggad" was squarely covered under the definition of motor vehicles as specified under Section 2 (28) of the Act, since it was mechanically propelled and adapted for use on road and hence other relevant provisions of the Act/Rules were applicable. The Court further directed that as the said vehicle did not comply with the provisions of the Act/Rules, the seizure effected by the U.P. Authorities could not be interfered with by the Court.

Further, in ***Avnish Kumar v. State of U.P. [WP (M/V)No. 6611 of 2005, decided on 23.2.2011 (ALL)]***, the Allahabad High Court has issued directions to the statutory authorities to ensure compliance with the provisions of the Act and the Rules, and to prevent the illegal plying of such vehicles, the statutory authorities must take effective measures in conformity with the statutory rules.

The learned Standing Counsel appearing for the State of Haryana has submitted that even the Punjab and Haryana High Court while delivering the judgment in CM No. 3543 of 1995 in CWP No. 10309 of 1994, decided on 29-3-1995 (PandH) had directed the State Authorities to ensure that no "jugaad" shall be permitted to ply in the State of Haryana under any circumstances. The relevant part of the said judgment reads as under :

> "An interim direction is issued that no such jugaad shall be permitted to ply in the State of Haryana under any circumstance. All such jugaads being plied, shall be seized by the law-enforcing agencies concerned, of the State. Since the aforesaid vehciles are being plied against the provisions of law and these vehicles are not recognised under the Motor Vehicles Act, the same cannot be released in favour of a person, who is not even admitted to be the registered owner of such vehicle. Despite directions, we have not been intimated as to how such unauthorised vehicles were ordered to be released and by whom. Prima facie, it appears to us that the aforesaid jugaads could not be released either by the law-enforcing agencies or by the Magistrates."

As such "jugaads" were being plied against the provisions of the Act and the Rules framed under it, and in case any "jugaad" is found on the road and is seized by the police authorities, it could not be released in favour of its owner either by the law-enforcing agency or even by the Magistrate. Plying of such

vehicles was in utter disregard/violation of the Provisions of the Act and the Rules framed thereunder.

As to whether a particular vehicle can be defined as motor vehicle in terms of Section 2(28) of the Act, is to be determined on the facts of each case taking into consideration the use of the vehicle and its suitability for being used upon the road. Once it is found to be suitable for being used on the road, it is immaterial whether it runs on the public road or private road, for the reason, that actual user for a particular purpose, is no criterion to decide the name. The definition of motor vehicle takes within its ambit, a dumper and tractor. A tractor which is used basically for agricultural purposes and a dumper is used in the factory premises, can suitably be adapted for being used on the road, therefore, they will meet the requirement of the definition of motor vehicle under Section 2 (28) of the Act. The word “only” used in Section 2 (28) of the Act clearly shows that the exemption is confined only to those kinds of vehicles which are exclusively being used in a factory or in any closed premises. Thus, a vehicle which is not adapted for use upon the road, is only to be excluded.

However, the learned Senior Counsel appearing for the applicant could not satisfactorily reply as to under what circumstances, if the tractor which is exclusively used for agricultural purpose, does require registration and insurance and driver also require a driving licence, why the same provisions would not apply in case of “jugaad”.

“Jugaad” does not require the permit, insurance or a driving licence for its driver. There is no specification for its body. It does not require fitness certificate. However, passenger vehicle has a upper limit of number of passengers it can carry. The same remains the position for the goods vehicle as there is a specification for the maximum load it can carry. The “jugaad” is not liable to pay any passenger or road tax like other vehicles.

In view of the above, as the “jugaad” is covered in the definition of the motor vehicle under Section 2(28) of the Act, the statutory authorities cannot escape from their duty to enforce the law and restrain the plying of “jugaad”. The statutory authorities must ensure that “jugaad” can be plied only after meeting the requirements of the Act. The same has become a menace of public safety as they are causing a very large number of accidents. “Jugaad” are not insured and the owners of the “jugaad” generally do not have the financial capacity to pay compensation to persons who suffer disablement and to dependants of those, who lose life. Thus, considering the gravity of the circumstances, the statutory authorities must give strict adherence to the circular referred to hereinabove by the Central Government.

However, we clarify that it is open to the statutory authorities to make exemptions by issuing a notification/circular specifically if such a vehicle is exclusively used for agricultural purposes but for that sufficient specifications have to be provided so that it cannot be used for commercial purposes.

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185. MOTOR VEHICLES ACT, 1988 – Sections 3, 149(2) (a) (ii) and 181
Registration of case u/s 3 and 181 of M. V. Act against the driver by itself, is not sufficient to hold that driver did not have a valid driving licence at the time of accident.

Ramlal v. Prakash and others
Judgment dated 03.09.2012 passed by the High Court of M.P. in M.A. No. 2624 of 2007, reported in 2013 ACJ 1758 (M.P.)

Extracts from Judgment:

So far as registration of a case under sections 279, 337, 338 of the Indian Penal Code and sections 3 and 181 of the Motor Vehicles Act against the respondent No. 2 is concerned, that alone is not enough to hold that the driver was not having a valid licence to drive the vehicle at the time of the accident. This court in the matter of ***Gopalkrishna v. Santosh, MACD 2010 (2) (MP) 704,*** while dealing the similar issue has held as under:

> "Learned counsel appearing for the appellant has relied upon the judgment of the Supreme Court in the matter of ***Rukmani v. New India Assurance Co. Ltd., 1999 ACJ 171 (SC),*** wherein it has been held that it is the burden of the insurance company to establish that the driver was not having a valid licence to drive the vehicle. In the said case the insurance company though had relied upon the evidence of the Investigating Officer but the insurance company did not summon the driver and had not produced any record from the Regional Transport Authority, therefore, the Apex Court took a view that the insurance company cannot be exonerated. The Division Bench of this court in the matter of ***Jagdish v. Rajkumar, 2002 ACJ 1124 (MP),*** has taken a view that when on record of the Licensing Authority it is proved by the insurer it cannot be assumed that the driver of the offending vehicle was not having a valid licence to drive the vehicle. Even if no driving licence is produced on notice to owner and driver, then also no adverse inference against them can be drawn.
>
> Similarly this court by the order passed in ***Ghanshyam v. Rajesh, M.A. No. 698 of 1999, decided on 3.12.2003,*** while dealing with the effect of registration of criminal case against the driver under sections 279 and 337 of Indian Penal Code and sections 3 and 181 of Motor Vehicles Act, 1988 has held that:
>
> > 'The learned Tribunal has relied upon statement of Kamla Kant, DW 1, Surveyor and the unexhibited copy of final report, which was marked as Exh. Cl by the Tribunal itself wherein a charge-sheet under sections 3 and 181 of the

Motor Vehicles Act, 1988 was also filed besides under sections 279 and 338 of the Indian Penal Code. From this evidence the Tribunal has concluded that Raju, R2, had no driving licence and was driving the Tempo unauthorisedly and has exonerated insurance company from liability. Certainly, Raju, R2, had not come forward to defence. He did not submit his written statement. Defence available to the insurance company have to be proved by the insurance company. Insurance company did not summon the driver. No record from Regional Transport Authority was produced. Kamla Kant, NAW 1, had not recorded the statement of Raju, R2. No written notice was given to him. No written reply was taken from him. No complaint to Motor Vehicle Inspector, who was required to check whether Raju, R2, was holding a valid driving licence had been there. Thus, in view of ***Rukmani v. New India Assurance Co. Ltd.*** (supra); ***United India Insurance Co. Ltd. v. Mohd. Ashique, 1998 ACJ 589 (MP); Jagdish v. Rajkumar (supra)*** and ***United India Insurance Co. Ltd. v. N. Srinivasa, 2001 ACJ 800 (Karnataka),*** the insurance company, R3, had not been able to discharge its burden.'

The High Court of Rajasthan at Jodhpur in the matter of ***National Insurance Co. Ltd. v. Soni, 2006 ACJ 1661 (Rajasthan),*** while considering the similar issue of the liability of the insurance company has held that even if the challan is filed against the driver of offending vehicle for not having any licence and even if the conviction takes place that cannot be a ground for holding that the driver was not having a valid licence to drive the vehicle.

In the present case the insurance company though had taken a defence in the written statement that the driver of the offending vehicle was not having a valid licence to drive the vehicle but no evidence was produced by the insurance company to establish the said fact. The insurance company has not produced any certificate from the concerned Transport Authority to establish the said fact. No investigation report has been placed on record by the insurance company to show that there is any infirmity in the driving licence of the driver of offending vehicle.

Thus, in the light of the aforesaid position in law it is found that the insurance company has failed to discharge its burden. The Tribunal has committed an error in holding that since the offence under sections 279 and 337 of Indian

Penal Code read with sections 3 and 181 of the Motor Vehicles Act, 1988 has been registered against the driver of the vehicle, therefore, it is presumed that the driver was not having a valid licence to drive the vehicle. Such a presumption drawn by the Tribunal was contrary to the aforesaid judgment."

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186. MOTOR VEHICLES ACT, 1988 – Sections 146, 147 and 149

Compulsory third-party insurance of vehicle – Statutory right of a third party to recover the amount of compensation – Victims of accident arising from the use of motor vehicles would be able to get compensation for the death or injuries suffered – The insurer cannot disown its liability – Insurer can proceed against the insured for recovery of amount in the event there has been violation of any condition of the insurance policy.

S. Iyyapan v. United India Insurance Company Limited and another
Judgment dated 01.07.2013 passed by the Supreme Court in Civil Appeal No. 4834 of 2013, reported in (2013) 7 SCC 62

Extracts from Judgment:

The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.

Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,

(i) the vehicle was not driven by a named person,

(ii) it was being driven by a person who was not having a duly granted licence, and

(iii) person driving the vehicle was disqualified to hold and obtain a driving licence.

Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.

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187. MOTOR VEHICLES ACT, 1988 – Section 163A

(i) Accident – What is? It is relevant to note that the word 'accident' is not defined anywhere in the Act – The meaning of the word 'accident' as per Oxford Dictionary is 'an unpleasant event that happens incidentally and causes damage, injuries, etc.'

(ii) What is negligence? The basis of the claim petitions arising out of the use of motor vehicles is essentially 'negligence' – In law of Tort, the word 'negligence' is understood either as the state of mind of a party in doing an act or as a conduct, which the law deems wrongful – Now-a-days negligence has become an independent, specific tort in itself – To decide whether a man is guilty of negligent conduct or not, courts shall not be guided only by his mental attitude at the moment of the act – An external standard of a reasonable man placed in similar circumstances has to be applied to arrive at the conclusion – Thus the pertinent question to be answered is whether a reasonable man placed in similar circumstances as the alleged wrongdoer would have acted in that way to cause damage to the claimant?

(iii) Distinction between murder simpliciter and accidental murder – Only if the dominant intention of the act of felony is to kill any particular person, then alone such killing can be termed as a murder simpliciter, otherwise it is an accidental murder – The distinction depends upon the proximity of cause of such murder. In a murder simpliciter, the dominant intention of the act of felony is to kill any particular person, whereas, the cause of murder is not originally intended in accidental murders.

(iv) Whether the wrongdoer is liable for compensation under the Act, if the accidental murder arose from the use of a motor vehicle – Held, Yes.

New India Assurance Co. Ltd. v. Kamalamma and others

Judgment dated 17.08.2012 passed by the High Court of Kerala in M.A.C.A. No. 2530 of 2008, reported in 2013 ACJ 1941 (Kerala)

Extracts from Judgment:

It is relevant to note that the word 'accident' is not defined any where in the Act. The meaning of the word 'accident' as per Oxford Dictionary is 'an unpleasant event that happens incidentally and causes damage, injuries, etc.' The basis of the claim petitions arising out of the use of motor vehicles is essentially 'negligence'. In law of Tort, the word 'negligence' is understood either as the state of mind of a party in doing an act or as a conduct, which the law deems wrongful. Now-a-days negligence has become an independent, specific tort in itself. To decide whether a man is guilty of negligent conduct or not, courts shall not be guided only by his mental attitude at the moment of the act. An external standard of a reasonable man placed in similar circumstances has to be applied to arrive at the conclusion. Thus the pertinent question to be answered is whether a reasonable man placed in similar circumstances as the alleged wrongdoer would have acted in that way to cause damage to the claimant? If the answer is 'no', he should be held liable. There is a valid reason for adopting such a course of action. If the wrongdoers are permitted to set up their individual state of mind as a defence, it would be easy for them to wriggle out of the liability of paying compensation. That is why, Winfield has defined 'negligence' as a tort, as the breach of legal duty to take care, which results in damage, undesired by the defendant to the plaintiff.

In the instant case, there was some exchange of words between the conductor of the bus and the deceased, during the course of which the conductor stamped the deceased with foot resulting in his fall from the bus. In ***United India Insurance Co. Ltd. v. Thankamma, 2012 ACJ 1512 (Kerala),*** a Division Bench of this court observed that, only if the dominant intention of the act of felony is to kill any particular person, then alone such killing can be termed as a murder simpliciter, otherwise it is an accidental murder. There, this court was considering the implication of the murder of a driver by a passenger in the vehicle, pursuant to an altercation between them. Relying on the decision of the Apex Court in ***Rita Devi v. New India Assurance Co. Ltd., 2000 ACJ 801 (SC),*** it was held that the incident in that case arose out of the use of a motor vehicle giving rise to a claim for damages. In the decision rendered by the Apex Court referred to above, the difference between a murder simpliciter and an accidental murder was discussed. The Apex Court held that the distinction depends upon the proximity of cause of such murder. It was held that in a murder simpliciter, the dominant intention of the act of felony is to kill any particular person, whereas the cause of murder is not originally intended in accidental murders.

In the instant case, it is true that the conductor of the bus was charge-sheeted under section 302, Indian Penal Code. But, what could be discerned from the evidence is that the actual genesis of the incident was an unpremeditated act. Hence it is doubtful whether the conductor of the bus desired the consequence, i.e., the death of Bhaskaran Pillai. Acts where the mental conditions of the wrongdoer cannot be ascertained with reasonable certainty are to be treated as accidental, which will give rise to a claim for damages. Hence we hold that this was an accidental murder which arose out of the use of a vehicle and the respondents-claimants who are the legal heirs-cum-dependants of deceased Bhaskaran Pillai are entitled to get compensation. As we see no reason to interfere with the finding entered into by the learned Tribunal, we dismiss the appeal without any costs.

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188. MOTOR VEHICLES ACT, 1988 – Section 166

Contributory Negligence – Deceased sitting on a two wheeler as pillion rider – The two wheeler carrying three persons – Finding of contributory negligence is unsustainable. (*Devisingh v. Vikram Singh, 2008 ACJ 393 (M.P.) (FB)* relied on)

Narmada Prasad Choure and others v. Nanakram Pavar and others
Judgment dated 16.01.2012 passed by the High Court of M.P. in M.A. No. 4905 of 2010, reported in 2013 ACJ 2008 (M.P.)

Extracts from Judgment:

After having heard learned counsel appearing for the parties and on perusal of the record, it is seen that on 15.1.2010 when the deceased was sitting as pillion rider on a motor cycle it was dashed by a truck bearing registration No. MH 31-CB 2835 from behind. Even if three persons were sitting on a motor cycle but as per the judgment of Full Bench of this court in the case of ***Devisingh v. Vikramsingh, 2008 ACJ 393 (M.P.)(FB),*** the finding of contributory negligence is unsustainable in law, therefore it is hereby set aside.

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189. MOTOR VEHICLES ACT, 1988 – Section 166
RAILWAYS ACT, 1989 – Section 161

Unmanned level crossing – A two wheeler passing through unmanned level crossing, hit by a railway engine causing death of driver of two wheeler and injuries to pillion rider – Driver of engine was not examined by appellants – On the basis of the statement of pillion rider, Tribunal held that accident was caused due to negligence of driver of railway engine – Finding upheld by High Court.

Union of India and another v. Omprakash and another
Judgment dated 22.07.2011 passed by the High Court of M.P. in M.A. No. 2682 of 2008, reported in 2013 ACJ 1653 (M.P.)

Extracts from Judgment :

The law laid down under section 161 of Railways Act, 1989 is that if any person driving or leading a vehicle is negligent in crossing an unmanned level crossing, he shall be punishable under section 161 of the Railways Act. The word 'negligent' has been defined under section 161 of the Railways Act by giving an explanation which reads as under:

> *Explanation.* – For the purposes of this section, 'negligence' in relation to any person driving or leading a vehicle in crossing an unmanned level crossing means the crossing of such level crossing by such person –
>
> (a) without stopping or caring to stop the vehicle near such level crossing to observe whether any approaching rolling stock is in sight, or
>
> (b) even while an approaching rolling stock is in sight."

After going through the evidence on record, it appears that Rakesh was the best witness, who was pillion rider and who had been examined by the respondent Nos. 1 and 2. Therefore, his statement throws light to prove that under what circumstances the accident occurred. In the facts and circumstances of the case, this court is of the view that the learned Tribunal after due appreciation of the evidence has rightly concluded that the accident occurred because of negligence on the part of driver of the engine. Moreover, driver of the engine was in employment of the appellants, he was not examined by the appellants for reasons best known to them.

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190. MOTOR VEHICLES ACT, 1988 – Section 166

Assessment of compensation in injury case – Claimant's right leg below knee was amputated due to accident – Whether it is just to award compensation under head of permanent disability apart from the head of loss of earnings? Held, Yes – Compensation can be payable both for loss of earnings as well as disability suffered by the claimant.

S. Manickam v. Metropolitan Transport Corporation Ltd.
Judgment dated 01.07.2013 passed by the Supreme Court in C.A. No. 4816 of 2013, reported in 2013 ACJ 1935 (S.C.)

Extracts from Judgment:

Following the ratio in ***B. Kothandapani v. Tamil Nadu State Trans. Corpn. Ltd., 2011 ACJ 1971 (SC),*** in the subsequent decision, viz., ***K. Suresh v. New India Assurance Co. Ltd., 2012 ACJ 2694 (SC),*** another Bench of this court awarded separate amount for permanent disability apart from fixing compensation under the head 'loss of earnings' or 'earning capacity'.

In matters of determination of compensation, particularly under the Motor Vehicles Act, both the Tribunals and the High Courts are statutorily charged with a responsibility of fixing a 'just compensation'. It is true that determination of 'just compensation' cannot be equated to a bonanza. On the other hand, the concept of 'just compensation' suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and the courts. We hold that determination of quantum in motor accident cases and compensation under the Workmen's Compensation Act, 1923 must be liberal since the law values life and limb in a free country in generous scales. The adjudicating authority, while determining the quantum of compensation, has to take note of the suffering of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. While computing compensation, the approach of the Tribunal or a court has to be broad-based and sometimes it would involve some guesswork as there cannot be any precise formula to determine the quantum of compensation.

Keeping the above principles in mind, there is no difficulty in holding that the High Court has committed an error in setting aside the award of Rs. 1,00,000 under the head 'permanent disability' on the ground that substantial amount had been fixed under the heads 'loss of earnings' and 'loss of earning capacity'. It is not in dispute that at the time of accident, appellant was aged about 45 years and he was the proprietor of Parvathy Furniture Mart and 15 persons were working under him. Based on the evidence, the Tribunal has determined his income as Rs. 8,000 per month.

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191. MOTOR VEHICLES ACT, 1988 – Section 168

(i) "Pecuniary advantages" received from other sources by reason of victim's death – Does not include provident fund, pension, insurance and similarly in any case, bank balance, shares, fixed deposits, etc. – Salary receivable by the claimant on compassionate appointment also does not come within the periphery of the Motor Vehicles Act.

(ii) Computation of income after deduction of Income Tax from salary – Nature of the Income of the victim is to be noticed – Victim receiving income chargeable under the head "salaries" only – The presumption would be that the employer under section 192(1) of the Income Tax Act, 1961 has deducted the tax at source from the employee's salary – If objection is raised by any party, the objector is required to prove that the employer failed to deduct the TDS from the salary of the employee – Where the victim is not a salaried person – Objection as to deduction of tax is made by a party – Claimant is required to prove that the victim has already paid income tax and no further tax has to be deducted from the income.

Vimal Kanwar and others v. Kishore Dan and others
Judgment dated 03.05.2013 passed by the Supreme Court in Civil Appeal No. 5513 of 2012, reported in (2013) 7 SCC 476

Extracts from Judgment:

The aforesaid issue fell for consideration before this Court in ***Helen C. Rebello v. Maharashtra SRTC., (1999) 1 SCC 90.*** In the said case, this Court held that provident fund, pension, insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statue occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The following was the observation and finding of this Court :

> "Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz. accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statue occasioned only on account of accidental death. How could such an amount come within the periphery of

> the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any co-relation. The insured (the deceased) contributes his own money for which he receives the amount which has no co-relation to the compensation computed as against the tort-feasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contribution of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

"Compassionate appointment" can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness i.e. while in service leaving behind the dependants, one of the dependants may request for compassionate appointment to maintain the family of the deceased employee who dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statue occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependants may be entitled for compassionate appointment but that cannot be termed as "pecuniary advantage" that comes under the periphery of the Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act.

In ***Sarla Verma v. DTC, (2009) 6 SCC 121*** this Court held :

> "Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation".
>
> This Court further observed that:
>
> "..... Where the annual income is in taxable range, the words 'actual salary' should be read as 'actual salary less tax'".

Therefore, it is clear that if the annual income comes within the taxable range, income tax is required to be deducted for determination of the actual salary. But while deducting income tax from the salary, it is necessary to notice the nature of the income of the victim. If the victim is receiving income chargeable under the head “salaries” one should keep in mind that under Section 192 (1) of the Income Tax Act, 1961, any person responsible for paying any income chargeable under the head “salaries” shall at the time of payment, deduct income tax on estimated income of the employee from “salaries” for that financial year. Such deduction is commonly known as tax deducted at source (“TDS”, for short). When the employer fails in default to deduct the TDS from the employee’s salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed under Section 201(1-A) of the Income Tax Act, 1961. Therefore, in case the income of the victim is only from “salary”, the presumption would be that the employer under Section 192(1) of the Income Tax Act, 1961 has deducted the tax at source from the employee’s salary. In case if an objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee. However, there can be cases where the victim is not a salaried person i.e. his income is from sources other than salary, and the annual income falls within taxable range, in such cases, if any objection as to deduction of tax is made by a party then the claimant is required to prove that the victim has already paid income tax and no further tax has to be deducted from the income.

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192. N.D.P.S. ACT, 1985 – Section 32A

Remission of sentence – Section 32A ex facie has nothing to do with punishment or penalty and no change or alteration in severity of penalty has been brought about by introduction of this Section – What Section 32A has done is to obliterate remission(s) that a convict under NDPS Act would have normally earned.

Budh Singh v. State of Haryana and anr.
Judgment dated 11.03.2013 passed by the Supreme Court in Writ Petition (Criminal) No. 15 of 2012, reported in 2013 (3) Crimes 234 (SC)

Extracts from Judgment

It has been argued on behalf of the petitioner that though the petitioner has been sentenced to undergo RI for a period of 10 years on being found guilty under Section 15 of the NDPS Act, the said period of imprisonment must be understood to be subject to such remissions to which the petitioner would have been entitled to in the normal course. However, Section 32A of the NDPS Act by denying the benefit of remissions has, in fact, enlarged the period of incarceration. According to the petitioner, he is alleged to have committed the offence under the NDPS Act on 13.12.1988 and was convicted of the said offence by the learned Trial Court and sentenced accordingly on 27.7.1990. Section 32A of the NDPS Act was brought into the statute book by an amendment to the

Act with effect from 29.5.1989. Therefore, according to the petitioner, the benefit of remissions of sentences under the Act being permissible on the date when he is alleged to have committed the offence, i.e., 13.12.1988, the exclusion of the said benefit by the introduction of Section 32A with effect from 29.5.1989 has the effect of making the petitioner undergo a longer period of incarceration than what was visualized by the Act as prevailing on the date of the alleged commission of the crime by the petitioner.

The answer to the above issue raised by the petitioner would depend on the true and correct meaning of the effect of the period/periods of remissions earned by a convict under Section 432 of the Code of Criminal Procedure on the sentence or penalty that may have been imposed by a court of competent jurisdiction. Specifically, the question that arises is whether the remission (s) earned by a convict operates as a reduction of the sentence. The issue arising, is no longer res integra having been dealt with by a decision of this Court of somewhat old vintage in ***Sarat Chandra Rabha and others v. Khagendranath Nath and others, AIR 1961 SC 334***.

In ***Maru Ram v. Union of India and others, (1981) 1 SCC 107***, this Court had observed that Article 20 (1) of the constitution engrafts the rule that there can be no ex post facto infliction of a penalty heavier than what had prevailed at the time of commission of the offence. Section 32A ex facie has nothing to do with the punishment or penalty imposed under the Act. In fact, no change or alteration in the severity of the penalty under the NDPS Act has been brought about by the introduction of Section 32A with effect from 29.05.1989. What Section 32A has done is to obliterate the benefit of remission(s) that a convict under the NDPS Act would have normally earned. But, if the correct legal position is that the remission(s) do not in any way touch or affect the penalty/sentence imposed by a Court, we do not see how the exclusion of benefit of remission can be understood to have the effect of enlarging the period of incarceration of an accused convicted under the NDPS Act or as to how the said provision, i.e., Section 32A, can have the effect of making a convict undergo a longer period of sentence than what the Act had contemplated at the time of commission of the offence.

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193. N.D.P.S. ACT, 1985 – Sections 18, 41 and 50

(i) Police witnesses – If the evidence of police witness is unrealistic and untrustworthy, it may disbelieve him but it should not be solely on the presumption that a police witness is untrustworthy.

(ii) Seizure of contraband – When Section 50 of the NDPS Act is attracted? It is attracted only when the person of an accused is searched and not when a vehicle is searched.

(iii) Non-production of the scooter from which narcotic drug was seized, in the Court – Effect of – All documents pertaining to the scooter was seized and the witness had stated about the registration number of the scooter – From the evidence it is clear

that the scooter belonged to the appellant/accused and the search and seizure was made from the tool box of the scooter – Under these circumstances, the submission that the scooter was not produced in the Court is entirely devoid of merit.

Kashmiri Lal v. State of Haryana
Judgment dated 16.05.2013 passed by the Supreme Court in Criminal Appeal No. 1576 of 2009, reported in (2013) 6 SCC 595

Extracts from Judgment

It is evincible from the evidence on record that the police officials had requested the people present in the 'dhaba' to be witnesses, but they declined to cooperate and, in fact, did not make themselves available. That apart, there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to reliable and trustworthy, the court can definitely act upon the same. If in the course of scrutinising the evidence the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence. These aspects have been highlighted in ***State of U.P. v. Anil Singh, 1988 Supp SCC 686, State (Govt. of NCT of Delhi) v. Sunil, (2001) 1 SCC 652*** and ***Ramjee Rai v. State of Bihar, (2006) 13 SCC 229.*** Appreciating the evidence on record on the anvil of the aforesaid principles, we do not perceive any acceptable reason to discard the testimony of the official witnesses which is otherwise reliable and absolutely trustworthy.

The second plank of submission pertains to non-compliance of Section 50 of the Act. There is no dispute over the fact that the seizure had taken place from the tool box of the scooter. There is ample evidence on record that the scooter belongs to the appellant. When a vehicle is searched and not the person of an accused, needless to emphasise, Section 50 of the Act is not attracted. This has been so held in ***Ajmer Singh v. State of Haryana, (2010) 3 SCC 746, Madan Lal v. State of H.P., (2003) 7 SCC 465*** and ***State of H.P. v. Pawan Kumar, (2005) 4 SCC 350.*** Thus, the aforesaid submission of the learned counsel for the appellant is without any substance.

194. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 118, 138 and 139
Rebuttal of presumption of debt or legally enforceable liability – Burden of rebutting presumption when discharged – So long as accused can make his version reasonably probable, burden of rebutting presumption would stand discharged.

Vijay v. Laxman and anr.
Judgment dated 07.02.2013 passed by the Supreme Court in Criminal Appeal No. 261 of 2013, reported in 2013 (3) Crimes 246 (SC)

Extracts from Judgment

In ***M.S. Narayana Menon v. State of Kerala, (2006) 6 SCC 39,*** while dealing with that aspect in a case under Section 138 of the Negotiable Instruments Act, 1881, this Court held that the presumptions under Sections 118(a) and 139 of the Act are rebuttable and the standard of proof required for such rebuttal is preponderance of probabilities and not proof beyond reasonable doubt. The Court observed:

> "In terms of Section 4 of the Evidence Act whenever it is provided by the Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved. The words "proved" and "disproved" have been defined in Section 3 of the Evidence Act (the interpretation clause)...
>
> Applying the said definitions of "proved" or "disproved" to the principle behind Section 118 (a) of the Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon.
>
> The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies.
>
> * * *
>
> ...Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the 'prudent man'."

The decision in ***M.S. Narayana Menon*** (supra) was relied upon in ***K. Prakashan v. P.K. Surenderan, (2008) 1 SCC 258*** where this Court reiterated the legal position as under:

> "The Act raises two presumptions; firstly, in regard to the passing of consideration as contained in Section 118 (a) therein and, secondly, a presumption that the holder of cheque receiving the same of the nature referred to in Section 139 discharged in whole or in part any debt or other liability. Presumptions both under Sections 118 (a) and 139 are rebuttable in nature.
>
> It is furthermore not in doubt or dispute that whereas the standard of proof so far as the prosecution is concerned is proof of guilt beyond all reasonable doubt; the one on the accused is only mere preponderance of probability."

To the same effect is the decision of this Court in ***Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54*** where this Court observed:

> "... Standard of proof on the part of an accused and that of the prosecution a criminal case is different.
>
> * * *
>
> Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is preponderance of probabilities.
>
> * * *
>
> ... Statute mandates raising of presumption but it stops at that. It does not say how presumption drawn should be held to have rebutted. Other important principles of legal jurisprudence, namely presumption of innocence as human rights and the doctrine of reverse burden introduced by Section 139 should be delicately balanced."

Presumptions under Sections 118(a) and Section 139 were held to be rebuttable on a preponderance of probabilities in ***Bharat Barrel and Drum Manufacturing Company v. Amin Chand Pyarelal, (1999) 3 SCC 35*** also where the Court observed:

> "... Though the evidential burden is initially placed on the defendant by virtue of S.118 it can be rebutted by the defendant by showing a preponderance of probabilities that such consideration as stated in the pronote, or in the suit notice or in the plaint does not exist and once the presumption is so rebutted, the said presumption 'disappears'. For the purpose of rebutting the initial evidential burden, the defendant can rely on direct evidence or circumstantial evidence or on presumptions of law or fact. Once such convincing rebuttal evidence is adduced and accepted by the Court, having regard to all the

circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the plaintiff who has also the legal burden."

In ***Hiten P. Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16*** this Court compared evidentiary presumptions in favour of the prosecution with the presumption of innocence in the following terms:

> "... Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.
>
> In other words, provided the facts required to form the basis of a presumption of law exists, no discretion is left with the Court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. ..."

Decisions ***in Mahtab Singh and Anr. v. State of Uttar Pradesh, (2009) 15 SCC 670, Subramaniam v. State of Tamil Nadu, (2009) 14 SCC 415*** and ***Vishnu Dutt Sharma v. Daya Sapra, (2009) 13 SCC 729,*** take the same line of reasoning.

●

195. THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995 – Sections 18 and 47

A Government servant rendered disabled during his service – Effect – Not open to the authorities to dispense with his service or to retire him from service, compulsorily.

Anil Kumar Mahajan v. Union of India

Judgment dated 02.07.2013 passed by the Supreme Court in Civil Appeal No. 4944 of 2013, reported in (2013) 7 SCC 243

Extracts from Judgment:

The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "the 1995 Act") was enacted in the year 1995 with the following Statement of Objects and Reasons :

"(i) to spell out the responsibility of the State towards the prevention of disabilites, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;

(ii) to create barrier free environment for persons with disabilities;

(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down a strategy for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and

(vi) to make special provision of the integration of persons with disabilities into the social mainstream."

Section 2(i) of the 1995 Act defines "disability":

"2. (i) 'disability means –

(i) blindness;

(ii) low vision;

(iii) leprosy-crude;

(iv) hearing impairment;

(v) loco-motor disability;

(vi) mental retardation;

(vii) mental illness;"

There is a prohibition imposed under Section 47 to dispense with, or reduce in rank, an employee who acquires a disability during his service, which reads as follows:

> ***"47. Non-discrimination in government employment*** – (1) No establishment shall dispense with, or reduce in rank, an employee who acquires disability during his service:
>
> Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:
>
> Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.
>
> (2) No promotion shall be denied to a person merely on the ground of his disability:
>
> Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

The appellant was appointed in the service of the respondent as an IAS Officer and joined in the year 1977. He served for 30 years till the order of his

compulsory retirement was issued on 15-10-2007. It is not the case of the respondents that the appellant was insane and in spite of that he was appointed as an IAS Officer in 1977. Therefore, even if it is presumed that the appellant became insane, as held by the enquiry officer, mental illness being one of the disabilities under Section 2 (i) of the 1995 Act, under Section 47 it was not open to the respondents to dispense with, or reduce the rank of the appellant, who acquired a disability during his service. If the appellant, after acquiring disability, was not suitable for the post he was holding, he should have been sifted to some other post with the same pay scale and service benefits. Further, if it was not possible to adjust the appellant against any post, the respondents ought to have kept the appellant on a supernumerary post until a suitable post is available or, until the appellant attained the age of superannuation whichever was earlier.

In view of the aforesaid finding, we are of the view that it was not open to the authorities to dispense with the service of the appellant or to compulsorily retire him from service. The High Court also failed to notice the relevant facts and without going into the merits allowed the counsel to withdraw the writ petition merely on the basis of the finding of the enquiry officer. In fact the High Court ought to have referred the matter to a Medical Board to find out whether the appellant was insane and if so found, in that case instead of dismissing the case as withdrawn, the matter should have been decided on merits by appointing an advocate as amicus curiae.

It is informed at the Bar that in normal course the appellant would have superannuated from service on 31-7-2012. In that view of the matter, now there is no question of reinstatement of the appellant though he may be entitled for consequential benefits including arrears of pay. Having regard to the facts and finding given above, we have no other option but to set aside the order of compulsory retirement of the appellant dated 15-10-2007 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 2784 of 2008 and the impugned order dated 20-4-2010 passed by the High Court of Delhi in ***Anil Kumar Mahajan v. Union of India*** [W.P. (c) No. 2622 of 2010, decided on 20.4.2010) (Del)] and the case is remitted to the respondents with a direction to treat the appellant as continued in the service till the date of his superannuation. The appellant shall be paid full salary minus the subsistence allowance already received for the period from the date of initiation of departmental proceeding on the ground that he was suffering from mental illness till the date of compulsory retirement. The appellant shall also be provided with full salary from the date of compulsory retirement till the date of superannuation in view of the first and second provision to Section 47 of the 1995 Act. If the appellant has already been superannuated, he will also be entitled to full retiral benefits counting the total period in service. The benefits shall be paid to the appellant within three months, else the respondents will be liable to pay interest at the rate of 6% per annum from the date the amount was due, till the actual payment.

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196. PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION ON SEX-SELECTION) ACT, 1994

Female foeticide – PC and PNDT Act has its roots in Article 15 (2) of the Constitution of India – The Act is a piece of welfare legislation – Imbalance between men and women leads to increased crime against women, trafficking, sexual assault, polygamy etc. – Directions issued to ensure proper implementation of the Act.

Voluntary Health Association of Punjab v. Union of India and ors.

Judgment dated 04.03.2013 passed by the Supreme Court in Writ Petition (Civil) No. 349 of 2006, reported in AIR 2013 SC 1571

Extracts from Judgment :

The Parliament wanted to prevent the same and enacted the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition on Sex-Selection) Act (57 of 1994)(for short 'the Act') which has its roots in Article 15(2) of the Constitution of India. The Act is welfare legislation. The Parliament was fully conscious of the fact that the increasing imbalance between men and women leads to increased crime against women, trafficking, sexual assault, polygamy etc.

The authorities of the Government, the Non-Government Organisations and other volunteers are required to remember that there has to be awareness camps which are really effective…….. The awareness camps should not be founded on the theory of Euclidian geometry. It must engulf the concept of social vigilance with an analytical mind and radiate into the marrows of the society. If awareness campaigns are not appositely conducted, the needed guidance for the people would be without meaning and things shall fall apart and everyone would try to take shelter in cynical escapism. It is difficult to precisely state how an awareness camp is to be conducted. It will depend upon what kind and strata of people are being addressed to. The persons involved in such awareness campaign are required to equip themselves with constitutional concepts, culture, philosophy, religion, scriptural commands and injunctions, the mandate of the law as engrafted under the Act and above all the development of modern science.

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***197. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 12, 19, 20 and 22**

The claim of wife for alternative accommodation under the Act can only be made against the husband and not against the in-laws or other relatives – Wife is entitled to a right of residence in a shared house in which husband has a share. (*S.R. Batra and Anr. v. Taruna Batra, 2007 Cr.L.R. (SC) 113* and *Tehmina Qureshi v. Shazia Qureshi, 2010 (1) MPHT 133 relied* on)

Meenakshi Jatav (Smt.) and Ors. v. Dr. Smt. Seema Sehar and anr.

Order dated 28.01.2013 passed by the High Court of M.P. in M.Cr.C. No. 9243 of 2012, reported in ILR (2013) M.P. 729

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198. SUCCESSION ACT, 1925 – Section 63
EVIDENCE ACT, 1872 – Section 68

(i) Proof of Will – It is necessary for the propounder of the Will to prove that the testator signed it, that he understood the nature and effect of the depositions of the Will, and that he had affixed his signatures on the Will knowing what it contains.

(ii) Registration of Will – Registration of Will would not attract presumption as to the correctness or regularity of the attestation and a person claiming through the Will is required to specifically plead and prove through the attesting witness that the requirement of Section 63 of the Act, 1925 and 68 of Evidence Act, 1872 have been complied with.

Ram Narayan Tiwari and ors. v. Uma Shanker Pacholi and anr.
Judgment dated 05.02.2013 passed by the High Court of M.P. in S.A. No. 455 of 1995, reported in ILR (2013) M.P. 858

Extracts from Judgment:

From a perusal of the decision of the Supreme Court rendered in the case of ***H. Venkatachala Iyengar v. B. N. Thimmajamma and others, AIR 1959 SC 443,*** it is clear that the Supreme Court, while analyzing the provisions of Sections 59 and 63 of the Succession Act and Sections 67 and 68 of the Evidence Act, has held that it is necessary for the propounder of the Will to prove that the testator signed it; that he understood the nature and effect of the depositions of the Will; and that he had affixed his signature on the Will knowing what it contains, in the following terms:

> "....Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression " a person of sound mind'' in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? ....."

In the case of ***Bhagat Ram and another v. Suresh and others, (2003) 12 SCC 35,*** the Supreme Court while again analyzing the aforesaid aspect has held that on mere registration of a Will, a presumption as to the correctness or regularity

of the attestation cannot be drawn and a person claiming through the Will is required to specifically plead and prove through the attesting witness that the requirement of Section 63 of the Succession Act and Section 68 of the Evidence Act, have been complied with in spite of due registration.

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199. TRANSFER OF PROPERTY ACT, 1882 – Sections 58 (c) and 54

(i) Mortgage by conditional sale and a sale with right of repurchase – Merely because of the term was incorporated in the same document, it cannot always be accepted that the transaction agreed between the parties was a mortgage transaction – In a mortgage the debt subsists and a right to redeem remains with the debtor, but a sale with a condition for repurchase is not a landing and borrowing arrangement.

(ii) Sale with option of repurchase – This option of repurchase is in the nature of contract for sale – Only personal right to repurchase is reserved – This personal right can only be enforced strictly according to the terms of the deed and at the time agreed upon.

Vanchalabai Raghunath Ithape by LRs. v. Shankarrao Baburao Bhilare by LRs. and others

Judgment dated 01.07.2013 passed by the Supreme Court in Civil Appeal No. 4833 of 2013, reported in (2013) 7 SCC 173

Extracts from Judgment:

From a perusal of Section 58(c), it is evidently clear that for the purpose of bringing a transaction within the meaning of "mortgage by conditional sale", the first condition is that the mortgagor ostensibly sells the mortgaged property on the condition that on such payment being made, the buyer shall transfer the property to the seller. Although there is a presumption that the transaction is a mortgage by conditional sale in cases where the whole transaction is in one document, but merely because of a term incorporated in the same document it cannot always be accepted that the transaction agreed between the parties was a mortgage transaction.

In ***Williams v. Owen, (1840) 5 My and Cr 303,*** a similar question arose for consideration as to whether a conveyance by the plaintiff's father to the defendant was to be considered as having been a mortgage as contended by the plaintiff, or as having been a sale, with a right of repurchase at a given date? It was held that in a mortgage the debt subsists and a right to redeem remains with the debtor, but a sale with a condition of repurchase is not a lending and borrowing arrangement; no debt subsists and no right to redeem is reserved by the debtor, but only a personal right to purchase. This personal right can only be enforced strictly according to terms of the deed and at the time agreed upon.

In the instant case, the alleged sale document was executed in the year 1967 transferring the suit property by way of sale subject to one stipulation/ condition that on receiving the sale amount of Rs 3000 within five years the land

was to be returned to the plaintiff vendor. It is also not in dispute that after transfer of the land Respondent 1-defendant came in possession and used and enjoyed the suit property as an absolute owner. It was only after 11 years that the appellant-plaintiff filed the suit alleging that the suit property was mortgaged in favour of the defendant-Respondent 1 herein with a condition to reconvey the land.

In the instant case, the trial court committed grave error in construing the document and erroneously held that the transaction is mortgage and hence, the plaintiff is entitled to the decree of redemption.

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200. TORTS:

(i) Strict liability – A person or authority undertaking an activity involving hazardous or risky exposure to human life – Liable to compensate for injury suffered irrespective of any negligence or carelessness on the part of the manager of such undertaking.

(ii) Strict liability, what is? A person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings – The basis of such liability is foreseeable risk inherent in the very nature of such activity – The liability cast on such person is known, in law, as "strict liability".

(iii) Assessment of Quantum of Compensation – If the specific provisions are not available in the concerning enactment, then the court may take into consideration the provisions of some other enactments like Motor Vehicles Act and its interpretations for the assessment of compensation.

Madhya Pradesh State Electricity Board v. Girvan Dhakad and anr.
Judgment dated 11.02.2013 passed by the High Court of M.P. in F.A. No. 284 of 2005, reported in ILR (2013) M.P. 868

Extracts from Judgment:

As per the available evidence including the postmortem report, said Rajendra had died due to electrocution. So, in such premises, this Court has to answer only one question, whether for want of any information about breaking the live wire laying on agricultural field, the liability to pay the compensation could be saddled on the appellant-Board. Before proceedings further to examine this question, I would like to reproduce the relevant para of the decision of the Apex Court in the matter of ***M. P. Electricity Board v. Shail Kumari and others*** reported in ***2002 (1) JLJ 240,*** in which considering the identical question it was held as under:

> "Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or

> risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i. e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions."

In view of aforesaid dictum of the Apex Court, on examining the case at hand, I am of the view that in the available factual matrix, the principle of "strict liability" as laid down in the cited case is applicable. The appellant Board know/knew its business hazards, risk and liabilities. So, on happening the alleged incident, the appellant could not escape payment of compensation. So, in such premises, I have not found any perversity, in the impugned judgment holding the liability to pay compensation on the appellant.

The impugned suit was filed by the respondents for compensation under the law of torts and damages, I agree with the submission of learned Senior counsel of the appellant that for assessment of the compensation regarding electrocution death, neither the specific rules have been enacted nor any specific direction in this regard has been given by the Legislature in any existing law. But to assess the reasonable quantum of compensation, if the specific provisions are not available in the concerning enactment then the Court may on consideration such question keeping in view the provisions of some other enactments and its interpretations in which the question of compensation has been considered and adjudicated and in such premises, the approach of the trial Court could not be said to be arbitrary or contrary to law.

Undisputedly the respondents are the parents of the deceased and not the wife and children and in such premises on examining the reasonableness of the awarded sum of compensation then in view of aforesaid discussions, there is no option with the Court except to assess the compensation keeping in view of the provisions of Motor Vehicles Act and its interpretations.

As such in the light of the aforesaid, Court has to answer that if a person of 18 years has died in an accident then, how much his income could be assessed and out of which, how much amount could be awarded as compensation to the dependents of such deceased.

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PART – III

CIRCULARS/NOTIFICATIONS

NOTIFICATION OF THE CENTRAL GOVERNMENT FOR EXEMPTION OF CERTAIN CLASSES OF PERSONS FROM THE OPERATION OF SOME OF THE PROVISIONS OF THE ARMS ACT, 1959 (54 OF 1959)

Ministry of Home Affairs Notification No. S.O. 591 (E) dated the 6th March, 2013 published in Gazette of India (Extraordinary) Part II Section 3(ii) dated 8-3-2013 Pages 5-8.

In exercise of the powers conferred by Section 41 of the **Arms Act, 1959 (54 of 1959),** the Central Government hereby makes the following amendments in the Notification of the Government of India in the Ministry of Home Affairs No. S.O. 667 (E) dated the 12th September, 1985 by way of modifying the text incorporating alterations brought through subsequent Notifications No. S.O. 831 (E) dated 2nd August, 2002; S.O. 568 (E) dated 12th May, 2004 and S.O. 1864 (E) dated 19th October, 2007 and new provisions all together to make the orders comprehensive and reading as follows :

"whereas the Central Government is of the opinion that it is necessary and expedient in the public interest to exempt certain classes of persons from the operation of some of the provisions of the Arms Act, 1959 (54 of 1959);

Now, therefore, in exercise of the powers conferred by Section 41 of the said Act, the Central Government hereby exempts the classes of the persons specified in column 2 of the Schedule hereto annexed, in respect of the arms of the category of description specified in the corresponding entry in column 3 thereof, when carried, possessed for their own personal use for the purpose of training or use in competitions, from the operations of the provision of sub-section (2) of section 3 and sub-clause (i) of Clause (a) of sub-section (1) of Section 9, of the said Act and subject to such conditions as are specified in the corresponding entry in column 4 of the said Schedule :

Provided that the exemption hereby granted shall be subject to the following further conditions, namely:-

(1) The certifying body for persons specified at Serial No. 1 to 3 of the Schedule shall be Department of Sports, Ministry of Youth Affairs and Sports, Government of India. The certificate shall specifically state that the award was conferred for excellence as a shooter.

(2) The Junior Target Shooter claiming exemption under this notification has completed the age of twelve years.

Explanation – For the purposes of this notification,

(a) 'International Championship' means the Asian Games, the Asian Shooting Championship, the Asian Women or Asian Junior Shooting Championship, or the Common Wealth Games, the Common Wealth Shooting Championships, the Olympic Games, the World Junior Shooting Championships; and the World Cups in senior as well as junior events; para championships in all the above categories;

(b) 'International Target Shooter' means a person who has won an individual or team medal in an International Championship;

(c) 'Renowned Shooter' means a person who has participated in a National Shooting Championship in an Open Men's Event or Open Women's Event or Open Civilian's Event whether through Qualifying Tournament or Wild Card Entry conducted in accordance with the rules of International Shooting Union and has attained the Minimum Qualifying Score prescribed by the National Rifle Association'

(d) 'Junior Target Shooter' means a person who has completed the age of twelve years but is below the age of twenty one years and has taken part in at least one State Level, Zonal Level, or National Level Shooting Competition recognized by National Rifle Association;

(e) 'Aspiring Shooter' means a person who has taken part in at least oone State Level, Zonal Level, or National Level Shooting Competition recognized by National Rifle Association and attained the prescribed minimum qualifying score approved by the respective association."

SCHEDULE

Sr. No.	Persons or class of persons	Categories/descriptions of arms	Conditions
1	Arjuna Awardee	General exemption on the number of arms to be possessed provided that the Arjuna Award is conferred in shooting.	The person must hold a certificate issued by the appropriate certifying bodies specified in the proviso to this notification
2	International Medalist/ Renowned shot	Type of arms used in the event in which the person is an international medalist or a renowned shot.	The total number of weapons exempted shall not exceed six in addition to the number of weapons

Sr. No.	Persons or class of persons	Categories/descriptions of arms	Conditions
		(i) Rifles in caliber .22 Long Rifle (also known as .22 LR) (ii) Center fire Rifles with calibers up to 8mm including all calibers lower than 8mm. (iii) Pistol/Revolvers of caliber up and including 9mm but excluding 9mm parabellum (9 x 19mm). (iv) Shotguns of caliber up to 12 bore/gauge including all calibers lower than 12 bore/guage	he is entitled to possess as a normal citizen as per provisions of the Arms Act, 1959, subject to overall ceiling of ten weapons. **Note :** Even if a shooter is renowned in more than two events, the total number of weapons such renowned shooter can possess shall not exceed ten as mentioned above.
3	Junior Target shooter (12 years to 21 years)	Type of arms used in the event in which the person is a Junior Target Shooter	The total number of weapons exempted shall not exceed four including the number of weapons the person is entitled to possess as normal citizen as per provisions of the Arms Act, 1959. **Note :** Even if a shooter is Junior Target Shooter in more than two events, the total number of weapons such Junior Target Shooter can possess shall not exceed four as mentioned above.
4	Aspiring Shooters	Type of arms used in the event in which the person is an international medalist or a renowned shot (i) Rifles in caliber. 22 long Rifle (also known as .22 LR). (ii) Center fire Rifles with Calibers up to 8mm including all calibers lower than 8mm. (iii) Pistol/Revolvers of	The total number of weapons exempted shall not exceed four including the number of weapons the person is entitled to possess as a normal citizen as per provisions of the Arms Act, 1959.

		caliber up and including 9mm but excluding 9mm parabellum (9 x 19mm). (iv) Shotguns of caliber up to 12 bore/gauge including all calibers lower than 12 bore/gauge.	
5.	District Rifle Association/ State Rifle Associations/ National Rifle Associations of India/All Shooting clubs affiliated to the State or the National Rifle Association of India. All Shooting Ranges under the Sports Authority of India or the Sports Authority of the State Government.	(i) Rifles in caliber .22 Long Rifles (also known as .22 LR) (ii) Center fire Rifles with calibers up to 8mm including all calibers lower than 8mm. (iii) Pistol/Revolvers of caliber up and including 9mm but excluding 9mm parabellum (9 x 19 mm) (iv) Shotguns of caliber up to 12 bore/gauge including all calibers lower than 12 bore/gauge.	No limit will be prescribed on the possession of Arms.

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LEARNING THE LAW BY OSMOSIS

At bar, a young lawyer learns much – simply by osmosis. Scientifically, osmosis is the diffusion of a liquid through a porous barrier but learning the law by osmosis is simply being with other lawyer (senior to you) and imbibing what they say and do.

PART – IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

NATIONAL LEGAL SERVICES AUTHORITY (LEGAL SERVICES TO THE MENTALLY ILL PERSONS AND PERSONS WITH MENTAL DISABILITIES) SCHEME, 2010

[Adopted in the Meeting of the Central Authority of NALSA held on 8.12.2010 at Supreme Court of India]

Persons with disability, especially those suffering from mental illness and other barriers like mental retardation do not get proper attention from the authorities in the matter of access to justice. The result is that they are sidelined and are viewed only from the prism of the paternalistic "social welfare" which looks upon them as merely as persons who are in need of special protection by the State and the society. India being a signatory to the UN Convention on the Rights of Persons with Disabilities (CRPD) 2008 and since our country has ratified the Convention, it is obligatory for our legal system to ensure the human rights and fundamental freedoms of persons with disability (including mentally ill persons and persons with mental disabilities) are enjoyed on equal basis with others and to ensure that they get equal recognition before the law and equal protection of the law. The Convention further requires to ensure effective access to justice for persons with disabilities on an equal basis with others. In other words, the Convention has the philosophical underpinnings with a right based and inclusive approach and it treats persons with disabilities as those to be accepted as persons living in the inherent diversity in society.

In this background, the following guidelines are issued for the legal services institutions (State Legal Services Authorities, District Legal Services Authorities, Taluk Legal Services Committees, High Court Legal Services Committees, Supreme Court Legal Services Committee) to be followed while they deal with legal services to the mentally ill and persons with mental disabilities: -

PART – I

MATTERS TO BE CONSIDERED WHILE RENDERING LEGAL SERVICES TO MENTALLY ILL PERSONS:

(1) Mental illness is curable – The Legal Services Institutions shall keep in mind the fact that mental illness is curable on proper medication and care.

(2) Mentally ill persons are entitled to all human rights and fundamental freedoms – While dealing with mentally ill persons for rendering legal services it shall be the prime concern of the legal services institutions to promote, protect and ensure the full and equal enjoyment of human rights and fundamental freedoms of the mentally ill persons.

(3) **Respect for the inherent dignity of mentally ill persons –** The legal services institutions shall promote respect for the inherent dignity, individual autonomy including independence of mentally ill persons.

(4) **Non-discrimination –** The legal services institutions shall not discriminate mentally ill persons merely because of his state of mental health. It shall be always borne in mind that they are entitled to be treated without any discrimination, on equal basis with others and are entitled to equal protection and equal benefit of the law.

(5) **Reasonable accommodation –** The legal services institutions shall ensure that the mentally ill persons are afforded situations with appropriate modification and adjustments, where needed in a particular case, to ensure that they enjoy on an equal basis with others all human rights and fundamental freedoms (***see Article -2 of CRPD***).

(6) **The right of mentally ill persons to get treatment –** Right to treatment and to get proper health care, emanating from Article 21 of the Constitution of India is equally applicable to all mentally ill persons. Mentally ill persons deprived of treatment either due to illegal confinement or superstition or lack of means shall be ensured to get treatment facilities available in the psychiatric hospitals or psychiatric nursing homes. The provisions in chapter IV of the Mental Health Act, 1987 may be invoked in appropriate cases.

(7) **Informed consent for treatment –** Legal services institutions shall ensure that when a person is subjected to treatment for mental illness, his / her informed consent has been obtained. If any person is incapable of giving such consent, the informed consent of his / her relatives or friend and if no relative or friend or if there is no relative or friend the satisfaction of the court under Part II Chapter V of Mental Health Act, 1987 shall be ensured.

(8) **Legal services during the proceedings for Reception Orders –** It shall be the duty of the legal services institutions to depute its retainer lawyer to the court which deals with every application for a reception orders under Part III of Chapter IV of the Mental Health Act, 1987. The Legal Services Authorities may request the Magistrates who deals with such application that the Legal Services Institution having jurisdiction in that area is given notice in all cases, for protecting the interest of the mentally ill persons in relation to whom an application for reception order is made.

The retainer lawyer shall gather the details of the circumstances and shall liaise with the relatives of the alleged mentally ill persons, Doctors in the psychiatric hospitals or psychiatric nursing homes or any other competent person to ensure that the condition of the person against whom the application for reception order has been made warrants such an order from the Court.

(9) **Privacy and dignity of mentally ill persons –** Mentally ill persons are entitled to right to privacy and dignity emanating from the right to life under Article 21 of the Constitution of India. The legal services institutions shall always uphold and ensure the privacy and dignity of mentally ill persons during the spell of their illness. This shall be especially observed in the case of women who are mentally ill and incapable of taking care of themselves.

(10) **Protection of the other fundamental rights of the mentally ill persons –** Legal Services Institutions while dealing with mentally ill persons shall ensure that because of his / her being mentally ill his / her human rights and fundamental rights are not violated.

(11) **Humane living conditions in the mental hospitals and other places where mentally ill persons are confined –** The legal services institutions shall in consultation with the State Authority for Mental Health organize visits to psychiatric hospitals or psychiatric nursing homes and other places where mentally ill are confined to ensure that there is humane living condition at such places. The legal services institutions shall take up the matter with the State Mental Health Authority and the State Government in cases of lack of humane living conditions.

(12) **Legal services to the mentally ill persons confined in psychiatric hospitals or psychiatric nursing homes –** The Legal Services Institutions shall organize frequent visits to psychiatric hospitals or psychiatric nursing homes and other places where the mentally ill persons are confined and shall gather information about the existence of any legal problems for any mentally ill persons which he / she cannot deal with on account of mental illness. The information so gathered shall be utilized by the legal services institutions for providing legal aid to such mentally ill persons for protection of his / her rights. For gathering such information, the visitors from legal services institutions shall interview the mentally ill persons, hospital authorities and the relatives / friend, if any, of the mentally ill persons.

(13) **Legal services in case of forced admission into the psychiatric hospitals or psychiatric nursing homes –** Legal services institutions shall attempt to gather information during its visits to the psychiatric hospitals or psychiatric nursing homes as to whether any of the persons admitted there are victims of forced admission or not. In such cases, legal services shall be given to such persons for their release from the psychiatric hospitals or psychiatric nursing homes.

(14) **Legal Services Institutions to follow up the condition of the mentally ill persons against whom a Reception Order has been passed –** The Legal Services Institutions having local jurisdiction shall keep a list of the

mentally ill persons against whom reception orders have been passed by the Court under Part III of Chapter IV of Mental Health Act, 1987 and shall monitor the progress of treatment of the mentally ill persons in the psychiatric hospitals or psychiatric nursing homes where the mentally ill persons is detained as per the reception order.

The legal services institutions shall bring to the notice of the Magistrate concerned about any cured mentally person remaining in the psychiatric hospitals or psychiatric nursing homes where such mentally ill person has been sent as per the reception order.

(15) Legal services during inquisition proceedings – Where an alleged mentally ill person is possessed of property and if no persons mentioned in Clauses (a) to (d) of Sub-section (1) of Section 50 of Mental Health Act is coming forward with an application for holding judicial inquisition under Chapter VI of Mental Health Act, the legal services institutions in consultation with District Legal Services Authorities concerned shall take appropriate steps for initiating judicial inquisition regarding the mental condition of the alleged mentally ill persons, custody of his / her person and management of his / her property.

For this purpose the Legal Services Institutions may contact any of the aforesaid persons referred to in Clauses (a) to (d) of Sub-section (1) of Section 50 of Mental Health Act, 1987 in writing and may also take up the matter with the Advocate General of the State.

(16) Legal services institutions to step in when there is attempt to misappropriation of property of mentally ill persons – On getting information about the misappropriation or fraudulent dealing with the properties of mentally ill persons by any person, the legal services institutions in consultation with the District Legal Services Authority concerned shall invoke the provision in Chapter VI of the Mental Health Act, 1987.

(17) Legal Services for non-criminal mentally ill persons confined in jails – Legal services institutions through the panel lawyers deputed for jail visits or otherwise shall attempt to identify whether any non-criminal mentally person is detained in any of the prisons. If any such person is found, necessary legal aid may be given to such mentally ill person for transferring them to the psychiatric hospitals or psychiatric nursing homes for treatment as per law.

(18) Legal services for making available the benefits of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 – The definition of ‘disabled’ under Section 2 of Persons with Disabilities (Equal Opportunities, Protection of Rights and

Full Participation) Act, 1995 includes mentally ill persons. Therefore, the legal services institutions shall provide legal services to mentally ill persons for availing of the benefits under the PWD Act, 1995 in appropriate cases.

(19) **Legal aid to mentally ill persons under Section 91 of Mental Health Act, 1987 –** Legal services institutions can play a effective role in the situation mentioned in Section 91 of Mental Health Act, 1987 provided that the mentally ill person is in custody in a psychiatric hospital or psychiatric nursing home, irrespective of his / her proof of means. However, in all cases under Section 91 where the mentally ill person has no sufficient means to engage a legal practitioner, the legal services institutions shall provide legal services to such mentally ill persons.

(20) **Legal awareness programmes and public advocacy relating to mental illness and the rights of mentally ill persons –** The legal services institutions shall organize awareness programmes especially in rural areas, to educate people that mental illness is curable and the need for equal treatment of mentally ill with other persons in the society. Such awareness camps may be organized for the cured mentally ill persons and also for the relatives of the mentally ill persons in a particular locality to educate them about the aforesaid the matters for changing the mind set of the society towards mentally ill persons. In such special legal awareness camps the presence of psychiatrists, lawyers and social workers can help the participants to clear their doubts and misconception about mental illness. The lawyer in such camps may educate on the property and other legal rights and the other provisions of law relating to the mentally ill persons.

(21) **Special legal awareness programmes for sensitizing Judicial officers and panel lawyers –** The State Legal Services Authority / District Legal Services Authority may organize training programmes in association with Judicial Academy to sensitize the judicial officers about the socio-legal problems faced by the mentally ill persons, their parents, relatives and family members. Similar programmes may be organized with the help of the bar associations to sensitize the panel lawyers and the other members of the legal profession.

(22) **Setting up of legal aid clinics for dealing with the problems of mentally ill persons –** The District Legal Services Authorities may set up special legal aid clinics in association with the psychiatric hospitals or psychiatric nursing homes to sensitize the family members of the persons with mental disabilities and for discussing the issues relating to inheritance, guardianship, family pension benefits, properties belonging to the mentally ill persons and to take steps for institutional care for destitute and wandering mentally ill persons.

(23) **Organizing rehabilitation measures for the cured mentally ill persons –** The legal services institutions in consultation with District Legal Services Authorities and the State Legal Services Authorities shall assist the persons cured of mental illness for their rehabilitation. For this purpose, the Legal Services Authorities may liaise with the Social Welfare Department. The District Legal Services Authority / State Legal Services Authority shall make frequent visits to the places where such rehabilitated persons are accommodated to ensure that they are given proper shelter with humane conditions, proper food, continued medication and vocational training.

(24) **Co-operation with the NGOs and Volunteer Social Organizations –** The legal services institutions shall co-ordinate with NGOs and other volunteer social organizations for dealing with the issues relating to mentally ill persons.

(25) **Observance of the World Mental Health Day on 10th October every year –** All legal services institutions may organize programmes on 10th October every year for observing it as the World Mental Health Day. The programmes shall focus on creating awareness about the mental illness, promoting mental health advocacy and spreading the message that the mentally ill persons are entitled to human rights and other legal rights, as persons living in the inherent diversity in the society and as persons before the law on an equal basis with others in all aspects of life.

PART – II

MATTERS TO BE CONSIDERED WHILE RENDERING LEGAL SERVICES TO MENTALLY RETARDED PERSONS

(1) **Mentally retarded persons are not mentally ill persons –** There is a confusion even amongst the legal community that mentally retarded people are mentally ill. Mentally retarded persons are suffering from mental disabilities due to developmental disorders. Mental retardation of permanent nature is not curable. They are, therefore, treated as persons with disabilities under Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act). The statutory provisions for the welfare of mentally retarded persons are (i) PWD Act, 1995 and; (ii) National Trust Act, 1999. They also come under the purview of the UN Convention on the Rights of Persons with Disabilities (CRPD), 2008.

(2) **Legal services to mentally retarded persons (MRs) –** The legal services institutions shall get in touch with the Social Welfare Department of the State Government and find out the different beneficial schemes for the

MRs. Indian Railways and some State Governments have schemes for travel facility for MRs. The Income-Tax Act also gives some benefits to the parents of MRs. The legal services institutions shall attempt to make available the benefits under various schemes to the MRs and their family members.

(3) **Legal services for ensuring the health care of MRs –** MRs like any other citizens are entitled to right to health services as a part of the fundamental rights.

(4) **Legal services for ensuring the fundamental rights of MRs –** The legal services institutions shall provide assistance to the MRs for protecting their fundamental rights, equality and equal treatment.

(5) **Right to education –** The policy in CRPD is an inclusive policy providing respect for MRs, evolving capacity of MRs, for preserving their identity, respect their inherent dignity and individual autonomy. The Convention envisages the right of MRs to get education on the basis of equal opportunity and for the development of their mental, physical abilities and creativity to their fullest potential. Therefore, the Legal Services Institutions shall always attempt to safeguard the above mentioned rights of MRs whenever they are found to be deprived of such rights.

(6) **Legal services for the benefits under PWD Act, 1995 –** Legal services institutions shall assist the MRs for obtaining benefits under the PWD Act, 1995.

(7) **Prevention of exploitation and abuse of MRs –** MRs are one of the vulnerable groups likely to be exploited. Female MRs are the most vulnerable of the group. Therefore, the legal services institutions shall come to the assistance of MRs in preventing their exploitation including sexual abuse and also for taking legal action against the abusers and exploiters.

(8) **Legal services for MRs for owing and inheriting properties and to have financial rights –** Legal services institutions shall come to the help of MRs in protecting the rights of inheritance, owing properties and enjoying financial rights.

(9) **Appointment of guardians under the National Trust Act, 1999 –** Loss of both parents often leads to a situation that the MRs become orphans. Therefore, appointment of guardian as contemplated under National Trust Act, 1999 is of great importance. Legal services institutions shall come to the assistance of MRs in the matter of appointment of guardian.

(10) **Need for setting up of a supported network –** The legal services institutions with the help of the Social Welfare Department of the State Government, NGOs, charitable trust, relatives of the MRs and social

workers shall encourage to set up a supported network at the local level for the welfare of MRs. The supported network in each locality shall take care of the MRs to ensure that the MRs are not becoming destitutes and their food, health and other essential needs are taken care of uninterruptedly.

(11) Creating awareness campaigns amongst the other school children – It is important that the normal children are made aware of the fact that MRs and other persons with disabilities are also equally entitled to the rights provided by the laws and the protection of laws like any other persons. Therefore, the Legal Services Authorities shall on the World Disability Day organize special awareness programmes in the primary schools to create awareness amongst the young children to change their mindset towards MRs. Video films, charts, picture, skits and thematic presentations can be used in such programmes.

(12) Awareness camps for educating the family members of MRs – The legal services institutions in association with the schools in their locality shall organize awareness camps for the family members of MRs. Services of specialists in counseling, psychiatric, psychological, social work and lawyers also can be made use of in their programmes. Siblings of MRs also may be included in such programmes.

(13) Awareness programmes for the general public – Awareness programmes may be conducted for the general public to educate the public that MRs and other disabled persons also have the rights on par with the other normal persons.

(14) Sensitization Programme for Judicial Officers and Lawyers – Special sensitization programmes can be organized with the assistance of Judicial Academy and bar associations for sensitizing judicial officers and lawyers about the MRs and their rights.

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