# JOTI JOURNAL

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# मध्य प्रदेश राज्य न्यायिक अकादमी

मध्यप्रदेश उच्च न्यायालय, जबलपुर - 482 007

# MADHYA PRADESH STATE JUDICIAL ACADEMY

HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

# सम्पादकीय

**प्रदीप कुमार व्यास**
**प्रभारी संचालक**

सम्माननीय पाठक गण,

वर्ष 2015 का यह अंतिम द्विमासिक अंक व Annual Index आपकी ओर प्रेषित हैं। इन दो माहों में एक कार्यशाला ग्वालियर व उसके पास के जिले मुरैना, भिण्ड, शिवपुरी गुना व श्योपुर के लगभग 55 अभिभाषकगण के लिए दिनांक 31 अक्टूबर 2015 से 3 नवम्बर 2015 तक आयोजित की गयी है। दिनांक 16–11–2015 से 11–12–2015 तक 2014 बैच के सिविल जज वर्ग–2 के लिए Induction Training का अंतिम चरण होना है । इसी बीच दिनांक 05–12–2015 को एक कार्यशाला किशोर न्याय (बालकों की देखभाल एवं संरक्षण) अधिनियम, 2000 पर ग्वालियर में रखी गयी है जिसमें किशोर न्याय बोर्ड के प्रधान मजिस्ट्रेट, किशोर न्याय बोर्ड के सदस्य, किशोर पुलिस इकाई के अधिकारीगण आदि लगभग 40 सदस्य शामिल होंगे।

दिनांक 14–12–2015 से 18–12–2015 तक वर्ष 2013 बैच के सिविल जज वर्ग–2 का First Refresher Course जबलपुर में होना है तथा एक कार्यशाला दिनांक 19–12–2015 एवं 20–12–2015 को जबलपुर में जिला उपभोक्ता फोरम के पीठासीन अधिकारीगण एवं सदस्यगण के लिए रखी गयी है । इस तरह इन दो माहों में विभिन्न कार्यक्रम रखे गये हैं।

माननीय मुख्य न्यायाधिपति महोदय की प्रेरणा से एक नवीन कार्यक्रम Workshop on – Professionalism at Work Place प्रारंभ किया गया है जिसमें उच्च न्यायालय जबलपुर के सभी अधिकारीगण एवं कर्मचारीगण के लिए कार्यशालायें आयोजित हो रही हैं। खंडपीठ इंदौर और ग्वालियर के लिए ऐसी ही कार्यशाला होना है। इनमें मैनेजमेंट विशेषज्ञों को बुलाया जा रहा है। श्री कपिल मेहता, विशेष कर्त्तव्यस्थ अधिकारी इन कार्यशालाओं को संभाल रहे हैं। निश्चित रूप से यह नवीन प्रयोग लाभप्रद साबित होगा।

इस अंक में अनुसूचित जाति एवं जनजाति (अत्याचार निवारण) अधिनियम, 1989 पर एक लेख और धारा 19 भ्रष्टाचार निवारण अधिनियम, 1988 तथा मध्य प्रदेश विशेष न्यायालय अधिनियम, 2011 पर एक लेख शामिल किया जा रहा है।

अक्टूबर–2015 का अंक अक्टूबर–2015 में प्रदेश के सभी जिलों में प्रेषित किया जा चुका था और यह अंक भी माह दिसम्बर–2015 में आपके हाथ में पहुँचे ऐसे प्रयास किये जा रहे हैं ताकि हमारे न्यायाधीशगण नवीनतम वैधानिक स्थिति और संस्थान की गतिविधियों से शीघ्र अवगत हो सकें।

इस पत्रिका के बारे में आपके अमूल्य सुझाव सादर आमंत्रित हैं।

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*किसी भी लड़ाई के लिए कम से कम दो व्यक्तियों की आवश्यकता होती है यह सुनिश्चित कीजिये कि आप उनमें से एक नहीं हैं लेकिन अपना पक्ष विनम्रता पूर्वक रखने का हर संभव प्रयास कीजिये।*

– एक विद्वान

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

Hon'ble Shri Justice Rajendra Menon, Administrative Judge, High Court of M.P. addressing the participants in the Workshop on – Professionalism at Work Place for the Registry Officers and Judges of the District Court, Jabalpur. On His Lordship's right is Hon'ble Shri Justice S.S. Kemkar, Judge Incharge, Judicial Education and Shri Kapil Mehta, OSD, MPSJA and on the left is Ms. Parul Rishi, Faculty of HRM, Bhopal
(19th & 20th September, 2015 in the Conference Hall, High Court of M.P., Jabalpur)

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


Workshop on – Key Issues and Challenges under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 held in the Academy on 3rd & 4th October, 2015

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


Workshop on – Key Issues and Challenges under the Prevention of Corruption Act, 1988 held in the Academy on 10th & 11th October, 2015

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

Shri Manohar Mamtani, Principal Registrar (Judicial) addressing the participants in the Workshop on –
Key Issues and Challenges under the Prevention of Corruption Act, 1988 held in the
Academy on 10th & 11th October, 2015

# PART – I

## SECOND JUDICIAL GOVERNANCE PROGRAMME JOINTLY ORGANIZED BY STATE COURT OF SINGAPORE AND CIVIL SERVICES COLLEGE SINGAPORE – AN OVERVIEW

**Ved Prakash***
Registrar General,
High Court of M.P.

The State Courts of Singapore and Civil Services College, Singapore jointly organized **Second Judicial Governance Programme** from 27th to 31st July, 2015 in collaboration of Supreme Court of Singapore. The programme aimed at contributing to 'Enhancement of Judiciary and Legal systems Globally' by sharing Singapore experience in Court Governance, Administration and judicial capabilities with Judges and Court Administrators from around the world.

Twenty-seven Judges/Administrators from across 15 Countries including seven from India, participated in this programme. Having been nominated, by Hon'ble the Chief Justice of India vide Communication dated 28th May, 2015 in the capacity of Registrar General of the High Court of M.P., I also had the privilege to participate in this programme with the kind approval of Hon'ble the Chief Justice.

The programme enabled the participants to have first hand idea about Singapore experience in strengthening its judicial system, which is a tiny country **with a total geographical area of 718 Sq Km**., spreading **42 Km. East to West and 23 Km. South to North**, having no natural resources. Despite being a multi-ethnic society with population density of 7615 per Sq Km., (**Chinese 74%, Malaysian 14%, Indian 9% and others 4%**) Singapore has succeeded in developing a world class system of judicial governance.

**Good governance**, as explained in a document issued by World Bank **(World Bank 1994: Governance The World bank Experience)**, is epitomized by predictable, open and enlightened policy making, a bureaucracy imbued with professional ethos acting in furtherance of the public good, the rule of law, transparent process, and a strong civil society participating in public affairs. Noticeably, as a system of governance, Singapore enjoys parliamentary form of democracy based on West Minister Model with 87 elected members. It has inherited the Common Law System. Having a **single party rule since its independence in 1965**, the leadership of Singapore has provided long term vision and direction with a pragmatic approach, transforming it as a model of good governance.

**The basic principles**, which have fueled the engine of change, generating momentum of growth, in Singapore can be classified as under:-

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*The views expressed in the write-up are of the Author.

(a) Visionary Leadership

(b) Work for Reward;
Reward for Work

(c) A Stake for Everyone;
Opportunities for All

(d) Anticipate change;
Stay Relevant

- **VISIONARY LEADERSHIP**: **Lee Kuan Yew**, the first Prime Minister of Singapore, who studied law at Fitzwilliam College, Cambridge, UK (1950) and is credited with transformation of Singapore from a township of fishermen to a world class Nation State, said in 1979, "**the moment key leaders are less than incorruptible, less than stern in demanding high standards, from that moment the structure of administrative integrity will weaken, and eventually crumble. Singapore can survive only if ministers and senior officers are incorruptible and efficient**".
- **WORK FOR REWARD; REWARD FOR WORK**: Polity of Singapore attaches highest regard to the members of work force. The system facilitates wealth creation by encouraging work and self-reliance, not dependence on welfare. The resources are allocated for long term competitiveness, with a basic safety frame work. Preference is given to **meritocracy i.e. the best use of talent facilitating growth and development**.
- **A STAKE FOR EVERYONE, OPPORTUNITIES FOR ALL**: Singapore, which is **celebrating 50$^{th}$ year of independence this year** and has attained a status of '**Global City**' and the choice home for many in the world, is an attractive investment destination, particularly because each citizen has stake in growth and each one has opportunity to grow. This has promoted collective responsibility without compromising with the most cherished core values which are :-
  - **Nation before community, society before self.**
  - **Family as the basic unit of society.**
  - **Community support and respect for the individual**.
  - **Consensus, not conflict**
  - **Racial and Religious harmony.**
- **ANTICIPATE CHANGE; STAY RELEVANT**: Change being the rule of nature, every Singaporean believes in being thinking ahead and thinking across and being innovative and organized. This requires connecting with others and staying flexibly as regards respectabilities of ideas.

**The Singapore Judiciary:**

While **the core mission** of Singapore judiciary is to develop as an efficient, competent and honest judicial system with a pragmatic approach to serve the people by ensuring that they have effective access to justice; the **holistic vision** is to take meaningful steps to promote collaborative and multi-disciplinary approach involving as many of the related agencies as possible to achieve a hassle-free journey to deliver justice and at the same time, understanding the role of judicial system in facilitating environment for growth and development of the country including that for trade and investment, locally, regionally and globally.

It is worthwhile to note that **around two decades ago**, the Singapore Judicial System was **perceived as slow, inefficient and inadequate**, however, with strategic planning, effective application of IT tools and dedicated efforts, Singapore, in terms of judicial governance, emerged as **Top Ranking Country**, amongst 144 countries including USA, U.K., Switzerland, India and Australia in the '**Global Competitive Index**' in a study carried out in **2014**.

To establish and maintain as a top ranking system, Singapore Judiciary scrupulously adhered to the **following four values**:

- **Integrity and Transparency**:
  - public trust and confidence in the judiciary rests on its integrity and the transparency of its process this requires that the **public must be assured**-
    - That court decisions are fair and independent.
    - The court staff are incorruptible.
    - Easy accessibility to court services.
    - Better cost management and cost effective services.
    - Court records are accurate.
    - Increased interaction with the users i.e. the voice of the people is heard.

- **Quality Public Service:**
  - Processes are customized and tailored to meet the needs of the court users.
  - The emphasis should be on accessibility, quality and timely delivery of services.
- **Learning and Innovation**:
  - To transform into world-class judiciary, it must be recognized that there is need to continually improve the processes.
  - Therefore, learning and innovation to take the system to the highest levels of performance should be encouraged.

- **Promoting Sense of belongingness in the Staff:**
    - There should always be pre-recognition of the contribution of the staff.

Ability to integrate court processes with cutting edge technology coupled with long term strategic planning and research has helped the Singapore judicial system to understand needs of the users and to evolve **comprehensive, customized and cost effective solutions** in a planned manner for various stake holders. The hall-mark of Singapore judicial system is the **technology driven user-friendly services** for various stakeholders based on best practices and quality standards with a holistic approach to serve the litigants.

Singapore Judiciary, headed by the Chief Justice, consists of:

i. **Supreme Court.**
ii. **State Courts.**
iii. **Specialized Courts like Family Court, Youth Court and Community Division Court.**

The highest moral authority, which the judiciary commands in Singapore, is the '**trust and confidence of the public**' in a system where enforcement of rule and regulation is strict and standard of living is quite high, which can be gathered from the fact that annual per capita income in terms of **US $ (as per World Bank Report of 2013) is 55182 i.e. around Rs. 37.5 Lac. p.a**.

**THE PROGRAMME HIGHLIGHTS**:

- The five days' **Programme on Judicial Governance** commenced with welcome address by Judicial Commissioner See Key Oon, Presiding Judge of the State Courts.
- Discussions and deliberations started with an introduction about fundamentals of good governance in Singapore, how it has been achieved, followed by strategic over view of the legal system in Singapore and integral role of State Courts in the dispensation of justice in Singapore.
- Every session, one after the other, each day, was a learning journey regarding how the Singapore Judiciary has been able to transform itself into the most efficient and trusted system of the world.

Of course India, **ranking 71$^{st}$ as regards governance, on the Global Competitive Index (2014)**, with a liberal parliamentary democracy since its independence, has steadily traversed the path of growth and development but the pace and momentum has not been up to the expectations, thus, leaving a big gap, if compared to other countries of South East Asia like Malaysia, Indonesia and Singapore etc.

India, a vast Country (**Total area 3.28 million Km.), spread over 3214 km. from Kashmir to Kanyakumari** (north – south) and **2933 Km. from Arunanchal Pradesh to Rann of Kutch** (east – west), with a multi-ethnic society, comprising people of many religions, creeds, cultures, races and castes, is required to attain momentum in its journey towards the goal of good and effective governance which invariably includes good judicial governance .

Indian Judiciary, during past two decades, through the tools of Court/Case management, A.D.R. and information technology, has taken a number of initiatives to make the system more efficient and to ensure timely dispensation of justice. However, with growing public expectations, it is but imperative to enhance the momentum of this reform process.

**TAKE HOME LESSONS:**

- The important **take home lessons** from the aforesaid programme, which can be helpful in accelerating the momentum of reform process , are chronicled as under:-

**GENERAL:**

(a) Formulation of **vision, mission and core values** in precise terms and putting them in public domain through different modes.

(b) Creation of a dedicated wing for '**Strategic Court Planning, Quality Management and Integration of Technology with Court Processes'** for enhancing efficiency of system.

(c) **Enhanced use of e-technology** to make system efficient and transparent . Services available for court users may be put in public domain through websites and other modes.

**FOR LITIGANTS:**

**(a)** Increased focus on **citizen centric/litigant centric approach** instead of Court/Judge centric approach.

**(b)** Having an **integrated system for feedback** from court users, stakeholders, dutyholders – online and through feedback forms.

**(c)** Enhancing **interaction with litigants** through **litigant forums** and including interaction with the forum of particular class of litigants like matrimonial litigation, service litigation, labour litigation etc. This may help in identifying their problems. Their perception can help in getting valuable suggestions and effecting quality changes in the working system.

**FOR LAWYERS:**

**(a)** May consider motivating and encouraging **lawyers** at all levels to **render pro bono services**: each lawyer 25 hours per year. Their services can be used in Family/Juvenile Justice matters which can facilitate qualitative and speedy determination of such cases.

**FOR DUTY HOLDERS:**

**(a)** Bringing **change in the mindset of duty holders, particularly Judges, lawyers, Court staff**, impressing upon them that the judicial system, as a service provider, is there to serve the society in a holistic manner.

**(b)** Can consider preparing an '**Yearly Work Plan'** outlining vision, mission and goals for the next year, to be put in public domain.

**(c)** To define and lay down **Key Performance Indicators** (KPI) regarding Judicial and administrative performance at various levels and periodical evaluation of performance on the basis thereof. Those duty holders who are performing better, may be identified and appreciated so as to further motivate them and others as well.

**(d)** Developing the spirit of **self-assessment** and introduction of '**Institutional Self-Assessment Mechanism**' at each and every level through self-assessment forms.

**(e)** Focus on **enhancing productivity with quality**. Increase in working hours on voluntary basis even by half an hour a day may be considered, after taking into confidence the duty holders.

**(f)** Motivating Judges and Administrators to enhance their capacity by up-gradation of knowledge and skills. May consider introduction of '**On-line Test System**' for Judges and staff to evaluate up-gradation of their knowledge and capacity .

**LEGAL PRACTICES/PROCEDURE:**

(a) **Referral of all Motor Accident Claim Cases** for mediation because case load of such cases is around 30% of total Civil pendency.

(b) In civil matters, **fixed court fees jurisdiction-wise** can help in curtailing delays which occur due to disputes with regard to court fees. This may drastically reduce life span of civil cases.

(c) May consider **audio recording of evidence** in criminal trials involving serious offences. This may not involve much expenditure in view of the installation of computer system in each and every Court.

(d) In criminal matters it is high time to conduct '**empirical study on sentencing**' for ensuring consistency in sentencing. This may require introducing a study project through **State Judicial Academy or law schools** regarding trends and practices in sentencing.

(e) Exploring option for **e-filing and e-court fee on optional basis** with some preferential terms as regards processing of the case.

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# अनुसंधान, जमानत, प्रसंज्ञान और प्रक्रिया अजा और अजजा (अत्याचार निवारण) अधिनियम, 1989 के संदर्भ में

**प्रदीप कुमार व्यास**
प्रभारी संचालक
म.प्र. राज्य न्यायिक अकादमी

प्रायः विशेष न्यायाधीश महोदय अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 के समक्ष अनुसंधान, प्रसंज्ञान, अग्रिम जमानत और विशेष न्यायालय द्वारा अपनायी जाने वाली प्रक्रिया आदि के बारे में कई प्रश्न उत्पन्न होते हैं और विशेष न्यायालय का अमूल्य समय नष्ट होता है यहाँ इन्हीं विषयों पर स्थापित वैधानिक स्थिति के बारे में चर्चा करेंगे।

## 1. अनुसंधान

अनुसंधान को धारा 2 (एच) द.प्र.स.1973 में परिभाषित किया गया है जिसके अनुसार अनुसंधान के अन्तर्गत वे सब कार्यवाहियाँ आती हैं जो इस संहिता के अधीन पुलिस अधिकारी द्वारा या (मजिस्ट्रेट से भिन्न) किसी भी ऐसे व्यक्ति द्वारा जो मजिस्ट्रेट द्वारा इस निमित्त प्राधिकृत किया गया है, साक्ष्य एकत्रित करने के लिए की जाये।

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 के अधीन किये गये किसी अपराध के अन्वेषण के लिए अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) नियम, 1995 के नियम 7 में प्रावधान है जो इस प्रकार है :–

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| Investigating Officer.- (1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government, Director-General of Police, Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time. | अन्वेषक अधिकारी – (1) अधिनियम के अधीन किए गए किसी अपराध का अन्वेषण ऐसे पुलिस अधिकारी द्वारा किया जाएगा जो पुलिस उप–अधीक्षक की रैंक से कम न हो। अन्वेषक अधिकारी की नियुक्ति राज्य सरकार / पुलिस महानिदेशक /पुलिस अधीक्षक द्वारा उसके पूर्व अनुभव, मामले की विविक्षाओं को समझने और मामले का अन्वेषण सही दिशा में कम से कम समय के भीतर करने की योग्यता और न्याय की भावना को ध्यान में रखकर की जाएगी। |
| (2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director-General of Police of the State Government. | (2) उपनियम (1) के अधीन इस प्रकार नियुक्त अन्वेषक अधिकारी अन्वेषण उच्च प्राथमिकता पर तीस दिन के भीतर पूरा करेगा और पुलिस अधीक्षक को रिपोर्ट प्रस्तुत करेगा जो उसके पश्चात् उसे उस राज्य सरकार के पुलिस महानिदेशक को तत्काल भेज देगा। |

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| (3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution the officer-in-charge of Prosecution and the Director-General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer. | (3) राज्य सरकार के गृह सचिव और समाज कल्याण सचिव अभियोजन निदेशक/अभियोजन के भारसाधक अधिकारी तथा पुलिस महानिदेशक प्रत्येक तिमाही के अन्त में अन्वेषण अधिकारियों द्वारा किए गए सभी अन्वेषणों की स्थिति का पुनर्विलोकन करेंगे। |

उक्त नियम से यह स्पष्ट है कि अधिनियम के अधीन किये गये किसी अपराध का अन्वेषण पुलिस उप–अधीक्षक की रैंक के पुलिस अधिकारी द्वारा किया जाना चाहिए।

इस संबधं में न्यायदृष्टांत ***धनराज सिंह विरूद्ध स्टेट ऑफ एम.पी., 2005 (3) एमपीएलजे 332*** में यह प्रतिपादित किया गया है धारा 3 (1) (x) अधिनियम के अधीन अभियुक्त को दोषसिद्ध किया गया था लेकिन अन्वेषण ऐसे अधिकारी द्वारा नहीं किया गया था जो पुलिस उप–अधीक्षक अथवा उससे उच्च रैंक का हो जैसा कि नियम 7 में अपेक्षित है। नियम 7 का अनुपालन आज्ञापक है और ऐसा अनुपालन नहीं करने से अन्वेषण दूषित हो जाता है अतः दोषसिद्धि एवं दण्डादेश अपास्त किया गया था।

इस मामले में यह कहा गया था कि अधिनियम और नियम का कठोरता से अर्थान्वयन करना चाहिए तभी इन विशेष नियम को जिस उद्देश्य से बनाया गया है उसे प्राप्त किया जा सकेगा क्योंकि यह अधिनियम और नियम वर्षों से उपेक्षित वर्ग के सुरक्षा के लिए बनाये गये है।

न्यायदृष्टांत ***भारत सिंह विरूद्ध स्टेट ऑफ एम.पी., 2006 (4) एमपीएलजे 171*** के अनुसार नियम 7 के प्रावधान आज्ञापक है अन्वेषण विशेष रूप से नियुक्त उप–पुलिस अधीक्षक ही कर सकते है और जहाँ अन्वेषण कनिष्ठ पुलिस अधिकारी ने किया जिसने सक्षम प्राधिकारी का प्रमाण पत्र भी नहीं लिया कि परिवादी अनुसूचित जाति या अनुसूचित जनजाति का सदस्य है ऐसे में दोषसिद्धि और दण्डादेश अपास्त किया गया। इस मामले में यह भी प्रतिपादित किया गया कि धारा 5 (अब धारा 17) भ्रष्टाचार निवारण अधिनियम, 1947 और नियम 7 आपस में पेरिमटेरिया नहीं है।

इस तरह उक्त दोनों मामलों में माननीय मध्यप्रदेश उच्च न्यायालय ने नियम 7 को आज्ञापक बतलाया है और उसका अनुपालन न होने पर दोषसिद्धि और दण्डादेश को अपास्त किया था।

इसके विपरीत न्यायदृष्टांत ***केशव सिंह विरूद्ध स्टेट ऑफ एम.पी., आईएलआर 2006 एमपी 1443*** के अनुसार नियम 7 का अनुपालन न करने से विचारण दूषित नहीं होता है और अनुसंधान की कोई कमी या अवैधता चाहे जितनी गंभीर हो वह न्यायालय की सक्षमता जो कि विचारण और प्रसंज्ञान के संबंध में है उसे सीधा प्रभावित नहीं करती है। इस मामले में यह भी कहा गया कि उक्त न्यायदृष्टांत धनराज सिंह विभेदित किये जाने योग्य है।

इस तरह जहाँ एक ओर उक्त ***धनराज सिंह*** और ***भारत सिंह*** के मामलों में नियम 7 को आज्ञापक बतलाया गया है और उसका अनुपालन न करने के कारण दोषसिद्ध और दण्डादेश अपास्त किया गया

था वहीं दूसरी और उक्त केशव सिंह वाले मामले में यह बतलाया गया था कि नियम 7 का अनुपालन न करने से विचारण दूषित नहीं होता है क्योंकि अनुसंधान की कमी या अवैधता चाहे जितनी गंभीर हो न्यायालय की प्रसंज्ञान और सक्षमता से सीधा संबंध नहीं रखती है और उसे प्रभावित नहीं करती है।

उक्त परस्पर विरोधी स्थिति को देखते हुए न्यायदृष्टांत ***भगवान सिंह विरूद्ध स्टेट ऑफ एम.पी., आईएलआर 2008 एमपी 1514*** में मामला बड़ी बैंच को निम्न बिन्दुओं को स्पष्ट करने के लिए रेफर किया गया था :–

1. क्या नियम 7 अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण ) नियम, 1995 आज्ञापक है ?
2. क्या उक्त नियम का अनुपालन न करने के कारण पूरा विचारण दूषित होगा या केवल अधिनियम, 1989 से संबंधित अपराध के बारे में विचारण दूषित होगा?
3. क्या नियम 7 का अनुपालन न करने की आपत्ति अपील न्यायालय के समक्ष प्रथम बार उठाई जा सकती है?
4. यदि यह पाया जाता है कि नियम 7 आज्ञापक है तो क्या न्यायालय नियम 7 के अनुसार पुनः अनुसंधान करने के निर्देश और नया अभियोग पत्र प्रस्तुत करने के निर्देश दे सकती है?

खण्डपीठ ने दाण्डिक अपील 110/2000 में दिनांक 24.08.2007 को उक्त रेफरेन्स का इस प्रकार उत्तर दिया :–

1. नियम 7 के प्रावधान आज्ञापक प्रकृति के है।
2. नियम 7 का अनुपालन न करने से पूरा विचारण दूषित नहीं होगा किन्तु अधिनियम, 1989 से संबंधित अपराध का विचारण दूषित होगा जब तक कि भारतीय दण्ड संहिता के अधीन अपराध, अधिनियम, 1989 के अपराध से सीधे संबंधित न हो।
3. नियम 7 के प्रावधान का अनुपालन न करने की आपत्ति प्रथम बार अपील न्यायालय के समक्ष उठाई जा सकती है किन्तु अभियुक्त को अपील न्यायालय को संतुष्ट करवाना होगा कि ऐसा अनुपालन न करने से उसके हितों पर गंभीर प्रतिकूल प्रभाव पड़ा है जिससे न्याय की हानि हुई है जब तक अभियुक्त अपील न्यायालय को इस बारे में संतुष्ट नहीं करता है कि न्याय की हानि हुई है तब तक वह इस प्रावधान का पालन न होने का काई लाभ नहीं पा सकता।
4. यदि नियम 7 का अनुपालन न करने की आपत्ति सर्वप्रथम अवसर पर उठाई जाती है और न्यायालय आपत्ति से संतुष्ट होता है तो वह पुनः अनुसंधान करके नया अभियोग पत्र प्रस्तुत करने के निर्देश दे सकता है लेकिन कार्यवाही के बहुत बाद की अवस्था में यदि ऐसी आपत्ति ली जाती है तब पुनः अनुसंधान का आदेश नहीं कर सकती है।

इस प्रकार जो दो परस्पर विरोधी मत पूर्व में थे उनका उक्तानुसार समाधान किया गया नियम 7 को आज्ञापक होना निर्धारित किया गया लेकिन नियम 7 का अनुपालन न करने से केवल अधिनियम, 1989 से संबंधित अपराध का विचारण दूषित होता है यदि उसी विचारण में भारतीय दण्ड

संहिता का या अन्य कोई अपराध भी हो तो उनसे संबंधित विचारण दूषित नहीं होता है जब तक कि दोनों अपराध अंतर संबंधित न हो साथ ही यदि ऐसी आपत्ति कार्यवाही के प्रारंभिक स्तर पर की गई हो तो न्यायालय नियम 7 के अनुसार पुनः अनुसंधान के निर्देश दे सकती है लेकिन बहुत बाद की अवस्था में पुनः अनुसंधान के निर्देश नहीं दे सकती है।

न्यायदृष्टांत ***स्टेट ऑफ एम. पी. विरूद्ध चुन्नी लाल उर्फ चुन्नी सिंह, 2009 एआईआर एससी डब्ल्यू 5335*** के अनुसार यदि धारा 3 अधिनियम, 1989 और भारतीय दण्ड संहिता से संबधित मामले में नियम 7 का अनुपालन नहीं किया गया तब भारतीय दण्ड संहिता के अधीन दण्डनीय अपराध में कार्यवाही सक्षम न्यायालय द्वारा जारी रहेगी जबकि धारा 3 अधिनियम, 1989 के अधीन कार्यवाही अभिखंडित कर दी जाऐगी क्योंकि नियम 7 के अधीन नियुक्त अधिकारी ने अनुसंधान नहीं किया है तो ऐसा अनुसंधान अवैध है। यही मत स्टेट ऑफ पंजाब विरूद्ध हरदयाल सिंह, (2009) 15 एससीसी 106 में भी दिया गया।

इस प्रकार माननीय सर्वोच्च न्यायालय के उक्त दोनों न्यायदृष्टांत के प्रकाश में यह स्थिति स्पष्ट होती है कि एक ही मामले में अधिनियम, 1989 और भारतीय दण्ड संहिता के अधीन दण्डनीय अपराध हो और नियम 7 का अनुपालन नहीं हुआ हो तब अधिनियम, 1989 के तहत अपराधों का विचारण दूषित होगा पूरा विचारण दूषित नहीं होगा।

न्यायदृष्टांत ***एच.एन. रिशबुद विरूद्ध स्टेट ऑफ देहली, एआईआर 1955 एससी 196*** तीन न्यायमूर्तिगण पीठ के अनुसार किसी विशिष्ट वैधानिक प्रावधान जिसके अनुसार अनुसंधान पुलिस उप अधीक्षक की रैंक के नीचे की रैंक के अधिकारी द्वारा किया जाना यदि निषेधित हो तब धारा 156 (2) दंप्रसं. के प्रावधान इस कमी को नहीं सुधार सकते। यदि ऐसे आज्ञापक प्रावधान का उल्लंधन पर्याप्त प्रारंभिक स्तर पर न्यायालय के ध्यान पर लाया जाता है तब न्यायालय पुनः अनुसंधान का आदेश करके इस कमी को सुधार सकते है।

न्यायदृष्टांत ***ए.सी. शर्मा विरूद्ध देहली एडमीनिस्ट्रेशन, एआईआर 1973 एससी 913*** तीन न्यायमूर्तिगण की पीठ के अनुसार अनुसंधान की कमी सक्षम न्यायालय के विचारण की वैधानिकता को प्रभावित नहीं करती है।

इस प्रकार उपरोक्त समस्त वैधानिक स्थितियों पर विचार करने से यह निष्कर्ष निकलता है कि :–

1. नियम 7 के प्रावधान आज्ञापक प्रकृति के है जिसके अनुसार अधिनियम, 1989 से संबंधित अपराध का अनुसंधान पुलिस उप– अधीक्षक की रैंक के अधिकारी द्वारा किया जाना चाहिए।
2. यदि इससे कम रैंक के पुलिस अधिकारी द्वारा अनुसंधान किया जाता है और यह कमी प्रारंभिक स्तर पर ही न्यायालय के ध्यान में आ जाती है तो न्यायालय पुनः अनुसंधान करके फ्रेश अभियोग पत्र प्रस्तुत करने के निर्देश दे सकती है लेकिन कार्यवाही के बहुत बाद की अवस्था में ऐसे निर्देश नहीं दिये जा सकते।
3. नियम 7 का अनुपालन न करने से अधिनियम, 1989 से संबंधित अपराधों का विचारण दूषित हो जाता है लेकिन उसी कार्यवाही में भारतीय दण्ड संहिता के अन्य अपराध भी हो जिसमें दण्ड

प्रक्रिया संहिता के अनुसार उचित पुलिस अधिकारी ने अनुसंधान किया हो तो शेष अपराधों से संबंधित विचारण दूषित नहीं होता है लेकिन अधिनियम से संबंधित अपराध और भारतीय दण्ड संहिता से सबंधित अपराध अंतरसंबंधित हो तो स्थिति भिन्न होती है।

4. नियम 7 का अनुपालन न करने की आपत्ति अपील के स्तर पर भी उठाई जा सकती है लेकिन अभियुक्त को अपील न्यायालय को यह संतुष्ट करवाना होगा कि नियम 7 के अनुपालन ने करने से उसके हितों पर गंभीर प्रतिकूल असर पड़ा है जिससे न्याय की हानि हुई तभी अभियुक्त को लाभ मिलेगा अन्यथा नहीं।

अतः मामले को उपार्पित या कमिट करने वाले प्रत्येक मजिस्ट्रेट और प्रत्येक विशेष न्यायाधीश को प्रारंभिक स्तर पर ही अभियोग पत्र को देखकर यह समाधान कर लेना चाहिए कि नियम 7 के अनुसार उप पुलिस अधिक्षक या उससे उच्च रैंक के पुलिस अधिकारी द्वारा अधिनियम, 1989 से संबंधित अपराध का अनुसंधान किया गया है या नहीं और यदि नहीं किया गया है तो प्रारंभिक स्तर पर ही नियम 7 के अनुसार पुनः अनुसंधान करके नया या फ्रेश अभियोग पत्र पेश करने के निर्देश दे देना चाहिए ताकि बाद में अपील न्यायालय में ये विवाद नहीं रहे कि इस कमी से अभियुक्ति के हितों पर प्रतिकूल असर गिरा है या नहीं या न्याय की हानि हुई है या नहीं आदि।

मजिस्ट्रेट पुलिस अभिरक्षा या न्यायिक अभिरक्षा स्वीकार करते समय ही इस तथ्य को आसानी से देख सकते है।

## 2 प्रसंज्ञान

प्रसंज्ञान की कोई परिभाषा अधिनियम 1989 या द.प्र.सं में नहीं दी गयी है। न्यायदृष्टांत ***गोपालदास विरूद्ध स्टेट आफ असम, ए.आई.आर 1961 एस.सी 986*** तीन न्यायमूर्तिगण की पीठ निर्णय चरण सात में अपराध का संज्ञान क्या है यह बतलाया गया है जिसके अनुसार जहाँ मजिस्ट्रेट उसके मस्तिष्क का प्रयोग इस उद्देश्य से करता है कि अध्याय 15 द.प्र.स. के विभिन्न प्रावधानों के तहत कार्यवाही की जाये तब यह कहा जाता है कि उसने अपराध का संज्ञान ले लिया है लेकिन अन्य क्रियायें जैसे परिवाद को धारा 156(3) द.प्र.सं. के अधीन पुलिस को अनुसंधान के लिए भेजना, अनुसंधान के उद्देश्य से तलाशी वारंट जारी करना आदि तब यह नहीं कहा जाता है कि उसने अपराध का संज्ञान ले लिया है। इस संबंध में न्यायदृष्टांत ***आर सी. चारी विरूद्ध स्टेट आफ एम.पी., ए.आई.आर 1951 एस.सी 207*** एवं ***नारायण दास भगवान दास विरूद्ध स्टेट आफ वेस्ट बंगाल, ए.आई.आर. 1951 एस.सी. 1118*** भी अवलोकनीय है जिन पर इस मामले में भरोसा किया गया है।

नवीनतम न्याय दृष्टांत ***भूषण कुमार विरूद्ध स्टेट, (2012) 5 एस.सी.सी. 424*** के अनुसार संज्ञान का शब्द का अर्थ 'बीकम अवेयर आफ' अर्थात किसी चीज का ज्ञान होना बतलाया गया है और यह कहा गया है कि जब यह शब्द न्यायालय या न्यायाधीश के संदर्भ में प्रयुक्त होता है तब इसका अर्थ 'टू टेक नोटिस ज्यूडिशियसली' अर्थात किसी तथ्य का न्यायिक तरीके से नोटिस लेना होता है।

न्यायदृष्टांत ***सी.आर.ई.एल. फाइनेन्स लिमिटेड विरूद्ध श्री शान्ति होम प्राइवेट लिमिटेड, (2005) 7 एस.सी.सी. 467*** के अनुसार संज्ञान लेना और धारा 204 द.प्र.सं. के तहत प्रोसेस जारी करना अलग अलग तथ्य है इसे भी ध्यान में रखना चाहिए।

अधिनियम, 1989 में ऐसा कोई प्रावधान नहीं है जिसके तहत धारा 14 के तहत गठित विशेष न्यायालय सीधे प्रसंज्ञान ले सके।

धारा 14 अधिनियम के अनुसार इस अधिनियम के अधीन अपराधों का विचारण करने के लिए प्रत्येक जिले के सेशन न्यायालय को विशेष न्यायालय के रूप में राज्य सरकार विर्निदिष्ट करेगी और वह ऐसा मुख्य न्यायाधिपति की सहमति से करेगी।

इस प्रावधान को भी देखे तो विशेष न्यायालय एक सेशन न्यायालय है।

धारा 193 दंप्रसं के अनुसार इस संहिता द्वारा या तत्समय प्रवृत किसी अन्य विधि द्वारा अभिव्यक्त रूप से जैसा उपबंधित है उसके सिवाय कोई सेशन न्यायालय आरंभिक अधिकारिता वाले न्यायालय के रूप में किसी अपराध का संज्ञान तब तक नहीं करेगा जब तक कि मामला इस संहिता के अधीन मजिस्ट्रेट द्वारा उसे सुपुर्द नहीं कर दिया जाता।

न्यायदृष्टांत ***गांगुला अशोक विरूद्ध स्टेट ऑफ आंध्रप्रदेश, एआईआर 2000 एससी 740*** के अनुसार अधिनियम, 1989 की धारा 14 के अधीन गठित विशेष न्यायालय जब तक उसे प्रकरण उपार्पित नहीं किया जाता वह अपराध का संज्ञान नहीं लें सकती है।

न्यायदृष्टांत ***एम.ए. कुट्टीअप्पन विरूद्ध ई. कृष्णन नायर, 2004 एआईआर एससीडब्ल्यू 1323*** एवं न्यायदृष्टांत ***गोदेन प्रसाद विरूद्ध मुन्ना, 2004 (4) एमपीएचटी 457*** के अनुसार विशेष न्यायालय सीधे परिवाद ग्रहण करके, प्रसंज्ञान लेकर आदेशिका जारी नहीं कर सकती है।

न्यायदृष्टांत ***मोली विरूद्ध स्टेट ऑफ केरला, 2004 एआईआर एससीडब्ल्यू 1708*** के अनुसार विशेष न्यायालय मामला उपार्पित होकर प्राप्त हुए बीना सीधे अपराध का प्रसंज्ञान नहीं ले सकती है।

इस प्रकार विधिक स्थिति यह स्पष्ट होती है कि विशेष न्यायालय को सीधे परिवाद या अभियोग पत्र ग्रहण करके प्रसंज्ञान नहीं लेना चाहिए बल्कि मामला मजिस्ट्रेट द्वारा उपार्पित होकर प्राप्त होने के बाद प्रसंज्ञान लेना चाहिए।

लेकिन न्यायदृष्टांत ***स्टेट ऑफ एम.पी. विरूद्ध भूरजी, एआईआर 2001 एससी 3372*** के अनुसार यदि विशेष न्यायालय ने मामला उपार्पित हुए बिना प्रसंज्ञान ले लिया है जो कि तत्समय की विधिक स्थिति को मानते हुए लिया है तब केवल सर्वोच्च न्यायालय के बाद के निर्णय में यह अभिमत दे देने के कारण कि विशेष न्यायालय मामला उपार्पित हुए बिना प्रसंज्ञान नहीं ले सकती है तो विशेष न्यायालय ऐसे अभिमत के कारण इनकाम्पेटेंट नहीं हो जाती और ऐसी अनियमितता से न्याय की हानि प्रकट नहीं होती है और ऐसी प्रक्रिया की कमी के कारण विशेष न्यायालय द्वारा किया गया विचारण प्रभावित नहीं होता है।

न्यायदृष्टांत ***छोटे लाल विरूद्ध स्टेट ऑफ एम.पी., आईएलआर 2007 एमपी 808 (डीबी)*** में भी यह प्रतिपादित किया गया है कि धारा 193 दंप्रसं का अनुपालन न होने से विचारण दूषित नहीं होता है।

माननीय सर्वोच्च न्यायालय की तीन न्यायमूर्तिगण की पीठ ने न्यायदृष्टांत ***रत्ति राम विरूद्ध स्टेट ऑफ एम.पी., (2012) 4 एससीसी 516*** में यह अभिमत दिया है कि विशेष न्यायालय द्वारा यदि मामला सीधे ग्रहण करके प्रसंज्ञान ले लिया है और इस कारण धारा 193 दंप्रसं. का अननुपालन हुआ है तो मात्र इस आधार पर विचारण दूषित नहीं होता है और दोषसिद्धि अपास्त नहीं की जा सकती या पुनः विचारण का निर्देश नहीं दिया जा सकता क्योकि अभियुक्त के हितों पर कोई प्रतिकूल असर उक्त कारण से (विशेष न्यायालय द्वारा सीधे प्रसंज्ञान ले लेने के कारण) नहीं गिरता है और न ही न्याय की हानि होती है। इस मामले में कि यह भी स्पष्ट किया गया है कि दंप्रसं., 1898 में धारा 207 और 207–ए में उपार्पण की पूरी प्रक्रिया निर्धारित थी जिसमें मजिस्ट्रेट पूरी जाँच करके साक्ष्य लेकर मामला उपार्पित करते थे लेकिन दण्ड प्रक्रिया संहिता, 1973 में ऐसी कोई व्यवस्था नहीं है और मजिस्ट्रेट को अनन्यतः सत्र न्यायालय द्वारा विचारणीय मामला प्रकट होने पर धारा 209 दंप्रसं के तहत आवश्यक कार्यवाही करके उसे सत्र न्यायालय को उपार्पित करना होता है अतः प्रकरण की यह अवस्था कोई वाईटल स्टेज नहीं मानी गई है।

न्यायदृष्टांत ***मोहम्मद जूनेद उर्फ जावेद विरूद्ध स्टेट ऑफ एम.पी.,*** दाण्डिक पुनरीक्षण 645/2013 आदेश दिनांक 4 जनवरी, 2014 में पास्को अधिनियम और अधिनियम, 1989 के प्रावधानों को विचार में लेते हुए और उक्त न्यायदृष्टांत रत्ति राम को विचार में लेते हुए यह प्रतिपादित किया है कि यदि विशेष न्यायालय ने सीधे अभियोग पत्र लेकर प्रसंज्ञान ले लिया है तो मात्र इस कारण से विचारण दूषित नहीं होता जब तक कि अभियुक्त यह न दर्शावे कि ऐसा करने से उसके हितों पर प्रतिकूल असर गिरा है।

वैसे भी न्याय दृष्टांत ***धरम पाल विरूद्ध स्टेट आफ हरियाणा, 2013 सी.आर.एल.जे. 3900*** पाँच न्यायमूर्तिगण की पीठ में माननीय सर्वोच्च न्यायालय ने यह प्रतिपादित किया है कि उपार्पण मजिस्ट्रेट एक निष्क्रिय भूमिका मामले को उपार्पित करते समय निभाता है उसके लिए मामला उपार्पित करते समय अपराध का प्रसंज्ञान लेना आवश्यक नहीं होता है मजिस्ट्रेट को केवल यह देखना होता है कि मामला क्या अनन्यतः सत्र न्यायालय द्वारा विचारणीय है और यदि हाँ तो उसे मामला उपार्पित कर देना चाहिए और धारा 193 द.प्र.सं के तहत सत्र न्यायालय को मूल क्षेत्राधिकार के न्यायालय की सभी शक्तियाँ होती हैं और सत्र न्यायालय ही प्रसंज्ञान लेने की कार्यवाही करते हैं। ***हरदीप सिंह विरूद्ध स्टेट आफ पंजाब, (2014) 3 एस.सी.सी. 92*** पाँच न्यायमूर्तिगण की पीठ के अनुसार मजिस्ट्रेट धारा 207 से 209 द.प्र.सं. के प्रक्रम पर मामले के गुण दोष पर मस्तिष्क का प्रयोग करने से निषेधित होते हैं।

अतः विधिक स्थिति यह स्पष्ट होती है कि विशेष न्यायालय को जब तक मामला मजिस्ट्रेट द्वारा उपार्पित होकर प्राप्त न हो जावे तब तक सीधे प्रसंज्ञान नहीं लेना चाहिए और प्रारंभिक स्तर पर ही इस बारे में सावधानी रखना चाहिए।

यदि मामले में पास्को अधिनियम, 2012 और अधिनियम, 1989 दोनों ही है और विशेष न्यायालय ने सीधे प्रसंज्ञान ले लिया है तो मात्र इस कारण से विचारण दूषित नहीं होता है क्योंकि अभियुक्त के हितों पर इससे कोई प्रतिकूल असर नहीं गिरता है न ही न्याय की हानि होती है अभियुक्त को यह दर्शाना होता है कि मामला उपार्पित होकर नहीं आने से और विशेष न्यायालय द्वारा सीधे प्रसंज्ञान ले

लेने से अभियुक्त के हितों पर प्रतिकूल असर गिरा है या न्याय की हानि हुई है। दण्ड प्रक्रिया संहिता, 1973 के लागू हो जाने के बाद उपार्पण की कार्यवाही में महत्वपूर्ण परिर्वतन हुआ है। ***धरमपाल*** (उपरोक्त) वाले पाँच न्यायमूर्तिगण की पीठ सर्वोच्च न्यायालय के अभिमत के प्रकाश में प्रसंज्ञान मजिस्ट्रेट को नहीं लेना चाहिए बल्कि मामला उपार्पित होकर पहुंचने के बाद सत्र न्यायालय प्रसंज्ञान लेती है।

### 3. जमानत

जमानत के संबंध में धारा 18 अधिनियम, 1989 में यह प्रावधान है कि दण्ड प्रक्रिया संहिता की धारा 438 की कोई बात इस अधिनियम के अधीन किसी अपराध करने के अभियोग में किसी व्यक्ति के गिरफ्तारी के संबंध में लागू नहीं होगी।

## ए. प्रावधान की संवैधानिकता

माननीय सर्वोच्च न्यायालय ने न्यायदृष्टांत ***स्टेट ऑफ एम.पी. विरूद्ध रामकृष्ण बलोथिया, एआईआर 1995 एससी 1198*** में यह प्रतिपादित किया है कि धारा 18 अधिनियम, भारतीय संविधान के अनुच्छेद 14 और 21 का उल्लंघन नहीं करती है इस अधिनियम के अपराधों में धारा 438 दंप्रसं. के प्रावधान का लागू न होना संविधान के उक्त अनुच्छेदों का उल्लंघन नहीं है इस मामले में यह भी कहा गया कि संविधान के अनुच्छेद 21 में जो जीवन का अधिकार दिया है उसमें अग्रिम जमानत शामिल नहीं है अग्रिम जमानत अधिकार पूर्वक नहीं मांगी जा सकती है और यह संविधान के अनुच्छेद 21 का आवश्यक अंग नहीं है।

इस मामले में निर्णय चरण 9 में यह भी कहा गया है कि ऐतिहासिक पृष्ठ भूमि को देखे तो छुआ–छूत का व्यवहार रहा है और यदि अनुसूचित जाति और अनुसूचित जनजाति के लोगों के विरूद्ध यह अपराध किये जाते है और उनमें अग्रिम जमानत दे दी जाती है तो अभियुक्त इस स्वतंत्रता का दुरूपयोग करेंगे आहत को भयभीत करेंगे, अनुसंधान को प्रभावित करेंगे इन्हीं सब तथ्यों को ध्यान में रखते हुए धारा 18 का प्रावधान किया गया है।

## बी. समानता के सिद्धांत पर

समानता का सिद्धांत या लॉ ऑफ पेरेटी यह है कि यदि किसी मामले में एक अभियुक्त की जमानत यदि वरिष्ठ न्यायालय द्वारा ले ली जाती है तो समान प्रकार के मामले वाला सह–अभियुक्त जमानत का हकदार हो जाता है इस सिद्धांत को न्यायदृष्टांत ***मनोहर विरूद्ध स्टेट ऑफ एम.पी., आईएलआर 2007 एमपी 837*** एवं ***बद्री निहाले विरूद्ध स्टेट ऑफ एम.पी., 2006 (1) एमपीएलजे 166*** में स्पष्ट किया गया है।

न्यायदृष्टांत ***सुरेन्द्र कुमार अग्रवाल विरूद्ध स्टेट ऑफ एम.पी., 2001 (1) एमपीएलजे 683*** के अनुसार यदि धारा 18 अधिनियम के प्रावधान के विरूद्ध यदि एक अभियुक्त को अग्रिम जमानत दे दी गई है तब भी सह अभियुक्त समानता के सिद्धांत के आधार पर अग्रिम जमानत का हकदार नहीं होता है क्योंकि ऐसे में समानता का सिद्धांत लागू नहीं होता है।

## सी. अभियोग पत्र में अधिनियम के अपराध न दर्शाना

न्यायदृष्टांत ***बाबू सिंह विरूद्ध स्टेट ऑफ एम.पी., 1991 एमपीजेआर एसएन 9*** के अनुसार यदि अभियोग पत्र में पुलिस ने उपेक्षा वश या उसकी सुविधा के कारण अधिनियम,1989 के अपराध नहीं दर्शायें हो तब भी धारा 18 अधिनियम की बाधा आती है और न्यायालय को अभियोग पत्र के आधार पर अधिनियम के अपराध का नोटिस लेना चाहिए।

न्यायदृष्टांत ***विलास पांडुरंग पवार विरूद्ध स्टेट ऑफ महाराष्ट्र, एआईआर 2012 एससी 3316*** के अनुसार यह न्यायालय का कर्तव्य है कि वह यह देखें कि क्या अधिनियम की धारा 3(1) में वर्णित अपराध के अभियोग लगाये गये है और ऐसे में धारा 18 की बाधा लागू होगी।

## डी. प्रथम दृष्टयॉ मामला

न्यायदृष्टांत ***बच्चू लाल विरूद्ध स्टेट ऑफ बिहार, (2014) 3 एससीसी 471*** के अनुसार यदि धारा 3 अधिनियम प्रथम दृष्टयॉ बनना प्रतीत होती है तब अग्रिम जमानत लेने में धारा 18 की बाधा आकर्षित होती है।

न्यायदृष्टांत ***दुले सिंह विरूद्ध स्टेट ऑफ एम.पी., 1993 (1) एमपीजेआर 223*** के अनुसार परिवादी जब ईटों के ढेर से ईट चुन रही थी तब ईटों का ढेर गिर गया इस कारण उसे गालियॉं दी गई इस स्थिति में धारा 18 अधिनियम की बाधा लागू नहीं होगी और धारा 438 दंप्रसं. ऐसे मामले में लागू होगी।

न्यायदृष्टांत ***मोहर सिंह विरूद्ध स्टेट ऑफ एम.पी., 1995 जेएलजे 584*** के अनुसार अधिनियम के अधीन अपराध गठित होने के अभियोग पर ही धारा 18 की बाधा अग्रिम जमानत में लागू होगी। इस बारे में ***सुरेश कुमार विरूद्ध स्टेट ऑफ एमपी, 1999 (1) जेएलजे 84, कल्याण सिंह विरूद्ध स्टेट ऑफ एमपी, 1995 (2) एमपीडब्ल्यूएन 5, बाबू विरूद्ध स्टेट ऑफ एमपी, 1996 (2) एमपीडब्ल्यूएन 98, रामदयाल विरूद्ध स्टेट ऑफ एमपी, 1991 जेएलजे 468, तुलसी बाई विरूद्ध स्टेट ऑफ एमपी , 1992 (1) एमपी डब्ल्यू एन 2*** और ***अरूण कुमार शर्मा विरूद्ध स्टेट ऑफ एम.पी.,1991 (2) एमपी डब्ल्यूएन 92***, भी अवलोकनीय है जिसमें यही विधि प्रतिपादित की गई है कि यदि प्रथम दृष्टयॉ अधिनियम, 1989 के अपराध बनाना प्रतीत नहीं होते है तब धारा 18 की बाधा आकर्षित नहीं होती है।

## ई. अभियोक्त्री का चरित्र

न्यायदृष्टांत ***कृति मार्टिन विरूद्ध स्टेट ऑफ एमपी, 2010 सीआर एलजे 318*** के अनुसार अभियोक्त्री का चरित्र जमानत या अग्रिम जमानत स्वीकार करने का आधार नहीं हो सकता। अभियुक्त के विरूद्ध प्रथम दृष्टयॉ परिवादी को अनुसूचित जाति/अनुसूचित जनजाति की जानते हुए उसके साथ बलात्कार करने के अभियोग है अभियुक्त एक पुलिस अधिकारी है मामले के तथ्यों में उसे अग्रिम जमानत का पात्र नहीं माना गया।

## एफ. जे. जे. एक्ट, 2000 और अधिनियम, 1989

न्यायदृष्टांत ***कपिल दुर्गवानी विरूद्ध स्टेट ऑफ एमपी, आईएलआर 2000 एमपी 2003*** के अनुसार धारा 12 जे. जे. एक्ट, 2000 का धारा 18 अधिनियम, 1989 पर अभिभावी प्रभाव नहीं है दोनों प्रावधान अलग–अलग है दोनों का क्षेत्र और प्रयोग अलग है।

न्यायदृष्टांत ***ताराचंद विरूद्ध स्टेट, 2007 सीआरएलजे 3047*** के अनुसार धारा 2 (के) किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2000 में परिभाषित किशोर के मामले में अग्रिम जमानत आवेदन पत्र प्रचलन योग्य होता है और धारा 18 का वर्जन या 'बार' लागू नहीं होता।

## जे. जमानत और मजिस्ट्रेट की भूमिका

अधिनियम 1989 में धारा 18 के अलावा जमानत के बारे में और कोई प्रावधान नहीं है और ऐसे में दण्ड प्रक्रिया संहिता, 1973 की द्वितीय अनुसूचि लागू होगी और यदि कोई अपराध तीन वर्ष से कम के कारावास से दण्डनीय है तो वह जमानतीय होगा और तीन वर्ष से अधिक दण्ड से दण्डनीय अपराध अजमानतीय होगा।

मजिस्ट्रेट दण्ड की मात्रा को देखते हुए धारा 437 दंप्रसं. की शक्तियों का प्रयोग करके समुचित मामलें में जमानत दे सकते है इस संबंध में न्यायदृष्टांत ***राकेश जैन विरूद्ध स्टेट ऑफ एम.पी., 2001(3) एमपीएलजे 356, सजय नरहर मालसे विरूद्ध स्टेट ऑफ महाराष्ट्र, 2005 सीआरएलजे 2984, ए.एम. अली विरूद्ध स्टेट ऑफ केरला, 2000 सीआरएलजे 2721*** और ***एलेक्स विरूद्ध स्टेट ऑफ केरला, 2007 सीआरएलजे 2835*** अवलोकनीय है।

इस तरह विधिक स्थिति यह स्पष्ट होती है कि जहाँ प्रथम दृष्टयॉ अधिनियम, 1989 के अधीन अपराध किया जाना प्रतीत होता है वहाँ धारा 18 का अग्रिम जमानत के विरूद्ध वर्जन या 'बार' लागू होता है और विशेष न्यायाधीश ऐसे मामलों में अग्रिम जमानत नहीं दे सकते है लेकिन जहाँ प्रथम दृष्टयाँ अधिनियम, 1989 के अधीन अपराध किया जाना प्रतीत नहीं होता है वहाँ धारा 18 की अग्रिम जमानत के विरूद्ध बाधा लागू नहीं होती है और ऐसे मामले में अग्रिम जमानत दी जा सकती है।

नियमित जमानत के मामले में दंप्रसं. की द्वितीय अनुसूची लागू होगी क्योंकि अधिनियम में जमानत के बारे में और कोई प्रावधान नहीं है समुचित मामले में मजिस्ट्रेट भी धारा 437 दंप्रसं. के तहत अभियुक्त को जमानत का लाभ दे सकते है।

## 4 प्रक्रिया

अधिनियम में विशेष न्यायालय द्वारा अपनायी जाने वाले प्रक्रिया के बारे में कोई प्रावधान नहीं है लेकिन न्यायदृष्टांत ***मीराबाई विरूद्ध भुजबल सिंह, 1994 जेएलजे 203*** के अनुसार विशेष न्यायालय सत्र न्यायालय द्वारा अध्याय 18 दण्ड प्रक्रिया संहिता में वर्णित प्रक्रिया उनके समक्ष विचारण में अपनायेंगे। इस तरह विशेष न्यायालय को सत्र विचारण प्रक्रिया धारा 225 से 237 दंप्रसं. अपनानी होती है।

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# म.प्र. विशेष न्यायालय अधिनियम, 2011 – एक विहंगम दृष्टि

**प्रदीप कुमार व्यास**
प्रभारी संचालक
म.प्र. राज्य न्यायिक अकादमी

किसी लोक सेवक के विरूद्ध अनुपातहीन संम्पत्ति आधिपत्य में रखने का मामला धारा 13 (1) (इ) भ्रष्टाचार निवारण अधिनियम, 1988 के अधीन बन जाने के बाद भी उसकी अनुपात हीन सम्पत्ति उसी के आधिपत्य में रहती थी और वह उसका उपयोग करता रहता था या मामले के निराकरण तक कई सम्पत्तियाँ व्ययनित कर देता था। मामला अन्तिम न्यायालय द्वारा अन्तिम रूप से निपटने के बाद धारा 452 दं.प्र.सं. के तहत सम्पत्ति के निराकरण का आदेश यदा कदा प्रभाव में आता था। इन मामलों के निराकरण में भी अधिक समय लगता था।

इन सब तथ्यों को ध्यान में रखते हुए एक ऐसे अधिनियम की आवश्यकता थी जिसमें उक्त कठिनाईयों को दूर किया जा सके और इसी कारण म.प्र. विशेष न्यायालय अधिनियम, 2011 लाया गया ताकि प्रथम दृष्टया अनुपातहीन सम्पत्ति का मामला प्रतीत होने पर उस लोक सेवक की संपत्ति का, प्रकरण के अन्तिम रूप से निराकृत होने के पूर्व ही, अधिहरण किया जा सके और उस सम्पत्ति का उपयोग लोकहित में किया जा सके तथा इन मामलों का तेज गति से निराकरण हो सके। इन्हीं उद्देश्यों की पूर्ति के लिए 15 फरवरी 2012 से यह अधिनियम लागू किया गया तथा म.प्र. विशेष न्यायालय नियम, 2012 दिनांक 22 फरवरी 2012 से लागू किये गये।

यह अधिनियम मुख्यतः अनुपातहीन सम्पत्ति के अपराध से संबंध रखता है अधिनियम, 2011 की धारा 2 (इ) में जो अपराध की परिभाषा दी गई है उसके अनुसार :–

अपराध से अभिप्रेत है, आपराधिक अवचार का ऐसा अपराध जो अधिनियम, 1988 की धारा 13 (1)(इ) को या तो स्वतंत्र रूप से या अधिनियम, 1988 के किसी अन्य उपबंध या भारतीय दंड संहिता के किसी उपबंध के साथ संयुक्त रूप से लागू करने के लिए प्रेरित करता हों।

अर्थात अनुपातहीन सम्पत्ति प्रभावित व्यक्ति के आधिपत्य में या उसकी ओर से किसी अन्य व्यक्ति के आधिपत्य में यदि पायी जाती है तभी अधिनियम, 2011 के तहत अपराध की परिभाषा में वह कृत्य शामिल होता है और अधिनियम के प्रावधान आकर्षित होते हैं।

धारा 14 अधिनियम, 2011 में जिस व्यक्ति के विरूद्ध अधिहरण का आवेदन आता है उसे प्रभावित व्यक्ति के रूप में निर्दिष्ट करने की व्यवस्था है यह भी ध्यान में रखना चाहिए।

धारा 2 (बी) अधिनियम, 2011 के अनुसार प्राधिकृत अधिकारी से अभिप्रेत है धारा 14 के प्रयोजन के लिए, उच्च न्यायिक सेवा का कोई सेवारत अधिकारी जो सेशन न्यायाधीश/अपर सेशन न्यायाधीश हो या रह चुका हो।

नियम 8 के अनुसार प्राधिकृत अधिकारी को राज्य सरकार उच्च न्यायालय की परामर्श से नियुक्त करती है इस संबंध में प्रावधान हैं।

इस तरह प्राधिकृत अधिकारी कौन होगा यह भी ध्यान रखना होगा।

## विशेष न्यायालय

अधिनियम, 2011 की धारा 3 के तहत विशेष न्यायालय की स्थापना का प्रावधान है जिसके तहत म.प्र. में इन्दौर, भोपाल, जबलपुर तथा ग्वालियर में प्रत्येक स्थान पर दो और कुल आठ विशेष न्यायालय स्थापित किये गये हैं। अधिनियम की धारा 3 (3) के अनुसार विशेष न्यायालय में अपर सत्र न्यायाधीश नियुक्त किये गये हैं।

## प्रसंज्ञान

अधिनियम, 2011 की धारा 4 के अनुसार विशेष न्यायालय ऐसे मामलों का प्रसंज्ञान लेगा और उनका विचारण करेगा जो उसके समक्ष संस्थित किये जायें या धारा 10 के अधीन उच्च न्यायालय द्वारा अन्तरित किये जायें।

अधिनियम की धारा 6 (2) के अनुसार यदि किसी लोक सेवक के बारे में धारा 5 के तहत घोषणा की गयी है तब उस अपराध के संबंध में यदि कोई अभियोजन पहले से संस्थित किया जा चुका है और उसकी कार्यवाही इस अधिनियम के अधीन गठित विशेष न्यायालय से भिन्न किसी न्यायालय में चल रही है तो तत्समय प्रवृत्त किसी अन्य विधि में अन्तर्विष्ट किसी बात के होते हुए भी, ऐसी कार्यवाही इस अधिनियम के अनुसार अपराध के विचारण के लिए गठित विशेष न्यायालय को अन्तरित (stands transferred) हो जाएगी।

इस तथ्य को प्रदेश के अन्य विशेष न्यायालयों को ध्यान में रखना चाहिए और जैसे ही किसी लोक सेवक के बारे में राज्य सरकार ने धारा 5 के तहत कोई घोषणा की हो तब उसके संबंध में कोई भी कार्यवाही या मामला ग्रहण नहीं करना चाहिए और यदि ग्रहण कर भी लिया है तो धारा 6 (2) अधिनियम के तहत उसे अधिनियम, 2011 के तहत गठित विशेष न्यायालय को भेज देना चाहिए।

प्रदेश के अन्य विशेष न्यायालय अपने समक्ष प्रस्तुत अनुपातहीन संम्पत्ति के मामलों में लोक अभियोजक से यह अपेक्षा कर सकते हैं कि वह धारा 5 की घोषणा यदि हुई हो तो उसका राजपत्र प्रस्तुत करें ताकि धारा 57 भारतीय साक्ष्य अधिनियम के तहत उसकी न्यायिक अवेक्षा की जा सके या ज्यूडिशियल नोटिस लिया जा सके और ऐसी घोषणा का राजपत्र पेश होने पर लंबित कार्यवाही को सीधे ही अधिनियम, 2011 के तहत गठित विशेष न्यायालय को भेज देना चाहिए।

## विचारण की प्रक्रिया

धारा 8 (1) अधिनियम, 2011 के अनुसार विशेष न्यायालय मजिस्ट्रेट के समक्ष वारंट मामलों के विचारण के लिए संहिता द्वारा विहित प्रक्रिया का अनुसरण करेंगे इस तरह विशेष न्यायालय को वारंट विचारण प्रक्रिया अपनाना होती है।

धारा 8 (2) के अनुसार दं.प्र.सं., 1973 और भ्रष्टाचार निवारण अधिनियम, 1988 के प्रावधान इस अधिनियम के अधीन कार्यवाही में यदि वे अधिनियम से असंगत न हों तो लागू होंगे इस तरह उक्त दोनों विधियों के प्रावधान विशेष न्यायालय पर लागू होते हैं।

धारा 8 (3) के अनुसार विशेष न्यायालय विधि द्वारा प्राधिकृत दंडादेश दे सकते हैं।

धारा 12 अधिनियम, 2011 धारा 326 दं.प्र.सं. के अनुरूप हैं और पूर्व न्यायाधीश द्वारा लेख बद्ध साक्ष्य को उनके पद उत्तरवर्ती पढ़ सकते हैं।

नियम 12 के अनुसार दं.प्र.सं., 1973 और नियम 13 के अनुसार भारतीय साक्ष्य अधिनियम, 1872 के प्रावधान विशेष न्यायालय और प्राधिकृत अधिकारियों के समक्ष कार्यवाहियों में लागू होते हैं।

## निराकरण की समय सीमा

धारा 11 (2) अधिनियम, 2011 के अनुसार विशेष न्यायालय को किसी भी मामले को संस्थित किये जाने की तारीख से या अन्तरण में प्राप्त होने की तारीख से 1 वर्ष के भीतर निपटाने का हर संभव प्रयास करना चाहिए। इस तरह अधिनियम में एक निश्चित समय सीमा में मामलों को निपटाने की व्यवस्था है।

## घोषणा

धारा 5 (1) अधिनियम के अनुसार जहाँ राज्य सरकार को प्रथम दृष्टया साक्ष्य के आधार पर यह विश्वास करने का कारण हो कि किसी ऐसे व्यक्ति द्वारा कथित रूप से किये गये किसी अपराध के किये जाने का समुचित आधार है जो लोक पद धारण कर चुका हो अथवा धारण कर रहा हो और जो अधिनियम 1988 की धारा 2 (सी) के अर्थ के अन्तर्गत म.प्र. राज्य में लोक सेवक हो या रह चुका हो, तो राज्य सरकार ऐसे प्रत्येक मामले में, जिसमें कि उसका उपरोक्त विश्वास हो, उस आशय की घोषणा करेंगी।

नियम 6 म.प्र. विशेष न्यायालय नियम, 2012 के अनुसार ऐसी घोषणा प्रमुख सचिव/सचिव सामान्य प्रशासन विभाग द्वारा प्रारूप एक में की जायेगी और उसका प्रकाशन नियम 6 (2) के अनुसार राजपत्र में किया जायेगा और इसकी सूचना विशेष न्यायालय को, अन्वेषण अधिकरण को, प्रभावित व्यक्ति को, भ्रष्टाचार निवारण अधिनियम, 1988 के अधीन उस विशेष न्यायालय को जिसके समक्ष से लंबित कार्यवाही विशेष न्यायालय को अंतरित की गई है, भेजी जायेगी।

धारा 5 अधिनियम 2011 की घोषणा इस अधिनियम की मुख्य विशेषता है और इस घोषणा के बाद ही संबंधित अपराध का मामला अधिनियम के अधीन गठित विशेष न्यायालय के क्षेत्र में आता है जैसा कि धारा 6 (1) अधिनियम से स्पष्ट है।

## सम्पत्ति का अधिहरण

धारा 13 अधिनियम, 2011 इस अधिनियम की एक प्रमुख विशेषता है जिसके अनुसार राज्य सरकार द्वारा धारा 5 (1) के तहत घोषणा कर देने के बाद संबंधित लोक सेवक की सम्पत्ति के अधिहरण की कार्यवाही प्रारंभ होती है।

राज्य सरकार लोक अभियोजक को सम्पत्ति के अधिहरण का आवेदन देने के लिए अधिकृत करती है और तब लोक अभियोजक शपथ पत्र से समर्थित आवेदन प्रस्तुत करते हैं जिसमें सम्पत्ति की विशिष्टयाँ उनकी स्थिति का उल्लेख रहता है और नियम 11 में बतलाई विशिष्टियाँ भी आवेदन में दर्ज होती हैं।

नियम 11 के अनुसार धारा 13 के आवेदन में निम्नलिखित विशिष्टियाँ अन्तरविष्ट करना होती हैः–

(1) प्रभावित व्यक्ति का नाम;

(2) प्रभावित व्यक्ति का कार्यालयीन पदनाम और विस्तृत पता;

(3) प्रभावित व्यक्ति की आय के ज्ञात स्त्रोत की विशिष्टियाँ;

(4) प्रभावित व्यक्ति द्वारा संधारित आस्तियों की विशिष्टियाँ एवं उनका प्राक्कलित मूल्य;

(5) इन आस्तियों का कितना (भाग) आय के ज्ञात स्त्रोत से अननुपातिक है;

(6) जब्ती का तरीका जो प्रार्थित है;

(7) उन व्यक्तियों के नाम और विस्तृत पते, जिनके शपथ पत्र, मामले के समर्थन में प्रस्तुत किए गए हैं; और

(8) समुचित मूल्य सहित धन अथवा सम्पत्ति की अवस्थिति।

धारा 14 अधिनियम के अनुसार प्रभावित व्यक्ति को आवेदन आने पर सूचना पत्र दिया जाता है और उससे यह अपेक्षा की जाती है कि वह उसकी आय, उपार्जन या अर्निंग और आस्तियों का स्त्रोत बतलायें और यह कारण बतलायें कि क्यों न ऐसी सम्पत्ति का अधिहरण कर लिया जाये। धारा 14 (2) के अनुसार यदि सम्पत्ति प्रभावित व्यक्ति के निमित्त किसी अन्य व्यक्ति के आधिपत्य में है तो उसे भी सूचना पत्र की तामील कराई जायेगी।

नियम 10 में प्राधिकृत अधिकारी अर्थात विशेष न्यायाधीश द्वारा धारा 13 का आवेदन प्राप्त होने पर अपनाई जाने वाली प्रक्रिया बतलाई गई है। जिसके अनुसार प्रभावित व्यक्ति के उपस्थित होने पर उसे धारा 13 के आवेदन के साथ प्रस्तुत दस्तावेजों की नकल प्रदान की जाती है और उसे बचाव में अपना कथन प्रस्तुत करने के लिए 30 दिन का समय दिया जाता है। यदि प्राधिकृत अधिकारी के समाधानपरक ठीक और विधिमान्य कारणों से प्रभावित व्यक्ति उसके बचाव में कथन फाइल नहीं कर पाता है तो वह उसे 15 दिन का और समय दे सकेगा जिसके भीतर उसे बचाव में अपना कथन फाइल करना होगा।

नियम 10 (3) के अनुसार यदि प्रभावित व्यक्ति 30 दिन की विहित अवधि में अथवा 15 दिन की विस्तारित अवधि में भी अपने बचाव में कथन फाईल नहीं करता है तो यह उपधारणा की जायेगी कि उसे अपने बचाव में कुछ नहीं कहना है और तब प्राधिकृत अधिकारी उसके समक्ष संस्थित कार्यवाही पर न्यायनिर्णयन करने के लिए स्वतंत्र होंगे।

नियम 10 (4) के अनुसार यदि प्रभावित व्यक्ति अपने बचाव में कथन फाईल करता है तो उसकी एक प्रति कार्यवाही का संचालन करने वाले विशेष लोक अभियोजक को दी जायेगी जो 15 दिन के भीतर प्रत्युत्तर देगा। प्राधिकृत अधिकारी लोक अभियोजक को 15 दिन का अतिरिक्त समय ठीक और विधिमान्य कारण होने पर दे सकेंगे यदि विशेष लोक अभियोजक उक्त अवधि में प्रत्युत्तर देने में असफल रहते हैं तो यह माना जायेगा कि अभियोजन बचाव के कथन का कोई प्रत्युत्तर नहीं देना चाहता है।

नियम 10 (7) के अनुसार यदि प्रभावित व्यक्ति सम्पत्ति के मूल्यांकन का विरोध करता है तो प्राधिकृत अधिकारी राज्य सरकार या केन्द्र सरकार की ऐसी ऐजेन्सी या किसी अन्य अधिकारी या तकनीकी रूप से योग्य व्यक्ति की सहायता ले सकते हैं।

नियम 10 (8) के अनुसार प्राधिकृत अधिकारी, आवेदन, बचाव के कथन, विशेष लोक अभियोजक के प्रत्युत्तर तथा विशेषज्ञों की रिपोर्ट, यदि कोई हो तो उस पर विचार करके नोटिस तामील की तारीख से 6 माह के भीतर अन्तिम निर्णय सुनाएंगी।

नियम 10 (9) के अनुसार निर्णय के पश्चात धारा 15 अधिनियम, 2011 के अनुसार उक्त सम्पत्ति जप्त करने की कार्यवाही की जा सकेगी।

धारा 15 (3) के परन्तुक के अनुसार यदि अधिहरण की गई सम्पत्ति का बाजार मूल्य प्राधिकृत अधिकारी के पास जमा कर दिया गया हो तो सम्पत्ति का अधिहरण नहीं किया जायेगा।

नियम 10 (10) के अनुसार बाजार मूल्य को राष्ट्रीयकृत बैंक में सावधि जमा किया जायेगा।

नियम 10 (11) के अनुसार जिस जिले में अनुपातहीन सम्पत्ति स्थित है अधिहरण के बाद उस जिले के जिला मजिस्ट्रेट को सौंप दी जायेगी जो राज्य सरकार के निदेशों के अधीन मामले के अन्तिम निराकरण तक सम्पत्ति का जनहित में उपयोग कर सकेगा।

धारा 15 के अनुसार प्राधिकृत अधिकारी प्रभावित व्यक्ति के लिखित कथन तथा उपलब्ध सामग्री और प्रभावित व्यक्ति को सुनवाई का अवसर देने के बाद आदेश पारित करते है। यदि प्राधिकृत अधिकारी यह पाते हैं उक्त धन या सम्पत्ति अपराध के माध्यम से अर्जित किये गये हैं तो उन्हें राज्य सरकार के हित में अधिहरण करने का आदेश देते हैं।

**एक प्रश्न यह उत्पन्न होता है कि क्या इस कार्यवाही में साक्ष्य अभिलिखित करना चाहिए?**

धारा 13 (2) अधिनियम के अनुसार अधिहरण का आवेदन एक या एक से अधिक शपथ पत्रों से समर्थित होता है जिसमें धन या सम्पत्ति के संबंध में विश्वास के आधार लिखे होते हैं कि वे अपराध से अर्जित की गई है और उनका मूल्य अंकित होता है। प्रभावित व्यक्ति अपने बचाव के कथन के समर्थन में शपथ पत्र दे सकता है सम्पत्ति के अर्जन के बारे में दस्तावेज प्रस्तुत कर सकता है अतः इन मामलों में साधारणतया विचारण की तरह साक्ष्य अभिलिखित करना आवश्यक नहीं होता है और यदि ऐसा किया जाता है तो यह आवेदन के त्वरित निराकरण के उद्देश्य को प्रभावित करेगा।

धारा 18 में अधिहरण की गई सम्पत्ति का आधिपत्य लेने की प्रक्रिया है और बल प्रयोग से भी आधिपत्य लेने के प्रावधान हैं जिन्हें ध्यान रखना चाहिए।

धारा 16 के तहत जैसे ही प्रभावित व्यक्ति पर धारा 14 की सूचना तामील हो जाती है उसके बाद यदि धन या सम्पत्ति का कोई भी अंतरण किया जाता है तो वह शून्य होता है।

## प्रभावित व्यक्ति द्वारा लिये जाने वाले बचाव या प्रतिरक्षा

सामान्यतः इन मामले में प्रभावित व्यक्ति निम्नलिखित या इनमें से कोई बचाव लेता है जिन पर प्राधिकृत अधिकारी को अपना निष्कर्ष देना होता हैः–

## सम्पत्ति उपहार (gift) में मिलना

इन मामलों में प्रभावित व्यक्ति की एक प्रतिरक्षा यह होती है कि उसे सम्पत्ति उपहार में मिली है यह अनुपातहीन सम्पत्ति नहीं है। उक्त प्रतिरक्षा पर विचार करते समय विशेष न्यायाधीश को मध्यप्रदेश सिविल सेवा (आचरण) नियम 1965 का नियम 14 ध्यान में रखना चाहिए।

नियम 14 उपनियम (1) के अनुसार कोई भी शासकीय सेवक इन नियमों में उपबंधित को छोड़कर कोई भी उपहार न तो स्वीकार करेगा न ही उसे स्वीकार करने के लिए अपने कुटुंब के किसी सदस्य को या उसके ओर से कार्य करने वाले किसी दूसरे व्यक्ति को अनुज्ञा देगा।

नियम 14 (2) के अनुसार विवाह, वर्ष दिवस, अन्त्येष्टियाँ, धार्मिक कृत्यों जैसे अवसरों पर जबकि उपहार का दिया जाना प्रचलित धार्मिक या सामाजिक प्रथा के अनुरूप हो, शासकीय सेवक अपने निकट संबंधियों से उपहार स्वीकार कर सकेगा किन्तु वह शासन को उपहार की रिपोर्ट उपहार प्राप्त होने की तिथि से एक माह के अन्दर करेगा, यदि किसी ऐसे उपहार का मूल्य प्रथम श्रेणी या द्वितीय श्रेणी का पद धारण करने वाले शासकीय सेवक के मामले में 1500 रूपये और तृतीय श्रेणी का पद धारण करने वाले शासकीय सेवक के मामले में 700 रूपये, चतुर्थ श्रेणी के पद धारण करने वाले शासकीय सेवक के नाम पर 250 रूपये से अधिक हो।

नियम 14 (3) के अनुसार शासकीय सेवक अपने निजी मित्रों से जिनका उसके साथ पदीय संव्यवहार न हो उपहार स्वीकार कर सकेगा, किन्तु वह शासन को उपहार की रिपोर्ट उपहार प्राप्त होने की तिथि से एक माह के अन्दर करेगा, यदि किसी ऐसे उपहार का मूल्य प्रथम श्रेणी या द्वितीय श्रेणी का पद धारण करने वाले शासकीय सेवक के मामले में 500 रूपये, तृतीय श्रेणी का पद धारण करने वाले शासकीय सेवक के मामले में 200 रूपये, चतुर्थ श्रेणी के पद धारण करने वाले शासकीय सेवक के मामले में 100 रूपये से अधिक हो।

नियम 14 (4) के अनुसार किसी भी अन्य मामलें में कोई शासकीय सेवक, शासन की मंजूरी के बिना, कोई उपहार प्राप्त नहीं करेगा अथवा अपने परिवार के किसी सदस्य को अथवा अपनी ओर से कार्य करने वाले किसी सदस्य को लेने की अनुमति नहीं देगा, यदि उसका मूल्य प्रथम और द्वितीय श्रेणी का पद धारण करने वाले शासकीय सेवक के मामले में 200 रूपये और तृतीय श्रेणी या चतुर्थ श्रेणी का पद धारण करने वाले शासकीय सेवक के मामले में 50 रूपये से अधिक हो।

नियम 14 (5) के अनुसार कोई भी शासकीय सेवक 2000 रूपये के अधिक का कोई नकद उपहार एक अकाउण्ट पेयी चैक के माध्यम के अतिरिक्त स्वीकार नहीं करेगा या अपने कुटुंब के किसी सदस्य के या अपनी ओर से कार्य करने वाले किसी व्यक्ति को स्वीकार करने की अनुमति नहीं देगा।

विशेष न्यायाधीश को सम्पत्ति उपहार में मिलने बाबद प्रतिरक्षा पर विचार करते समय यह देखना चाहिए कि क्या संबंधित लोकसेवक ने उपहार प्राप्त होने के एक माह के भीतर उसकी सूचना शासन को अर्थात् अपने विभाग प्रमुख को कर दी थी या नहीं यदि उपहार उक्त नियम 14 में वर्णित मूल्य से अधिक का हो और यदि ऐसी सूचना नहीं की है तब इस प्रतिरक्षा को मान्य नहीं किया जा सकता क्योंकि धारा 13 (1) (ई) भ्रष्टाचार निवारण अधिनियम 1988 के स्पष्टीकरण (1) के अनुसार आय के ज्ञात स्त्रोत का तात्पर्य कोई ऐसे वैध स्त्रोत जिससे आय प्राप्त की गई है और लोकसेवक पर तत्समय किसी विधि या नियम या आदेश के अधीन उसकी प्राप्ति की सूचना दे दी गई है।

मध्यप्रदेश सिविल सेवा (आचरण) नियम 1965 के नियम 1 (3) के अनुसार ये नियम मध्यप्रदेश राज्य के कार्यों के संबंध में सिविल सेवाओं और पदों पर नियुक्त समस्त व्यक्तियों को लागू होते है।

नियम 14 के तहत उपहार में न केवल लोकसेवक के स्वयं के उपहार बल्कि उसकी कुटुंब के किसी सदस्य द्वारा लिये गये उपहार भी शामिल है अतः हमें शासकीय सेवक के कुटुंब के सदस्य कौन है यह यह भी ध्यान रखना होगा।

नियम 2 (सी) मध्यप्रदेश सिविल सेवा (आचरण) नियम 1965 के अनुसार शासकीय सेवक के कुटुंब के सदस्यों में निम्नलिखित सम्मिलित है :–

(एक) शासकीय सेवक की पत्नी या उसका पति, जैसी भी दशा हो, चाहे वह शासकीय सेवक के साथ रहती/रहता हो या नहीं किन्तु उसमें, यथास्थिति ऐसी पत्नी या ऐसा पति सम्मिलित नहीं है, जिसका कि सक्षम न्यायालय की डिक्री या आदेश द्वारा शासकीय सेवक से पृथक्करण हो गया हो।

(दो) शासकीय सेवक का पुत्र या पुत्री या सौतेला पुत्र या सौतेली पुत्री, जो उस (शासकीय सेवक) पर पूर्णतः आश्रित हो, किन्तु उसमें ऐसा बालक या सौतेला बालक, जो अब शासकीय सेवक पर किसी भी प्रकार आश्रित न रहा हो, या जिसे अभिरक्षा में रखने से शासकीय सेवक को किसी भी विधि द्वारा या उसके अधीन वंचित कर दिया गया हो, सम्मिलित नहीं है।

(तीन) कोई भी अन्य व्यक्ति, जो शासकीय सेवक या शासकीय सेवक की पत्नी या उसके पति से चाहे रक्त द्वारा या विवाह द्वारा, संबंधित हो और शासकीय सेवक पर पूर्णतः आश्रित हो।

यदि प्रभावित व्यक्ति ने उक्त नियम 14 के पालन में अपने विभाग को उपहार प्राप्त होने के 1 माह के अन्दर उपहार प्राप्ति की सूचना दी है तभी यह प्रतिरक्षा मान्य की जाना चाहिए।

## ऋण या उधार का बचाव

इन मामलों में प्रभावित व्यक्ति एक बचाव यह लेता है कि उसने सम्पत्ति ऋण लेकर या अपने रिश्तेदारों या परिचित से उधार लेकर खरीदी है।

इस प्रतिरक्षा पर विचार करते समय हमें नियम 17 मध्यप्रदेश सिविल सेवा (आचरण) नियम 1965 ध्यान रखना होगा जिसके अनुसार कोई भी शासकीय सेवक अकाउण्ट पेयी चैक के अतिरिक्त 2000 रूपये से अधिक की धनराशि उधार नहीं लेगा।

विशेष न्यायाधीश को यह देखना होगा क्या अभियुक्त ने 2000 रूपये से अधिक की धनराशि उधार ली है और यदि हाँ तो क्या उसने अकाउण्ट पेयी चैक के माध्यम से ली है और यदि ऐसा नहीं किया है तब ऐसे उधार को मान्यता नहीं दी जानी चाहिए।

नियम 17 (4) के अनुसार यदि कोई शासकीय सेवक किसी बैंक या बैंक का कारोबार करने के लिए प्राधिकृत किसी फर्म के साथ कारोबार के साधारण क्रम की स्थिति को छोड़कर न तो स्वयं न अपने कुटुंब के किसी सदस्य को या उसकी ओर से कार्य करने वाले किसी व्यक्ति के माध्यम से किसी भी ऐसे व्यक्ति से जो कि उसकी प्राधिकारी के स्थानीय सीमाओं के भीतर हो या जिसके साथ उसका पदीय संव्यवहार होने की संभावना हो उससे कोई धन उधार नहीं लेगा न ऐसे व्यक्ति को कोई आर्थिक आभार लेगा साथ ही किसी व्यक्ति को ब्याज पर इस प्रकार धनराशि उधार नहीं देगा जिससे कि उसकी वापसी धन के रूप में या वस्तु के रूप में ली जाये या की जाये।

परन्तु शासकीय सेवक शासन से पूर्व स्वीकृति या पूर्व अनुमति प्राप्त करके जो लेन–देन करता है उस पर यह बातें लागू नहीं होगी।

विशेष न्यायाधीश को उक्त नियम 17 (4) ध्यान में रखना होगा और यह देखना होगा क्या प्रभावित व्यक्ति ने जो धन उधार लेना बतलाया है वह बैंक या स्थापित फर्म से है या किसी अन्य व्यक्ति से।

यदि किसी अन्य व्यक्ति से उधार लिया है तो क्या शासन की पूर्व अनुमोदन या पूर्व अनुमति थी या नहीं यदि ऐसा नहीं है तब इस प्रतिरक्षा को मान्य नहीं किया जाना चाहिए क्योंकि यह नियम 17 मध्यप्रदेश सिविल सेवा (आचरण) नियम के उल्लघंन में किया गया संव्यवहार है।

## स्वयं के या कुटुंब के सदस्य की आमदनी

इन मामलों में प्रभावित व्यक्ति का एक बचाव यह रहता है कि उसने सम्पत्ति पत्नी या पति या कुटुंब के सदस्य की आमदनी से क्रय की है या उसने संबंधित सेवा के अलावा किसी अन्य व्यापार का कारोबार से अर्जित की है। विशेष न्यायाधीश को इस बचाव पर विचार करते समय नियम 16 मध्यप्रदेश सिविल सेवा (आचरण) नियम ध्यान में रखना चाहिए।

नियम 16 (3) के अनुसार यदि किसी शासकीय सेवक के कुटुंब का कोई सदस्य किसी कारोबार या व्यापार में लगा हुआ है या उसके कुटुंब के कोई सदस्य किसी बीमा कंपनी या कमीशन एजेंसी का स्वामित्व रखता है या उसका प्रबंध करता है तो वह शासन को इसकी रिपोर्ट करेगा।

जब कभी शासकीय सेवक स्वयं की कोई अतिरिक्त आय या कुटुंब के किसी सदस्य की आय से सम्पत्ति खरीदना बतलावे तब विशेष न्यायाधीश को यह देखना चाहिए कि शासकीय सेवक ने कुटुंब के सदस्य का व्यापार या कारोबार में लगा होने की सूचना शासन को अर्थात विभाग प्रमुख को दी थी या नहीं जैसा कि नियम 16 (3) के अनुसार आवश्यक है।

नियम 16 (1) के अनुसार शासकीय सेवक प्रत्यक्ष या अप्रत्यक्ष रूप से कोई व्यापार या कारोबार या अन्य सेवा नहीं कर सकता है अतः इस नियम के विपरीत जाकर और शासन की अनुमति के बिना यदि अभियुक्त ने कोई व्यापार या कारोबार या अन्य सेवा की है तब उसकी आमदनी वैध स्त्रोतों से आमदनी नहीं मानी जा सकती अतः इस प्रतिरक्षा पर विचार करते समय नियम 16 का पालन हुआ है या नहीं यह ध्यान रखना चाहिए।

अभियुक्त कुटुंब के जिस सदस्य की आमदनी से सम्पत्ति क्रय करना बतला रहा है उस सदस्य की शैक्षणिक योग्यता, कथित व्यापार या कारोबार का उसे अनुभव आदि प्रश्न संबंधित साक्षी से पूछकर यह तथ्य अभिलेख पर लाना चाहिए कि कुटुंब के जिस सदस्य की आमदनी बतलाई जा रही है वह वास्तविक भी है या नहीं।

जो आमदनी कुटुंब के सदस्य की बतलाई गई है वह आयकर की सीमा में हो तो क्या उस पर आयकर दिया है या नहीं और आयकर रिटर्न में उस सदस्य ने वह आय दर्शाई है या नहीं यह भी देखना चाहिए।

## सम्पत्ति दहेज में मिलना

इन मामलों में शासकीय सेवक का एक बचाव यह रहता है कि उसे सम्पत्ति दहेज में मिली है।

इन प्रतिरक्षा पर विचार करते समय नियम 14 ए मध्यप्रदेश सिविल सेवा (आचरण) नियम 1965 ध्यान में रखना चाहिए जिसके अनुसार कोई शासकीय सेवक दहेज न तो लेगा और न ही देगा और न ही किसी को दहेज लेने या देने के लिए प्रेरित करेगा न ही दहेज की मांग करेगा।

धारा 2 (2) (ए) (बी) दहेज प्रतिषेध अधिनियम 1961 के अनुसार विवाह के समय जो भेंट मिलती है उनके बारे में एक सूची बनायी जाती है क्या उक्त सूची में कथित सम्पत्ति दर्ज की गई है या नहीं और विभाग प्रमुख को इसकी सूचना दी है या नहीं यदि विवाह सेवा में आने से पहले हुआ है तब सम्पत्ति की घोषणा में उन वस्तुओं का उल्लेख प्रथम बार किया है या नहीं इन सब चीजों पर विचार करना चाहिए और यदि ऐसा नहीं किया गया है तब यह प्रतिरक्षा मान्य नहीं की जाना चाहिए।

## चल एवं अचल सम्पत्ति के बारे में

इन मामले में प्रभावित व्यक्ति की प्रतिरक्षा पर विचार करते समय नियम 19 मध्यप्रदेश सिविल सेवा (आचरण) नियम 1965 ध्यान में रखना चाहिए। जिसके अनुसार लोकसेवक को शासकीय सेवा में प्रथम नियुक्त होने पर और उसके बाद समय–समय पर शासन को उसकी या उसके कुटुंब के सदस्य के नाम की अर्जित की गयी या उत्तरदाय में प्राप्त की गई या पट्टे या बंधक पर ली गई अचल सम्पत्ति की सूचना देना चाहिए।

नियम 19 (1) (ए) के अनुसार अचल सम्पत्ति चाहे वह किसी भी मूल्य की हो उसके संव्यवहार की जानकारी शासन को देने का प्रावधान है।

नियम 19 (1) (बी) के अनुसार ऋण पत्र, तथा नकदी, बैंक में जमा, शेयर चाहे लोकसेवक के स्वयं का हो या उसने दाय या उत्तराधिकार में प्राप्त किये गये हो उसकी सूचना शासन को देने का प्रावधान है।

नियम 19 (2) के अनुसार कोई भी लोकसेवक विहित प्राधिकारी के पूर्व जानकारी के बिना न तो स्वयं के नाम से और न ही अपने कुटुंब के किसी सदस्य के नाम की कोई अचल सम्पत्ति पट्टे, बंधक, क्रय विक्रय या अन्यथा न तो अर्जित करेगा न उसे हस्तांतरित करेगा।

परन्तु विहित प्राधिकारी के पूर्व मंजूरी उस दशा में प्राप्त करना होगा जब लेन–देन ऐसे व्यक्ति से किया जा रहा हो जिसके साथ शासकीय सेवक का पदीय संव्यवहार है।

नियम 19 (2) (ए) के अनुसार कोई शासकीय सेवक स्वयं या उसके कुटुंब का कोई सदस्य शासकीय सेवक की सहमति से या अन्यथा कोई अचल सम्पत्ति क्रय करता है या बेनामी रूप से निर्मित करता है तब विहित प्राधिकारी को निर्माण के बारे में सूचना युक्तियुक्त अवधि में देगा।

नियम 19 (3) के अनुसार प्रथम या द्वितीय श्रेणी का लोकसेवक जो स्वयं के नाम से 10,000 रूपये से अधिक मूल्य की, अब उसके मूल वेतन के दुगने तक तृतीय या चतुर्थ का कोई शासकीय सेवक 5000 से अधिक मूल्य की चल सम्पत्ति क्रय करता है इसकी सूचना विहित प्राधिकारी को देगा।

इस तरह नियम 19 में चल एवं अचल सम्पत्ति के लेन–देन के बारे में प्रतिवेदन करने का प्रावधान है।

जब कभी विशेष न्यायाधीश प्रभावित व्यक्ति की प्रतिरक्षा पर विचार करें तब उन्हें यह देखना चाहिए कि लोकसेवक के आधिपत्य जो सम्पत्ति पायी गयी है क्या उसके बारे में नियम 19 के तरह संबंधित विभाग को युक्तियुक्त समय के भीतर सूचित कर दिया था या नहीं और यदि ऐसा नहीं किया है तब सम्पत्ति को अनुपात हीन सम्पत्ति माना जाना चाहिए और प्रभावित व्यक्ति की इस प्रतिरक्षा को स्वीकार नहीं करना चाहिए।

## चन्दे के बारे में

इन मामलों में प्रभावित व्यक्ति की एक प्रतिरक्षा यह होती है सम्पत्ति उसने चन्दे से बनायी है।

नियम 13 मध्यप्रदेश सिविल सेवा (आचरण) नियम 1965 के अनुसार कोई भी शासकीय सेवक शासन की या विहित प्राधिकारी के पूर्व मंजूरी के बिना किसी भी प्रकार के उद्देश्य के अनुसरण से किन्हीं निधियों के लिए या तो नकदी में या वस्तु के रूप में अन्य संग्रहणों के लिए न तो अंशदान मांगेगा न अंशदान स्वीकार करेगा न उनको इकट्ठा किये जाने में स्वयं को अन्यथा सम्बद्ध करेगा।

विशेष न्यायाधीश को यह ध्यान रखना चाहिए कि क्या प्रभावित व्यक्ति ने शासन के विहित प्राधिकारी की पूर्व मंजूरी ली थी या नहीं और यदि नहीं ली थी तब चन्दे संबंधी प्रतिरक्षा को मान्य नहीं किया जाना चाहिए।

## आचरण नियमों के पालन नहीं करने के प्रभाव पर

प्रभावित व्यक्ति की एक प्रतिरक्षा यह होती है कि उसने मध्यप्रदेश सिविल सेवा (आचरण) नियम 1965 के नियमों का पालन नहीं किया है तो यह विभागीय जाँच का विषय हो सकता है लेकिन इसके कारण उसकी प्रतिरक्षा को अमान्य नहीं किया जा सकता है चाहे उसने नियम 14, 14ए, 16, 17 और 19 मध्यप्रदेश सिविल सेवा (आचरण) नियम का पालन नहीं किया।

न्याय दृष्टांत ***अशोक तेहरिंग भूटिया विरूद्ध स्टेट ऑफ सिक्किम, ए.आई.आर. 2011 एस.सी.1363*** के अनुसार यदि लोकसेवक उसकी सम्पत्ति की घोषणा सेवा नियमों के अनुसार नहीं करता है या सेवा नियमों का पालन नहीं करता है तो वह विभागीय जाँच के लिए उत्तरदायी होता है किन्तु इस कारण से उसके द्वारा प्रस्तुत दस्तावेजों को उसमें वर्णित तथ्यों का परीक्षण किये बिना पूरी तरह खारिज नहीं किया जा सकता है।

न्याय दृष्टांत ***पी. नल्लमल विरूद्ध स्टेट, ए.आई.आर. 1999 एस.सी. 2556*** के पैरा 20 के अनुसार धारा 13 (1) (ई) भ्रष्टाचार निवारण अधिनियम 1988 के स्पष्टीकरण के अनुसार आय के ज्ञात स्त्रोतों में लोकसेवक को न्यायालय को संतुष्ट करने के उद्देश्य से यह बतलाना चाहिए कि सम्पत्ति वैध स्त्रोत से अर्जित की गई है। उसके अर्जन की सूचना उस पर लागू होने वाले नियमों के अनुसार दे दी गई है।

इन न्याय दृष्टांत में प्रतिपादित विधि पर विचार करे तब ऐसी सम्पत्ति जो लोकसेवक ने वैध स्त्रोत से अर्जित की हो और उसकी सूचना भी सेवा नियमों के अनुसार दी हो तभी उसे आय के ज्ञात स्त्रोत पद में माना जा सकता है अन्यथा नहीं।

इस न्यायदृष्टांत को उक्त न्याय दृष्टांत ***अशोक तेहरिंग भूटिया*** में ओवर रूल्ड या विभेदित नहीं किया है। यह पूर्व का न्याय दृष्टांत है अतः इस न्याय दृष्टांत को अधिमान्यता दी जाना चाहिए और यदि लोकसेवक ने सेवा नियमों का पालना नहीं किया है तो उसकी प्रतिरक्षा मान्य नहीं की जाना चाहिए।

## आचरण नियमों की पालना की जाँच

इन मामलों में कभी–कभी प्रभावित व्यक्ति के विरूद्ध प्रकरण पंजीबद्ध हो जाने के बाद वह विभाग के कुछ कर्मचारियों से मिलकर उपहार की सूचना, चल अचल सम्पत्ति की सूचना, कुटुंब के सदस्यों की आय आदि के दस्तावेज अभिलेख में संलग्न करवा लेता है।

विशेष न्यायाधीश को यह देखना चाहिए कि क्या नियमों के तहत प्रभावित व्यक्ति द्वारा दी गई सूचना पर कार्यालय में नोटशीट प्रारंभ की गई थी और विभाग प्रमुख ने क्या प्रभावित व्यक्ति द्वारा दी गई जानकारी पर आवश्यक जॉच करके सम्पत्ति या उपहार को सर्विस बुक में इंद्राज करने के आदेश दिये थे या नहीं। प्रभावित व्यक्ति को ऐसे इंद्राज सेवा पुस्तिका में कर लेने की सूचना भेजी गई थी या नहीं। यदि सूचना नहीं मिली थी तो प्रभावित व्यक्ति ने क्या स्मरण पत्र वगैरह लिखे थे या नहीं यह सब छानबीन करना चाहिए ताकि सद्भावना पूर्वक समय पर सूचना देने वाले लोकसेवक और ऐसी सूचनाएं बाद में मैनुपुलेट करवाने वाले लोकसेवक के बीच का अन्तर स्पष्ट हो सकें।

**एक प्रश्न यह भी उत्पन्न हो सकता है कि यदि अभियुक्त मूल मामले में अंततः दोषमुक्त हो गया तब क्या होगा?**

इसका उत्तर धारा 19, अधिनियम, 2011 में मिलता है जिसके अनुसार :–

यदि धारा 15 अधिनियम, 2011 के तहत पारित अधिहरण आदेश अपील में उच्च न्यायालय द्वारा उपान्तरित या खारिज कर दिया जाता है या प्रभावित व्यक्ति विशेष न्यायालय द्वारा दोष मुक्त कर दिया जाता है तब धन या सम्पत्ति या दोनों प्रभावित व्यक्ति को वापस कर देनें के आदेश देने होते हैं और यदि सम्पत्ति वापस करना संभव न हो तब अधिहरण की तारीख से 5 प्रतिशत प्रतिवर्ष की दर से परिगणित ब्याज सहित सम्पत्ति का मूल्य प्रभावित व्यक्ति को लौटाने का आदेश देना होता है इसे भी ध्यान में रखना चाहिए।

इन कार्यवाहियों में धारा 22 अधिनियम, 2011 के ध्यान में रखना चाहिए जिसके अनुसार धारा 15 के अधीन किसी धन या सम्पत्ति या दोनों के अधिहरण किये जाने के आदेश के बारे में कोई वाद या धारा 9 और धारा 17 में वर्णित अपील के अलावा अन्य कोई विधिक कार्यवाही नहीं चलाई जा सकेगी इस तरह इन कार्यवाहियों में यदि प्रभावित व्यक्ति सिविल न्यायालय से स्थगन लाने के लिए कोई समय मांगता है तो धारा 22 ध्यान में रखना चाहिए।

धारा 11 अधिनयम, 2011 में कार्यवाही कारण अभिलिखत किये बिना और न्यायहित में ही स्थगित करने के प्रावधान हैं यह भी ध्यान में रखना चाहिए।

नियम 14 में विशेष न्यायालय तथा प्राधिकृत अधिकारी उनके द्वारा पारित आदेश को लागू करवाने में पुलिस अधिकारियों की सहायता राज्य सरकार से मांग सकते हैं। इसे भी ध्यान में रखना चाहिए।

इस प्रकार जब कभी विशेष न्यायालय के समक्ष धारा 13 अधिनियम, 2011 के अधीन सम्पत्ति के अधिहरण का आवेदन पेश होता है तब उनको नियम 10 में बतलाई प्रक्रिया का पालन करते हुए धारा 15 के तहत अन्तिम आदेश पारित करना चाहिए और इन कार्यवाहियों में प्रभावित व्यक्ति द्वारा उसके बचाव कथन में उठाये गये आधारों पर म. प्र. सिविल सेवा, (आचरण) नियम, 1965 को ध्यान में रखते हुए विचार करना चाहिए। सामान्यतः इन कार्यवाहियों में साक्ष्य अभिलिखित करने से बचना चाहिए।

विशेष न्यायालय के समक्ष प्रस्तुत धारा 13 (1) (इ) भ्रष्टाचार निवारण अधिनियम के मामले में अन्य विशेष न्यायालयों की तरह ही वारंट विचारण प्रक्रिया अपनाना होती है और एक वर्ष के भीतर प्रकरण का निराकरण करना होता है।

उक्त विधिक स्थितियों को ध्यान में रखते हुए प्रकरणों को त्वरित गति से निराकरण अपेक्षित है तभी यह अधिनियम जिस उद्देश्य से लाया गया है उसे प्राप्त किया जा सकेगा।

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# धारा 19 भ्रष्टाचार निवारण अधिनियम, 1988 के बारे में

**प्रदीप कुमार व्यास**
प्रभारी संचालक
म.प्र. राज्य न्यायिक अकादमी

विशेष न्यायाधीश, भ्रष्टाचार निवारण अधिनियम, 1988 के समक्ष प्रायः अभियोजन की पूर्व स्वीकृति को लेकर कई तर्क किये जाते हैं और न्यायदृष्टांत प्रस्तुत होते हैं जिसमें उनका बहुमूल्य समय कई बार नष्ट होता है यहाँ हम अभियोजन की पूर्व स्वीकृति के बारे में विधिक स्थिति पर चर्चा करेंगे।

## 1. मूल प्रावधान

**धारा 19. अभियोजन पूर्व स्वीकृति की आवश्यकता –** (1) कोई न्यायालय धारा 7, 10, 11, 13 और 15 के अधीन दंडनीय अपराध का संज्ञान जिसके संबंध में यह अधिकथित है कि वह लोक सेवक द्वारा किया गया है, निम्नलिखित की पूर्व स्वीकृति के बिना नहीं करेगा –

(क) ऐसे व्यक्ति की दशा में जो संघ के मामलों के संबंध में नियोजित है और जो अपने पद से केन्द्रीय सरकार द्वारा या उसकी मंजूरी से हटाए जाने के सिवाय नहीं हटाया जा सकता है, केन्द्रीय सरकार;

(ख) ऐसे व्यक्ति की दशा में, जो राज्य के मामलों के संबंध में नियोजित है और जो अपने पद से राज्य सरकार द्वारा या उसकी मंजूरी से हटाए जाने के सिवाय नहीं हटाया जा सकता है, राज्य सरकार;

(ग) किसी अन्य व्यक्ति की दशा में उसे उसके पद से हटाने के लिए सक्षम प्राधिकारी।

(2) जहाँ किसी कारण से इस बाबत शंका उत्पन्न हो जाए, कि उपधारा (1) के अधीन अपेक्षित पूर्व मंजूरी केन्द्रीय या राज्य सरकार या किसी अन्य प्राधिकारी में से किसके द्वारा दी जानी चाहिए वहां ऐसी मंजूरी उस सरकार या प्राधिकारी द्वारा दी जाएगी जो लोक सेवक को उसके पद से उस समय हटाने के लिए सक्षम था जिस समय अपराध किया जाना अभिकथित है।

(3) दंड प्रक्रिया संहिता, 1973 (1974 का 2) में किसी बात के होते हुए भी –

(क) उपधारा (1) के अधीन अपेक्षित मंजूरी में किसी अनियमितता, लोप या त्रुटि के कारण अपील न्यायालय द्वारा पुनरीक्षण, पुष्टिकरण या अपील में, विशेष न्यायालय द्वारा पारित कोई निष्कर्ष, दंडादेश या आदेश तब तक परिवर्तित या उल्टा नहीं जाएगा, जब तक कि उस न्यायालय की राय में उसके कारण यथार्थ में न्याय नहीं हो सका;

(ख) इस अधिनियम के अधीन की किसी कार्यवाही को किसी न्यायालय द्वारा प्राधिकारी द्वारा दी गई मंजूरी में किसी अनियमितता या लोप या त्रुटि के कारण रोका नहीं जाएगा जब तक कि यह समाधान न हो जाए कि ऐसी अनियमितता, लोप या त्रुटि के परिणामस्वरूप न्याय नहीं हो सका है,

(ग) इस अधिनियम के अधीन की किसी कार्यवाही, को किसी न्यायालय द्वारा किसी, अन्य आधारों पर रोका नहीं जाएगा और किसी न्यायालय द्वारा पुनरीक्षण के अधिकारों का प्रयोग किसी जाँच, सुनवाई, अपील या अन्य कार्यवाही में पारित किसी अन्तर्वर्ती आदेश के संबंध में नहीं किया जाएगा।

(4) उपधारा (3) के अधीन अवधारणों के लिए, कि ऐसी मंजूरी के अभाव या किसी अनियमितता, लोप या त्रुटि के कारण न्याय नहीं हो सका है, न्यायालय इन तथ्यों को विचार में लेगा कि आपत्ति, किसी कार्यवाही के दौरान उठाई जा सकती थी और उठाई गई थी।

स्पष्टीकरण –– इस धारा के प्रयोजनों के लिए –

(क) ''त्रुटि'' में मंजूरी देने वाला प्राधिकारी की सक्षमता शामिल है;

(ख) ''अभियोजन के लिए अपेक्षित मंजूरी'' में किसी विहित प्राधिकारी के आवेदन पर किया जाने वाला अभियोजन की आवश्यकता का सन्दर्भ अथवा किसी विहित व्यक्ति द्वारा दी गई मंजूरी या इसी प्रकृति की अन्य अपेक्षा सम्मिलित है।

मूल प्रावधान के अवलोकन से यह स्पष्ट होता है कि धारा 19 (1) और धारा 19 (2) अधिनियम का संबंध विचारण न्यायालय से है जब कि धारा 19 (3) और धारा 19 (4) अधिनियम माननीय अपील न्यायालय से संबंधित है इस तथ्य को सदैव ध्यान में रखना चाहिए।

न्यायदृष्टांत ***नाजप्पा विरूद्ध स्टेट ऑफ कर्नाटका, 2015 ए.आई.आर. एस.सी.डब्लू 4432*** निर्णय चरण 16 में भी यह प्रतिपादित किया गया है कि धारा 19 (3) और धारा 19 (4) अधिनियम अपील न्यायालय के लिए हैं।

इस संबंध में न्यायदृष्टांत ***आर. वेंकट कृष्णन विरूद्ध सी.बी.आई., ए.आई.आर. 2010 एस.सी. 1812, स्टेट ऑफ एम.पी. विरूद्ध जीया लाल, ए.आई.आर. 2010 एस.सी. 1451*** एवं ***सी.बी.आई. विरूद्ध बी.के. सहगल, ए.आई.आर. 1999 एस.सी. 3706*** भी अवलोकनीय है जिनके अनुसार अपील न्यायालय को कोई निष्कर्ष, दंडादेश या आदेश अभियोजन चलाने की अनुमति में किसी त्रुटि या लोप या अनियमितता के आधार पर तभी उलटना चाहिए तब उस कमी के कारण न्याय की हानी हुई हो।

## 2. प्रावधान की संवैधानिकता

न्यायदृष्टांत ***मंजूर अली खान विरूद्ध यूनियन ऑफ इंडिया, ए.आई.आर. 2014 एस.सी. 3194*** में यह प्रतिपादित किया गया है कि धारा 19 जो कि अभियोजन की पूर्व स्वीकृति को आवश्यक बतलाती है वह असंवैधानिक नहीं है लेकिन सक्षम प्राधिकारी को अनुमति के बिन्दु पर त्वरित गति से निर्णय लेना चाहिए।

## 3 प्रावधान की प्रकृति

न्यायदृष्टांत ***अनिल कुमार विरूद्ध एम.के. अयप्पा, (2013) 10 एस.सी.सी. 705*** के अनुसार अभियोजन चलाने की अनुमति की आवश्यकता आज्ञापक प्रावधान है।

## 4. प्रावधान का उद्देश्य

किसी भी प्रावधान का उद्देश्य समझना इस कारण आवश्यक होता है कि उसका अर्थान्वयन करते समय हम प्रावधान जिस उद्देश्य से बनाया गया है वह प्राप्त हो सके ऐसा दृष्टिकोण रखें।

न्यायदृष्टांत ***आर.एस. नायक विरूद्ध ए.आर. अंतुले, ए.आई.आर. 1984 एस.सी. 684*** संविधान पीठ के अनुसार अभियोजन चलाने की स्वीकृति के प्रावधान का उद्देश्य लोक सेवकों को असत्य अभियोजन से बचाना और उनके और न्यायालयों के समय को नष्ट होने से रोकना है क्योंकि ऐसे अभियोजन के कारण वे अपने पदीय कर्तव्य नहीं कर पाएंगे और उनके समय की बर्बादी होगी।

न्यायदृष्टांत ***दिनेश कुमार विरूद्ध चेयरमेन, एयरपोर्ट अथारटी ऑफ इंडिया, (2012) 1 एस.सी.सी. 532*** के अनुसार अभियोजन के लिए स्वीकृति एक औपचारिकता नहीं है बल्कि यह एक विधिवत और अतिपवित्र कार्य है जो शासकीय सेवकों के विरूद्ध असत्य और त्रासदायक अभियोजन से उनके संरक्षण के लिए है।

न्यायदृष्टांत ***चितरंजन दास विरूद्ध स्टेट ऑफ उड़ीसा, ए.आई.आर. 2011 एस.सी 2893*** के अनुसार अभियोजन के लिए पूर्व स्वीकृति की आवश्यकता निर्दोष लोक सेवकों को असत्य और त्रासदायक अभियोजन से संरक्षित करने के लिए है। उन्हें उनके पदीय कर्तव्य को बिना किसी भय और पक्षपात के निर्वाहन करने की स्वतंत्रता देने के लिए है ताकि वे अनैतिक तत्वों के दबाव में आये बिना अपने पदीय कर्तव्यों का निर्वाहन कर सकें। इस संबंध में ***सुब्रहमण्यम स्वामी विरूद्ध मनमोहन सिंह, ए.आई.आर. 2012 एस.सी. 1185*** भी अवलोकनीय है जिसमें यही विधि प्रतिपादित की गई है।

न्यायदृष्टांत ***मनसुखलाल विट्ठल दास चौहान विरूद्ध स्टेट ऑफ गुजरात, (1997) 7 एस.सी.सी. 622*** के अनुसार अभियोजन के लिए स्वीकृति निर्दोष लोक सेवक के लिए सुरक्षा है लेकिन दोषी लोक सेवक के लिए ढाल या बचाव नहीं है।

न्यायदृष्टांत ***मन्जूर अली खान विरूद्ध यूनियम ऑफ इंडिया, ए.आई.आर. 2014 एस.सी. 3194*** के अनुसार लोक सेवक को विद्वेष पूर्ण अभियोजन से बचाना और आम जीवन में भ्रष्टलोक सेवकों को अभियोजित करके ईमानदारी कायम रखना इन दोनों के बीच एक बेहतर संतुलन बनाना चाहिए।

इस प्रकार प्रावधान का उद्देश्य यह है कि असत्य और त्रासदायक अभियोजन से लोक सेवक की सुरक्षा की जावे ताकि वे अपने पदीय कर्तव्य बिना किसी भय, पक्षपात के और अनैतिक तत्वों के दबाव में आये बिना कर सकें लेकिन प्रावधान का उद्देश्य दोषी लोक सेवक के लिए बचाव का कार्य करना नहीं है। लोक सेवक की असत्य

अभियोजन से सुरक्षा और आम जीवन में ईमानदारी बनाये रखना और भ्रष्ट लोक सेवकों को अभियोजित करना इसके बीच एक संतुलन बनाना चाहिए।

## 5. प्रारूप

न्यायदृष्टांत ***विश्वभूषण नायक विरूद्ध स्टेट ऑफ उड़ीसा, ए.आई.आर. 1954 एस.सी. 359*** तीन न्यायमूर्तिगण की पीठ के अनुसार अभियोजन की स्वीकृति का कोई विर्निदिष्ट प्रारूप नहीं है।

## 6. धारा 156 (3) दं.प्र.सं. के समय या प्रसंज्ञान के पूर्व की स्थिति

न्यायदृष्टांत ***अनिल कुमार विरूद्ध एम.के. अयप्पा, (2013) 10 एस.सी.सी. 705*** के अनुसार मजिस्ट्रेट किसी परिवाद को 156 (3) दण्ड प्रक्रिया संहिता के तहत अनुसंधान के लिए भेजने का आदेश तब तक नहीं कर सकता जब तक धारा 19 (1) भ्रष्टाचार निवारण अधिनियम के तहत अभियोजन चलाने की स्वीकृति प्राप्त नहीं की गयी हो अर्थात् प्रसंज्ञान पूर्व की स्टेज पर भी अभियोजन चलाने की अनुमति आवश्यक होती है।

न्यायदृष्टांत ***स्टेट ऑफ यूपी. विरूद्ध पारस नाथ सिंह, ए.आई.आर. 2009 एस.सी. (सप्लीमेंन्ट) 1615*** तीन न्यायमूर्तिगण की पीठ के अनुसार किसी भी लोक सेवक के विरूद्ध परिवाद प्रस्तुत होने पर प्रसंज्ञान लेने के पूर्व अभियोजन चलाने की स्वीकृति आवश्यक होती है न्यायदृष्टांत सुब्रहमण्यम स्वामी विरूद्ध मनमोहन सिंह में भी यह प्रतिपादित किया गया है कि अभियोजन चलाने की अनुमति न केवल प्रसंज्ञान लेने के समय बल्कि उसके पूर्व भी आवश्यक होती है।

## 7. प्रमाणित करने की विधि

न्यायदृष्टांत ***स्टेट विरूद्ध के. नरसिंहाचारी, ए.आई.आर. 2006 एस.सी. 628*** के अनुसार अभियोजन चलाने की अनुमति एक लोक दस्तावेज है और इसे धारा 76 से 78 भारतीय साक्ष्य अधिनियम, 1872 में बतलाये गये तरीके से प्रमाणित किया जा सकता है। न्यायदृष्टांत शिवराजसिंह यादव विरूद्ध स्टेट ऑफ एम.पी., 2010 (4) एम.पी.जे.आर. 49 डी.बी. में भी यही विधि प्रतिपादित की गई है।

न्यायदृष्टांत ***मोहम्मद इकबाल एहमद विरूद्ध स्टेट ऑफ ए.पी., ए.आई.आर. 1979 एस.सी. 677*** के अनुसार मूल अभियोजन स्वीकृति प्रस्तुत की जा सकती है जिसमें अपराध को गठित करने वाले सभी तत्व लिखे होते हैं सक्षम प्राधिकारी के संतोष के आधार लिखे होते हैं या ऐसी साक्ष्य पेश की जा सकती है जिससे यह स्पष्ट हो सके कि सक्षम प्राधिकारी के समक्ष कौन से तथ्य रखे गये थे जिन के आधार पर उन्होंने उनका संतोष होना निर्धारित किया। इस प्रकार उक्त दो तरीकों से अभियोजन चलाने की अनुमति प्रमाणित की जा सकती है।

न्यायदृष्टांत ***सी.एस. कृष्णामूर्ति विरूद्ध स्टेट ऑफ कर्नाटका, (2005) 4 एस.सी.सी. 81*** के अनुसार तथ्य जो अपराध गठित करते हैं वे अनुमति आदेश में रेफर किये गये अभियोजन के लिए यह प्रमाणित करना आवश्यक नहीं है कि सारी सामग्री अनुमति देने वाले प्राधिकारी के समक्ष रखी गयी थी। इस मामले में न्यायदृष्टांत ***गोकुल चंद्र द्वारकादास मुरारका विरूद्ध र, ए. आई. आर. 1948 पी.सी. 82*** पर विश्वास किया गया जिसके अनुसार यदि अनुमति आदेश से ऐसा प्रतीत नहीं होता कि

सामग्री अनुमति देने वाले प्राधिकारी के समक्ष रखी गयी थी तब अभियोजन को यह प्रमाणित करना होता है कि समस्त सामग्री अनुमति देने वाले प्राधिकारी के समक्ष रखी गयी थी जहाँ अनुमति आदेश स्वतः ही स्पष्ट हो वहाँ ऐसे प्रमाण की आवश्यकता नहीं होती है।

## 8. सक्षम प्राधिकारी को साक्ष्य में पेश न करना

कभी–कभी अभियोजन सक्षम प्राधिकारी को साक्ष्य में पेश नहीं करता है और उनके स्थान पर कोई अन्य कर्मचारी साक्ष्य में पेश किया जाता है न्यायदृष्टांत ***स्टेट ऑफ एम.पी. विरूद्ध जिया लाल, ए.आई.आर. 2010 एस.सी. 1451*** के अनुसार अभियोजन चलाने की अनुमति का आदेश स्पष्ट रूप से जिला मजिस्ट्रेट ने उनके पदीय कर्तव्य के निर्वाहन के दौरान जारी किया था यह उपधारणा की जायेगी कि यह कार्य सदभाविक तरीके से किया गया है जिला मजिस्ट्रेट को गवाह के रूप में परीक्षित करवाया जाना आवश्यक नहीं है।

न्यायदृष्टांत ***स्टेट ऑफ एम.पी. विरूद्ध हरिशंकर भगवान प्रसाद त्रिपाठी, (2010) 8 एस.सी.सी. 655*** के अनुसार अभियोजन चलाने की अनुमति देते समय संबंधित अधिकारी के लिए यह आवश्यक नहीं है कि वह आदेश में यह दर्शावें कि उसने व्यक्तिगत रूप से संबंधित पत्रावली की छानबीन की है और यह संतोष किया है कि अनुमति देना चाहिए।

उक्त न्यायदृष्टांत ***सुब्रमण्यम स्वामी*** के अनुसार सक्षम प्राधिकारी को केवल यह विचार करना चाहिए कि परिवादी या अनुसंधान अधिकारी ने जो सामग्री प्रस्तुत की है उसके आधार पर प्रथम दृष्टया अपराध किया जाना प्रकट होता है या नहीं उसके लिए यह आवश्यक नहीं है कि वह एक विस्तृत जांच यह तय करने के लिए आयोजित करें कि लोक सेवक के विरूद्ध जो अभिकथन किये गये हैं वे सही हैं या नहीं। प्रथम दृष्टया अपराध किया जाना प्रतीत होता है या नहीं केवल यह देखना होता है और उसी के आधार पर या तो अनुमति दी जाती है या अनुमति देने से इंकार किया जाता है। सक्षम प्राधिकारी का कर्तव्य है कि वह अपने मस्तिष्क का प्रयोग करे और त्वरित गति से निर्णय लें।

## 9. आई.जी. के प्रतिवेदन के आधार पर अनुमति

न्यायदृष्टांत ***अमीर जान स्टेट ऑफ कर्नाटका विरूद्ध अमीर जान, (2007) 11 एस.सी.सी. 273*** वाले मामले में आई.जी. के प्रतिवेदन के आधार पर अभियोजन चलाने की अनुमति दे दी गयी थी जिसे उचित नहीं माना गया।

## 10. सक्षम प्राधिकारी कौन है?

वह प्राधिकारी जो लोक सेवक को उसके कार्यालय से अपराध कारित किये जाते समय हटाने के लिए सक्षम था उसे अभियोजन चलाने की अनुमति देने के लिए सक्षम प्राधिकारी माना जाता है इस संबंध में न्यायदृष्टांत ***स्टेट ऑफ एम.पी. विरूद्ध प्रदीप कुमार गुप्ता, ए.आई.आर. 2011 एस.सी. 2334*** अवलोकनीय है।

*स्टेट ऑफ उत्तराखंड विरूद्ध योगेन्द्र नाथ अरोरा, (2013) 2 क्राइम्स 79 (एस.सी.)* के अनुसार शासकीय सेवक को स्वदेश लौटाने की शक्ति उसे पद से हटाने की शक्ति के समान नहीं है पद से हटाना अर्थात नियोजन समाप्त करना होता है जो स्वदेश लौटाने की शक्ति से भिन्न होता है।

न्यायदृष्टांत *पी.एल. टटवाल विरूद्ध स्टेट ऑफ एम.पी., ए.आई.आर. 2014 एस.सी. 2369* के अनुसार धारा 58 म.प्र. नगर पालिक निगम अधिनियम, 1956 के तहत स्थाई समिति नगर पालिका में 400 रूपये से अधिक वेतन पाने वाले किसी भी पद के लिए नियुक्ति देने के लिए सक्षम प्राधिकारी होती है अतः स्थाई समिति अभियोजन चलाने की स्वीकृति देने के लिए सक्षम प्राधिकारी है यह तथ्य असंगत है कि अभियुक्त की नियुक्ति उस समय हुई जब नगर पालिक निगम पर प्रशासक कार्यरत था क्योंकि वह प्राधिकारी जो लोक सेवक को पद से हटाने में सक्षम हो वही अभियोजन स्वीकृति देने के लिए सक्षम प्राधिकारी होता है।

## 11. अभियुक्त को सुनवाई का अवसर

न्यायदृष्टांत उक्त ***सुब्रहमण्यम स्वामी*** के अनुसार अभियोजन के लिए पूर्व स्वीकृति देना या न देना एक अर्ध न्यायिक कार्य है जिस व्यक्ति के विरूद्ध अभियोजन चलाने की स्वीकृति मांगी जा रही है उसको सुनवाई का अवसर देना आवश्यक नहीं होता है इस संबंध में न्यायदृष्टांत ए.पी. सी.बी.आई. विरूद्ध दीपक चौधरी, ए.आई.आर. 1996 एस. सी. 186 अवलोकनीय है।

## 12. न्यायालय के निर्देश पर दी गयी स्वीकृति

न्यायदृष्टांत उक्त *मंसुखलाल विट्ठल दास विरूद्ध स्टेट ऑफ गुजरात, ए.आई.आर. 1997 एस.सी. 3400* के अनुसार यदि न्यायालय के निर्देश पर अभियोजन चलाने की स्वीकृति दी जाती है तो ऐसी स्वीकृति को वैध नहीं माना गया है।

न्यायदृष्टांत *अरूण कुमार अग्रवाल विरूद्ध स्टेट ऑफ एम.पी., ए.आई.आर. 2011 एस.सी. 3056* के अनुसार भी अभियोजन चलाने की स्वीकृति देने के लिए कोई निर्देश न्यायालय को नहीं देने चाहिए।

## 13. धारा 19 अधिनियम व 197 दं.प्र.सं. में अन्तर

धारा 197 दण्ड प्रक्रिया संहिता के तहत अभियोजन चलाने की स्वीकृति वहाँ आवश्यक होती है जहाँ लोकसेवक ने उसके पदीय कर्त्तव्यों के निर्वहन के दौरान अपराध किया हो लेकिन धारा 19 भ्रष्टाचार निवारण अधिनियम, 1988 के तहत यह आवश्यक नहीं है कि कथित अपराध पदीय कर्त्तव्यों के निर्वहन के दौरान किया गया है और यही दोनों प्रावधानों में एक मूलभूत अन्तर है जैसा की *न्यायदृष्टांत रोमेश लाल जैन विरूद्ध नागिन्दर सिंह राणा, (2006) 1 एस.सी.सी. 294, लालू प्रसाद यादव विरूद्ध स्टेट ऑफ बिहार, (2007) 1 एस.सी.सी. 49 उक्त सुब्रहमण्यम स्वामी विरूद्ध मनमोहन सिंह* और *पॉल वर्गीस विरूद्ध स्टेट ऑफ केरला, ए.आई.आर. 2007 एस.सी. 2618* में प्रतिपादित किया गया है।

## 14. धारा 319 द.पं.सं. का प्रयोग व अभियोजन स्वीकृति की आवश्यकता

न्यायदृष्टांत ***दिलावर सिंह विरूद्ध परविंदर सिंह, ए.आई.आर. 2006 एस.सी. 389*** के अनुसार धारा 19 अधिनियम, 1988 का धारा 319 व 190 दं.प्र.सं. के सामान्य प्रावधानों पर अधिभावी प्रभाव या ओवर राईडिंग इफेक्ट होता है और कोई भी विशेष न्यायाधीश ऐसे व्यक्ति को धारा 319 दं.प्र.सं. के तहत समन नहीं कर सकता जिसके विरूद्ध अभियोजन चलाने की स्वीकृति नहीं है इस बारे में न्यायदृष्टांत ***पालवर्गीस विरूद्ध स्टेट ऑफ केरला, ए.आई.आर. 2007 एस.सी. 2618*** अवलोकनीय है।

## 15. अनुमति में प्रत्येक अपराध का विवरण दिया जाना

अभियोजन चलाने की अनुमति देने वाले प्राधिकारी के लिए यह आवश्यक नहीं है कि वह आदेश में लोक सेवक के विरूद्ध प्रत्येक अपराध का पृथक से विवरण दे बल्कि यह कार्य न्यायालय को आरोप विरचित करते समय करना होता है। इस संबंध में न्यायदृष्टांत ***प्रकाश सिंह बादल विरूद्ध स्टेट ऑफ पंजाब, (2007) 1 एस.सी.सी. 1*** अवलोकनीय है।

## 16. विशेषज्ञ का प्रतिवेदन आना

अनुमति देने वाले प्राधिकारी के लिए यह आवश्यक नहीं है कि वह विशेषज्ञ के प्रतिवेदन के आने का इंतजार करे प्राधिकारी के समक्ष टेपरिर्काडर पेश किया जाना भी आवश्यक नहीं होता है। इस संबंध में न्यायदृष्टांत ***स्टेट विरूद्ध आर.सी.आनन्द, ए.आई.आर. 2004 एस.सी. 3693*** अवलोकनीय है।

## 17. खात्मा और अभियोजन चलाने की स्वीकृति

खात्मा के लिए अभियोजन चलाने की स्वीकृति आवश्यक नहीं होती है क्योंकि जब लोक सेवक के विरूद्ध प्रथम दृष्टया कार्यवाही के आधार ही नहीं पाये जाते हैं तब खात्मा प्रस्तुत किया जाता है इसलिए खात्मा में अभियोजन चलाने की स्वीकृति आवश्यक नहीं होती है क्योंकि स्वीकृति का प्रावधान लोकसेवक के संरक्षण के लिए बनाया गया है। इस संबंध में न्यायदृष्टांत ***स्टेट द्वारा सी.बी.आई. विरूद्ध राजकुमार जैन, ए.आई.आर. 1998 एस.सी. 2985*** अवलोकनीय है।

## 18. क्या आदेश का पुनरावलोकन संभव है?

न्यायदृष्टांत ***स्टेट ऑफ हिमाचल प्रदेश विरूद्ध निशांत सरीम, ए.आई.आर. 2011 एस.सी. 404*** के अनुसार यदि अभियोजन चलाने की अनुमति देने से इंकार कर दिया गया हो उसके बाद अनुसंधान अधिकारी ने कुछ और सामग्री इकट्ठी की उसके आधार पर पुनः अभियोजन चलाने की स्वीकृति मांगी हो तब पूर्व के आदेश का पुनरावलोकन किया जा सकता है और नई सामग्री के आधार पर अभियोजन चलाने की अनुमति दी जा सकती है लेकिन उसी सामग्री पर आदेश का पुनरावलोकन अनुमत नहीं है इस संबंध में न्यायदृष्टांत ***नित्यानन्द जोशी विरूद्ध स्टेट ऑफ एम.पी., 2004 (4) एम.पी.एल.जे. 478*** अवलोकनीय हैं।

## 19. भूतलक्षी अभियोजन स्वीकृति

न्यायदृष्टांत ***स्टेट ऑफ गोवा विरूद्ध बाबू थामस, ए.आई.आर. 2005 एस.सी. 3606*** के अनुसार अभियोजन चलाने की स्वीकृति भूतलक्षी प्रभाव से नहीं दी जा सकती।

## 20. सेवा निवृत्ति के बारे में

यदि संबंधित लोक सेवक सेवा निवृत हो चुका हो या अभियोग पत्र पेश करते समय उस पद पर नहीं रहा हो या सेवा में नहीं रहा हो तब उसके विरूद्ध धारा 19 अधिनियम के तहत अभियोजन चलाने की अनुमति लेना आवश्यक नहीं होता है। इस संबंध में न्याय दृष्टांत ***स्टेट ऑफ केरला विरूद्ध वी. पद्मनाभन अय्यर, (1999) 5 एस. सी.सी. 690, स्टेट ऑफ एच.पी. विरूद्ध एम.पी.गुप्ता, (2004) 2 एस.सी.सी. 349, एन.भारगव पिल्ले विरूद्ध स्टेट ऑफ केरला, ए.आई.आर. 2004 एस.सी. 2317*** और ***बी.एस. गोरैया विरूद्ध यूनियन टेरिटेरि ऑफ चंडीगढ़, (2007) 6 एस.सी.सी. 397*** अवलोकनीय है।

इसी बिन्दु पर म.प्र. उच्च न्यायालय के न्यायदृष्टांत ***भास्कर दत्त मिश्रा विरूद्ध स्टेट ऑफ एम.पी., 1981 (1) एम.पी.डब्लू.एन. 173, यशवन्त कवठेकर विरूद्ध इकानामिक आफिस विग, 1995 जे.एल.जे. 709, बी.पी. सेठ विरूद्ध स्टेट ऑफ एम.पी., (2000) 1 एम.पी.एल.जे. 518, दीनानाथ विमल विरूद्ध स्टेट ऑफ एम.पी., 2004 (2) एम.पी.एल.जे. 278*** और ***जयन्त अवाशिया विरूद्ध स्टेट ऑफ एम.पी., 2008 (3) एम.पी.एल.जे. 521*** अवलोकनीय है।

## 21. स्वीकृति से इनकार के बाद सेवा निवृत्ति

यदि लोक सेवक के सेवा में रहते हुए अभियोजन चलाने की अनुमति मांगी गई हो और अनुमति देने से इनकार कर दिया गया हो तब उसके सेवा निवृत्त हो जाने के बाद भी उसे अभियोजित नहीं किया जा सकता। इस संबंध में न्यायदृष्टांत ***चितरंजनदास विरूद्ध स्टेट ऑफ उड़ीसा, ए.आई.आर. 2011 एस.सी. 293*** अवलोकनीय है।

## 22. सेवा में पुनः प्रवेश का प्रभाव

यदि लोक सेवक पद से हटा दिया गया हो और उसके विरूद्ध अभियोजन पेश होकर प्रसंज्ञान ले लिया गया हो उसके बाद यदि वह सेवा में वापस ले लिया जाता है तब भी इससे कार्यवाही पर कोई प्रभाव नहीं होता है क्योंकि प्रसंज्ञान लेने की तिथि महत्वपूर्ण होती है। इस संबंध में न्यायदृष्टांत ***के.एस. धर्मदत्तन विरूद्ध सेंट्रल गर्वमेंट, ए.आई.आर. 1979*** और ***बी.एस. गौरेया विरूद्ध यू.टी. चंडीगढ़, 2007 (6) एस.सी.सी. 397*** अवलोकनीय है।

## 23. लोक सेवक का कार्यालय बदल जाना

यदि लोक सेवक कथित अपराध करते समय जिस कार्यालय में नियुक्त था उसमें नहीं रहता है और किसी दूसरे कार्यालय में अन्य पद पर चला जाता है तब भी अभियोजन चलाने की अनुमति आवश्यक नहीं रहती है क्योंकि प्रसंज्ञान की तिथि पर वह उस पद पर नहीं रहता है जिसका कि उसने

कथित दुरूपयोग किया था इस संबंध में न्यायदृष्टांत ***अभय सिंह चौटाला विरूद्ध सी.बी.आई., 2011 ए.आई.आर. एस. सी.डब्लू. 3955, आर.एस.नायक विरूद्ध ए.आर. अंतुले, ए.आई.आर. 1984 एस.सी. 684*** और ***सुब्रहमण्यम स्वामी विरूद्ध मनमोहन सिंह*** के न्यायदृष्टांत अवलोकनीय है।

## 24. कार्यालय का बाहुल्य

यदि अभियुक्त एक से अधिक कार्यालय में एक से अधिक पद धारित करता है तब भी उसमें जिस पद का दुरूपयोग किया वहाँ के विभाग प्रमुख की अभियोजन स्वीकृति तात्विक होती है इस संबंध में न्यायदृष्टांत ***अजय आचार्य विरूद्ध स्टेट ब्यूरो ऑफ इन्वेस्टीगेशन इकानामिक आफेन्स, आइ.एल.आर. 2014 एम.पी. 915 एस.सी.*** अवलोकनीय है।

## 25. वैध अनुमति के साथ पश्चात्वर्ती विचारण

न्यायदृष्टांत ***बैजनाथ प्रसाद त्रिपाठी विरूद्ध स्टेट ऑफ भोपाल, ए.आई.आर. 1957 एस.सी. 494*** के अनुसार यदि अभियोजन स्वीकृति विचारण में अवैध पाई जाती है तब वैध स्वीकृति लेकर पुनः विचारण किया जा सकता है और ऐसा विचारण धारा 300 द.पं.सं. से बाधित नहीं होता है इस संबंध में न्यायदृष्टांत ***स्टेट ऑफ कर्नाटका विरूद्ध सी. नागाराजा स्वामी, ए.आई.आर. 2005 एस.सी. 4308, अजय राय विरूद्ध स्टेट ऑफ एम.पी., आई.एल.आर. 2007 एम.पी. 1821, शिवकुमार पाल विरूद्ध स्टेट ऑफ एम.पी., 2002 (3) एम.पी.एल.जे. 485*** और ***यशवन्त कुमार मेहता विरूद्ध स्टेट ऑफ एम.पी., 2003 (1) एम.पी.डब्लू.एन. 94*** भी अवलोकनीय है।

उक्त सी. नागाराजा स्वामी वाले मामले में यह भी कहा गया है यदि अभियोजन चलाने की अनुमति वैध नहीं है तो न्यायालय दोष सिद्धि या दोष मुक्ति का निर्णय लिखने के लिए बाध्य नहीं होता है। और यदि ऐसा निर्णय लेखबद्ध भी किया है तो वह बिना क्षेत्राधिकार के माना जाता है।

## 26. आदेश का प्रारूप देना

न्यायदृष्टांत ***स्टेट ऑफ तमिलनाडू विरूद्ध दामोदरम, ए.आई.आर. 1992 एस.सी. 563*** के अनुसार सतर्कता संचालक ने अनुमति आदेश का प्रारूप लगा दिया था ताकि राजस्व उपखंड अधिकारी उसके अनुसार स्वीकृति आदेश बना सके मात्र इस कारण अनुमति आदेश अवैध नहीं हो जाता क्योंकि अनुमति सभी सुसंगत सामग्री के आधार पर दी गयी थी इस संबंध में न्यायदृष्टांत ***इंद्र भूषण चटर्जी विरूद्ध स्टेट ऑफ बेस्ट बंगाल, ए.आई.आर. 1958 एस.सी. 148*** और ***यूनियम ऑफ इंडिया विरूद्ध जयन्त कुमार गांगूली, आई.एल.आर. 2011 एम.पी. 1765*** भी अवलोकनीय हैं।

## 27. धारा 19 का आवेदन पेश होने पर प्रक्रिया

प्रायः इन मामलों में प्रतिरक्षा पक्ष की ओर से अभियोजन चलाने की स्वीकृति को चुनौती देते हुए एक आवेदन कार्यवाही के प्रारंभ में ही प्रस्तुत कर दिया जाता है ऐसा आवेदन पेश होने पर अभियोजन का जवाब लेकर उभय पक्ष को सुनकर आवेदन का निराकरण किया जा सकता है और ऐसे आवेदन के निराकारण के समय यह तथ्य ध्यान में रखना चाहिए कि यदि अभियोजन चलाने की अनुमति का

अभिलेख पर बिल्कुल अभाव है तब प्रारंभिक अवस्था में भी ऐसा आवेदन चलने योग्य होता है लेकिन जहाँ अभियोजन चलाने की अनुमति अभिलेख पर है और उसकी वैधता के बारे में कोई प्रश्न हो तब ऐसा प्रश्न विचारण के दौरान साक्ष्य लेकर ही तय हो सकता है और तब ऐसा आवेदन चलने योग्य नहीं होता है इस संबंध में न्यायदृष्टांत ***सी.बी.आई. विरूद्ध अशोक कुमार अग्रवाल, ए.आई.आर. 2014 एस.सी. 827, दिनेश कुमार विरूद्ध चेयमेन एयरपोर्ट अथारटी ऑफ इंडिया, (2012) 1 एस.सी.सी. 532, स्टेट ऑफ बिहार विरूद्ध राजमंगल राम, ए.आई.आर. 2014 एस.सी. 1674*** और ***प्रकाश सिंह बादल विरूद्ध स्टेट ऑफ पंजाब, (2007) 1 एस.सी.सी. 1*** अवलोकनीय है।

न्यायदृष्टांत ***नाजप्पा विरूद्ध स्टेट ऑफ कर्नाटका, 2015 ए.आई.आर. एस.सी.डब्लू. 4432*** के अनुसार यदि विचारण न्यायालय यह पाती है कि अनुमति का वैध आदेश अभिलेख पर नहीं है तो वह कार्यवाही की किसी भी प्रक्रम पर यह आदेश कर सकती है कि अभियोजन अनुमति आदेश के अभाव में चलने योग्य नहीं है उक्त न्यायदृष्टांत ***सी. नागाराजा स्वामी*** के अनुसार भी यदि वैध अनुमति आदेश अभिलेख पर नहीं है तो न्यायालय दोष सिद्ध या दोष मुक्ति का निर्णय लिखने का बाध्य नहीं होता है और ऐसा निर्णय लिखा भी गया है तो वह क्षेत्राधिकार के बाहर होता है।

## 28. अभियोजन स्वीकृति का बाद में पेश किया जाना

यदि अभियोजन चलाने की अनुमति अभियोग पत्र के साथ पेश नहीं की गयी है लेकिन वह अभियोजन संस्थित करने के पूर्व से अस्तित्व में थी तब अभियोजन प्रमाण समाप्त होने से पूर्व पेश की जा सकती है। इस संबंध में न्यायदृष्टांत लक्ष्मीनारायण विरूद्ध स्टेट ऑफ एम.पी., 1987 (1) एम.पी. डब्लू. एन. 64 अवलोकनीय है।

## 29. अभियोजन चलाने की अनुमति के सिद्धांत

न्यायदृष्टांत ***स्टेट ऑफ महाराष्ट्र विरूद्ध महेश जी जैन, (2013) 8 एस.सी.सी. 119*** में अभियोजन चलाने की अनुमति के बारे में सिद्धांत बतलाए गए है जो इस प्रकार हैः–

1. अभियोजन को यह प्रमाणित करना आवश्यक होता है कि अनुमति देने वाले प्राधिकारी ने इस बात से संतुष्ट होने के बाद की अनुमति देने का प्रकरण बनता है, एक वैध अनुमति दी है।
2. अनुमति के आदेश से यह प्रत्यक्ष रूप से दिखना चाहिए कि अनुमति देने वाले प्राधिकारी ने उसके समक्ष रखी गयी सामग्री का अवलोकन किया है और परिस्थितियों पर विचार करके अभियोजन चलाने की अनुमति दी है।
3. अभियोजन ऐसा प्रमाण प्रस्तुत कर सकता है कि अनुमति देने वाले प्राधिकारी के समक्ष सामग्री रखी गयी थी और वे उसका अवलोकन करके संतुष्ट हुए थे।
4. अभियोजन चलाने की अनुमति देना एक प्रशासकीय कार्य है अनुमति देने वाले प्राधिकारी को प्रथम दृष्टया इस बात से संतुष्ट होना चाहिए कि सुसंगत तथ्यों से अपराध गठित होता है।

5. न्यायालय यह नहीं देख सकती कि अनुमति देने वाले प्राधिकारी के समक्ष जो सामग्री रखी गयी थी वह पर्याप्त थी क्योंकि विचारण न्यायालय उस प्राधिकारी के अपील न्यायालय के समान नहीं होता है।

6. अनुमति देने वाले प्राधिकारी ने उसके समक्ष रखी गयी सभी सामग्री का अवलोकन किया हो और उनमें से कुछ प्रमाणित नहीं की जाती है तो इससे अनुमति दूषित नहीं होती है।

7. अभियोजन चलाने की अनुमति का होना एक पूर्व शर्त है और यह लोकसेवक को असत्य और तंग करने वाले मामलों से बचाने के लिए होती है इसकी वैधता जांचने के अति तकनीकी दृष्टिकोण अपनाना उचित नहीं हाता है।

## 30. न्यायदृष्टांत सुब्रहमण्यम स्वामी के निर्देश

उक्त न्यायदृष्टांत ***सुब्रहमण्यम स्वामी*** में अभियोजन चलाने की अनुमति के बारे में निर्णय सक्षम प्राधिकारी द्वारा तीन माह के भीतर लेने के निर्देश दिये गये थे और यदि प्राधिकारी अटार्नी जनरल या सोलीसीटर जनरल या एडवोकेट जनरल से सलाह लेना चाहे तो एक माह का अतिरिक्त समय बड़ाने के निर्देश थे और यदि इस समय में भी अनुमति नहीं दी जाती है तब डीम्ड अनुमति के आधार पर परिवाद या अभियोग पत्र पेश किया जा सकेगा ऐसी व्यवस्था थी लेकिन अब तक इन निर्देशों के आधार पर कोई कार्यवाही नहीं हुई है।

लेकिन म.प्र. राज्य के सामान्य प्रशासन विभाग के प्रमुख सचिव ने दिनांक 05.09.2014 को अभियोजन स्वीकृति जारी करने की प्रक्रिया के युक्ति युक्तकरण के लिए पत्र क्रमांक एफ 15–11/2014/1 – 10 दिनांक 05.09.2014 को जारी किया है जिसके अनुसार

1. अन्वेषण अभिकरण/व्यक्तिगत परिवादी अभिलेख सहित अभियोजन की स्वीकृति का आवेदन पत्र विधि और विधायी कार्य विभाग को प्रेषित करेगा।

2. विधि और विधायी कार्य विभाग आवेदन पत्र को मूल अभिलेख सहित एक सप्ताह के भीतर प्रशासकीय विभाग को प्रेषित करेगा।

3. प्रशासकीय विभाग प्रकरण का परीक्षण करने पर यह पाता है कि प्रकरण अभियोजन की स्वीकृति के योग्य है तो वह प्रकरण प्राप्त होने के 45 दिन के भीतर अभियोजन की स्वीकृति जारी करके उसे अन्वेषण अभिकरण/व्यक्तिगत परिवादी को प्रेषित करेगा तथा स्वीकृति आदेश कि एक प्रति विधि और विधायी कार्यविभाग को भी अग्रेषित करेगा।

4. यदि प्रशासकीय विभाग प्रकरण को अभियोजन स्वीकृति के योग्य नहीं पाता है तो वह उसके सकारण निष्कर्ष सहित प्रकरण 30 दिन के भीतर विधिक अभिमत हेतु विधि और विधायी कार्य विभाग को प्रेषित करेगा जो प्रकरण प्राप्ती के 15 दिन के भीतर प्रशासकीय विभाग को अपने लिखित सकारण अभिमत से अवगत करायेगा।

5. यदि विधि और विधायी कार्य विभाग का अभिमत यह है कि अभियोजन अस्वीकृति से वह सहमत है तो प्रशासकीय विभाग अभियोजन स्वीकृति के आवेदन पत्र को अस्वीकार कर अन्वेषण अधिकरण/व्यक्तिगत परिवादी को सूचित करेगा और आदेश की एक प्रति विधि और विधायी कार्य विभाग को प्रेषित करेगा।

6. यदि विधि विभाग की दृष्टि में अभियोजन स्वीकृति दी जानी चाहिए और पुनः विचार करने पर प्रशासकीय विभाग विधि विभाग की राय से सहमत होता है तो फिर प्रशासकीय विभाग 15 दिन के अन्दर अभियोजन स्वीकृति जारी करके आदेश की प्रति विधि विभाग को पृष्ठांकित करेगा।

7. पुनः विचार के बाद भी प्रशासकीय विभाग के निष्कर्ष और विधि और विधायी कार्य विभाग के अभिमत भिन्न होने की दशा में प्रशासकीय विभाग प्रकरण की संक्षेपिका 20 प्रतियों के साथ 15 दिन के भीतर सामान्य प्रशासन के विभाग के माध्यम से मंत्री परिषद को विचारार्थ भेजेगा।

प्रशासकीय विभाग, मंत्री परिषद समिति के निर्णय के अनुसार आदेश जारी करने की कार्यवाही करेगा।

8. अभियोजन स्वीकृति हेतु प्राप्त आवेदन पत्र और उनके निराकरण का संपूर्ण विवरण विधि और विधायी कार्य विभाग संधारित करेगा उक्त सभी कार्यवाहियाँ अभियोजन स्वीकृति हेतु आवेदन प्राप्त होने की तिथि से 3 माह की अवधि में अनिवार्य रूप से पूर्ण होनी चाहिए।

9. यदि इससे अवधि लगने की स्थिति बनती है तब प्रशासकीय विभाग कारण सहित प्रकरण समनवय में प्रस्तुत कर अनुमोदन प्राप्त करके एक माह के अतिरिक्त समय में प्रकरण का निराकरण सुनिश्चित करेंगे।

10. जो प्रकरण अभियोजन स्वीकृति हेतु विधि और विधायी कार्य विभाग के पास लंबित है उन्हें उक्त नीति के अंतर्गत निराकरण हेतु संबंधित प्रशासनिक विभाग को भेजा जायेगा।

इस प्रकार अभियोजन स्वीकृति के बारे में कोई भी प्रश्न उत्पन्न होने पर उक्त वैधानिक स्थितियों को ध्यान में रखना चाहिए और उसके अनुसार आपत्ति का निराकरण करना चाहिए। विशेष न्यायाधीश महोदय को यदि अनुमति में कोई भी तात्विक कमी प्रकट होती है तो वे किसी भी प्रक्रम पर अभियुक्त को उन्मोचित कर सकते है और कार्यवाही समाप्त कर सकते है जैसा कि नवीनतम न्यायदृष्टांत उक्त ***नाजप्पा विरूद्ध स्टेट ऑफ कर्नाटका, 2015 एआईआर एससीडब्ल्यू 4432*** में प्रतिपादित किया गया है।

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# PART - II

## NOTES ON IMPORTANT JUDGMENTS

**277. ADVOCATES ACT, 1961 – Sections 35 and 36**

**BAR COUNCIL OF INDIA (CONDUCT AND DISCIPLINE) RULES – Rules 4 and 5**

**Strike or boycott or token strike by the lawyers – Held, violation of law laid down by the Apex Court in *Ex-Capt. Harish Uppal v. Union of India and others, (2003) 2 SCC 45 (para 35)*.**

अभिभाषक अधिनियम, 1961 – धाराएं 35 और 36

भारतीय अधिवक्ता परिषद (आचरण और अनुशासन) नियम – नियम 4 और 5

अधिवक्ताओं द्वारा हड़ताल या बहिष्कार या सांकेतिक हड़ताल – अभिनिर्धारित किया गया कि सर्वोच्च न्यायलाय द्वारा *एक्स-कैप्टन हरिश उप्पल विरूद्ध युनियन ऑफ इंडिया एण्ड अन्य, (2003) 2 एससीसी 45* (पैरा 35) में प्रतिपादित विधि का उल्लंघन है।

**Anand Trust v. Bar Council of India and another**

**Order dated 27.04.2015 passed by the High Court of M.P. in W.P. No. 3809 of 2015, reported in 2015 (3) MPLJ 677 (DB)**

**Extracts from the Order:**

We have considered the principles laid down by the Supreme Court in the case of ***Ex-Capt. Harish Uppal v. Union of India and others, (2003) 2 SCC 45.*** For the sake of convenience, the same is reproduced herein under :-

> "In conclusion it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of Court premises banners and/or placards, wearing black or white or any colour arm bands, peaceful protest marches outside and away from Court premises, going on dharnas or relay fasts etc. It is held that lawyers holding Vakalats on behalf of their clients cannot refuse to attend Courts in pursuance of a call for strike or boycott. All lawyers must boldly refuse to abide by any call for strike or boycott. No lawyer can be visited with any adverse consequences by the Association or the Council and no threat or coercion of any nature including that of expulsion can be held out. It is held that no Bar Councilor or Bar Association can permit calling of a meeting for purposes of considering a call for strike or boycott and requisition, if any, for such meeting must be

ignored. It is held that only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, Courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day. It is being clarified that it will be for the Court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore in such cases the President of the Bar must first consult the Chief Justice or the District Judge before Advocate decide to absent themselves from Court. The decision of the Chief Justice or the District Judge would be final and have to be abided by the Bar. It is held that Courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all Courts to go on with matters on their boards even in the absence of lawyers. In other words, Courts must not be privy to strikes or calls for boycotts. It is held that if a lawyer, holding a Vakalat of a client, abstains from attending Court due to a strike call, he shall be personally liable to pay costs which shall be in addition to damages which he might have to pay his client for loss suffered by him.

It is now hoped that with the above clarifications, there will be no strikes and/or calls for boycott. It is hoped that better sense will prevail and self restraint will be exercised. The Petitions stand disposed off accordingly. "

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**278. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 34 and 37**

**Award, setting aside of – Unless there is perversity, it is not open to the Court to reappraise material on record and substitute its own view in place of Arbitrator's view merely because two views are possible.**

माध्यस्थ और सुलह अधिनियम, 1996 – धाराएं 34 और 37

अवार्ड का अपास्त किया जाना – जब तक कि विपर्यस्तता न हो, न्यायालय के लिए यह उचित नहीं हैं कि अभिलेख पर उपलब्ध सामाग्री का पुनः मुल्यांकन करे और क्योंकि दो मत संभव है माध्यस्थ के मत के स्थान पर अपना मत प्रतिस्थापित करें।

**Navodaya Mass Entertainment Limited v. J. M. Combines**

**Judgment dated 26.08.2014 by the Supreme Court in Civil Appeal No. 7128 of 2011, reported in (2015) 5 SCC 698**

**Extract from the Judgment:**

In our opinion, the scope of interference of the Court is very limited. Court would not be justified in reappraising the material on record and substituting its

own view in place of the Arbitrator's view. Where there is an error apparent on the face of the record or the Arbitrator has not followed the statutory legal position, then and then only it would be justified in interfering with the award published by the Arbitrator. Once the Arbitrator has applied his mind to the matter before him, the Court cannot reappraise the matter as if it were an appeal and even if two views are possible, the view taken by the Arbitrator would prevail. (See: ***Bharat Coking Coal Ltd. v. L.K. Ahuja, (2004) 5 SCC 109; Ravindra & Associates v. Union of India, (2010) 1 SCC 80; Madnani Construction Corpn. (P) Ltd. v. Union of India, (2010) 1 SCC 549; Associated Construction v. Pawanhans Helicopters Ltd., (2008) 16 SCC 128*** and ***Satna Stone & Lime Co. Ltd. v. Union of India, (2008) 14 SCC 785***.)

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***279. CIVIL PROCEDURE CODE, 1908 – Section 11 and Order 12 Rule 6**

**Judgment on admission – Can an issue decided in previous suit be made the basis for judgment on admission? Held, Yes, because said issue is not required to be decided afresh in the light of section 11 of the CPC – Plaintiff filed present suit for possession and recovery of Rs 5,55,000/- and future damages – The question of ownership has already been decided in favour of plaintiff in the earlier suit – He filed an application under Order 12 Rule 6 of CPC – Same has been rejected by the trial court – High Court reversed the order and passed a decree for possession in favour of plaintiff – Apex Court upheld the decree.**

सिविल प्रक्रिया संहिता 1908 – धारा 11 और आदेश 12 नियम 6

स्वीकारोक्ति पर निर्णय – क्या एक विवाद्यक जो पूर्व वाद में निराकृत हो गया हो उसे स्वीकारोक्ति पर निर्णय के लिए आधार बनाया जा सकता है? अभिनिर्धारित किया गया, हाँ, क्योंकि उस विवाद्यक का पुनः निराकरण धारा 11 सी.पी.सी. के प्रकाश में आवश्यक नहीं है – वादी ने वर्तमान वाद आधिपत्य और 5,55,000/– की वसूली तथा भविष्य की क्षति के लिए पेश किया – स्वामित्व का बिन्दु पूर्व वाद में वादी के पक्ष में निराकृत किया जा चुका था – उसने आदेश 12 नियम 6 सी.पी.सी. का एक आवेदन प्रस्तुत किया – विचारण न्यायालय ने उसे निरस्त कर दिया – उच्च न्यायालय ने उक्त आदेश को उलट दिया व वादी के पक्ष में आधिपत्य के लिए आज्ञप्ति पारित की – सर्वोच्च न्यायालय ने उस आज्ञप्ति को कायम रखा।

**Raveesh Chand Jain v. Raj Rani Jain**

**Judgment dated 12.02.2015 passed by the Supreme Court in Civil Appeal No. 1822 of 2015, reported in (2015) 8 SCC 428**

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***280. CIVIL PROCEDURE CODE, 1908 – Section 151**

**SPECIFIC RELIEF ACT, 1963 – Section 6**

**During pendency of ejectment suit, defendants have been dispossessed from a portion of property – They filed application for restoration of possession after seven months – Same was rejected by the trial court as well as by the High Court on the ground of delay – Apex Court held that delay in filing of application for restoration of possession cannot be the reason for declining relief.**

सिविल प्रक्रिया संहिता, 1908 – धारा 151

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 6

निष्कासन के वाद के लंबित रहने के दौरान संपत्ति के कुछ भाग से प्रतिवादीगण को आधिपत्य विहीन कर दिया गया था उन्होंने 7 माह के पश्चात् आधिपत्य पुनः स्थापित करने के लिए आवेदन प्रस्तुत किया – उस आवेदन के विचारण न्यायालय एवं उच्च न्यायालय ने विलंब के आधार पर खारिज कर दिया था – माननीय सर्वोच्च न्यायालय ने यह अभिनिर्धारित किया कि आधिपत्य के पुनः स्थापन के लिए आवेदन प्रस्तुत करने में हुआ विलंब अनुतोष से इंकार करने का कारण नहीं हो सकता है।

**Sushil Kumar Dey Biswas and another v. Anil Kumar Dey Biswas and another**

**Judgment dated 03.12.2014 passed by the Supreme Court in Civil Appeal No. 10689 of 2014, reported in 2015 (3) MPLJ 533 (SC) (Three Judge Bench)**

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**281. CIVIL PROCEDURE CODE, 1908 – Section 151 and Order 22 Rule 4**

**LIMITATION ACT, 1963 – Section 5**

**Appeal, abatement of.**

***Facts of the case:***

**Suit for declaration, possession, cancellation of orders of Revenue Authorities and perpetual injunction decreed by the Trial Court – In an appeal against such decree on 30.08.2011, the Appellate Court rejected the application dated 12.07.2004 under Order 22 Rule 4 read with section 151 CPC along with an application under section 5 of the Limitation Act seeking leave of the Court to bring on record L.Rs. of one of the respondents/plaintiffs who died on 07.04.2002 – Held, the suit has been decreed holding plaintiffs to be joint owners – In the event if appeal succeeds, there is an apparent possibility of conflicting decree being passed and this shall not meet the requirement of law as laid down by the Apex Court in the case of *State of Punjab v. Nathuram, AIR 1962 SC 89* – Therefore, the Appellate Court was justified in holding that the appeal as a whole stood abated.**

सिविल प्रक्रिया संहिता, 1908 – धारा 151 और आदेश 22 नियम 4

परिसीमा अधिनियम, 1965 – धारा 5

अपील का उपशमन।

मामले के तथ्य :–

घोषणा, आधिपत्य, राजस्व प्राधिकारियों के आदेशों के निरस्तीकरण और स्थायी व्यादेश का वाद विचारण न्यायालय ने आज्ञप्त किया – उस आज्ञप्ति के विरूद्ध अपील में (दिनांक) 30.08.2011 को अपील न्यायालय ने आवेदन दिनांक 12.07.2004 जो कि आदेश 22 नियम 4 सहपठित धारा 151 सीपीसी व धारा 5 परिसीमा अधिनिमय का एक प्रत्यर्थी/वादी जिसकी मृत्यु 07.04.2002 को हुई उसके वैध प्रतिनिधियों को अभिलेख पर लेने के लिए पेश किया गया था, उसे निरस्त कर दिया – अभिनिर्धारित किया गया, वाद यह अभिनिर्धारित करते हुए आज्ञप्त किया गया था कि वादीगण संयुक्त स्वामी है। यदि अपील सफल होती है तब परस्पर विरोधी आज्ञप्ति पारित होने की संभावना रहेगी और यह सर्वोच्च न्यायालय द्वारा स्टेट ऑफ पंजाब विरूद्ध नाथू राम, ए.आई.आर. 1962 एससी 89 में प्रतिपादित विधि की अनिवार्यताओं की पूर्ति नहीं करेगा इस कारण अपील न्यायालय ने यह सही निर्धारित किया है कि अपील पूरी तरह उपशमित हो गई है।

## Shambhu Singh v. Totaram (Dead) through LRs. and others

**Judgment dated 15.06.2015 by the High Court of M.P. in Misc. Appeal No. 1584 of 2011, reported in 2015 RN 488 (HC)**

**Extracts from the Judgment:**

This appeal by appellant/defendant under Order XLIII Rule 1 (k) CPC is directed against the order dated 30/8/2011 passed by Second Additional District Judge, Morena in Civil Appeal No. 10-A/2000. Application under Order XXII Rule 4 read with Section 151 CPC alongwith an application under Section 5 of Limitation Act dated 12.07.2004 seeking leave of the Court to bring on record LRs of respondent/plaintiff Gyaniya, who died on 07.04.2002, was rejected.

Learned counsel for the appellant/defendant has raised a solitary question as to whether first appellate Court was justified having dismissed the appeal as such instead of only against respondent/plaintiff Gyaniya as abated after dismissal of application XXII Rule 4 read with Section 151 CPC and application under Section 5 of Limitation Act on the premise that suit was filed jointly by plaintiffs and suit property is of their joint ownership, therefore, each one of the plaintiffs had divisible share and therefore, appeal was maintainable against the rest of the respondents/plaintiffs and there was no likelihood of any contradictory decree being passed.

Trial Court upon such pleadings allowed parties to lead evidence and upon critical evaluation of the evidence on record, decreed the suit to the extent of declaration and injunction.

Being aggrieved thereby, defendant preferred appeal. During pendency of the appeal, respondent/plaintiff Gyaniya died on 7/4/2002; however, appellant/defendant filed application for substitution of LRs of deceased Gyaniya only on 12.07.2004 stating knowledge of death of Gyaniya to be only on 11.07.2004 algonwith application for condonation of delay. This application was rejected. Being aggrieved thereby, writ petition vide W.P.No. 175/2005 was preferred however, as the same was found to be not maintainable therefore, dismissed on 18.12.2008 with liberty to file Miscellaneous Appeal. Accordingly, M.A.No. 86/2009 was filed before this Court. Same was allowed with direction to First appellate Court to hold an enquiry in the context of application under Order XXII Rule 4 CPC, thereafter, the first appellate Court has passed the impugned order after allowing the parties to lead evidence and upon critical evaluation of the evidence on record.

The law as regards abatement of appeal for non-substitution of deceased respondent under Order XXII Rule 4 CPC in entirety or only against the person died has been dealt with by the Supreme Court on more occasions than one in the case of ***State of Punjab v. Nathu Ram, AIR 1962 SC 89***. Hon'ble Supreme Court laid down the test for determination of the aforesaid question in the following words:-

> "If the Court can deal with the matter in controversy so far as regards the rights and interest of the appellant and the respondents other than the deceased respondent, it has to proceed with the appeal aid decide it : otherwise it will have to refuse to proceed further with the appeal and therefore dismiss it. Ordinarily, the consideration which will weigh with the court deciding upon the question whether the entire appeal had abated or not will be whether the appeal between the appellants and the respondents other than the deceased respondent can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the court-and the tests to determine this have been described thus : (a) when the success of the appeal may lead to the courts coming to a decision which will be in conflict with the decision between the appellant and the deceased ,respondent and therefore which would lead to the court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the court and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective that is to say it could not be successfully executed. ……".

The aforesaid principle has been followed in later years and still hold the field, in a recent judgment in the case of ***Budh Ram & ors. v. Bansi & ors. JT 2010 (8) SC 115*** in which on identical set of facts, Hon'ble Supreme Court has held that the appeal by defendant against the judgment and decree of the trial Court granting relief of declaration and permanent injunction shall stand abated in it's entirety in the event one of the respondents/plaintiffs dies during pendency of the appeal and by an application of law, the appellate Court had rejected the application for substitution of LRs of deceased/respondent finding the same not within time and thereby refusing to set aside the abatement. Para 20 of the aforesaid judgment is relevant which is reproduced hereinbelow:-

> "The instant case requires to be examined in view of the aforesaid settled legal propositions. Every co-owner has a right to possession and enjoyment of each and every part of the property equal to that of other co-owners. Therefore, in theory, every co-owner has an interest in every infinitesimal portion of the subject matter, each has a right irrespective of the quantity of its interest, to be in possession of every part and parcel of the property jointly with others. A co-owner of a property owns every part of the composite property along with others and he cannot be held to be a fractional owner of the property unless partition takes place. In the instant case a declaratory decree was passed in favour of respondents/plaintiffs and Smt. Parwatu to the effect that they were co-owners, though, they had specific shares but were held entitled to be in "joint possession". The appellants/ applicants had sought relief against Smt. Parwatu before the 1st Appellate court as there was a decree in her favour, passed by the Trial Court where Smt. Parwatu had been impleaded by the appellants/applicants as proforma respondent. In such a fact-situation, she had a right to contest the appeal. Once a decree had been passed in her favour, a right had vested in her favour. On her death on 19.11.2000, the said vested right devolved upon her heirs. Thus, appeal against Smt. Parwatu stood abated. In the instant case, the 1st Appellate Court rejected the application for condonation of delay as well as the substitution of LRs of Smt. Parwatu, respondent No. 4 therein. The only question remains as to whether the appeal is abated in toto or only in respect of the share of Smt. Parwatu. The High Court has rightly reached the conclusion that there was a possibility for the Appellate Court to reverse the Judgment of the Trial Court and in such an eventuality, there could have been two contradictory decrees, one in favour of Smt. Parwatu and the other, in favour of the

present appellants. The view taken by the High Court is in consonance with the law laid down by this Court consistently. The facts of the case do not warrant any further examination of the matter."

Counsel for the appellant has cited judgment of Hon'ble Supreme Court in the case of ***S. Amarjit Singh Kalra (dead) by LRs. & ors. v. Smt. Pramod Gupta (dead) by LRs and ors., AIR 2003 SC 2588***.

The aforesaid judgment is quite distinguishable on facts, inasmuch as the factual matrix involved in that case related to independent rights of persons as regards compensation under the Land Acquisition Act consequent upon acquisition of their lands and therefore, each claimant has distinct right. Hence, upon the death of one of claimant, appeal was held to be abated only against the deceased claimant and not as a whole.

In the instant case there is no dispute that suit was filed by plaintiffs seeking relief of declaration, possession, cancellation of orders passed by Revenue Authorities and permanent injunction against the defendant. The suit has been decreed. Plaintiffs are held to be joint owners. In the event, if appeal succeeds, there is an apparent possibility of conflicting decrees being passed and this shall not meet the requirement of law as laid down by Hon. Supreme Court in the case of ***Nathu Ram*** (supra). Hence, in the opinion of this Court, the first appellants Court was justified having held that the appeal as a whole stood abated consequent upon rejection of application under Order XXII Rule 4 read with Section 151 of CPC alongwith application under Section 5 of Limitation Act.

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**282. CIVIL PROCEDURE CODE, 1908 – Order 1 Rule 10**

**Eviction suit – Necessary party – Law explained.**

**In a suit for eviction by plaintiff against defendant, applicant filed an application for impleading her as a party allegedly on the basis of Will executed in her favour by the owner of the property – Trial court dismissed the application – Rejecting the petition, it was held that in a suit between landlord and tenant, presence of another person is not required – Such person or the court cannot compel the plaintiff to implead any person as defendant – Further held, since applicant was not party to the suit, finding given by the trial court on the issue of title shall not be binding on her.**

सिविल प्रक्रिया संहिता, 1908 – आदेश 1 नियम 10

निष्कासन का वाद – आवश्यक पक्षकार – विधि समझाई गई।

वादी द्वारा प्रतिवादी के विरूद्ध निष्कासन के एक वाद में आवेदक ने एक आवेदन प्रस्तुत किया कि उसे पक्षकार बनाया जाये, उसके पक्ष में संपत्ति के स्वामी द्वारा विल निष्पादित करने के आधार पर (आवेदन दिया है) – विचारण न्यायालय ने आवेदन निरस्त किया – याचिका खारिज करते हुए यह अभिनिर्धारित किया गया कि मकान

मालिक व किरायेदार के बीच वाद में अन्य व्यक्ति की उपस्थिति आवश्यक नहीं है – ऐसा व्यक्ति या न्यायालय वादी को बाध्य नहीं कर सकता की ऐसे व्यक्ति को प्रतिवादी के रूप में शामिल किया जाये – यह भी अभिनिर्धारित किया गया कि आवेदक वाद में पक्षकार नहीं था अतः विचारण न्यायालय द्वारा स्वत्व के बारे में दिये गये निष्कर्ष उस पर बंधन कारी नहीं है।

### Saroj Garg (Smt.) & anr. v. Aparna Gupta & anr.

**Order dated 11.09.2013 by the High Court of M.P. in Writ Petition No. 14975 of 2013, reported in ILR (2015) MP 64**

**Extracts from the Order:**

It is apparent fact on record that the impugned suit has been filed by respondent No.1 against respondent No.2 for eviction as landlord. So, according to it, the impugned suit is between the landlord and tenant and the question of title is not involved in any manner in the suit although incidentally the issue No.1 regarding title of the property, in view of the pleadings of the parties has been framed by the trial court but I am of the considered view that any finding which would be given by the trial court on such issue shall not be binding on the petitioners because they are not the parties in such suit and, in such premises, petitioners shall be at liberty to approach the appropriate forum with appropriate proceedings to declare their title with respect of the house and protect the interest in that regard. Even otherwise, in a suit between landlord and tenant, in normal course, presence of other persons are not required and if the relationship of such landlord and tenant is not proved in such suit then consequently, the suit may be dismissed and if such relationship is proved then the suit could be decreed for eviction only but the title shall not be decided by the trial court in the eviction suit. So, in such premises, firstly presence of the petitioners does not appear to be necessary to adjudicate the impugned suit because the same could be adjudicated only in presence of respondents No.1 and 2.

Apart the aforesaid, in view of the principle that the plaintiff is the sole dominus litus of his litigation and he is at liberty in his suit to implead the parties unless some compelling circumstances are available, the other party or the court cannot insist to plaintiff of a suit to implead any person as defendant or in some other manner in such suit. Although, in such a situation, the plaintiff shall be responsible for the consequences of such suit if the proper parties have not been impleaded in the same. So, in such premises also the trial court has not committed any error in dismissing the application of the petitioners. Consequently, I have not found any perversity, illegality, irregularity or any thing against the property of the law in the order impugned.

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**283. CIVIL PROCEDURE CODE, 1908 – Order 3 Rules 1 & 4 and Order 23 Rule 3**

**(i) Compromise/settlement by counsel, permissibility and requirement of – Power of counsel depends on authority conferred by party by way of appointment in writing *(Vakalatnama)* and instruction given by him – Principles summarised:**

**(a) Endorsement on compromise memo on the part of counsel;**

**(b) Record not revealing absence of authority to compromise;**

**(c) Absence of allegation of impropriety against concerning counsel;**

**(d) Non-initiation of any proceeding challenging compromise on the ground of lack of authority.**

**(ii) Challenge as to validity of compromise, forum therefor – Party must approach the Court which recorded the compromise in the first instance rather than straightway filing appeal.**

सिविल प्रक्रिया संहिता, 1908 – आदेश 3 नियम 1 और 4 तथा आदेश 23 नियम 3

(i) अभिभाषक द्वारा समझौता/सेटलमेंट का अनुमत होना और (उसके लिए) अनिवार्यताएँ – अभिभाषक की शक्ति पक्षकार द्वारा लिखित नियुक्ति (वकालत नामा) में दिये गये प्राधिकार और उसके द्वारा दिये गये निर्देश पर निर्भर करती है – सिद्धांत संक्षिप्त में बतलाये गये :–

(ए) अभिभाषक के भाग पर समझौते पर पृष्ठांकन

(बी) समझौते के लिए प्राधिकार का अभाव अभिलेख से प्रकट नहीं होना

(सी) संबंधित अभिभाषक के विरूद्ध अनुचित व्यवहार के अभियोग का अभाव

(डी) समझौते को प्राधिकार के अभाव के आधार पर चुनौती देते हुए कार्यवाही प्रारंभ न करना

(ii) समझौते की वैधता को चुनौती देने का फोरम (या मंच) – पक्षकार को सीधे अपील प्रस्तुत करने के बजाय जिस न्यायालय ने समझौता अभिलिखित किया है वहॉ कार्यवाही करना चाहिए।

## Y. Sleebachen and others v. State of Tamil Nadu through Superintending Engineer Water Resources Organization/ Public Works Department and another

**Judgment dated 04.08.2014 by the Supreme Court in Civil Appeal No. 7164 of 2014, reported in (2015) 5 SCC 747**

**Extracts from the Judgment:**

The only ground which has prevailed with the High Court in accepting the appeals of the respondents against the aforesaid orders are that the Government pleader was not authorised by the respondents to enter into such a settlement. It is difficult to accept this reasoning, in the scenario which prevails on the record.

In the first instance, it is to be kept in mind that nothing has been brought out by the respondents which would showthat advocate was not authorised to enter into such a settlement. On the perusal of the grounds of appeal submitted before the High Court by the respondents and even in the counter affidavit filed in this appeal, there is no allegation of any sort against the Government pleader. On the contrary, a categorical statement has been made that "the action of the respondent was fair and just in this regard as the respondent has not initiated any proceeding against the District Government Pleader." Furthermore, and most importantly, there is not even an iota of a pleading explaining as to how the Government Pleader was not authorised to record consent or that he in any manner lacked authority. It is not even remotely suggested in any of these grounds that the Government Pleader he acted improperly. On the contrary, what is sought to be suggested is that there was a failure of compromise, or that no compromise was recorded or agreed upon before the Court, which is contrary to the record of the Court and the statements recorded in the judgment of the District Court, and therefore impermissible as a ground of challenge.

In this behalf, we would like to reproduce the following discussion in the judgment of this Court in the case of ***State of Maharashtra v. Ramdas Shrinivas Nayak, (1982) 2 SCC 463***:

> "When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation". (Per Lord Atkinson in ***Somasundaran Chetty v. Subramanian Chetty, AIR 1926 PC 126***) We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the

> court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is' incumbent, upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. (Per Lord Buckmaster in ***Madhu Sudan Chowdhri v. Chandrabati Chowdhrain, AIR 1917 PC 30***) That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment."

It is also pertinent to point out that here also, no application was filed by the respondents before the District Court immediately after the passing of decrees in compromise terms, or even thereafter, for recall of the compromise order with the plea that such a compromise was unacceptable as the Government Pleader was not authorised to enter into any such settlement. Instead appeals were filed before the High Court. We are of the opinion that respondents should have approached the trial court in the first instance as it is the trial judge before whom the compromise was recorded and as he was privy to events that led to the compromise order, he was in a better position to deal with this aspect.

That apart, we find that as per the provisions of Order III Rule 4, once the counsel gets power of attorney/authorisation by his client to appear in a matter, he gets a right to represent his client in the Court and conduct the case. Further, in the case of ***Bakshi Dev Raj v. Sudhir Kumar, (2011) 8 SCC 679,*** this Court held that though Order XXIII Rule 3 of the CPC requires a compromise to be in writing and signed by parties, the signature of the advocate/counsel is valid for the said purposes. Detailed discussion on this aspect which ensues in the said judgment and is relevant for our purpose, reads as under:

> "Now, we have to consider the role of the counsel reporting to the Court about the settlement arrived at. We have already noted that in terms of Order 23 Rule 3 CPC, agreement or compromise is to be in writing and signed by the parties. The impact of the above provision and the role of the counsel has been elaborately dealt with by this Court in ***Byram Pestonji Gariwala v. Union of India, (1992) 1 SCC 31*** and observed that courts in India have consistently

recognised the traditional role of lawyers and the extent and nature of implied authority to act on behalf of their clients. Mr Ranjit Kumar, has drawn our attention to the copy of the vakalatnama (Annexure R-3) and the contents therein. The terms appended in the vakalatnama enable the counsel to perform several acts on behalf of his client including withdraw or compromise suit or matter pending before the court. The various clauses in the vakalatnama undoubtedly gives power to the counsel to act with utmost interest which includes to enter into a compromise or settlement.

The following observations and conclusions in paras 37, 38 and 39 are relevant:

"37. We may, however, hasten to add that it will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted. This essential precaution will safeguard the personal reputation of the counsel as well as uphold the prestige and dignity of the legal profession.

38. Considering the traditionally recognised role of counsel in the common law system, and the evil sought to be remedied by Parliament by the CPC (Amendment) Act, 1976, namely, attainment of certainty and expeditious disposal of cases by reducing the terms of compromise to writing signed by the parties, and allowing the compromise decree to comprehend even matters falling outside the subject-matter of the suit, but relating to the parties, the legislature cannot, in the absence of express words to such effect, be presumed to have disallowed the parties to enter into a compromise by the counsel in their cause or by their duly authorized agents. Any such presumption would be inconsistent with the legislative object of attaining quick reduction of arrears in court by elimination of uncertainties and enlargement of the scope of compromise.

> 39. To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorized representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorisation by vakalatnama, act on behalf of his client. Not to recognise such capacity is not only to cause much inconvenience and loss to the parties personally, but also to delay the progress of proceedings in court. If the legislature had intended to make such a fundamental change, even at the risk of delay, inconvenience and needless expenditure, it would have expressly so stated."

In ***Jineshwardas v. Jagrani, (2003) 11 SCC 372*** this Court, by approving the decision taken in Byram Pestonji (supra) case held:

> "8. ... that a judgment or decree passed as a result of consensus arrived at before court, cannot always be said to be one passed on compromise or settlement and adjustment. It may, at times, be also a judgment on admission...."

In ***Jagtar Singh v. Pargat Singh, (1996) 11 SCC 586*** it was held that the counsel for the appellant has power to make a statement on instructions from the party to withdraw the appeal. In that case, Respondent 1 therein, elder brother of the petitioner filed a suit for declaration against the petitioner and three brothers that the decree dated 4-5-1990 was null and void which was decreed by the Subordinate Judge, Hoshiarpur on 29.09.1993. The petitioner therein filed an appeal in the Court of the Additional District Judge, Hoshiarpur. The counsel made a statement on 15.09.1995 that the petitioner did not intend to proceed with the appeal. On the basis thereof, the appeal was dismissed as withdrawn. The petitioner challenged the order of the appellate court in the revision. The High Court confirmed the same which necessitated the filing of SLP before this Court.

The learned counsel for the petitioner in ***Jagtar Singh case*** (supra) contended that the petitioner had not authorised the counsel to withdraw the appeal. It was further contended that the court after admitting the appeal has no power to dismiss the same as withdrawn except to decide the matter on merits considering the legality of the reasoning of the trial court and the conclusions either agreeing or disagreeing with it. Rejecting the said contention, the Court held as under:

> "3. The learned counsel for the petitioner has contended that the petitioner had not authorised the counsel to withdraw the appeal. The court after admitting the appeal

has no power to dismiss the same as withdrawn except to decide the matter on merits considering the legality of the reasoning of the trial court and the conclusions either agreeing or disagreeing with it. We find no force in the contention. Order 3 Rule 4 CPC empowers the counsel to continue on record until the proceedings in the suit are duly terminated. The counsel, therefore, has power to make a statement on instructions from the party to withdraw the appeal. The question then is whether the court is required to pass a reasoned order on merits against the decree appealed from the decision of the Court of the Subordinate Judge? Order 23 Rules 1(1) and (4) give power to the party to abandon the claim filed in the suit wholly or in part. By operation of Section 107(2) CPC, it equally applies to the appeal and the appellate court has coextensive power to permit the appellant to give up his appeal against the respondent either as a whole or part of the relief. As a consequence, though the appeal was admitted under Order 41 Rule 9, necessarily the court has the power to dismiss the appeal as withdrawn without going into the merits of the matter and deciding it under Rule 11 thereof.

4. Accordingly, we hold that the action taken by the counsel is consistent with the power he had under Order 3 Rule 4 CPC. If really the counsel has not acted in the interest of the party or against the instructions of the party, the necessary remedy is elsewhere and the procedure adopted by the court below is consistent with the provisions of CPC. We do not find any illegality in the order passed by the Additional District Judge as confirmed by the High Court in the revision."

The analysis of the above decisions make it clear that the counsel who was duly authorised by a party to appear by executing the vakalatnama and in terms of Order 3 Rule 4, empowers the counsel to continue on record until the proceedings in the suit are duly terminated. The counsel, therefore, has the power to make a statement on instructions from the party to withdraw the appeal. In such a circumstance, the counsel making a statement on instructions either for withdrawal of appeal or formodification of the decree is well within his competence and if really the counsel has not acted in the interest of the party or against the instructions of the party, the necessary remedy is elsewhere."

Likewise in 2011, this Court in ***Jineshwardas*** (supra), has held as under:

> "If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorization by vakalatnama, act on behalf of his client."

We find that in the present case the Government Pleader was legally entitled to enter into a compromise with the appellant and his written endorsement on the Memo filed by the appellant can be deemed as a valid consent of the Respondent itself. Hence the Counsel appearing for a party is fully competent to put his signature to the terms of any compromise upon which a decree can be passed in proper compliance with the provisions of Order XXIII Rule 3 and such decree is perfectly valid. The authority of a Counsel to act on behalf of a party is expressly given in Order III Rule 1 of Civil Procedure Code which is extracted hereunder;

> "Any appearance, application or act in or to any court, required or authorized by law to be made or done by a party in such court, may except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader, appearing, applying or acting as the case may be, on his behalf.
>
> Provided that any such appearance shall, if the court so directs, be made by the party in person."

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

**Amendment of plaint – Amendment application should normally be allowed unless by virtue of the amendment, nature of the suit is changed or prejudice is caused to the defendant – In this case, defendant took the objection that the plaintiff had undervalued the subject-matter of the suit – By way of amendment, plaintiff wanted to incorporate correct market value of the subject-matter – Same was disallowed by the trial court but the High Court confirmed it – Hon'ble Apex Court allowed the amendment.**

सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 17

वाद पत्र में संशोधन – संशोधन आवेदन पत्र सामान्यतः स्वीकार करना चाहिए जब तक कि संशोधन द्वारा वाद की प्रकृति न बदल रही हो या प्रतिवादी के हितों पर प्रतिकूल असर कारित नहीं हो रहा हो – इस मामले में प्रतिवादी ने यह आपत्ति ली की वाद में वादग्रस्त संपत्ति का कम मूल्यांकन किया गया है – संशोधन द्वारा वादी वाद की विषय वस्तु का सही बाजार मूल्य जोड़ना चाहता था – इसे (संशोधन आवेदन को) विचारण न्यायालय ने अस्वीकार किया उच्च न्यायालय ने इसकी पुष्टि कर दी– माननीय सर्वोच्च न्यायालय ने आवेदन स्वीकार किया।

**Mount Mary Enterprises v. Jivratna Medi Treat Pvt. Ltd.**
**Judgment dated 30.01.2015 passed by the Supreme Court in Civil Appeal No. 1323 of 2015, reported in 2015 (3) MPLJ 494 (SC)**

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**285. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 10**

**Return of plaint, procedure for.**

**Court must return the plaint if it comes to the conclusion that it has no jurisdiction except deciding the suit on merit.**

**In suit for declaration of title, perpetual injunction and possession, an issue was framed whether plaintiff had properly valued the suit and has paid proper court fee – Trial court held that the suit was not properly valued and therefore, it has no jurisdiction – Trial court further held that plaintiff has failed to prove his title – Held, once the trial court had come to the conclusion that it has no jurisdiction, it ought to have returned the plaint and there was no need for the court to decide the suit on merit.**

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 10

वाद लौटाने की प्रक्रिया।

यदि न्यायालय इस निष्कर्ष पर पहुंचती है कि उसे क्षेत्राधिकार नहीं है तब उसे वाद गुण–दोष पर निराकरण करने के बजाय लौटा देना चाहिए।

स्वत्व घोषणा, स्थायी व्यादेश और आधिपत्य के वाद में एक विवाद्यक बनाया गया था कि क्या वादी ने वाद का उचित मूल्यांकन किया है व उचित न्यायशुल्क अदा की है – विचारण न्यायालय ने अभिनिर्धारित किया कि वाद का पर्याप्त मूल्यांकन नहीं किया गया था इस कारण उसे क्षेत्राधिकार नहीं है – विचारण न्यायालय ने यह अभिनिर्धारित किया कि वादी उसका स्वत्व प्रमाणित करने में असफल रहा है अभिनिर्धारित किया गया, एक बार जब विचारण न्यायालय इस निष्कर्ष पर पहुंच चुका था कि उसे क्षेत्राधिकार नहीं है तब उसे वाद वापस करना था और उस न्यायालय के लिए वाद को गुण–दोष पर निर्धारित करना आवश्यक नहीं था।

**Chandrakant & ors. v. Tikam Das & ors.**
**Judgment dated 03.11.2014 by the High Court of M.P. in Misc. Appeal No. 3129 of 2012, reported in ILR (2015) MP 181**

**Extracts from the Judgment:**

The respondent No. 1/plaintiff filed the suit for declaration of title, permanent injunction and possession regarding disputed property described in Annexure A of the plaint, assessing the valuation of the suit at Rs. 1068/¬ in Para 13 of the plaint. The appellant/defendant along with other defendants submitting their written statements denying the title of the plaintiff and allegations of the plaint specifically pleaded in Para 12 that the valuation putforth by the appellant is totally arbitrary and contrary to law and the Court has no jurisdiction to entertain

the suit. Learned trial Court vide order dated 29.08.11 framed 15 issues on the basis of pleadings of both the parties. Out of them issue No. 12 was framed regarding the valuation and court fees which reads as under :

क्या वाद का उचित मूल्यांकन कर पर्याप्त न्यायशुल्क चस्पा कर प्रस्तुत किया गया है?

The said issue could not be decided as preliminary issue by the Court because question of fact was involved in the issue along with that of the law. Thereafter evidence of both the parties was recorded. Learned trial Court having considered the evidence of both the parties on merit dismissed the suit vide judgment and decree dated 100412 holding that the plaintiff had failed to prove his title in the disputed property. The learned Court in Para 18 of the judgment further held that the valuation putforth by the plaintiff was not correct because the plaintiff himself had admitted in Para 34 of his statement that the worth of the houses situated in the disputed property was near about 60 to 70 lacs. On the basis of which it was decided by the Court that the Court had no jurisdiction to entertain the suit.

The respondent No. 1/plaintiff being aggrieved by the judgment and decree challenging the legality and validity of the judgment filed the appeal before the District Judge. However, the appellant/defendant and other defendants did not challenge the findings of the trial Court in the appeal. Learned Appellate Court, having considered the merits of the case, has confirmed the finding of the trial Court regarding valuation in Para 6 to 9 in the impugned judgment. The findings recorded by the learned trial Court as well as Appellate Court in connection with the suit valuation appear to be justified because the worth of the disputed property was more than 60 to 70 lacs. The suit was filed for declaration of the title of the said property owing to which the suit ought to have been valued according to market value of the property. The findings of the trial Court had become final against the appellants/defendants as they did not challenge the finding of the trial Court in the Appellate Court by cross objection. In the said circumstances the appellants are estopped to challenge the findings of valuation of suit recorded by the learned trial Court in the instant appeal. Only the legality and propriety of the trial Court's judgment was challenged by the respondent No. 1/ plaintiff before the Appellate Court, hence in this appeal the appellants are not entitled to say that the valuation putforth by the respondent No. 1/plaintiff was correct. As per pleadings appellants themselves challenged the valuation of the suit as well as jurisdiction of the trial Court, as a result the Appellate Court has also held in the impugned judgment that the trial Court had no jurisdiction to entertain the suit. When the trial Court had no jurisdiction to entertain the suit, there was no need for the Court to decide the case on merits and giving the finding to the effect that the plaintiff had failed to prove his case. Therefore, the learned appellate Court rightly set aside the findings of the trial Court regarding the dismissal of the suit on merits. The judgment cited by the appellants in support of their submission does not help him in this case because as discussed earlier the valuation assessed by the trial Court as well as by Appellate Court cannot be

challenged by the appellants against their pleadings stated in Para 12 of the written statement. Moreover the said judgment is related to the issue of the determination of court fees.

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***286. CIVIL PROCEDURE CODE, 1908 – Order 12 Rule 6**

**Nature of provision – It is discretionary – Judgment on admission cannot be claimed as a matter of right – Though defendant admitted relationship of landlord and tenant but resisted plaintiff's claim by setting up a defence in form of plea of agreement to sale – It goes to the root of the case – Judgment on admission cannot be passed in such a situation.**

सिविल प्रक्रिया संहिता, 1908 – आदेश 12 नियम 6

प्रावधान की प्रकृति – यह वैवेकिय है – स्वीकारोक्ति पर निर्णय अधिकार पूर्वक दावा नहीं किया जा सकता है – यद्यपि प्रतिवादी ने मकान मालिक और किरायेदार के संबंध स्वीकार किये थे किन्तु वादी के दावे का विरोध विक्रय अनुबंध के अभिवाक का बचाव लेकर किया था – यह (बचाव) मामले की जड़ तक जाता है – ऐसी परिस्थिति में स्वीकारोक्ति पर निर्णय पारित नहीं किया जा सकता।

**S.M. Asif v. Virender Kumar Bajaj**

**Judgment dated 12.08.2015 passed by the Supreme Court in Civil Appeal No. 6106 of 2015, reported in 2015 AIR SCW 4936 (Three Judge Bench)**

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***287. CIVIL PROCEDURE CODE, 1908 – Order 23 Rule 3**

**The property which is not the subject-matter of the suit but related to the parties to the suit, compromise in this respect may be arrived at in the Court – compromise decree may be passed if it is arrived at by lawful agreement.**

सिविल प्रक्रिया संहिता, 1908 – आदेश 23 नियम 3

संपत्ति जो वाद की विषय वस्तु नहीं है लेकिन वाद के पक्षकारों से संबंधित है, उस संपत्ति के लिए भी न्यायालय में समझौता किया जा सकता है और समझौते के आधार पर आज्ञप्ति पारित की जा सकती है यदि वह (समझौता) वैध अनुबंध के आधार पर किया हो।

**Jeevanlal Rathore v. Deepchand & ors.**

**Order dated 01.03.2013 passed by the High Court of M.P. in Civil Revision No. 44 of 2007, reported in ILR (2014) MP 3263**

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***288. CONSTITUTION OF INDIA – Articles 19 (1) (a) and 19 (2)**

**Freedom of speech and expression, reasonable restriction thereto – Public decency and morality – Obscenity, test of – Charge under section 292 IPC, maintainability of.**

**(i) Everyone has freedom to express views about a historically respected personality by showing disagreement, dissent, criticism, non-acceptance or critical evaluation so long as there is no obscenity in the expression – Artistic or poetic freedom is not absolute or limitless – The freedom is subject to reasonable restrictions which may be thought necessary in the interest of the general public and one such is the interest of public decency and morality.**

**(ii) Reasonable restriction in the interest of public decency and morality can be imposed on freedom of speech and expression – Test of obscenity applicable in India is the contemporary community standard's test i.e. obscenity has to be judged from the point of view of an average person, by applying contemporary community standards which vary from time to time as perception, views, ideas; and ideas can never remain static – Section 292 of the Penal Code manifestly embodies such a restriction because the law against obscenity of course, correctly understood and applied, seeks no more than to promote public decency and morality.**

**(iii) Employing a historically respected person (e.g. Mahatma Gandhi) in an allegedly obscene manner, *prima facie* amounts to offence punishable under section 292 IPC.**

भारत का संविधान – अनुच्छेद 19 (1)(ए) और 19 (2)

वाक और अभिव्यक्ति की स्वतंत्रता पर युक्तियुक्त प्रतिबंध – लोकशालीनता और नैतिकता – अशलीलता का परीक्षण – धारा 292 भा.दं.सं. के आरोप की प्रचलन शीलता – विधि समझाई गई।

**Devidas Ramachandra Tuljapurkar v. State of Maharashtra and others**

**Judgment dated 14.05.2015 by the Supreme Court in Criminal Appeal No. 1179 of 2010, reported in (2015) 6 SCC 1**

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***289. CONSTITUTION OF INDIA – Article 363**

**INDORE LAND REVENUE AND TENANCY ACT, 1931 – Section 31**

**LAND REVENUE CODE, 1959 (M.P.) – Sections 185 (1) (ii) (a), 190 (1) and 158 (2)**

**M.B. LAND REVENUE AND TENANCY ACT, 1950 – Sections 54 (vii) and 54 (xviii)**

(i) **Article 363 of the Constitution of India, applicability of – Suit for declaration of title by successor of Ex-Ruler of Holkar State, maintainability of – Property not shown as personal in the list of private properties – Source of title is covenant – Since dispute arose out of the terms of covenant, Article 363 will be attracted – Suit not maintainable.**

(ii) **Tenancy rights, claim of – Basis of suit for declaration of title by successor of Ex-Ruler of Holkar State is covenant and title not claimed on the basis of tenancy rights – Tenancy rights cannot be claimed over suit scheduled properties.**

(iii) **Suit, burden of proof – Plaintiff has to prove and succeed on the strength of his own case – He cannot take advantage of weakness of defendant's case.**

भारत का संविधान – अनुच्छेद 363

इन्दौर लैण्ड रेवेन्यू और टेनेन्सी अधिनियम, 1931 – धारा 31

भू राजस्व संहिता, 1959 (म.प्र) – धाराएं 185(1)(ii)(ए), 190(1) और 158 (2)

मध्य भारत लैण्ड रेवेन्यू और टेनेन्सी अधिनियम, 1950 – धाराएं 54(vii) और 54 (xviii)

(i) भारतीय संविधान के अनुच्छेद 363 का लागू होना – होल्कर राज्य के पूर्व शासक के उत्ताधिकारी द्वारा स्वत्व घोषणा के लिए वाद की प्रचलनशीलता – निजी संपत्तियों की सूची में संपत्ति व्यक्तिगत होना नहीं दर्शाई – स्वत्व का स्त्रोत प्रसंविदा (या प्रतिज्ञा पत्र) है – यदि प्रसंविदा की शर्तों के बारे में विवाद उत्पन्न होता है तब अनुच्छेद 363 आकर्षित होगा – वाद प्रचलनशील नहीं है।

(ii) टेनेन्सी राईट का दावा – स्वत्व घोषणा के वाद का आधार होल्कर राज्य के पूर्व शासक के उत्तराधिकारी द्वारा प्रसंविदा है और टेनेन्सी राईट के आधार पर स्वत्व का दावा नहीं किया है – वाद की अनुसूचित संपत्ति पर टेनेन्सी राईट का दावा नहीं किया जा सकता।

(iii) वाद का प्रमाण भार – वादी को अपना मामला अपने बल पर प्रमाणित करना होता है – वह प्रतिवादी के मामले की कमजोरी का लाभ नहीं ले सकता है।

**State of M.P. v. Maharani Ushadevi**

**Judgment dated 15.07.2015 by the Supreme Court in Civil Appeal No. 557 of 2012, reported in 2015 RN 461 (SC)**

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***290. CO-OPERATIVE SOCIETIES ACT, 1961 (M.P.) – Section 64 (1) (c)**

**Respondents were agriculturists who had agreed to sell agricultural land to the appellant housing co-operative society – Whether it is a "business transaction" covered under section 64(1)(c) of the Act of 1961 and any dispute arising out of that contract for sale is**

**amenable to adjudication under section 64 of the Act of 1961? Held, No, because a single transaction in the circumstances like the present case would not constitute business for both the parties to the transaction – The dispute must be between parties who have a series of transactions, each one constituting a business transaction in order that the provisions of section 64 are attracted and a dispute arising out of any such transaction brought within its purview.**

मध्यप्रदेश सहकारी समिति अधिनियम, 1961 – धारा 64 (1) (सी)

प्रत्यर्थीगण कृषक थे जो कृषि भूमि अपीलार्थी गृह निर्माण सहकारी समिति को विक्रय करने को तैयार हुए – क्या यह एक ''व्यापारिक संव्यवहार'' है जो धारा 64 (1) (सी) अधिनियम, 1961 में आता है और क्या इस विक्रय संविदा से उत्पन्न कोई विवाद धारा 64 अधिनियम, 1961 के तहत निराकृत करने योग्य होता है ? अभिनिर्धारित किया गया, नहीं, क्योंकि एक मात्र संव्यवहार जो कि इस प्रकरण की परिस्थितियों में किया गया वह संव्यवहार के दोनों पक्षों के लिए व्यापार गठित नहीं करता है – पक्षकारों के मध्य विवाद ऐसा होना चाहिए जिसमें संव्यवहारों की एक श्रृंखला हो तब प्रत्येक संव्यवहार एक व्यापारिक संव्यवहार का गठन करता है तब धारा 64 के प्रावधान आकर्षित होते है और उस संव्यवहार से उत्पन्न विवाद इस प्रावधान के क्षेत्र में आता है।

**Bhanushali Housing Co-operative Society Ltd. v. Mangilal and ors.**
**Judgment dated 24.07.2015 passed by the Supreme Court in Civil Appeal No. 5704 of 2015, reported in 2015 AIR SCW 4479 (Three Judge Bench)**

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**291. CRIMINAL PROCEDURE CODE, 1973 – Section 145**

**Relevancy of finding given in proceedings under section 145 of CrPC – It has relevance in evidence to show one or more of the following facts:**

**(a) that there was a dispute relating to a particular property;**

**(b) that the dispute was between the parties;**

**(c) that such dispute led to the passing of a preliminary order under section 145(1) CrPC or an order of attachment issued under section 146(1) CrPC; and that the Magistrate found particular party or parties in possession or fictional possession of the disputed property.**

**The observations made in the above proceedings do not bind the competent court in a legal proceeding initiated before it – It cannot be made a ground for deciding relationship of landlord and tenant.**

दण्ड प्रक्रिया संहिता, 1973 – धारा 145

धारा 145 दं.प्र.सं. की कार्यवाहियों में दिये गये निष्कर्ष की सुसंगतता – यह निम्न में से एक या एक से अधिक तथ्यों को दर्शाने के लिए साक्ष्य में सुसंगत होते हैः–

(ए) एक विशेष संपत्ति के बारे में विवाद था ;

(बी) विवाद पक्षकारों के मध्य था ;

(सी) ऐसा विवाद इस प्रकार का था कि धारा 145 (1) दं.प्र.सं. के अधीन प्रारंभिक आदेश या धारा 146 (1) दं.प्र.सं. के अधीन कुर्की का आदेश जारी किया जाए; और मजिस्ट्रेट ने यह पाया था कि एक पक्षकार विशेष विवादित संपत्ति के आधिपत्य में है या कल्पित आधिपत्य में है।

उक्त कार्यवाही में दिये गये अभिमत किसी विधिक कार्यवाही जिस सक्षम न्यायालय के सामने शुरू की गई है उस पर बन्धनकारी नहीं होते हैं – ये (उक्त कार्यवाही में दिये गये अभिमत) मकान मालिक और किरायेदार के संबंध निर्धारित करने का आधार नहीं बनाये जा सकते है।

**Surinder Pal Kaur and another v. Satpal and another**

**Judgment dated 13.01.2015 passed by the Supreme Court in Civil Appeal No. 345 of 2015, reported in 2015 CriLJ 3821 (SC)**

**Extracts from the Judgment:**

In ***Shanti Kumar Panda v. Shakuntala Devi, AIR 2004 SC 115*** this Court has held, in Paragraph 15, that the reasoning recorded by the Magistrate or other findings arrived at by him have no relevance and are not admissible in evidence before the competent court (except for the limited purposes enumerated above). Also, it was further held in said case that the words “competent court” as used in sub-section (1) of Section 146 of the Code do not necessarily mean a civil court only. A competent court is one which has the jurisdictional competence to determine the question of title or the rights of the parties with regard to the entitlement as to possession’ over the property forming the subject-matter; of proceedings before the Executive Magistrate.

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**292. CRIMINAL PROCEDURE CODE, 1973 – Sections 156, 161 and 162**

**EVIDENCE ACT, 1872 – Sections 3 and 145**

**(i) Contradiction as per provision under section 145 of the Evidence Act with the statement recorded under section 161 CrPC by the police – When cannot be looked into? If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot *suo motu* make use of that statement – Neither prosecution witness nor the I.O. was confronted with the statement and questioned about it, the police statement cannot be looked into for the purpose of discrediting the testimony of that witness and prosecution version.**

**(ii) Effect of delay in recording statement under section 161 CrPC – No question was put to I.O. on the delayed recording of statement – Had such question been put to I.O., he would have explained the reason for such delay – Having not done so, the defence could not get any advantage on this point.**

**(iii) Omission on the part of I.O. – The I.O. is not obliged to anticipate all possible defences and investigate in that angle – Interest of justice demands that acts or omission of the I.O. should not be taken in favour of the accused otherwise it would amount to placing a premium upon such omissions.**

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 156, 161 और 162

साक्ष्य अधिनियम, 1872 – धाराएं 3 और 145

(i) धारा 145 साक्ष्य अधिनियम के अधीन, पुलिस द्वारा धारा 161 दं.प्रं.सं. के अधीन अभिलिखित कथन के साथ विरोधाभास – कब नहीं देखा जा सकता? – यदि गवाह को कथन के उस भाग से, जिसके साथ विरोधित करवाना बचाव पक्ष चाहता है, उसके सामने नहीं रखा गया था तब न्यायालय स्वप्रेरणा से ऐसे कथन का उपयोग नहीं कर सकता है – न तो अभियोजन साक्षी न हीं अन्वेषण अधिकारी के सामने कथन का संबंधित भाग रखा गया न उनसे इस बारे में प्रश्न किये गये थे। पुलिस कथन गवाह के कथन को और अभियोजन कथानन को अविश्वसनीय मानने के उद्देश्य से नहीं देखा जा सकता।

(ii) धारा 161 दंप्रसं के कथन अभिलिखित करने में हुए विलंब का प्रभाव – अन्वेषण अधिकारी से कथन विलंब से अभिलिखित करने के बारे में कोई प्रश्न नहीं किया गया था – ऐसे प्रश्न अन्वेषण अधिकारी से पूछे जाते तो वह विलंब के कारण के बारे में स्पष्टीकरण दे सकता था – ऐसा नहीं करने के कारण, बचाव को इस बिन्दु पर कोई लाभ प्राप्त नहीं होता है।

(iii) अन्वेषण अधिकारी के भाग पर चूक – अन्वेषण अधिकारी सभी संभाव्य बचाव को विचार में लेने व उन पर अनुसंधान करने के लिए उत्तरदायी नहीं होता है – न्याय हित की मांग यह है कि अन्वेषण अधिकारी के कृत्य या लोप को अभियुक्त के पक्ष मे विचार में नहीं लेना चाहिए अन्यथा ये ऐसे लोपों पर पुरस्कार देने के समान होगा।

## V.K. Mishra & another v. State of Uttarakhand and another

**Judgment dated 28.07.2015 passed by the Supreme Court in Criminal Appeal No. 1247 of 2012, reported in 2015 AIR SCW 4443 (Three Judge Bench)**

**Extracts from the Judgment:**

Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose

of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of Evidence Act that is, by drawing attention to the parts intended for contradiction.

In the case at hand, PW-1 was not confronted with his statement recorded by the police under Section 161 Cr.P.C. to prove the contradiction nor his statement marked for the purpose of contradiction was read out to the investigating officer. When neither PW-1 nor the investigating officer were confronted with the statement and questioned about it, PW-1's statement recorded under Section 161 Cr.P.C. cannot be looked into for any purpose much less to discredit the testimony of PW-1 and the prosecution version.

It cannot be held as a rule of universal application that the testimony of a witness becomes unreliable merely because there is delay in examination of a particular witness. In ***Sunil Kumar & anr. v. State of Rajasthan, AIR 2005 SC 1096,*** it was held that the question of delay in examining a witness during investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a core of witness to falsely support the prosecution case. As such there was no delay in recording the statement of PW-2 and even assuming that there was delay in questioning PW-2, that by itself cannot amount to any infirmity in the prosecution case.

The investigating officer is not obliged to anticipate all possible defences and investigate in that angle. In any event, any omission on the part of the investigating officer cannot go against the prosecution. Interest of justice demands that such acts or omission of the investigating officer should not be taken in favour of the accused or otherwise it would amount to placing a premium upon such omissions.

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***293. CRIMINAL PROCEDURE CODE, 1973 – Sections 173 and 397**

**(i) Caution in exercise of revisional jurisdiction – Normally, it should be exercised on a question of law where factual appreciation is involved. It should be exercised in class of cases resulting in a perverse finding.**

**(ii) Magistrate has power to direct further investigation but he cannot direct another investigating agency to investigate the matter – It would not be within the sphere of further investigation.**

दंड प्रक्रिया संहिता, 1973 – धाराएं 173 और 397

(i) पुनरीक्षण के क्षेत्राधिकार का प्रयोग करने में सावधानी – सामान्यतया इसका प्रयोग विधि के प्रश्न पर करना चाहिए, जहां तथ्य संबंधी मूल्यांकन (शामिल) हो वहां उन वर्ग के प्रकरणों में इसका प्रयोग करना चाहिए जिनमें विपर्यस्त निष्कर्ष दिए गए है।

(ii) मजिस्ट्रेट को अतिरिक्त अनुसंधान का निर्देश देने की शक्ति होती है किन्तु वह मामले का अनुसंधान अन्य अनुसंधान ऐजेन्सी से कराने का निर्देश नहीं दे सकता है – यह (ऐसा निर्देश) अतिरिक्त अनुसंधान के क्षेत्र में नहीं आता है।

**Chandra Babu alias Moses v. State, Through Inspector of Police and others**

**Judgment dated 07.07.2015 passed by the Supreme Court in Criminal Appeal No. 866 of 2015, reported in 2015 AIR SCW 4976**

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**294. CRIMINAL PROCEDURE CODE, 1973 – Section 200**

**INDIAN PENAL CODE, 1860 – Sections 120-B and 500**

**Amendment in criminal complaint – When can be permitted? Held, if the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and could not cause prejudice to the other side, may be permitted.**

दण्ड प्रक्रिया संहिता, 1973 – धारा 200

भारतीय दंड संहिता, 1860 – धाराएं 120–ब और 500

दांडिक परिवाद में संशोधन – कब अनुमत किया जा सकता है ? अभिनिर्धारित किया गया, यदि चाहा गया संशोधन साधारण कमी से संबंधित है जिसे औपचारिक संशोधन द्वारा सुधारा जा सकता है और यह विरोधी पक्ष के हितों को प्रतिकूल रूप से प्रभावित नहीं करता है तो अनुमति दी जा सकती है।

**S.R. Sukumar v S. Sunaad Raghuram**

**Judgment dated 02.07.2015 passed by the Supreme Court in Criminal Appeal No. 844 of 2015, reported in 2015 CrLR (SC) 769**

**Extracts from the Judgment:**

Insofar as merits of the contention regarding allowing of amendment application, it is true that there is no specific provision in the Code to amend either a complaint or a petition filed under the provisions of the Code, but the Courts have held that the petitions seeking such amendment to correct curable infirmities can be allowed even in respect of complaints. In ***U.P. Pollution Control Board v. Modi Distillery and ors., (1987) 3 SCC 684,*** wherein the name of the company was wrongly mentioned in the complaint that is, instead of Modi Industries Ltd. The name of the company was mentioned as Modi Distillery and the name was sought to be amended. In such factual background, this Court has held as follows:-

> "...The learned Single Judge has focussed his attention only on the technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in para 2 of the complaint so as to make the controlling company of the industrial unit figure as the concerned accused in the complaint. All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Limited, the company owning the industrial unit, in place of Modi Distillery.... Furthermore, the legal infirmity is of such a nature which could be easily cured..."

What is discernible from the ***U.P. Pollution Control Board's case*** (supra) is that easily curable legal infirmity could be cured by means of a formal application for amendment. If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the Court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the Court shall not allow such amendment in the complaint.

In the instant case, the amendment application was filed on 24.05.2007 to carry out the amendment by adding paras 11(a) and 11(b). Though, the proposed amendment was not a formal amendment, but a substantial one, the Magistrate allowed the amendment application mainly on the ground that no cognizance was taken of the complaint before the disposal of amendment application. Firstly,

Magistrate was yet to apply the judicial mind to the contents of the complaint and had not taken cognizance of the matter. Secondly, since summons was yet to be ordered to be issued to the accused, no prejudice would be caused to the accused. Thirdly, the amendment did not change the original nature of the complaint being one for defamation. Fourthly, the publication of poem 'Khalnayakaru' being in the nature of subsequent event created a new cause of action in favour of the respondent which could have been prosecuted by the respondent by filing a separate complaint and therefore to avoid multiplicity of proceedings, the trial court allowed the amendment application. Considering these factors which weighed in the mind of the courts below, in our view, the High Court rightly declined to interfere with the order passed by the Magistrate allowing the amendment application and the impugned order does not suffer from any serious infirmity warranting interference in exercise of jurisdiction under Article 136 of the Constitution of India.

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***295. CRIMINAL PROCEDURE CODE, 1973 – Sections 227 and 319**

**Can a person who has been added as an accused under section 319 of CrPC by the court, able to avail the remedy of discharge under section 227 of CrPC? Held, No – Because it is apparent that both these provisions, in essence, have the opposite effect – The power under section 319 of CrPC results in the summoning and consequent commencement of the proceedings against a person who was not an accused and the power under section 227 of CrPC results in termination of proceedings against the person who is an accused – For using power under section 319, there must be a stricter standard of proof but for using power under section 227, there must be a lesser standard of proof.**

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 227 और 319

एक व्यक्ति जिसे न्यायालय द्वारा धारा 319 दण्ड प्रक्रिया संहिता के अधीन एक अभियुक्त के रूप में जोड़ा गया हो क्या वह धारा 227 दण्ड प्रक्रिया संहिता के अधीन उन्मोचन के उपचार का लाभ ले सकता है? अभिनिर्धारित किया गया, नहीं – क्योंकि यह स्पष्ट है कि दोनों प्रावधान, तत्व में (तात्विक रूप से) विपरीत प्रभाव रखते है – धारा 319 दण्ड प्रक्रिया संहिता के अधीन शक्ति (के प्रयोग) का परिणाम होता है एक व्यक्ति के विरूद्ध संमन जारी करना और कार्यवाही प्रारंभ करना जो कि पूर्व में अभियुक्त नहीं था और धारा 227 दण्ड प्रक्रिया संहिता के अधीन शक्ति (के प्रयोग) का परिणाम होता है एक व्यक्ति के विरूद्ध जो कि अभियुक्त है कार्यवाही का समाप्त होना – धारा 319 के अधीन शक्ति के उपयोग के लिये प्रमाण का स्तर अपेक्षाकृत कठोर होना चाहिये किन्तु धारा 227 के अधीन शक्ति के प्रयोग के लिये प्रमाण का स्तर अपेक्षाकृत कम होना चाहिये।

**Jogendra Yadav & others v. State of Bihar**

**Judgment dated 15.07.2015 passed by the Supreme Court in Criminal Appeal No. 343 of 2012, reported in 2015 AIR SCW 4517**

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**296. CRIMINAL PROCEDURE CODE, 1973 – Section 354**

**INDIAN PENAL CODE, 1860 – Sections 300 and 376 (2) (g)**

***Crime against women – Sentencing Policy***

**(i) Stricter yardstick – The sentencing policy adopted by the Court in such cases must have a stricter yardstick so as to act as a deterrent – The object of sentencing policy should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it.**

**(ii) Mitigating circumstances – Age of accused person, family background and lack of criminal antecedents cannot alone be considered as mitigating circumstances.**

**(iii) Death sentence – Accused, a cab driver along with his friend picked up deceased victim and took her to secluded place, gang raped her and thereafter killed her – After commission of gruesome rape and murder, accused had acted remorselessly – Case falls within the category of the rarest of rare cases.**

दण्ड प्रक्रिया संहिता, 1973 – धारा 354

भारतीय दण्ड संहिता, 1860 – धाराएं 300 और 376 (2)(जी)

महिला के विरूद्ध अपराध – दण्ड नीति

(i) कठोरतर मानदण्ड – ऐसे मामलों में न्यायालय द्वारा अपनाई जाने वाली दण्ड नीति के कठोरतर मानदण्ड होने चाहिए ताकि यह (दण्ड) निवारक की तरह कार्य करे।

(ii) शमनकारी परिस्थितियाँ – अभियुक्त की उम्र, पारिवारिक पृष्ठ भूमि और पूर्व आपराधिक इतिहास के अभाव को शमनकारी परिस्थिति के रूप में विचार में नहीं लिया जा सकता।

(iii) मृत्युदण्ड – अभियुक्त एक केब ड्राईवर, उसके मित्र के साथ मृतक अभियोक्त्री को एक सुनसान स्थल पर ले गया, उसके साथ सामूहिक बलात्कार किया उसके बाद उसे मार डाला – विभत्स बलात्कार और हत्या कारित करने के बाद अभियुक्त ने पश्चातापरहित (निष्ठुर) व्यवहार किया – मामला विरले से विरलतम में आता है।

**Purushottam Dashrath Borate & anr. v. State of Maharashtra**

**Judgment dated 08.05.2015 by the Supreme Court in Criminal Appeal No. 1439 of 2013, reported in 2015 CriLJ 2862 (SC) (Three Judge Bench)**

**Extracts from the Judgment:**

We do not intend to saddle the judgment with the settled position of law in respect of the sentencing policy and the principles evolved by this Court for weighing the aggravating and mitigating factors in specific facts of the case. However, it would be apposite to notice the decision of this Court in the case of ***Bachan Singh v. State of Punjab, AIR 1980 SC 898***, wherein the constitutional validity of the provisions that authorize the Trial Court to award death sentence for the offence punishable under Section 302 of the IPC and other offences was upheld. However, this Court observed that there can be no strait jacket formula which can be applied in each case and that while considering the sentence to be awarded, the Court must look into the aggravating and mitigating circumstances. The ratio of the decision in Bachan Singh (supra) has been followed in the case of ***Machhi Singh & ors. v. State of Punjab, AIR 1983 SC 957*** wherein this Court held that the manner of commission, motive for commission, anti-social nature of crime, magnitude of crime and personality of victim ought to be kept in mind while awarding an appropriate sentence. It was held that a balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so, the mitigating circumstances have to be accorded full weightage and a balance has to be struck.

It is an established position that law regulates social interests and arbitrates conflicting claims and demands. Security of persons is a fundamental function of the State which can be achieved through instrumentality of criminal law. The society today has been infected with a lawlessness that has gravely undermined social order. Protection of society and stamping out criminal proclivity must be the object of law which may be achieved by imposing appropriate sentence. Therefore, in this context, the vital function that this Court is required to discharge is to mould the sentencing system to meet this challenge. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused and all other attending circumstances are relevant facts which would enter into the area of consideration. Based on the facts of the case, this Court is required to be stern where it should be and tempered with mercy where warranted.

In this context, it would be profitable to notice the manner in which this Court has considered the sentencing policy vis-à-vis certain aggravating and mitigating circumstances. In the case of ***Ramnaresh v. State of Chhattisgarh, AIR 2012 SC 1357,*** this Court referred to the ***Bachan Singh case*** (supra) and ***Machhi Singh case*** (supra) to cull out certain principles governing aggravating and mitigating circumstances. It would be beneficial to refer to the same hereinbelow:

***"Aggravating circumstances:***

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the

person having a substantial history of serious assaults and criminal convictions.

(2) The offence was committed while the offender was engaged in the commission of another serious offence.

(3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

(5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody.

(8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 CrPC.

(9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

(10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

(11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold-blooded murder without provocation.

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

***Mitigating circumstances:***

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though the prosecution has brought home the guilt of the accused."

Further, it has been held by this Court that undue sympathy to impose inadequate sentence would do more harm to the justice system by undermining the public [pic]confidence in the efficacy of law [See ***Mahesh v. State of M.P., AIR 1987 SC 1346; Sevaka Perumal v. State of T.N., AIR 1991 SC 1463 and Mofil Khan v. State of Jharkhand, (2015) 1 SCC 67]***. To give the lesser punishment for the accused would be to render the judicial system of the country suspect. If the courts do not protect the injured, the injured would then resort to private vengeance. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.

In the case of ***B.A. Umesh v. High Court of Karnataka, AIR 2011 SC 1000,*** the appellant was accused of a brutal rape and murder of a lady. It was found, by medical evidence, that the deceased therein was a victim of a violent rape prior to death and the death was caused due to as asphyxiation. Further, the medical report found that the body of the deceased has several abrasions and lacerations. This Court, noticing the brutal and violent manner of commission of the offences confirmed the death sentence to the accused therein. It was held that:

> "As has been indicated by the courts below, the antecedents of the appellant and his subsequent conduct indicates that he is a menace to the society and is incapable of rehabilitation. The offences committed by the appellant were neither under duress nor on provocation and an innocent life was snuffed out by him after committing violent rape on the victim. ..."

In the ***Sevaka Perumal*** case (supra), the counsel for the appellants therein contended that considering the young age of the accused, the same would be a strong mitigating factor in favour of commutation of death sentence. It was contended therein that the accused were the breadwinners of their family which consisted of a young wife, minor child and aged parents. However, this Court, finding no force in the said contention, observed that such compassionate grounds are present in most cases and are not relevant for interference in awarding death sentence. The principle that when the offence is gruesome and was committed in a calculated and diabolical manner, the age of the accused may not be a relevant factor, was further affirmed by a three-Judge Bench of this Court in ***Mofil Khan case*** (supra).

In view of the aforesaid decisions highlighting the approach of this Court, we would now consider the decision of the Courts below, in the present case. The Sessions Court has noticed a similarity with the present case and the decision of this Court in the case of ***Dhananjoy Chatterjee v. State of West Bengal, 1995 AIR SCW 510.*** Therefore, in light of the same, the Sessions Court has held that the present case would merit a sentence of death penalty and no less. The Session Court has observed:

> "... In present case, accused driver alongwith co-accused committed rape and murder of helpless and defenceless young girl who was reposing complete faith and trust on them by carefully planning the crime and executing it in barbaric manner. Taking the verdict in the matter of ***Dhananjoy Chatterjee*** (supra) as yardstick, there is no hesitation to put on record that the case at hand is the rarest of rare case warranting nothing else but the death penalty to the accused persons. ..."

The High Court, by the impugned judgment and order, has concurred with the findings recorded by the Sessions Court in respect of the chain of circumstances being clearly and incontrovertibly established by the prosecution. With regard to the balance sheet of aggravating and mitigating circumstances, the High Court has, in addition to the finding and observations of the Sessions Court, held that the aggravating circumstances far outweigh the mitigating circumstances. Therefore, the High Court has recorded that there is no alternative but to confirm the death sentence as awarded by the Sessions Courts.

At this juncture, it would be pertinent to notice the ***Dhananjoy Chatterjee*** (supra). As noticed above, the said case has been noticed by the Sessions Court, in the present case, as bearing great similarity to the facts herein. In the ***Dhananjoy Chatterjee case*** (supra), the accused was convicted for the brutal rape and murder of a young girl aged about 18 years. The accused-therein was employed as a security guard of the building where the deceased resided and therefore was entrusted with the noble task of ensuring her safety and security. The reasoning therein has been instrumental in moulding the sentencing policy

of this Court and therefore it would be gainful to reproduce the relevant paragraphs from the said case below:

> "In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.
>
> The sordid episode of the security guard, whose sacred duty was to ensure the protection and welfare of the inhabitants of the flats in the apartment, should have subjected the deceased, a resident of one of the flats, to gratify his lust and murder her in retaliation for his transfer on her complaint, makes the crime even more heinous. Keeping in view the medical evidence and the state in which the body of the deceased was found, it is obvious that a most heinous type of barbaric rape and murder was committed on a helpless and defenceless school-going girl of 18 years. If the security guards behave in this manner who will guard the guards? The faith of the society by such a barbaric act of the guard, gets totally shaken and its cry for justice becomes loud and clear. The offence was not only inhuman and barbaric but it was a totally ruthless crime of rape followed by cold blooded murder and an affront to the human dignity of the society. The savage nature of the crime has shocked our judicial conscience. There are no extenuating or mitigating circumstances whatsoever in the case. We agree that a real and abiding concern for the dignity of human life is required to be kept in mind by the courts while considering the confirmation of the sentence of death but a cold blooded preplanned brutal murder, without any provocation, after committing rape on an innocent and defenceless young girl of 18 years, by the security guard certainly makes this case a "rarest of the rare" cases which calls for no punishment other than the capital punishment and we accordingly confirm the sentence of death imposed upon the appellant for the offence under Section 302 IPC. The order of sentence imposed on the appellant by the courts below for offences under Sections

376 and 380 IPC are also confirmed along with the directions relating thereto as in the event of the execution of the appellant, those sentences would only remain of academic interest. This appeal fails and is hereby dismissed."

It would now be necessary for this Court to consider the balance sheet of aggravating and mitigating circumstances. In the instant case, the learned counsel for the accused-appellants has laid stress upon the age of the accused persons, their family background and lack of criminal antecedents. Further, the learned counsel has fervently contended that the accused-appellants are capable of reformation and therefore should be awarded the lighter punishment of life imprisonment.

In our considered view, in the facts of the present case, age alone cannot be a paramount consideration as a mitigating circumstance. Similarly, family background of the accused also could not be said to be a mitigating circumstance. Insofar as accused No.1 is concerned, it has been contended that he was happily married and his wife was pregnant at the relevant time. However, the accused No.1 did not take into consideration the condition of his wife or his mother while committing the said offence and, as a result, his wife deserted him and his widowed mother is being looked after by his nephew and niece. Insofar as accused No.2 is concerned, he has two sisters who are looking after his widowed mother. Lack of criminal antecedents also cannot be considered as mitigating circumstance, particularly taking into consideration, the nature of heinous offence and cold and calculated manner in which it was committed by the accused persons.

In our considered view, the "rarest of the rare" case exists when an accused would be a menace or, threat to and incompatible with harmony in the society. In a case where the accused does not act on provocation or on the spur of the moment, but meticulously executes a deliberate, cold-blooded and pre-planned crime, giving scant regard to the consequences of the same, the precarious balance in the sentencing policy evolved by our criminal jurisprudence would tilt heavily towards the death sentence. This Court is mindful of the settled principle that criminal law requires strict adherence to the rule of proportionality in awarding punishment, and the same must be in accordance with the culpability of the criminal act. Furthermore, this Court is also conscious to the effect, of not awarding just punishment, on the society.

In the present factual matrix, Accused No.1 abducted the deceased with help of Accused No.2, and subsequently they raped and murdered her. They did not show any regret, sorrow or repentance at any point of time during the commission of the heinous offence, nor thereafter, rather they acted in a disturbingly normal manner after commission of crime. It has been established by strong and cogent evidence that after the commission of the gruesome crime, Accused No.2 accompanied Accused No.1 for the second pick up and exited the cab only prior to reaching the gate of the Company. Further, it has been brought

on record that the Accused No.1 attempted to create false record of the whereabouts of the cab and the cause of the delay in arriving at the workplace. In addition, it has been noticed that even though the accused-appellants were seen by PW-12, that the deceased repeatedly questioned them of the unusual route, or that the deceased was talking to a friend on the phone during the journey, nothing deterred them from committing the heinous offences. In fact the Sessions Court has noticed that during the commission of the offences, the accused-appellants were contacted by PW-11 seeking an explanation for the delay in picking him up, however even this did not deter them.

Thus, the manner in which the commission of the offence was so meticulously and carefully planned coupled with the sheer brutality and apathy for humanity in the execution of the offence, in every probability they have potency to commit similar offence in future. It is clear that both the accused persons have been proved to be a menace to society which strongly negates the probability that they can be reformed or rehabilitated. In our considered opinion, the mitigating circumstances are wholly absent in the present factual matrix. This appeal is not a case where the offence was committed by the accused persons under influence of extreme mental or emotional disorder, nor is it a case where the offence may be argued to be a crime of passion or one committed at the spur of the moment. There is no question of accused persons believing that they were morally justified in committing the offence on helpless and defenceless young woman.

Therefore, in view of the above and keeping the aforesaid principle of proportionality of sentence in mind, this Court is in agreement with the reasoning of the Courts below that the extreme depravity with which the deceased was done to death coupled with the other factors including the position of trust held by the Accused No.1, would tilt the balance between the aggravating and mitigating circumstances greatly against the accused-appellants. The gruesome act of raping a victim who had reposed her trust in the accused followed by a cold-blooded and brutal murder of the said victim coupled with the calculated and remorseless conduct of the accused persons after the commission of the offence, we cannot resist from concluding that the depravity of the appellants' offence would attract no lesser sentence than the death penalty.

In addition to the above, it would be necessary for this Court to notice the impact of the crime on the community and particularly women working in the night shifts at Pune, which is considered as a hub of Information Technology Centre. In recent years, the rising crime rate, particularly violent crimes against women has made the criminal sentencing by the Courts a subject of concern. The sentencing policy adopted by the Courts, in such cases, ought to have a stricter yardstick so as to act as a deterrent. There are a shockingly large number of cases where the sentence of punishment awarded to the accused is not in proportion to the gravity and magnitude of the offence thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's

credibility. The object of sentencing policy should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In the case of ***Machhi Singh*** (supra), this Court observed that the extreme punishment of death would be justified and necessary in cases where the collective conscience of society is so shocked that it will expect the holders of judicial power to inflict death penalty irrespective of their personal opinion.

It is true that any case of rape and murder would cause a shock to the society but all such offences may not cause revulsion in society. Certain offences shock the collective conscience of the court and community. The heinous offence of gang-rape of an innocent and helpless young woman by those in whom she had reposed trust, followed by a cold-blooded murder and calculated attempt of cover-up is one such instance of a crime which shocks and repulses the collective conscience of the community and the court. Therefore, in light of the aforesaid settled principle, this Court has no hesitation in holding that this case falls within the category of "rarest of rare", which merits death penalty and none else. The collective conscience of the community is so shocked by this crime that imposing alternate sentence, i.e. a sentence of life imprisonment on the accused persons would not meet the ends of justice. Rather, it would tempt other potential offenders to commit such crime and get away with the lesser/lighter punishment of life imprisonment.

In the result, after having critically appreciated the entire evidence on record as well as the judgments of the Courts below in great detail, we are in agreement with the reasons recorded by the trial court and approved by the High Court while awarding and confirming the death sentence of the accused-appellants. In our considered view, the judgment and order passed by the Courts below does not suffer from any error whatsoever.

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***297. CRIMINAL PROCEDURE CODE, 1973 – Sections 357 and 357-A**
**INDIAN PENAL CODE, 1860 – Section 304-A**

**(i) Awarding compensation to the victim of offence – It is the duty of the court to duly consider the aspect of rehabilitating the victim – Court has to award compensation to the victim of offence – When the accused is not in a position to pay fair compensation, the same be paid by the State as per section 357-A CrPC [*Suresh v. State of Haryana, (2015) 2 SCC 227* relied on].**

**(ii) Sentencing policy – It is the duty of the court to award just sentence to a convict against whom offence is proved – Every mitigating or aggravating circumstance should be given due weightage – Mechanical reduction of sentence to the period already undergone cannot be appreciated – Sentence has to be fair not only to the accused but also to the victim and the society too.**

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 357 और 357–ए

भारतीय दंड संहिता, 1860 – धारा 304–ए

(i) अपराध के पीड़ित को प्रतिकर अधिनिर्णीत करना – यह न्यायालय का कर्त्तव्य है कि पीड़ित के पुनर्वास के पक्ष को सम्यक रूप से विचार में लेवे – न्यायालय को अपराध के पीड़ित को प्रतिकर अधिनिर्णीत करना ही चाहिए – यदि अभियुक्त ऋजु (या उचित) प्रतिकर अदा करने की स्थिति में न हो तो धारा 357–ए दं.प्र.स. के अधीन यह राज्य द्वारा अदा करना चाहिए [ सुरेश विरूद्ध स्टेट आफ हरियाणा, (2015) 2 एससीसी 227 पर विश्वास किया गया ]।

(ii) दण्ड नीति– यह न्यायालय का कर्त्तव्य है कि एक दोष सिद्ध जिसके विरूद्ध अपराध प्रमाणित हुआ है उसे युक्तियुक्त दंड देवे – प्रत्येक अल्पीकरण की या गंभीरता की परिस्थितियों को सम्यक महत्व दिया जा सकता है लेकिन दंड यांत्रिक तरीके से पूर्व में भुगती सजा की अवधि तक कम करना उचित नहीं माना जा सकता – दंड न केवल अभियुक्त के लिए बल्कि पीड़ित के लिए व समाज के लिए भी उपयुक्त लगने वाला होना चाहिए।

**State of M.P. v. Mehtaab**

**Judgment dated 13.02.2015 passed by the Supreme Court in Criminal Appeal No. 290 of 2015, reported in (2015) 2 SCC (Cri) 764**

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***298. CRIMINAL PROCEDURE CODE, 1973 – Sections 397 and 401**

**CRIMINAL TRIAL – *Fair trial***

**Reversal of order of acquittal and direction of re-trial in revisional jurisdiction – Duty of court and prosecutor in conducting trial – The court is under the legal obligation to see that the witnesses who have been cited by prosecution are produced by it – If summons are issued, they are actually served on the witnesses – The prosecution may not examine all the material witnesses but that does not mean that the prosecution can choose not to examine any witness and convey to the court that it does not intend to cite the witnesses – The Public Prosecutor who conducts the trial its has a statutory duty to perform – The trial court is not expected to accept the version of the prosecution as if it is sacred – It has to apply its judicial mind on every occasion – Non-application of mind by the trial court has the potentiality to lead to paralysis of the conception of fair trial – In cases pertaining to offences punishable under sections 147, 148, 149, 341, 342 and 302 IPC, the trial court after examining a singular formal witness PW 1 closed the evidence and recorded the judgment of acquittal – Direction for re-trial ordered by the revisional court held, proper by the Apex Court.**

दंड प्रक्रिया संहिता, 1973 – धाराएं 397 और 401

दांडिक विचारण – ऋजु विचारण

पुनरीक्षण के क्षेत्राधिकार में दोषमुक्ति के आदेश को पलटना और पुनः विचारण के निर्देश देना – विचारण का संचालन करने में न्यायालय और अभियोजक के कर्तव्य – न्यायालय इस विधिक दायित्व के अधीन होते है कि वे देखे कि अभियोजन द्वारा जिन गवाहों का उल्लेख किया गया है वे वास्तव में उसके द्वारा पेश किये गये हैं – यदि समन जारी किये गये है तो वे गवाहों पर वास्तव में तामील हुए हैं – अभियोजन सभी तात्विक गवाहों का कथन नहीं करवाता है लेकिन इसका अर्थ यह नहीं है कि अभियोजन किसी भी गवाह का कथन न करवाने का चुनाव करे और न्यायालय को यह सूचित कर दे कि वह कोई गवाह नहीं देने का आशय रखता है (या कोई गवाह नहीं करवाना चाहता है) – लोक अभियोजक जो विचारण का संचालन करता है उस पर पालन करने के लिए वैधानिक कर्तव्य होते है – विचारण न्यायालय से यह आशा नहीं की जाती कि वह अभियोजन का कथन यह मानते हुए स्वीकार कर ले कि यह पवित्र (कथन) हैं – न्यायालय को उसके न्यायिक मस्तिष्क का प्रयोग प्रत्येक अवसर पर करना ही चाहिए – विचारण न्यायालय द्वारा मस्तिष्क का प्रयोग न करना ऋजु विचारण की धारणा को लकवाग्रस्त करने के समान होता हैं – यह मामला जो धारा 147, 148, 149, 341, 342 और 302 भा.दं.सं. के अधीन दण्डनीय अपराध के संबंध में है विचारण न्यायालय ने केवल एक औपचारिक गवाह अभियोजन साक्षी क्रमांक 1 का परीक्षण करने के बाद प्रमाण समाप्त कर दिया और दोषमुक्ति का निर्णय अभिलिखित कर दिया – पुनरीक्षण न्यायालय द्वारा पुनः विचारण के निर्देश का आदेश देना – सर्वोच्च न्यायालय द्वारा उचित होना अभिनिर्धारित किया गया।

**Bablu Kumar and others v. State of Bihar and another**

**Judgment dated 20.07.2015 passed by the Supreme Court in Criminal Appeal No. 914 of 2015, reported in 2015 AIR SCW 4655**

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**299. CRIMINAL PROCEDURE CODE, 1973 – Sections 406, 407 and 408**

**Transfer of case, ground and need therefor – Where there exists a reasonable apprehension in the mind of litigant that the Court had so committed itself to a given approach or thought process that it might not be possible for it to redress its steps to take a fair and non-partisan view in the matter and the apprehension on the part of litigant cannot be said to be wholly misconceived, the case is required to be transferred to another Court.**

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 406, 407 और 408

प्रकरण के अंतरण के आधार और आवश्यकता – जहाँ पक्षकार के मस्तिष्क में ऐसा युक्तिसंगत भय विद्यमान हो कि न्यायालय किसी एक दिये गये दृष्टिकोण के प्रति वचनबद्ध है या विचार प्रक्रिया ऐसी है कि पक्षकार के लिए यह संभव न हो की न्यायालय

में ऋजु और पक्षपात रहित मत मामले में बनाने के लिए संबोधित कर सके व पक्षकार का भय पूरी तरह अनुचित नहीं कहा जा सकता हो वहॉ मामला अन्य न्यायालय को अंतरित करना आवश्यक होता है।

## Kanaklata v. State (NCT of Delhi) and others

**Judgment dated 04.02.2015 by the Supreme Court in Criminal Appeal No. 222 of 2015, reported in (2015) 6 SCC 617 (Three Judge Bench)**

**Extracts from the Judgment:**

It is true that the trial Court had while discharging the accused persons under the Special Act mentioned above, made certain observations about the alleged misuse of the provisions of the said Act by unscrupulous elements and also certain suggestions for remedying that situation. It is also true that the trial Court had come to the conclusion that there is no real basis for it to frame any charge against the accused persons under the said Act. But it is equally true that while setting aside that order and directing a fresh order on the question of charge, the High Court has clearly mentioned that the trial Court shall remain uninfluenced by the observation made in its earlier order. That observation is, in the opinion of the High Court, a sufficient safeguard against any possible prejudice to the complainant-appellant herein making transfer of the case from the Court at Rohini to any other Court unnecessary.

Now in the ordinary course if an order passed by the Court is set aside the observations and findings recorded therein also get obliterated for all intents and purposes. So also if the High Court makes the position clear that any such observation shall not influence the Court concerned while making a fresh order the same should ordinarily put the matter beyond the pale of any controversy. Having said that, there may still be situations where the nature of the observations made by the court concerned create a reasonable apprehension in the mind of the litigant that the Court has so committed itself to a given approach or thought process that it may not be possible for it to retrace its steps to take a fair and non-partisan view in the matter.

The present appears to be one such case where despite the safeguards provided by the High Court’s observations, the apprehension of the complainant continues to subsist. We do not think that such apprehension is wholly misconceived nor can it be dubbed as forum shopping in disguise. The earlier order passed by the trial Court is so strongly worded that it could in all likelihood give rise to a reasonable apprehension in the mind of the complainant which cannot be lightly brushed aside. We must hasten to add that we are not in the least suggesting that the Presiding Officer of the trial Court is totally incapable of adopting a fair approach while passing a fresh order but then the question is not whether the Judge is biased or incapable of rising above the earlier observations made by her. The question is whether the apprehension of the complainant is reasonable for us to direct a transfer. Justice must not only be done but must seem to have been done. A lurking suspicion in the mind of the

complainant will leave him with a brooding sense of having suffered injustice not because he had no case, but because the Presiding Officer had a preconceived notion about it. On that test we consider the present to be a case where the High Court ought to have directed a transfer. In as much as it did not do so, we have no option but to interfere and direct transfer of the case to another Court.

We are mindful of the fact that the transfer ordered by us may cause inconvenience and harassment to the accused persons but that can, in our opinion, be taken care of by directing that in case an application for exemption from personal appearances is filed, the Court concerned shall consider the same and pass appropriate orders in accordance with law.

In the result, we allow this appeal, set aside the order passed by the High Court and direct that Sessions Case No.1006 of 2009 pending in the Court of Additional District and Sessions Judge, Rohini shall stand transferred from that Court to the Court of Sessions Judge, Tis Hazari, who shall try the same himself or make it over to any other Court duly notified and competent to do so. Record of the case shall be transmitted to the transferee Court expeditiously.

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**300. CRIMINAL PROCEDURE CODE, 1973 – Section 439 (2)**

**Application for cancellation of bail, *locus standi* therefor.**

**Any member of the public can move the High Court to remind it the need to exercise its power *suo motu* in this regard.**

**Bail, cancellation of – Bail can be cancelled if there is a likelihood of its misuse.**

दण्ड प्रक्रिया संहिता, 1973 – धारा 439 (2)

जमानत निरस्त करने के आवेदन को पेश करने के लिए लोकस स्टेन्डी।

जनता का कोई भी सदस्य उच्च न्यायालय को इस संबंध में उसकी स्वप्रेरणा की शक्ति के प्रयोग की आवश्यकता को याद दिलाने के लिए आवेदन कर सकता है।

जमानत निरस्तीकरण – यदि जमानत का दुरूपयोग किया गया हो तो उसे निरस्त किया जा सकता है।

**Vikash Raghuvanshi v. State of M.P. & anr.**

**Order dated 12.12.2013 by the High Court of M.P. in M.Cr.C. No. 8992 of 2013, reported in ILR (2015) MP 268**

**Extracts from the Order:**

Learned counsel for the petitioner, submits that in the incident dated 07.11.2011 which was registered as crime No. 227/2011, Harishankar was not an accused, 2 MCRC No. 8992/13 whereas Toran Singh and Chaturbhuj were accused. It is contended that Toran Singh violated the conditions of bail order dated 30.11.2011 and again attacked Rajesh Raghuvanshi. Rajesh Raghuvanshi was returning from his agricultural farm when Toran Singh and other persons including Harishankar and Chaturbhuj attacked him by use of farsa, axe and

stick. Rajesh died on the spot. This incident was recorded as crime No. 663/2012.

It is contended by the petitioner that initially bail was refused to Toran Singh, but in M.Cr.C. No. 6833/2013 bail was granted by this Court on the basis of parity with Harishankar who was enlarged on bail by coordinate Bench. It is contended that the case of Harishankar and Toran Singh and Chaturbhuj are entirely different. Harishankar was not an accused in the first case i.e. crime No. 227/2011, whereas Chaturbhuj and Toran Singh were accused in the commission of first crime. Harishankar joined Toran and Chaturbhuj in the second attack in which Rajesh Raghuvanshi died.

It is submitted that, on the basis of aforesaid factual back ground, there is no parity between Harishankar and Toran Singh, and between Harishankar and Chaturbhuj. In addition, it is submitted that in view of conduct of Toran Singh, there is every likelihood of misuse of freedom by him. He will tamper the evidence and material on record. In support of this contention, learned counsel for the petitioner relied on certain judgments.

In the considered opinion of this Court, law is well settled that there is nothing to indicate in section 439(2) Cr.P.C. that power of cancellation of bail can be exercised only if the State or investigating officer or Public Prosecutor moves the petition. The power so vested in the High Court can be invoked by the State or by any aggrieved party. Power of cancellation of bail can be exercised “suo motu” by the High Court. Any member of public whether he belongs to any particular profession or otherwise can move the High Court to remind it of the need to exercise its power suo motu. This view is taken by the Supreme Court in ***Puran v. Rambilas and another, 2001 SCC (Cri.) 1124*** ( para 14).

The Apex Court in ***Prashanta Kumar Sarkar v. Ashis Chattterjee and another, (2010) 14 SCC 496*** again considered the judgment of ***State of U.P. through CBI v. Amarmani Tripathi, 2005 SCC (Cri.) 1960 (2).*** In ***Prakash Kadam and others v. Ramprasad Vishwanath Gupta and another, (2011) 6 SCC 189,*** the Apex Court opined that while considering the application for cancellation of bail, the Court needs to consider the gravity and nature of offence, prima facie case against the accused, position and standing of accused etc. Court opined that in cases of very serious allegations, bail can be cancelled even if he has not misused the bail granted to him. The Apex Court considered the judgment of ***Daulat Ram and others v. State of Haryana, 1995 SCC (Cri.) 237*** in the case of ***Prakash Kadam*** (supra). Paragraphs 17-19 of ***Kadam*** (supra) reads as under:-

> “17. It was contended by the learned counsel for the appellants before us, and it was also contended before the High Court, that the considerations for cancellation of bail are different from the consideration of grant of bail vide ***Bhagirathsinh v. State of Gujarat, (1984) 1 SCC 284, Dolat Ram*** (supra) and ***Ramcharan v. State of M.P., (2004) 13 SCC 617.*** However, we are of the opinion that, that is not an

absolute rule, and it will depend on the facts and circumstances of the case.

18. In considering whether to cancel the bail the Court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same Court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before an appellate/Revisional Court.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail."

The judgment of ***Prakash Kadam*** (supra) is followed by the Supreme court in ***Ash Mohammad v. Shivraj Singh and another, (2012) 9 SCC 446.*** As noticed above, the judgment of ***Dolat Ram*** (supra) was considered by the Supreme Court in the latest judgment in ***Prakash Kadam*** (supra). It is held in the case of Prakash Kadam that once bail is granted it can be cancelled if there is likelihood of misuse of the bail. In the considered opinion of this Court, Toran Singh is the accused in both the crime vide crime No. 227/11 and 663/12. He violated the conditions of bail. Complainant Rajesh Raghuvanshi died in the second incident. Harishankar is admittedly not an accused in the first crime. Thus there is no absolute parity between Toran Singh and Harishankar. Since Toran Singh is an accused in two criminal incidents, gravity of offence on his part is much higher. Apart from this, likelihood of misuse of bail by Toran Singh cannot be ruled out. In view of the law laid down in ***Prakash Kadam*** (supra), I deem it proper to cancel the bail granted to Toran Singh by order dated 08.10.2013. Accordingly, the said order dated 08.10.2013 passed in M.Cr.C. No. 6833/2013 is cancelled.

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***301. CRIMINAL TRIAL:**

**(i) Fair investigation, objective and need of – Investigation must not only be fair but must appear to have been conducted in a fair manner – There is a high degree of responsibility placed on an investigation agency to ensure that an innocent person is not subjected to a criminal trial – This responsibility is coupled with an equally high degree of ethical rectitude required of an investigating officer or agency to ensure that the investigations**

**are carried out without any bias and are conducted in all fairness not only to the accused person but also to the victim of crime.**

**(ii) Whistleblower, protection of – If action of whistleblower serves public interest, his prosecution is not warranted.**

दाण्डिक विचारण:

(i) ऋजु अनुसंधान के उद्देश्य व आवश्यकता – अनुसंधान न केवल ऋजु होना चाहिए बल्कि यह लगना भी चाहिए कि उसका संचालन ऋजु तरीके से किया गया है। अनुसंधान अधिकरण पर यह उच्च स्तर का दायित्व होता है कि वह यह सुनिश्चित करे कि एक निर्दोष व्यक्ति को दाण्डिक विचारण का विषय नहीं बनाया जाए – यह दायित्व एक समान रूप से उच्च स्तर की नैतिक ईमानदारी की आवश्यकता एक अनुसंधान अधिकारी या अधिकरण से यह सुनिश्चित करने के लिए डालता है कि अनुसंधान किसी पक्षपात के बिना हो और सारी ऋजुता के साथ संचालित किया जाये जो न केवल अभियुक्त के लिए बल्कि अपराध के पीड़ित के लिए भी (ऋजु और पक्षपात रहित हो)।

(ii) विसलब्लोअर का संरक्षण – यदि विसलब्लोअर का कृत्य लोकहित की पूर्ति के लिए हो तो उसका अभियोजन उचित नहीं होगा।

**Common Cause and others v. Union of India and others**

**Judgment dated 14.05.2015 by the Supreme Court in I.A. 13 of 2014, reported in 2015 CriLJ 2935 (SC) (Three Judge Bench)**

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**302. CRIMINAL TRIAL:**

**Offences under the Prevention of Corruption Act, 1988 – Sentencing policy – Theories of punishment, applicability of – Reformative theory of punishment is inapplicable as far as punishment under the Prevention of Corruption Act is concerned – The moment public servant is convicted, he loses his job hence, there is no significance to the theory of reformation of his conduct in public service – In such cases, object of punishment is only denunciation and deterrence.**

**Misplaced sympathy or unwarranted leniency will send a wrong message to public at large giving room to suspect institutional integrity affecting the credibility of its verdict – Judgments must project and promote the policy aims of punishment – The court owes a duty to protect and promote public interest and build public confidence in efficacy of the rule of law.**

**Sentence must be proportionate to crime committed and while sentencing, court must consider kind of forbidden conduct, kind of social condemnation, sanction prescribed in law, object of punishment, nature of crime, status of criminal etc.**

दाण्डिक विचारणः

भ्रष्टाचार निवारण अधिनियम, 1988 के अधीन अपराध – दण्ड नीति – दण्ड के सिद्धांतों का लागू होना – भ्रष्टाचार निवारण अधिनियम, 1988 के बारे में दण्ड का सुधारात्मक सिद्धांत लागू नहीं होता है – जिस क्षण लोक सेवक को दोषसिद्ध किया जाता है वह उसकी नौकरी खो देता है इस कारण लोक सेवा में उसके आचरण में सुधार के सिद्धांत का कोई महत्व नहीं रहता है – ऐसे मामलों में दण्ड का उद्देश्य भर्त्सना और निवारक होता है।

इन मामलों में दंड के प्रश्न पर अनावश्यक दयालुता न दिखाने के बारे में विधि समझाई गई और अपराध के अनुपात में दंड के बारे में विधि समझाई गई।

## Shanti Lal Meena v. State (NCT of Delhi), Central Bureau of Investigation

**Judgment dated 07.04.2015 by the Supreme Court in Criminal Appeal No. 585 of 2015, reported in (2015) 6 SCC 185 (Three Judge Bench)**

**Extracts from the Judgment:**

An analysis of the provisions on punishment under the PC Act would give a clear indication on the penal philosophy of deterrence conceived by Parliament. Though no authentic reference is available as to what promoted the lawmaker to take away the discretion conferred on the court to reduce the minimum punishment and in enhancing the minimum punishment, it is fairly clear that Parliament intended to restrict the discretion of the courts while imposing the sentence for offences under the Prevention of Corruption Act. In the words of K.T. Thomas, J. in ***Madhukar Bhaskarrao Joshi v. State of Maharashtra, (2000) 8 SCC 571***:

> "When corruption was sought to be eliminated from the polity all possible stringent measures are to be adopted within the bounds of law. One such measure is to provide condign punishment. Parliament measured the parameters for such condign punishment and in that process wanted to fix a minimum sentence of imprisonment for giving deterrent impact on other public servants who are prone to corrupt deals. That was precisely the reason why the sentence was fixed as 7 years and directed that even if the said period of imprisonment need not be given the sentence shall not be less than the imprisonment for one year. Such a legislative insistence is reflection of Parliament's resolve to meet corruption cases with very strong hand and to give signals of deterrence as the most pivotal feature of sentencing of corrupt public servants. All public servants were warned through such a legislative measure that corrupt public servants have to face very serious consequences. If on the other hand any public servant is given the impression

> that if he succeeds in protracting the proceedings that would help him to have the advantage of getting a very light sentence even if the case ends in conviction, we are afraid its fallout would afford incentive to public servants who are susceptible to corruption to indulge in such nefarious practices with immunity. Increasing the fine after reducing the imprisonment to a nominal period can also defeat the purpose as the corrupt public servant could easily raise the fine amount through the same means."

In ***Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220,*** this Court held at para 15 that:

> "15. .... Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime."

In ***Ahmed Husssein Vali Mohammed Saiyed v. State of Gujarat, (2009) 7 SCC 254*** at para 99, this Court reiterated the position in the following words:

> "99. ..... It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counter, productive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system."

In a recent decision in ***State of M.P. v. Bablu, (2014) 9 SCC 281,*** it was held as follows:

> "It is well-settled proposition of law that one of the prime objectives of criminal law is the imposition of adequate, just proportionate punishment which is commensurate with the gravity and nature of the crime and manner in which the offence is committed. One should keep in mind the social interest and consciousness of the society while considering the determinative factor of sentence commensurate with the gravity and nature of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, the solemn duty of the court to strike a proper balance while awarding sentence as awarding a lesser sentence encourages any criminal and as a result of the same society suffers."

After extensively referring to the objects of punishment in ***State of Punjab v. Bawa Singh, (2015) 3 SCC 441,*** at para 16, this Court held that:

> "16. .... Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence...."

In ***Mahesh v. State of M.P., (1987) 3 SCC 80,*** while referring to the cruel acts of the convicted accused, this Court observed that:

> "6. .... To give the lesser punishment for the appellants would be to render the justicing system of this country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon."

In ***Ravji v. State of Rajasthan, (1996) 2 SCC 175,*** this Court held that the sentence should reflect the social conscience of society and that the sentencing process has to be stern, where it should be.

In ***Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC 359,*** at para 7, it was held that:

> "7. ....Protection of society and stamping out criminal proclivity must be the object which must be achieved by imposing appropriate sentence."

In ***Hazara Singh v. Raj Kumar, (2013) 9 SCC 516,*** this Court took the view that:

> "11. The cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate tot eh gravity of the offence."

As far as punishment for the offences under the PC Act is concerned, we do not think that there is any serious scope for reforming the convicted public servant. The moment he is convicted, he loses his job. Hence, there is no significance to the theory of reformation of his conduct in public service. The only relevant object of punishment in such cases is denunciation and deterrence. Thatr is the reason Parliament has restricted the judicial discretion in imposing punishment

> To quote Friedmann"
>
> "Generally the philosophy of deterrence still prevails in modern criminology. We continue to be concerned with preventing, by appropriate punitive sanctions, both the individual offender and other members of society from the repetition of crime, or the imitation on the part of others by similar actions." [W. Friedmann, Law in a Changing Society (2nd Edn.) 224]

Unless the courts award appropriately deterrent punishment taking note of the nature of the offence under the PC Act and the status of the public servant at the relevant time, people will lose faith in the justice-delivery system and the very object of the legislation on prevention of corruption will be defeated. The court is the conscience of the statute and hence its judgments should project and promote the policy aims of punishment, lest it should shake the faith of common man in courts. The judgment on sentence shall not shock the common man. It should reflect the public abhorrence of the crime. The court has thus a duty to protect and promote public interest and build up public confidence n efficacy of the Rule of Law. Misplaced sympathy or unwarranted leniency will send a wrong signal to the public giving room to suspect the institutional integrity, affecting the credibility of its verdict. Thus, while awarding sentence in cases under the PC Act, the court should bear in mind the expectation of the people of its paramount duty to prevent corruption in society by providing prompt conviction and stern sentence.

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***303. CRIMINAL TRIAL:**

**Sentencing policy – Death sentence – Principle of the rarest of rare case – Aggravating and mitigating factors – Law explained – It is now settled law that where the maximum punishment that could be awarded under a provision is death penalty, the courts are required to independently consider factors of each and every case and determine a sentence which is most appropriate and proportional to culpability of the accused.**

**It is not sufficient for the court to decide the quantum of sentence only with reference to one of the clauses under any one of the head of circumstances while completely ignoring clauses under the other i.e. what is required to be considered is not just one of the circumstances by placing them in separate compartment, but their cumulative effect.**

**The court ought to be sufficiently cautious and adherent to the same so as to better administer the criminal justice system and provide an effective and meaningful reasoning by the court as contemplated under section 354 (3) CrPC while sentencing.**

**The most significant aspect of sentencing policy in Indian Criminal Jurisprudence regarding award of death penalty is that life sentence is a rule and death sentence is an exception only to be awarded in "the rarest of rare cases" – Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime and provided the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.**

***Facts of the case:***

**Extermination of her own entire family (seven in number including 10 month old infant) by educated daughter working as a teacher with her lover's help and the reasons being that family members were vehemently opposed to their relationship and to secure entire property of family, creating financial security for themselves – Crime was committed by both the accused persons in most cruel, cold blooded and inhuman manner, which is extremely brutal, grotesque, diabolical and revolting – As soon as family members were dead, while lover accused fled from the spot disposing of murder weapon and other evidence of crime, accused daughter feigned unconsciousness and laid by the side of deceased father's mutilated body to callously insinuate that crime was committed by an outsider while she was asleep on rooftop.**

**Held, extreme culpability of both the accused persons make them the most deserving of the death penalty.**

दाण्डिक विचारणः

दण्ड नीति – मृत्यु दण्ड – विरले से विरलतम का सिद्धांत – गंभीर और शमनकारी कारक विधि समझाई गई।

**Shabnam v. State of Uttar Pradesh**

**Judgment dated 15.05.2015 by the Supreme Court in Criminal Appeal No. 802 of 2015, reported in (2015) 6 SCC 632 (Three Judge Bench)**

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

**N.D.P.S. ACT, 1985 – Sections 20 and 52**

**Appreciation of evidence – Gazetted Officer as well as I.O. have deposed that public persons were available when the contraband was seized, however, none of them acceded to their request to join as an independent *panch* witness – These consistent statements have been found unreliable by the trial court but failed to record any reason for it – According to prosecution one co-accused had fled from the spot – Trial court held that he could not flee in presence of five police officers – Hon'ble Apex Court reversed the acquittal and held that the courts below have proceeded on assumption and conjecture – Appreciation of evidence by both the courts below is erroneous and cannot be termed as a possible view.**

साक्ष्य अधिनियम, 1872 – धारा 3

एन.डी.पी.एस. अधिनियम, 1985 – धाराएं 20 और 52

साक्ष्य का मूल्यांकन – राजपत्रित अधिकारी और अनुसंधान अधिकारी ने कथन किए कि जब निषिद्ध पदार्थ जप्त किया गया था तब आमजन उपलब्ध थे लेकिन उनमें

से किसी ने स्वतंत्र पंच गवाह बनने का अनुरोध स्वीकार नहीं किया – ऐसे स्थिर कथनों को विचारण न्यायालय ने अविश्वसनीय माना था किन्तु इसके लिए कोई कारण अभिलिखित करने में असफल रहीं थी – अभियोजन के अनुसार एक सह अभियुक्त घटना स्थल से भाग गया था विचारण न्यायालय ने यह अभिनिर्धारित किया कि 5 पुलिस अधिकारीगण की उपस्थिति में वह भाग नहीं सकता था – माननीय सर्वोच्च न्यायालय ने दोषमुक्ति को उल्ट दिया और यह अभिनिर्धारित किया कि निचले न्यायालयों ने कल्पना और अटकल (अनुमान) के आधार पर कार्यवाही की है – दोनों निचली न्यायालयों के साक्ष्य का मूल्यांकन त्रुटिपूर्ण है और उसे एक सम्भाव्य मत नहीं माना जा सकता।

### State of Haryana v. Asha Devi and another

**Judgment dated 12.05.2015 passed by the Supreme Court in Criminal Appeal No. 1953 of 2009, reported in (2015) 8 SCC 39**

**Extracts from the Judgment:**

We find that the High Court and the trial court both relied on three main points to decide the matter against the State – (i) no independent witness; (ii) Om Prakash could not have fled in presence of five police officers; and (iii) the link evidence of the possession of seal "RP" transferring from ASI Rishiraj to I0 Ramphal is not proved. The assessment of evidence and consideration of the matter as regards these three points by both the courts, in our view, is erroneous and cannot be termed as a possible view.

We find that both DSP Maharaj Singh as well as I0 Ramphal have deposed that public persons were available when the contraband was seized; however, none of the public persons acceded to their request of joining the investigation as an independent witness. The courts below have found it unbelievable but no reason for the same is rendered. In our opinion, the consistent statement of both DSP as well as IO rather enhances the veracity of the circumstances as put forth by them. With respect to the finding of the courts below that Om Prakash could not have fled away after scaling the wall and the police constables would not have failed to catch hold of him: we find the courts below have proceeded on assumption and conjecture. There is nothing in the evidence which could show that Om Prakash could not have run away. There are positive statements by several prosecution witnesses that he ran away on seeing the police party and these statements have withstood the test of cross-examination as well. Further, no other evidence was led to disprove the fact of running away of accused Om Prakash. So, we are of the view that the High Court and the trial court were not correct in arriving at the said finding.

There has been a controversy with respect to possession of seal. The controversy is that IO Ramphal had given the seal "RP" to ASI Rishiraj on 3-2-2006 after sealing the contraband and samples thereof. However, the next day when the case property was produced before the learned Judicial Magistrate,

after verification it was resealed again with “RP”. The courts below found the case of prosecution as doubtful inasmuch as that when the seal “RP” was in possession of ASI Rishiraj, how could it have been with IO Ramphal the next day. We find, the more important evidence was with respect to the sample which was sealed with “RP”. There is clear evidence that initially the samples were taken and sealed with “RP” and “MS” on 3-2-2006 at the place of seizure and thereafter, on same day, SHO Vikram Singh also sealed the said samples with “SS”. There is uncontroverted evidence to the fact that the samples were produced before the learned Judicial Magistrate, where seal of one sample was broken and resealed with “RP”. Thereafter, the sample was deposited in Judicial malkhana from where it was sent to FSL. The FSL report notes that the seal was intact and the sample was untampered.

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***305. EVIDENCE ACT, 1872 – Sections 3, 9 and 118**

**INDIAN PENAL CODE, 1860 – Sections 34, 201, 302 and 364-A**

**(i) Dock identification, evidentiary value of – Ordinarily, dock identification does not deserve much credence but the identification of the accused for the first time in court is permissible in law – However, the said principle has to be applied in the facts and circumstances of each case.**

**(ii) Child witness, credibility of – Evidence of the child witness and its credibility would depend upon the circumstances of each case – Only precaution which the court has to keep in mind while assessing the evidence of a child witness is that the witness must be a reliable one.**

**(iii) Last seen theory, absence of explanation on the part of accused, effect of – If the prosecution establishes that the deceased was last seen alive in the company of accused, it is for the accused to explain as to how and when he parted company of the deceased – Absence of any such explanation is a strong militating circumstances against the accused.**

**(iv) Discovery of fact, effect of – Although the statement recorded from accused A-3 and A-5 did not lead to any recovery as admissible under section 27 of the Evidence Act, their statement led to the disclosure of the details of the dead body – Father of the deceased identified clothes recovered from the body of the deceased boy lying beneath the culvert as well as his photograph and knowledge of accused (A-3) as to the place of the dead body held to be strong militating circumstance against the accused A-3 and A-5.**

**(v) Defective investigation, non effect of – Criminal trials must not be made casualties for any lapses committed by the Investigating Officer – Deficiency of the investigation cannot be ground for discrediting the prosecution version – It is well**

**settled that in criminal trials even if the investigation is defective, the rest of the evidence must be scrutinized independently of the impact of the defect in the investigation, otherwise, the criminal trial will plummet to the level of the investigation.**

**(vi) Non-recovery of *corpus delicti*, effect of – *Corpus delicti* in some cases may not be possible to be traced or recovered – If the recovery of a dead body is an absolute necessity to convict an accused, in many cases, the culprits would go unpunished as the accused would manage to see that the dead body is destroyed or not recovered – Any lapse in the recovery of dead body or missing link qua the dead body will not enure to the benefit of the accused.**

**(vii) Proof of offence beyond reasonable doubt, necessity of – Though there may be strong suspicion about involvement of accused in the commission of an offence, suspicion however strong, it cannot take the place of proof – Prosecution is required to prove the commission of an offence beyond reasonable doubt.**

साक्ष्य अधिनियम, 1872 — धाराएं 3, 9 और 118

भारतीय दंड संहिता, 1860 — धाराएं 34, 201, 302 और 364—ए

(i) न्यायालय में की गई पहचान का साक्ष्यिक मूल्य — साधारणतः न्यायालय में की गई पहचान को अधिक महत्व नहीं दिया जाता है किन्तु न्यायालय में प्रथम बार अभियुक्त की पहचान विधि में अनुमत है — इस कारण उक्त सिद्धांत प्रत्येक मामले में तथ्यों और परिस्थितियों के आधार पर लागू किया जाता है।

(ii) बाल साक्षी की विश्वसनीयता — बाल साक्षी की साक्ष्य और उसकी विश्वसनीयता प्रत्येक मामले की परिस्थितियों पर निर्भर होगी — न्यायालय को केवल यह सावधानी अपनी मस्तिष्क में एक बाल साक्षी के साक्ष्य का मूल्यांकन करते समय रखना चाहिए की ऐसा गवाह विश्वसनीय होना चाहिए।

(iii) अंतिम बार जीवित साथ देखे जाने का सिद्धांत, अभियुक्त द्वारा स्पष्टीकरण न देने का प्रभाव — यदि अभियोजन यह स्थापित करता है कि मृतक अंतिम बार अभियुक्त के साथ जीवित देखा गया था तब यह अभियुक्त को स्पष्ट करना होगा कि मृतक उसके साथ से कब अलग हुआ — ऐसे स्पष्टीकरण का अभाव अभियुक्त के विरूद्ध एक मजबूत परिस्थिति है।

(iv) तथ्य का पता लगने का प्रभाव — समझाया गया।

(v) त्रुटि पूर्ण अनुसंधान का प्रभाव न होना — बतलाया गया।

(vi) मृत शरीर के जप्त न होने का प्रभाव — बतलाया गया।

(vii) अपराध के युक्तियुक्त संदेह का परे प्रमाणित होने की आवश्यकता — बतलाई गयी।

**Ranjeet Kumar Ram alias Ranjit Kumar Das v. State of Bihar**
**Judgment dated 15.05.2015 by the Supreme Court in Criminal Appeal No. 1831 of 2011, reported in 2015 CriLJ 2944**

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***306. FOREST ACT, 1927 – Sections 33 (1) (c ) and 52**

**The allegation against the accused is confined to the fact that he was cultivating the reserved forest land – His tractor was seized by the Forest Department – Confiscation proceeding has been initiated by specified authority – There was no forest produce seized from the tractor so it cannot be confiscated – High Court ordered for release of the tractor [*State of Kerala v. P. V. Mathew, AIR 2012 SC 1502* relied on].**

वन अधिनियम, 1927 – धाराएं 33 (1)(सी) और 52

अभियुक्त के विरूद्ध अभियोग इस तथ्य तक सीमित थे कि उसने संरक्षित वन भूमि पर खेती की थी – उसका ट्रैक्टर वन विभाग द्वारा जप्त किया गया था – संपहरण कार्यवाही विनिर्दिष्ट प्राधिकारी द्वारा प्रारंभ की गई थी – ट्रैक्टर से कोई वन उपज बरामद नहीं हुई थी इस कारण ट्रैक्टर का संपहरण नहीं किया जा सकता – उच्च न्यायालय द्वारा ट्रैक्टर छोड़े जाने का आदेश दिया गया – स्टेट ऑफ केरला विरूद्ध पी.वी. मैथ्यू, ए.आई.आर. 2012 एस.सी. 1502 पर भरोसा किया गया।

**Shyambabu Kirar v. State of M.P. & others**
**Order dated 03.08.2015 passed by the High Court of M.P. in W.P. No. 7237 of 2014, reported in 2015(III) MPWN 10**

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**307. GUARDIANS AND WARDS ACT, 1890 – Section 7**
**HINDU MINORITY AND GUARDIANSHIP ACT, 1956 – Section 6**

**Infant, custody of – Must ordinarily be given to the mother – Proviso places burden on father to prove that grant of custody to mother is not in the welfare of the child – Order refusing interim custody to mother on the ground that she has failed to establish her suitability to be entitled for interim custody of infant, held to be improper.**

संरक्षक और प्रतिपाल्य अधिनियम, 1890 – धारा 7

हिन्दू अप्राप्तव्यता और संरक्षकता अधिनिमय, 1956 – धारा 6

बालक की अभिरक्षा – साधारणतः माता को देना चाहिए – परंतुक पिता पर यह प्रमाणित करने का भार डालता है कि माता को अभिरक्षा दी जाना बालक के हित में नहीं है – माता को अंतरित अभिरक्षा देने से इस आधार पर इंकार करते हुए आदेश दिया की वह बालक की अंतरित अभिरक्षा के लिए स्वंय को उपयुक्त हकदार प्रमाणित करने में असफल रही है, (ऐसा आदेश) उचित न होना अभिनिर्धारित किया गया।

## Roxann Sharma v. Arun Sharma

**Judgment dated 17.02.2015 by the Supreme Court in Civil Appeal No. 1966 of 2015, reported in AIR 2015 SC 2232**

**Extracts from the Judgment:**

Section 3 of the Hindu Minority and Guardianship Act clarifies that it applies to any person who is a Hindu by religion and to any person domiciled in India who is not a Muslim, Christian, Parsi or Jew unless it is proved that any such person would not have been governed by Hindu Law. In the present case, the Mother is a Christian but inasmuch as she has not raised any objection to the applicability of the HMG Act, we shall presume that Thalbir is governed by Hindu Law. Even in the proceedings before us it has not been contested by the learned Senior Advocate that the HMG Act does not operate between the parties. Section 6 of the HMG Act is of seminal importance. It reiterates Section 4(b) and again clarifies that guardianship covers both the person as well as the property of the minor; and then controversially states that the father and after him the mother shall be the natural guardian of a Hindu. Having said so, it immediately provides that the custody of a minor who has not completed the age of 5 years shall ordinarily be with the mother. The significance and amplitude of the proviso has been fully clarified by decisions of this Court and very briefly stated, a proviso isin the nature of an exception to what has earlier been generally prescribed. The use of the word “ordinarily” cannot be over-emphasised. It ordains a presumption, albeit a rebuttable one, in favour of the mother. The learned Single Judge appears to have lost sight of the significance of the use of word “ordinarily” inasmuch as he has observed in paragraph 13 of the Impugned Order that the Mother has not established her suitability to be granted interim custody of Thalbir who at that point in time was an infant. The proviso places the onus on the father to prove that it is not in the welfare of the infant child to be placed in the custody of his/her mother. The wisdom of the Parliament or the Legislature should not be trifled away by a curial interpretation which virtually nullifies the spirit of the enactment.

We shall abjure for making any further observations as the trial is still pending. Keeping in mind the facts and circumstances which have been disclosed before us, we set aside the impugned Order dated 18.09.2014. It is not in consonance with the previous order of a co-ordinate Bench and in fact severely nullifies its salient directions. We set aside the impugned Order dated 2nd August, 2014 inter alia for the reason that it incorrectly shifts the burden on the Mother to show her suitability for temporary custody of the infant Thalbir and, therefore, runs counter to the provisions contained in Section 6 of the HMG Act. We clarify that nothing presented by the Father, or placed on the record discloses that the Mother is so unfit to care for the infant Thalbir as justifies the departure from the statutory postulation in Section 6 of the HMG Act. Visitation rights succinctly stated are distinct from custody or interim custody orders. Essentially they enable the parent who does not have interim custody to be able to meet the child without

removing him/her from the custody of the other parent. If a child is allowed to spend several hours, or even days away from the parent who has been granted custody by the Court, temporary custody of the child stands temporarily transferred.

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**308. HINDU LAW:**

**Presumption of jointness of a family – There would normally be a presumption of jointness of a family, if alleged, and is not denied by the opponent – The moment denial is made, the burden is on the person who claims that the family was not joint – Likewise, in case the burden is discharged by the party claiming that the family was joint, it automatically shifts on the other side, who claimed that there was no joint family.**

हिन्दू विधिः

एक परिवार के संयुक्त होने की उपधारणा – एक परिवार के सामान्यतः संयुक्त होने की उपधारणा होगी, यदि (ऐसा) अभिकथन किया गया हो व विपक्षी द्वारा इससे इन्कार नहीं किया हो – जिस क्षण इन्कार किया जाता है उस पक्ष पर प्रमाण भार होता है जो यह दावा करता है कि परिवार संयुक्त नहीं था – इसी तरह, यदि प्रमाण भार उस पक्ष द्वारा उन्मोचित कर दिया जाता है जो परिवार संयुक्त था यह दावा करता है, यह (प्रमाण भार) स्वतः ही अन्य पक्ष पर अंतरित होता है जो यह दावा करता है कि परिवार संयुक्त नहीं था।

**Ramraj Patel and another v. Hiralal Patel and others**

**Judgment dated 16.04.2015 passed by the High Court of M.P. in Second Appeal No. 1063 of 2004, reported in 2015(3) MPLJ 606**

**Extracts from the Judgment:**

The trial Court has categorically held that when it was alleged by the defendants/appellants that there was a partition amongst the members of the joint family, it has to be inferred that there was a joint family earlier. In case the partition is not proved effectively, it has to be held that the joint family exists and there is no partition amongst the members of the family. While testing the statements of witnesses, the trial Court has reached to the conclusion that it was a case of the appellants/defendants that there was a partition amongst the members of the joint family in the year 1980 and that was the burden on the appellants/defendants to prove such a partition. Though for the proof of partition it was said that there were witnesses who were present when partition had taken place, but barring for one, none was examined by the appellants/defendants. The witness, who was examined, has denied the knowledge about the partition amongst the family members. In fact he was only a witness cited by the defendants/appellants per chance, as he was attesting witness of all the sale deeds obtained by the defendants/appellants. After recording this fact, the trial Court analyzed the other evidence and reached to the conclusion that there

was no proof of partition amongst the family members and since by virtue of alleged partition property was said to be obtained, it was to be held that the said property was joint Hindu family property, which has never been put to partition amongst the family members, and the suit was decreed. The re appreciation of the evidence of the trial Court by the lower appellate Court cannot be said to be perverse in any manner as no piece of evidence is made available to show that such evidence was not taken into consideration by the Courts below. In view of this, the allegation that the property was not joint and, therefore, no decree could be granted to the respondents/plaintiffs, is incorrect.

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**309. INDIAN PENAL CODE, 1860 – Section 97**

**CRIMINAL PROCEDURE CODE, 1973 – Section 397**

**(i) Right of private defence, availability and exercise of – The benefit of general exceptions may be available to the accused on discharging the burden in the Court during trial and not before the prosecution agency.**

**(ii) Revisional jurisdiction, exercise of – Interference while exercising revisional jurisdiction on the grounds which are not required to be examined by the revisional court, is unwarranted – Revisional court is not supposed to set aside an order of a trial court which is based upon well considered reasoning supported by material available on record.**

भारतीय दण्ड संहिता, 1860 – धारा 97

दण्ड प्रक्रिया संहिता, 1973 – धारा 397

(i) निजी प्रतिरक्षा के अधिकार का उपलब्ध होना व प्रयुक्त किया जाना – साधारण अपवादों का लाभ अभियुक्त को विचारण के दौरान न्यायालय में अपना प्रमाण भार उन्मोचित करते समय उपलब्ध होता है और अभियोजन अभिकरण के समक्ष उपलब्ध नहीं होता है।

(ii) पुनरीक्षण के क्षेत्राधिकार का प्रयोग किया जाना – पुनरीक्षण न्यायालय द्वारा जिन आधारों का परीक्षण करना आवश्यक नहीं है उनके आधार पर पुनरीक्षण क्षेत्राधिकार का प्रयोग करते हुए हस्तक्षेप अवांछनीय है। पुनरीक्षण न्यायालय विचारण न्यायालय के आदेश को जो अभिलेख पर उपलब्ध सामाग्री से समर्थित कारणों पर अच्छी तरह विचार करके आधारित किया है उसे अपास्त नहीं करती है।

**Gyanesh v. Central Bureau of Investigation and anr.**

**Order dated 15.01.2014 by the High Court of M.P. in Criminal Revision No. 803 of 2013, reported in ILR (2015) MP 3274**

**Extracts from the Order:**

In view of the law laid down by the Hon'ble Apex Court in various preceding judgments [***Uma Shankar Singh v. State of Bihar and anr., (2010) 9 SCC 479, Nupur Talwar v. Central Bureau of Investigation and anr., 2013 AIR SCW 369,***

***M/s Swil Ltd. v. State of Delhi and anr., AIR 2001 SC 2747, Rajinder Prasad v. Bashir and ors., (2001) 8 SCC 522, Dhrup Singh and others v. State of Bihar, (2013) 4 SCC 275, Dharam Pal and ors. v. State of Haryana & anr., 2013 CrLR (SC) 818 (Five Judge Bench)*** and ***Raghubans Dubey v. State of Bihar, AIR 1967 SC 1167***], it is clear that if on the basis of a police report a person has been made accused by a magistrate considering the material brought on record and satisfying himself to take cognizance, the revisional court ought to have exercise the revisional jurisdiction 17 looking into the fact whether the power exercised by the magistrate is based upon the material available or not. In my considered opinion, looking to the reasonings assigned by the magistrate as discussed hereinabove it is clear that Rajendra Patel has been made accused by the Police and the CBI also observing that he is having right to private defence and by giving benefit of exception of Section 100 and 103 of IPC he is not made accused by the CBI as apparent from the aforequoted final report prepared at the time of filing of the challan.

In this respect, Chapter IV of the IPC specifies the general exceptions. Section 100 deals with exception of right to private defence of the body extends to causing death. As per the language of aforesaid section, it is clear that right of private defence of body extends under the restrictions mentioned in the last preceding section, to voluntarily causing death or of any other harm to the assailant, if the offence occasioned, in exercise of the right of any of the descriptions under Section 100 of IPC. If an assault as made may reasonably cause apprehension that death will otherwise be consequence of such assault then right of private defence is available. In the facts of this case, accused persons may take the benefit of those exceptions. In the said context, chapter-7 of the Evidence Act deals the burden of proof. As per section 105, the burden of proving that the case of the accused falls within exceptions, of IPC is on him. The said burden can only be discharged by him when he is an accused of an offence and proves the existence of the circumstances proving his case within any of the general exceptions specified in chapter-IV of the IPC or within any special exception or proviso contained in any other part of the code or in any law defining the offence is upon him and on discharging the burden 18 the Court shall presume absence of such circumstances. In view of foregoing and looking to the final report of the CBI in the charge-sheet, it is clear that Sudeep Patel, Deepak Saran, Arun Jat and one more person along with deceased Durgesh Jaat has committed an offence of criminal trespass and breaking of the house at night, who were fired by the complainant Rajendra Patel (non-applicant No.2). As such the act done by Rajendra patel in retaliation causing injury by use of a fire arm to Durgesh Jaat has been assumed the cause death, thus applying the exception of sec.100 and 103 IPC, he was not made accused in the charge-sheet. In view of legal position discussed above it is clear that the benefit of the general exceptions may be available to the accused on discharging the burden in the Court and not before the prosecution agency, however, he ought to have first join as accused, thereafter he may make out a case within

the exceptions specified under Section 100 and 103 of the IPC, while adjudication of guilt in the trial. The said occasion is not available to the prosecution agency at the time of taking cognizance against a person of an offence who is an offender. It can be observed here that burden of proving guilt is on the prosecution agency alike to prove a civil case lies on a plaintiff, and the similar burden is not on the accused or on the defendant but they have to discharge the burden to prove their defence as specified, as per provisions of the Evidence Act. In the present case if the prosecution agency is of the opinion that Rajendra Patel made an assault by fire arm which caused injury to Durgesh Jaat, then in such case he ought to be joined as accused, thereafter, before Court he may take a plea of the exceptions available to him under section 100 and 103 of the IPC discharging burden as per section 105 of the Evidence Act, and Court may pass 19 appropriate orders, but grant of benefit to one of the accused in lieu of right of private defence is not available to the prosecution agency including CBI.

In such circumstances, for taking cognizance of offence, the satisfaction recorded by the trial court cannot be said to be illegal warranting interference by the revisional Court, that too on the ground which are not required to be examined by the revisional Court. The revisional court while setting aside the well considered findings of the order of magistrate has observed that he is having power under Section 190 of Cr.P.C. but, remitted back the matter on the observation which are not required to be looked into at the stage of taking cognizance by magistrate. However, the observation made by the revisional Court in para 12 of impugned order is unwarranted. It may further be observed that the revisional Court on the basis of material so available on record are not supposed to exercise revisional jurisdiction while setting aside the order of the trial Court which is based upon well considered reasoning supported by the material available on record. Therefore, the revisional Court exceeded from the jurisdiction while passing the order impugned, though not conferred on him under the law as per the judgment of the Apex Court in the case of ***Nupur Talwar*** (supra).

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

**Unlawful assembly – Some accused persons were acquitted, and the number of remaining accused was reduced to less than five – Whether they can be convicted with the aid of section 149 of IPC? Held, No, unless according to prosecution case, some other unidentified persons were there in that unlawful assembly – *Mohan Singh v. State of Punjab, AIR 1963 SC 174* (Constitution Bench) referred, in which case, three possible situations in this regard were explained.**

भारतीय दंड संहिता, 1860 – धाराएं 149 और 302

अवैध सभा – कुछ अभियुक्तगण दोषमुक्त किए गए, शेष अभियुक्त की संख्या घट कर 5 से कम रह गई – क्या उन्हें (शेष अभियुक्तगण को) धारा 149 भा.दं.सं. की सहायता लेकर दोषसिद्ध किया जा सकता है? अभिनिर्धारित किया गया, नहीं, जब तक कि,

अभियोजन के मामले के अनुसार, कुछ पहचान में न आये व्यक्ति भी उस अवैध सभा में थे (ऐसा दर्शित हो) – मोहन सिंह विरूद्ध स्टेट ऑफ पंजाब, एआईआर 1963 एससी 174 संविधान पीठ रेफर किया गया जिस प्रकरण में इस संबंध में तीन संभावित परिस्थितियों को स्पष्ट किया गया है।

## Ramanlal & anr. v. State of Haryana

**Judgment dated 15.05.2015 passed by the Supreme Court in Criminal Appeal No. 2279 of 2009, reported in 2015 CrLR (SC) 780**

**Extracts from the Judgment:**

The question is whether acquittal of some of the accused persons reducing the number of those convicted to less than 5 has the effect of taking the case out of the purview of Section 149 (supra). A Constitution Bench of this Court has in ***Mohan Singh v. State of Punjab, AIR 1963 SC 174,*** examined that question and authoritatively answered the same. The prosecution story in that case also was that on the date of the incident 5 accused persons composed an unlawful assembly and that in prosecution of the common object of the said assembly, they committed rioting while armed with deadly weapons. The prosecution alleged that in pursuance of the common object of the assembly Gurdip Singh was murdered and injuries caused to Harnam Singh. The prosecution alleged that although the fatal injury was inflicted by only one of the accused persons on Gurudip Singh's head since the same was in prosecution of the common object of unlawful assembly, all those who were members of the assembly were guilty under Section 302 read with Section 149 of the IPC. On behalf of the defence it was argued that the constructive criminal liability under Section 149 did not arise once two of the accused who were alleged to be members of that assembly were acquitted thereby reducing the number comprising the assembly to three persons only. This Court while dealing with that contention conceived of three possible situations and the legal position applicable to each one of such situations. This Court observed:

> "The true legal position in regard to the essential ingredients of an offence specified by section 149 are not in doubt. Section 149 prescribes for vicarious or constructive criminal liability for all members of an unlawful assembly where an offence is committed by any member of such an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object. It would thus be noticed that one of the essential ingredients of section 149 is that the offence must have been committed by any member of an unlawful assembly, and Section 141 makes it clear that it is only where five or more persons constituted an assembly that an unlawful assembly is born, provided, of course; the other

requirements of the said section as to the common object of the persons composing that assembly are satisfied. In other words, it is an essential condition of an unlawful assembly that its membership must be five or more. The argument, therefore, is that as soon as the two Piara Singhs were acquitted, the membership of the assembly was reduced from five to three and that made Section 141 inapplicable which inevitably leads to the result that Section 149 cannot be invoked against the appellants. In our opinion, on the facts of this case, this argument has to be upheld. We have already observed that the point raised by the appellants has to be dealt with on the assumption that only five persons were named in the charge as persons composing the unlawful assembly and evidence led in the course of the trial is confined only to the said five persons. If that be so, as soon as two of the five named persons are acquitted, the assembly must be deemed to have been composed of only three persons and that clearly cannot be regarded as an unlawful assembly.

In dealing with the question as to the applicability of Section 149 in such cases it is necessary to bear in mind the several categories of cases which come before the Criminal Courts for their decision. If five or more persons are named in the charge as composing an unlawful assembly and evidence adduced by the prosecution proves that charge against all of them, that is a very clear case where Section149 can be invoked. It is, however, not necessary that five or more persons must be convicted before a charge under section 149 can be successfully brought home to any members of the unlawful assembly. It may be that less than five persons may be charged and convicted under section 302/149 if the charge is that the persons before the Court, along with others named constituted an unlawful assembly; the other persons so named may not be available for trial along with their companions for the reason, for instance, that they have absconded. In such a case, the fact that less than five persons are before the Court does not make section 149 inapplicable for the simple reason that both the charge and the evidence seek to prove that the persons before the court and others number more than five in all and as Such, they together constitute an unlawful assembly. Therefore, in order to bring home a charge under Section 149 it is not necessary that five or more persons must necessarily be brought before the court and convicted. Similarly, less than

five persons may be charged under section 149 if the prosecution case is that the persons before the Court and others numbering in all more than five composed an unlawful assembly, these others being persons not identified and so not named. In such a case, if evidence shows that the persons before the Court along with unidentified and unnamed assailants or members composed an unlawful assembly, those before the Court, can be convicted under section 149 though the unnamed and unidentified persons are not traced and charged. Cases may also arise where in the charge, the prosecution names five or more persons and alleges that they constituted an unlawful assembly. In such cases, if both the charge and the evidence are confined to the persons named in the charge and out of the persons so named two or more are acquitted leaving, before the court less than five persons to be tried, then section 149 cannot be invoked. Even in such cases, it is possible that though the charge names five or more persons is composing an unlawful assembly, evidence may nevertheless show that the unlawful assembly consisted of some other persons as well who were not identified and so not named. In such cases, either the trial court or even the High Court in appeal may be able to come to the conclusion that the acquittal of some of the persons named in the charge and tried will not necessarily displace the charge under section 149 because along with the two or three persons convicted were others who composed the unlawful assembly but who have not been identified and so have not been named. In such cases the acquittal of one or more persons named in the charge does not affect the validity of the charge under section 149 because-on the evidence the court of facts is able to reach the conclusion that the persons composing the unlawful assembly nevertheless were five or more than five. It is true that in the last category of cases, the court will have to be very careful in reaching the said conclusion. But there is no legal bar which prevents the court from reaching such a conclusion. The failure to refer in the charge to other members of the unlawful assembly un-named and unidentified may conceivably raise the point as to whether prejudice would be caused to the persons before the Court by reason of the fact that the charge did not indicate that un-named persons also were members of the unlawful assembly. But apart from the question of such prejudice which may have to be carefully

considered, there is no legal bar preventing the court of facts from holding that though the charge specified only five or more persons, the unlawful assembly in fact consisted of other persons who were not named and identified. That appears to be the true legal position in respect of the several categories of cases which may fall to be tried when a charge under section 149 is framed."

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**311. INDIAN PENAL CODE, 1860 – Sections 302 r/w/s 34 and 302 r/w/s 149**

**Absence of charge with the help of section 34 of IPC, effect of – Accused persons were tried jointly for the offence of murder and charges were framed under section 302/149 IPC – Held, instead of convicting with the help of section 149 of the Code, no prejudice would be caused to the accused if he is convicted with the help of section 34 of the Code.**

भारतीय दण्ड संहिता, 1860 – धाराएं 302 सहपठित 34 और 302 सहपठित 149

धारा 34 की सहायता से आरोप के न होने का प्रभाव – अभियुक्तगण का विचारण संयुक्त रूप से हत्या के अपराध के लिए किया गया व और धारा 302/149 के आरोप विरचित किए गये – अभिनिर्धारित किया गया कि अभियुकतगण को धारा 149 की सहायता लेकर दोषसिद्ध करने के स्थान पर धारा 34 की सहायता लेकर दोषसिद्ध किया गया तो अभियुक्त के हितों पर प्रतिकूल असर नहीं गिरता।

**State of Madhya Pradesh v. Maiyadeen & ors.**

**Judgment dated 12.09.2014 by the High Court of M.P. in Criminal Appeal No. 277 of 1995, reported in ILR (2015) MP 200**

**Extracts from the Judgment:**

Initially the case was prosecuted against 12 to 14 accused persons. However, overt-act of other accused persons could not be established beyond doubt. Hence, possibility cannot be ruled out that other accused persons did not constitute an unlawful assembly to kill the deceased Anandilal. Charges were framed against the respondent Ramswaroop of offence under Section 302 read with Section 149 of IPC and it was very much clear before him that he had to defend the case, where the main accused had killed the deceased Anandilal and there was an allegation against him that he participated in the crime being a member of unlawful assembly. Under these circumstances, if there was no charge of offence under Section 302 read with Section 34

of IPC against the respondent Ramswaroop still he can be convicted of offence under Section 302 read with Section 34 of IPC. In this context, the judgment passed by Apex Court in case of ***Bhoor Singh v. State of Punjab, AIR 1974 SC 1256*** may be referred, in which it is held that if the accused has been charged under Section 302 read with Section 149 of IPC but, convicted under Section 302 read with Section 34 of IPC, though there was no specific charge under Section 34 of IPC, this tantamount to irregularity, if no prejudice has been caused to the accused. All the circumstances showing concert and participation in the joint criminal action by all the three appellants were duly put to them in their examination, under Section 342, Cr.P.C., 1898 (at present, under Section 313 of the Cr.P.C., 1973). The appellants were fully aware of the matter with which they were charged. No question of prejudice arises. In the light of aforesaid judgment, where it is clear that the respondent Ramswaroop was jointly tried with the respondent Maiyadeen and his joint criminal actions were duly put to him in his examination under Section 313 of the Cr.P.C. Instead of charge under Section 149 of the Cr.P.C. if he is convicted with help of Section 34 of IPC then, no prejudice would be caused to him.

On the basis of the aforesaid discussion, it is found that the respondent Maiyadeen had committed a crime under Section 302 of IPC, whereas the respondent Ramswaroop had committed an offence under Section 302/34 of IPC and therefore, they must be convicted in the present appeal for such offence. So far as the sentence is concerned, it is not a case, which may be considered in rare of the rarest category and therefore, it would be sufficient to impose a jail sentence of life imprisonment on the respondents No.1 and 2. Since they have deposited the fine amount on their conviction of offence under Section 325 of IPC, therefore, there is no need to further impose any fine on them.

On the basis of the aforesaid discussion, the State could not show any basis to accept its appeal against the respondents Sitaram, Tulsidas and Bandoo @ Bandi, therefore, appeal filed by the State against these respondents is hereby dismissed. The appeal filed by the State is accepted against the respondents Maiyadeen and Ramswaroop. Consequently, they are convicted of offence under Section 302 of IPC and Section 302 read with Section 34 of IPC respectively and sentenced to life imprisonment

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***312. INDIAN PENAL CODE, 1860 – Sections 302 and 304 Part II**

**Nature of offence – Bride burning case – Whether the act of accused of pouring water on the burning deceased would be a mitigating circumstance? Held, the accused was in his complete senses, knowing fully well the consequences of his act – The subsequent act of pouring water by the accused on the deceased also appears to be an attempt to cloak his guilty since he did only when the deceased screamed for help – *Kalu Ram v. State of Rajasthan, (2000) 10 SCC 324* distinguished because the element of inebriation ought to be taken into consideration as it considerably alters the power of thinking – An act undertaken by a person in full awareness knowing its consequences cannot be treated on par with an act committed by a person in a highly inebriated condition where his faculty of reason becomes blurred – Therefore, it cannot be considered as a mitigating factor.**

भारतीय दण्ड संहिता, 1860 – धाराएं 302 और 304 भाग 2

अपराध की प्रकृति नवविवाहिता को जलाने के मामले – क्या अभियुक्त द्वारा जल रही मृतक पर पानी उड़लने का कृत्य एक शमनकारी परिस्थिति होगी ? अभिनिधारित किया गया, अभियुक्त पूरी तरह होश में था अपने कार्य के परिणामों को पूरी तरह समझता था – अभियुक्त द्वारा मृतक पर पानी उड़ेलने के पश्चात्वर्ती कृत्य से भी यह प्रतीत होता है कि यह उसके दोषिता को छुपाने का एक प्रयत्न था क्योंकि उसने यह कृत्य (पानी उड़ेलना) तब किया गया जब मृतक सहायता के लिये चिल्लाई – कालूराम विरूद्ध स्टेट ऑफ राजस्थान, (2000) 10 एस.सी.सी. 324 को विभेदित किया गया क्योंकि नशे का तत्व यदि विचार में ले तो यह सोचने की शक्ति को काफी परिवर्तित कर देता है – एक कृत्य जो किसी व्यक्ति द्वारा पूरी समझ के साथ व उसके परिणामों को जानते हुये किया है उसे उस कृत्य के समकक्ष नहीं रखा जा सकता जो एक व्यक्ति ने भारी नशे की स्थिति में किया हो, जहां उसके सोचने की क्षमता धुंधली हो चुकी थी – अतः यह (जल रही मृतक पर पानी उड़ेलना) एक शमनकारी परिस्थिति नहीं है।

**Santosh v. State of Maharashtra**

**Judgment dated 21.04.2015 passed by the Supreme Court in Criminal Appeal No. 683 of 2015, reported in (2015) 7 SCC 641 (Three Judge Bench)**

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***313. INDIAN PENAL CODE, 1860 – Sections 302 and 364-A**

**(i) Applicability of section 364-A of IPC (kidnapping for ransom) – It is not only applicable where acts of terrorism directed against the Government or any foreign state or international inter-governmental organization but also for monetary gain from a private individual.**

**(ii) Whether the provision of section 364-A of the IPC is unconstitutional? Held, No.**

**(iii) Meaning of expression 'any other person' used in section 364-A of the IPC – It would include a company or association or body of persons whether incorporated or not, apart from natural person – It cannot be restricted to mean Government or foreign state or international inter-governmental organizations.**

भारतीय दंड संहिता, 1860 – धाराएं 302 और 364–ए

(i) धारा 364–ए का लागू होना (मुक्ति धन के लिए व्यपहरण) – यह न केवल वहाँ लागू होती है जहाँ आतंकपूर्ण कृत्य शासन या किसी विदेशी राज्य या अन्तरराष्ट्रीय अन्तर सरकारी संगठन के विरूद्ध हो बल्कि वहाँ भी लागू होती है जहाँ किसी निजी व्यक्ति से आर्थिक लाभ लिया जाना हो।

(ii) क्या धारा 364–ए भा.दं.सं. का प्रावधान असंवैधानिक है ? अभिनिर्धारित किया गया, नहीं।

(iii) धारा 364–ए भा.द.सं. में प्रयुक्त शब्द ''कोई अन्य व्यक्ति'' का अर्थ – इसमें नैसर्गिक व्यक्ति के साथ–साथ एक कंपनी या संघ या व्यक्ति निकाय चाहे वह निगमित हो या न हो शामिल होते हैं – इसे शासन या किसी विदेशी राज्य या अन्तरर्राष्ट्रीय अंन्तर सरकारी संगठन के अर्थ तक सीमित नहीं किया जा सकता।

**Vikram Singh alias Vicky and another v. Union of India and others**
**Judgment dated 21.08.2015 passed by the Supreme Court in Criminal Appeal No. 824 of 2013, reported in 2015 AIR SCW 4940 (Three Judge Bench)**

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**314. INDIAN PENAL CODE, 1860 – Section 304-B**
**EVIDENCE ACT, 1872 – Section 32 (1)**

**(i) Offence under section 304-B IPC – Bride burning, proof of – Initial burden lies on the prosecution to prove ingredients of the offence by preponderance of probabilities – Thereafter, presumption of innocence of accused stood replaced by presumption of guilt and burden now shifts on accused to prove his innocence beyond reasonable doubt – Principles stated in *Sher Singh v. State of Haryana, (2015) 3 SCC 724* reiterated.**

**(ii) Recording of dying declaration, procedure therefor – Whenever a person is brought to a hospital in an injured state which indicates foul play, the hospital authorities are enjoined to treat it as a medico-legal case and inform the police – If the doctor is of the opinion that death is likely to ensure, it is essential for him to immediately report the case to the police – The police in turn should be alive to the need to record a declaration/statement of the injured person by pursuing a procedure which would make the recording of it beyond pale of doubt – Investigating Officer is expected to alert the jurisdictional Magistrate of the occurrence, who in turn should examine the injured – When this procedure is adopted, conditional on a certification of a doctor that the injured is in a fit state to make a statement, a dying declaration assumes incontrovertible evidentiary value.**

**(iii) Dying declaration, evidentiary value of – Such statements are neither made on oath nor the maker of it would be available for cross-examination nor are they made under the influence of the supremacy and the solemnity of the Court room – However, once a dying declaration is held to be authentic, inspiring full confidence beyond a pale of doubt, voluntary,**

**consistent and credible, barren of tutoring, significant sanctity is endowed to it, such is the sanctitude that it can even be the exclusive and the solitary basis for conviction without seeking any corroboration.**

भारतीय दण्ड संहिता, 1860 – धारा 304–बी

सक्ष्य अधिनियम, 1872 – धारा 32 (1)

(i) धारा 304–बी भ.दं.सं के अधीन अपराध – वधु को जलाने का प्रमाण – प्रारंभिक प्रमाण भार अभियोजन पर होता है कि वह अपराध के घटक अधिसंभावनाओं की प्रबलता के स्तर पर प्रमाणित करे।
उसके बाद अभियुक्त के निर्दोष होने की उपधारणा का स्थान उसके दोषी होने की उपधारणा ले लेती है और प्रमाण भार अभियुक्त पर चला जाता है कि वह उसका निर्दोष होना संदेह से परे प्रमाणित करे – शेर सिंह विरूद्ध स्टेट ऑफ हरियाणा, (2015) 3 एस.सी.सी 724 के मामले में बतलाये गये सिद्धांत दोहराये गये।

(ii) मृत्यु पूर्व कथन अभिलखित करने की प्रक्रिया बतलाई गई।

(iii) मृत्यु पूर्व कथन का साक्ष्यिक मूल्य समझाया गया।

**Ramakant Mishra alias Lalu and others v. State of Uttar Pradesh**
**Judgment dated 27.02.2015 by the Supreme Court in Criminal Appeal No. 1279 of 2011, reported in (2015) 8 SCC 299**

**Extract from the Judgment:**

Very recently, this Court had the opportunity of interpreting Section 304-B of the IPC in ***Sher Singh v. State of Haryana, (2015) 3 SCC 724*** which was authored by one of us (Vikramajit Sen,J.). Succinctly stated, it had been held therein that the use of word 'shown' instead of 'proved' in Section 304B indicates that the onus cast on the prosecution would stand satisfied on the anvil of a mere preponderance of probability. In other words, 'shown' will have to be read up to mean 'proved' but only to the extent of preponderance of probability. Thereafter, the word 'deemed' used in that Section is to be read down to require an accused to prove his innocence, but beyond reasonable doubt. The 'deemed' culpability of the accused leaving no room for the accused to prove innocence was, accordingly, read down to a strong 'presumption' of his culpability. However, the accused is required to dislodge this presumption by proving his innocence beyond reasonable doubt as distinct from preponderance of possibility.

In harmony with the ratio of ***Sher Singh*** (supra), so far as the present case is concerned, there can be no cavil that the prosecution has 'shown' that Section 304-B stands attracted since the death of the wife occurred within seven years of the solemnization of the marriage; indubitably, it was an unnatural death. It has also come in evidence that immediately after her marriage a demand for a scooter was made and this demand recurred with regularity. It is in evidence

that about fifteen days prior to the unnatural death of the hapless young wife, her grandfather PW1 first did not accede to the request of the accused to send the deceased/victim to her matrimonial house because of their harassment and cruelty towards her for not meeting their demands of dowry. Only when the accused assured her grandfather that she would not be ill-treated, that she was sent back to her matrimonial house. The statement of the Mother PW2 is also to the same effect. We are not persuaded, therefore, to hold that there was no live link between the dowry demand and the death or that the Accused have succeeded in proving that the demand, if any, was of a much earlier vintage, on which count no support can be rallied from the judgment in ***Tarsem Singh v. State of Punjab, (2008) 16 SCC 155***. Therefore, the requirement of Section 304-B of the IPC that the dowry demand should be made soon before the death stands satisfied. Accordingly, it appears to us that the prosecution has succeeded in showing, or proving prima facie, that dowry demands had been made by the Accused even shortly before the death of the deceased.

The defence has rested very heavily nay, almost entirely, on the alleged dying declaration attributed to the deceased. The admissibility of a dying declaration as a piece of evidence in a Trial is governed by Section 32(1) of the Evidence Act, 1872. Section 32, as a whole, enunciates the exceptions to the rule of non-admissibility of hearsay evidences, eventuated out of necessity to give relevance to the statements made by a person whose attendance cannot be procured for reasons stipulated in the section. Postulating the essential ingredients to define what exactly would constitute a hearsay is an arduous task, and since we are only concerned with one of its exceptions, we should forbear entering into the entire arena. The risks while admitting a dying declaration and the statements falling within the domain of Section 32(1) run higher in contrast to other sundry evidences, and this entails a huge bearing on their admissibility and credibility. Such statements are neither made on oath nor the maker of the statement would be available for cross-examination nor are they made under the influence of the supremacy and the solemnity of the court-room. This is the reason why this Court has consistently underlined the necessity to examine this specie of evidence with great circumspection and care. However, once a dying declaration is held to be authentic, inspiring full confidence beyond the pale of doubt, voluntary, consistent and credible, barren of tutoring, significant sanctity is endowed to it; such is the sanctitude that it can even be the exclusive and the solitary basis for conviction without seeking any corroboration. At this juncture, it is worthwhile noting that the sanctity attached to a dying declaration springs up from the rationale that a person genuinely under the sense of imminent death would speak only the truth.

In addition to the dying declaration, which is only one of the species of the genus of Section 32 (1), there could be other statements, written or verbal, which also would be encompassed within the sweep of this section, and at this point the Indian law drifts from the English law. This is further evident from the usage of phraseology in the section, embracing not only statements made about

"cause of death" but also about "any of the circumstances of the transaction which resulted in the death", whether or not the person making the statement was under "expectation of death". These statements could be in the form of a suicide note, a letter, a sign or a signal, or a product of any reliable means of communication; their genuineness and credibility shall, of course, be reckoned by the Court entertaining the concerned matter. A dying declaration enjoys a higher level of credence vis-a-vis any other statement abovementioned, which is on account of the former being made in the "contemplation of death". "Contemplation of death" is the primal factor to segregate dying declarations from other statements. But no hard-and-fast rule can be laid down to confine the contemplation within the circumference of few hours or a few days in which death of the maker of the statement must happen so as to elevate that statement to the level of a dying declaration. Moreover, the state of mind of the maker would also be material in discerning completely as to whether the maker was mentally fit to make the statement and whether the maker actually could have contemplated death.

The definition of this legal concept found in Black's Law Dictionary (5th Edition) justifies reproduction:

> ***"Dying declarations.*** – Statements made by a person who is lying at the point of death, and is conscious of his approaching death, in reference to the manner in which he received the injuries of which he is dying, or other immediate cause of his death, and in reference to the person who inflicted such injuries or the connection with such injuries of a person who is charged or suspected of having committed them; which statements are admissible in evidence in a trial for homicide (and occasionally, at least in some jurisdictions, in other cases) where the killing of the declarant is the crime charged to the defendant. ***Shephard v. United States, 290 US 96 (1933)***. "

Generally, the admissibility of such declarations is limited to use in prosecutions for homicide; but is admissible on behalf of accused as well as for prosecution. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death is not excluded by the hearsay rule. [the Federal Rules of Evidence, Rule 804(b)(2). "Statement under the Belief of imminent Death"]

When a person makes a statement while being aware of the prospect that his death is imminent and proximate, such a statement assumes a probative value which is almost unassailable, unlike other statements which he may have made earlier, when death was not lurking around, indicating the cause of his death.That is to say that a person might be quite willing to implicate an innocent person but would not do so when death is knocking at his door. That is why a

Dying Declaration, to conform to this uniquespecie, should have been made when death was in the contemplation of the person making the statement/declaration. In the case before us, the statement, if made by the deceased, would qualify to be treated as a Dying Declaration because she was admitted in the hospital, having sustained 90-95 per cent burn injuries, and because of this grave burn injuries, she would be expecting to shortly breathe her last.

The central question, however, remains as to whether the alleged dying declaration attracts authenticity. Since the prosecution has succeeded in showing/proving by preponderance of probability that a dowry death has occurred, the burden of proving innocence has shifted to the accused. It appears to us to be unexceptionable that whenever a person is brought to a hospital in an injured state which indicates foul-play, the hospital authorities are enjoined to treat it as a medico-legal case and inform the police. If the doctor, who has attended the injured, is of the opinion that death is likely to ensue, it is essential for him to immediately report the case to the police; any delay in doing so will almost never be brooked. The police in turn should be alive to the need to record a declaration/statement of the injured person, by pursuing a procedure which would make the recording of it beyond the pale of doubt. This is why an investigating officer (I.O.) is expected to alert the jurisdictional Magistrate of the occurrence, who in turn should immediately examine the injured. When this procedure is adopted, conditional on the certification of a doctor that the injured is in a fit state to make a statement, a dying declaration assumes incontrovertible evidentiary value. We cannot conceive of a more important duty cast on the Magistrate, since the life & death of a human being is of paramount importance. We think that only if it is impossible for the Magistrate to personally perform this duty, should he depute another senior official. Non-adherence to this procedure would needlessly and avoidably cast a shadow on the recording of a dying declaration. The prosecution, therefore, would be expected to prove that every step was diligently complied with. The prosecution would have to produce the doctor or the medical authority to establish that on the examination of the injured/deceased, the police had been immediately informed. The I.O. who was so informed would then have to testify that he alerted the Magistrate, on whose non- availability, some responsible person was deputed for the purpose of recording the dying declaration. We are not in any manner of doubt that where medical opinion is to the effect that a person is facing death as a consequence of unnatural events, the responsibility of the Magistrate to record the statement far outweighs any other responsibility. There may be instances where there was no time to follow this procedure, but that does not seem to be what has transpired in the case in hand. In cases where some other person is stated to be recipient of a Dying Declaration, doubts may reasonably arise.

Since the burden of proving innocence beyond reasonable doubt shifts to the accused in the case of a dowry death, as it has in the present case, it was imperative for the defence to prove the sequence of events which lead to the recording of the alleged dying declaration by the Tehsildar DW1. This burden

has not even been faintly addressed. It appears that at the time of seeking bail the accused had requested the Sessions Court tocall for the alleged dying declaration. Keeping in perspective that none of the accused was present when the deceased was receiving medical treatment in the hospital, or when the dying declaration was allegedly recorded, or at the time of death, or even at the time of cremation, the manner in which the accused learnt of the existence of the dying declaration has not been disclosed. The statement of the I.O. also does not clarify the position; he has stated that he learnt of the existence of the dying declaration from the relatives of the deceased. On the application of ***Sher Singh*** (supra), the burden and necessity of proving this sequence of events stood transferred to the shoulders of the accused since Section 304B of the IPC had been attracted. The I.O. has deposed that all the accused, including the late father-in-law, Gorakh Nath, had absconded after the incident. In fact, in the cross-examination, the I.O. states that - “there is no reliable information about the dying declaration... On keeping this information that the dying declaration of Vijay Lakshmi was recorded by the Magistrate I did not consider any need of this thing”. Neither the Doctor DW2 who had allegedly certified that the deceased was in a fit condition to make a statement nor the Tehsildar who had allegedly written down the alleged dying declaration has stated the manner in which the Tehsildar had been conscripted or located to perform this important recording. The dying declaration appears to have mysteriously popped up and referred to at the time of praying for bail. The chain or sequence of events which lead to its recording remains undisclosed. In his statement, the Tehsildar has not clarified the manner in which he happened to record the dying declaration and the timing of its transmission to the Court. Since the onus of proof had shifted to the accused, this alleged sequence of events should have been proved beyond reasonable doubt by them. We may emphasise that the Tehsildar as well as the Doctor who allegedly certified that the deceased was in a fit state to make the dying declaration has been produced by the defence. The Doctor should have spoken of the sequence of events in which the Tehsildar came to record the dying declaration. The alleged exculpating dying declaration is, therefore, shrouded in suspicion and we have not been persuaded to accept that it is a genuine document. The defence has failed to comply with section 113-B of the Evidence Act. The accused being charged of the commission of a dowry death ought to have entered the witness box themselves. The accused were present on the scene at the time of the occurrence, which turned out to be fatal, and that added to their responsibility to give a credible version of their innocence in the dowry death.

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**315. INDIAN PENAL CODE, 1860 – Sections 306 and 498-A**

**Whether mere extra-marital relationship of husband comes under mental cruelty as provided in explanation (a) of sections 498-A of the IPC? Held, No – Though it would be illegal and immoral but to attract explanation (a) of 498-A of the IPC, there should be some evidence on record to show that the accused/husband had conducted in such a manner to drive the wife to commit suicide.**

भारतीय दण्ड संहिता, 1860 – धाराएं 306 और 498–ए

क्या केवल पति के विवाहेत्तर संबंध धारा 498–ए भारतीय दण्ड संहिता के स्पष्टीकरण (ए) में उल्लेखित मानसिक क्रूरता के अंतर्गत आते है ? अभिनिर्धारित किया गया, नहीं – यद्यपि ये (विवाहेत्तर संबंध) अवैध और अनैतिक है किन्तु धारा 498–ए भा.दं.सं. के स्पष्टीकरण (ए) को आकर्षित करने के लिए अभिलेख पर कुछ ऐसी साक्ष्य होना चाहिए जो यह दर्शाती हो कि अभियुक्त/पति ने इस तरीके का आचरण किया जिसने पत्नि को आत्महत्या करने के लिए प्रेरित किया।

## Ghusabhai Raisangbhai Chorasiya and others v. State of Gujarat

**Judgment dated 18.02.2015 passed by the Supreme Court in Criminal Appeal No. 262 of 2009, reported in 2015 CriLJ 3613 (SC)**

**Extracts from the Judgment:**

From the authorities of ***Giridhar Shankar Tawade v. State of Maharshtra, AIR 2002 SC 2078*** and ***Gurnaib Singh v. State of Punjab, AIR 2014 SC (Supp) 87,*** it is quite clear that the first limb of Section 498A, which refers to cruelty, has nothing to do with demand of dowry. In the present case, in fact, there is no demand of dowry. If the evidence is appropriately appreciated, the deceased was pained and disturbed as the husband was having an illicit affair with the appellant No. 4. Whether such a situation would amount to cruelty under the first limb of Section 498A, IPC is to be seen. A two-Judge Bench of this Court in ***Pinakin Mahipatray Rawal v. State of Gujarat, AIR 2014 SC 331,*** while dealing with extra marital relationship, has held thus:

> "Marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their upbringing, services in the home, support, affection, love, liking and so on. Extramarital relationship as such is not defined in the Penal Code. Though, according to the prosecution in this case, it was that relationship which ultimately led to mental harassment and cruelty within the Explanation to Section 498-A and that A-1 had abetted the wife to commit suicide."

* * * * *

''We are of the view that the mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty", but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the Explanation to Section 498-A, IPC. Harassment, of course, need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498-A, IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. We, on facts, found that the alleged extramarital relationship was not of such a nature as to drive the wife to commit suicide or that A-1 had ever intended or acted in such a manner which under normal circumstances, would drive the wife to commit suicide."

The Court further proceeded to State: :

"Section 306 refers to abetment of suicide. It says that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to fine. The action for committing suicide is also on account of mental disturbance caused by mental and physical cruelty. To constitute an offence under Section 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extra-marital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide."

Coming to the facts of the present case, it is seen that the factum of divorce has not been believed by the learned trial Judge and the High Court. But the fact remains is that the husband and the wife had started living separately in the same house and the deceased had told her sister that there was severance of status and she would be going to her parental home after the 'Holi' festival. True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of Section 498-A, IPC would not get attracted. It would be difficult to

hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra-marital relationship, even if proved, would. be illegal and immoral, as has been said in ***Pinakin Mahipatray Rawal*** (supra), but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with the appellant No. 4, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498-A, which includes cruelty to drive a woman to commit suicide, would not be attracted.

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**316. INDIAN PENAL CODE, 1860 – Sections 363 and 376 (2) (g)**

**EVIDENCE ACT, 1872 – Sections 3 and 45**

**(i) Determination of age of prosecutrix – Oral evidence versus ossification test – Appreciation of evidence – Radiologist had opined that the age of prosecutrix might be 16-17 years – Prosecutrix and her father had deposed that she was about 14 years of age at the time of incident – It was also corroborated by school leaving certificate – Ossification test had not depicted the true situation as the eruption of teeth, number of teeth and many other aspects were not observed by the doctor – Ossification test held, not reliable – Further held, there is no perversity of approach as regards the determination of age of the prosecutrix on the basis of oral evidence.**

**(ii) Facet of consent of prosecutrix – Once it is proved that the prosecutrix is below 16 years of age at the time of incident consent is absolutely irrelevant.**

भारतीय दंड संहिता, 1860 – धाराएं 363 और 376 (2) (g)

साक्ष्य अधिनियम, 1872 – धाराएं 3 और 45

(i) अभियोक्त्री के उम्र का निर्धारण – मौखिक साक्ष्य विरूद्ध ओशिफिकेशन परीक्षण – साक्ष्य का मूल्यांकन – रेडियोलॉजिस्ट ने यह राय दी थी कि अभियोक्त्री की उम्र 16–17 वर्ष हो सकती है – अभियोक्त्री एवं उसके पिता ने कथन दिया था कि वह (अभियोक्त्री) घटना के समय 14 वर्ष की थी – यह (उक्त तथ्य) शाला छोड़ने के प्रमाण पत्र से पुष्ट हुआ था – ओशिफिकेशन परीक्षण सही स्थिति का चित्रण नहीं कर रहा था जैसे दाँतों का निकलना, दाँतों की संख्या और कई अन्य पहलू का निरीक्षण डॉक्टर द्वारा नहीं किया गया था – अभिनिर्धारित किया गया कि ओशिफिकेशन परीक्षण विश्वास योग्य नहीं है – यह भी अभिनिर्धारित किया गया कि अभियोक्त्री की उम्र का निर्धारण मौखिक साक्ष्य पर करने के दृष्टिकोण में कोई विपर्यस्तता नहीं है।

(ii) अभियोक्त्री की सहमती का पक्ष – एक बार यह प्रमाणित हो जाता है कि अभियोक्त्री घटना के समय 16 वर्ष से कम की थी तब सहमती (का पहलू) बिल्कुल असंगत होता है।

## Parhlad and another v. State of Haryana

**Judgment dated 03.08.2015 passed by the Supreme Court in Criminal Appeal No. 983 of 2015, reported in 2015 AIR SCW 4512**

**Extracts from the Judgment:**

In this context reference to the decision in ***Ramdeo Chauhan alias Raj Nath v. State of Assam, AIR 2001 SC 2231*** would be apposite. In this case, Sethi, J. while considering the evidentiary value of radiological examination opined that :-

> "The statement of the doctor is no more than an opinion, the court has to base its conclusions upon all the facts and circumstances disclosed on examining of the physical features of the person whose age is in question, in conjunction with such oral testimony as may be available, An X-ray ossification test may provide a surer basis for determining the age of an individual than the opinion of a medical expert but it can be no means be so infallible and accurate a test as to indicate the exact date of birth of the person concerned. Too much of reliance cannot be placed upon textbooks, on medical jurisprudence and toxicology while determining the age of an accused. In this vast country with varied latitudes, heights, environment, vegetation and nutrition, the height and weight cannot be expected to be uniform."

Be it noted, Phukan, J. concurred with the view expressed by Sethi, J.

In this regard, we may, with profit, refer to the decision in ***Vishnu alias Undrya v. State of Maharashtra, AIR 2006 SC 508*** wherein a contention was raised that the age of prosecutrix by conducting ossification test was scientifically proved, and that it deserved acceptance. The court rejected the said submission by stating that :-

> "We are unable to accept this contention for the reasons that the expert medical evidence is not binding on the ocular evidence. The opinion of the Medical Officer is to assist the court as he is not a witness of fact and the evidence given by the Medical Officer is really of an advisory character and not binding on the witness of fact"

Similar view has been expressed in ***Arjun Singh v. State of Himachal Pradesh, AIR 2009 SC 1568***.

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**317. INDIAN PENAL CODE, 1860 – Section 376**

**JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007 – Rule 12 (3)**

**There is difference of just two days between two birth certificates of prosecutrix – Both the documents, which covered under rule 12(3) (a) of the Rules of 2007, supported the case of prosecution – The difference held, immaterial – Ossification test is not the sole criteria for determination of age of the prosecutrix.**

भारतीय दंड संहिता, 1860 – धारा 376

किशोर न्याय (बालकों की देख–रेख और संरक्षण) नियम, 2007 – नियम 12(3)

अभियोक्त्री की जन्म तिथि में दो जन्म प्रमाण पत्रों में मात्र दो दिन का अंतर है, दोनों दस्तावेज नियम 12(3)(ए) नियम, 2007 में शामिल है जो अभियोजन के मामले का समर्थन करते है – ये अंतर अतात्विक होना अभिनिर्धारित किया गया – ओशिफिकेशन परीक्षण अभियोक्त्री की उम्र निर्धारित करने का एक मात्र तरीका नहीं है।

**State of Madhya Pradesh v. Anoop Singh**

**Judgment dated 03.07.2015 passed by the Supreme Court in Criminal Appeal No. 442 of 2010, reported in 2015 CrLR (SC) 788**

**Extracts from the Judgment:**

This Court in the case of ***Mahadeo s/o Kerba Maske v. State of Maharashtra and anr., (2013) 14 SCC 637,*** has held that Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, is applicable in determining the age of the victim of rape. Rule 12(3) reads as under:

> "Rule 12(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 –
>
> (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;
>
> (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
>
> (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, record 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."

This Court further held in paragraph 12 of ***Mahadeo s/o Kerba Maske*** (supra) as under:

> "Under rule 12(3)(b), it is specifically provided that only in the absence of alternative methods described under Rule 12(3)(a)(i) to (iii), the medical opinion can be sought for. In the light of such a statutory rule prevailing for ascertainment of the age of the juvenile in our considered opinion, the same yardstick can be rightly followed by the courts for the purpose of the ascertaining the age of a victim as well."

This Court therefore relied on the certificates issued by the school in determining the age of the prosecutrix. In paragraph 13, this Court observed:

> "In light of our above reasoning, in the case on hand, there were certificates issued by the school in which the proseuctrix did her V standard and in the school leaving certificate issued by the school under Exhibit 54, the date of birth has been clearly noted as 20.05.1990 and this document was also proved by PW 11. Apart from that the transfer certificate as well as the admission form maintained by the Primary School, Latur, where the prosecutrix had her initial education, also confirmed the date of birth as 20.05.1990. the reliance placed upon the said evidence by the Courts below to arrive at the age of the prosecutrix to hold that the prosecutrix was below 18 years of age at the time of occurrence was perfectly justified and we do not find any grounds to interfere with the same."

In the present case, we have before us two documents which support the case of the prosecutrix that she was below 16 years of age at the time the incident took place. These documents can be used for ascertaining the age of the prosecutrix as per Rule 12(3)(b). The difference of two days in the dates, in our considered view, is immaterial and just on this minor discrepancy, the evidence in the form of Exts. P/5 and P/6 cannot be discarded. Therefore, the Trial Court was correct in relying on the documents.

The High Court also relied on the statement of PW-11 Dr. A.K. Saraf who took the X-ray of the prosecutrix and on the basis of the ossification test, came to the conclusion that the age of the prosecutrix was more than 15 years but

less than 18 years. Considering this the High Court presumed that the girl was more than 18 years of age at the time of the incident. With respect to this finding of the High Court, we are of the opinion that the High Court should have relied firstly on the documents as stipulated under Rule 12(3)(b) and only in the absence, the medical opinion should have been sought. We find that the Trial Court has also dealt with this aspect of the ossification test. The Trial Court noted that the respondent had cited ***Lakhan Lal v. State of M.P., 2004 CriLJ 3962,*** wherein the High Court of Madhya Pradesh said that where the doctor having examined the prosecutrix and found her to be below 18½ years, then keeping in mind the variation of two years, the accused should be given the benefit of doubt. Thereafter, the Trial Court rightly held that in the present case the ossification test is not the sole criteria for determination of the date of birth of the prosecutrix as her certificate of birth and also the certificate of her medical examination had been enclosed.

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***318. INDIAN PENAL CODE, 1860 – Section 376 (2) (f)**

**When compromise is produced in sexual assault cases, what should be the approach of the court ? Held, in a case of rape or attempt of rape, the conception of compromise under no circumstances really be thought of – These are crimes against the body of a woman which is her own temple – These are offences which suffocate the breath of life and sully the reputation – Reputation is the richest jewel one can conceive of in life – No one would allow it to be extinguished –When a human frame is defiled, the purest treasure is lost – Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay – There cannot be a compromise or settlement as it would be against her honour which matters the most – Sometimes, solace is given that accused has acceded to enter into wedlock with her, it is nothing but putting pressure in an adroit manner – The Courts remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error – It would be in the realm of a sanctuary of error – Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility – *Shyam Narain v. State (NCT of Delhi), (2013) 7 SCC 77* referred.**

भारतीय दंड संहिता, 1860 – धारा 376 (2) (एफ)

जब लैगिंक हमले के प्रकरणों में समझौता प्रस्तुत किया जाता है तब न्यायालय का दृष्टिकोण कैसा होना चाहिए ? स्पष्ट किया गया।

**State of Madhya Pradesh v. Madanlal**

**Judgment dated 01.07.2015 passed by the Supreme Court in Criminal Appeal No. 231 of 2015, reported in 2015 CrLR (SC) 792**

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***319. INDIAN PENAL CODE, 1860 – Sections 406, 409 and 420**

**CRIMINAL PROCEDURE CODE, 1973 – Sections 200 and 202**

**A society purchased a land in the year 1978 – Its officials sold the same to their relatives in the year 1996 – Relatives sold the same to the Directors of the society in the same year – Complaint filed under sections 406, 409 and 420 IPC – Magistrate took statement of complainant under section 200 CrPC and after enquiry, he registered a case under sections 406, 409 and 420 IPC – The order has been maintained by the Sessions as well as High Court – Hon'ble the Apex Court held that the complainant is neither party to the sale deeds nor a member of the society – He has no *locus standi* to file complaint – Complaint filed after fourteen years from sale – *Prima facie* entrustment of property, breach of trust or cheating were not established – Registration of such type of complaint is nothing but abuse of process of law on the part of the complainant – Order of Sessions Judge as well as High Court has been set aside by the Apex Court.**

भारतीय दण्ड संहिता 1860 – धाराएँ 406, 409 और 420

दण्ड प्रक्रिया संहिता, 1973 – धाराएँ 200 और 202

एक सोसायटी ने जमीन वर्ष 1978 में क्रय की – वर्ष 1996 में उसके अधिकारियों ने उनके रिश्तेदारों को वही जमीन विक्रय कर दी – रिश्तेदारों ने उसी वर्ष में जमीन वापस सोसायटी के संचालकों को विक्रय कर दी – एक परिवाद धारा 406, 409 और 420 भा.द.स. का प्रस्तुत किया गया – मजिस्ट्रेट ने परिवादी का धारा 200 द.प्र.सं. का कथन लेकर बाद जांच मामला 406, 409 और 420 भा.द.स. में दर्ज किया – इस आदेश को सत्र न्यायालय और उच्च न्यायालय ने स्थिर रखा – माननीय सर्वोच्च न्यायालय ने अभिनिर्धारित किया की परिवादी न तो विक्रय पत्र का पक्षकार है और न ही सोसायटी का सदस्य है – उसे परिवाद पेश करने का कोई अधिकारी नहीं था – उसने विक्रय के 14 वर्ष बाद परिवाद लगाया – संपत्ति का न्यस्त किया जाना, न्यास भंग और धोखा धड़ी प्रथम दृष्टया स्थापित नहीं हुई थी ऐसी दांडिक परिवाद का दर्ज करना परिवादी के भाग पर प्रक्रिया का दुरूपयोग है – सेशन जज और उच्च न्यायालय के आदेश निरस्त किये गये।

**Mr. Robert John D'Souza and others v. Mr. Stephen V. Gomes and another**

**Judgment dated 21.07.2015 passed by the Supreme Court in Criminal Appeal No. 953 of 2015, reported in 2015 (3) Crimes 160 (SC)**

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

**Offence of cheating and forgery, constitution of – Forged caste certificate – The caste certificate submitted by the accused before M.P. Public Service Commission for obtaining service was found to be illegal by the State Level Scheduled Caste Certificate Scrutiny Committee – Held, as the accused fabricated the caste certificate by practising fraud in the shape of valuable security with dishonest intention for the purpose of securing Government service, prima facie case in respect of offence u/s 420, 467 and 468 is made out.**

भारतीय दण्ड संहिता, 1860 – धाराएं 420, 467 और 468

छल और कूटरचना के अपराध का गठन – कूटरचित जाति प्रमाण पत्र अभियुक्त द्वारा मध्यप्रदेश लोक सेवा आयोग के समक्ष नौकरी पाने के लिए प्रस्तुत किया गया उसे राज्यस्तरीय अनुसूचित जाति प्रमाण पत्र छानबीन समिति द्वारा अवैध पाया गया – अभिनिर्धारित किया गया अभियुक्त ने जाति प्रमाण पत्र की कुट रचना कपट द्वारा, मूल्यवान प्रतिभूति के रूप में बेईमानी पूर्ण आशय के साथ शासकीय नौकरी पाने के लिए किया। प्रथम दृष्टया धारा 420, 467 और 468 भ.दं.सं. के अपराध का मामला बनता है।

**Usha Ajay Singh (Smt.) v. Shri J.L. Mishra**

**Order dated 22.04.2013 by the High Court of M.P. in M.Cr.C. No. 13305 of 2011, reported in ILR (2015) MP 260**

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**321. LAND ACQUISITION ACT, 1894 – Section 12 (2)**

**CIVIL PROCEDURE CODE, 1908 – Order 23 Rule 3**

**CONTRACT ACT, 1872 – Section 23**

**TRANSFER OF PROPERTY ACT, 1882 – Section 53-A**

**(i) What is constructive notice of an award passed under section 11 of the Act of 1894? Held, constructive notice in legal fiction signifies that individual person should know as a reasonable person would have – Even he has no actual knowledge of it – Constructive notice is a notice inferred by law, as distinguished from actual or formal notice; that which is held by law to amount to notice.**

**(ii) A Society has entered into an agreement to sale with a person of Scheduled Caste – A compromise decree has been passed by the court for specific performance of contract – A society is a juristic person – Person includes juristic person also – The transaction is *ab initio void* by virtue of specific provision of section 42 of the Rajasthan Tenancy Act,1955 – Society gets no advantage of such void transaction.**

भूमि अधिग्रहण अधिनियम, 1894 – धारा 12 (2)

सिविल प्रक्रिया संहिता, 1908 – आदेश 23 नियम 3

संविदा अधिनियम, 1872 – धारा 23

संपत्ति अंतरण अधिनियम, 1882 – धारा 53–ए

(i) धारा 11 अधिनियम, 1894 के अधीन पारित अवार्ड की प्रलक्षित सूचना या आन्वयिक सूचना क्या है ? प्रलक्षित सूचना या आन्वयिक सूचना का अर्थ विधिक परिकल्पना में यह होता है कि एक प्रज्ञावान व्यक्ति की तरह किसी व्यक्ति को जिसका ज्ञान होना चाहिए – यहाँ तक कि वास्तव में उसे उसका ज्ञान चाहे न हो – प्रलक्षित सूचना एक ऐसी सूचना है जिसका विधि द्वारा अनुमान निकाला जाता है जो वास्तविक या औपचारिक सूचना से भिन्न होती है जिसे विधि में सूचना होने के समान अभिनिर्धारित किया जाता है।

(ii) एक समिति ने एक व्यक्ति के साथ विक्रय अनुबंध किया – जो अनुसुचित जाति का सदस्य है – न्यायालय द्वारा समझौते के आधार पर अनुबंध के विनिर्दिष्ट पालन की आज्ञप्ति पारित की गई – एक समिति एक विधिक व्यक्ति होती है – व्यक्ति में विधिक व्यक्ति भी शामिल होता है – संव्यवहार धारा 42 राजस्थान टेनेन्सी अधिनियम, 1955 के विशिष्ट प्रावधान के प्रकाश में आरंभ से अंत तक शून्य है समिति को ऐसे शून्य संव्यवहार से कोई लाभ नहीं मिलता है।

## Rajasthan Housing Board v. New Pink City Nirman Sahkari Samiti Limited and another

**Judgment dated 01.05.2015 passed by the Supreme Court in Civil Appeal No. 1527 of 2013, reported in (2015) 7 SCC 601 (Three Judge Bench)**

**Extracts from the Judgment:**

Reliance has been placed on the decision of this Court in ***Madan v. State of Maharashtra, (2014) 2 SCC 720*** and in ***Harish Chandra Raj Singh v. Land Acquisition Officer, AIR 1961 SC 1500*** in which it has been laid down that the party must have either actual or constructive communication of the order which is an essential requirement of fair play and natural justice. The date of award used in proviso (b) to section 18 (2) of the Act must be the date when the award is either communicated to the party or known by him either actually or constructively. The award in the said case was passed on 25.3.1951. Notice of the award was however given to the appellant as required by section 12(2) on 13.1.1953 by which he received information about making of the said award. It was observed that it was necessary for the Collector to give immediate notice of his award under section 12(2) of the Act.

In the instant case it is apparent that the Housing Society had preferred objections and was aware of the land acquisition process and determination of compensation and has filed objections which stood rejected on 4.9.1982. Thus,

the constructive knowledge of the award is fairly attributable to it when it was so passed. Constructive notice in legal fiction signifies that the individual person should know as a reasonable person would have. Even if they have no actual knowledge of it. Constructive notice means a man ought to have known a fact. A person is said to have notice of a fact when he actually knows a fact but for wilful abstension from inquiry or search which he ought to have made, or gross negligence he would have known it. Constructive notice is a notice inferred by law, as distinguished from actual or formal notice; that which is held by law to amount to notice. The concept of constructive notice has been upheld by this Court in ***Harish Chandra*** (supra).

In the instant case, the transaction is *ab initio* void that is right from its inception and is not voidable at the volition by virtue of the specific language used in section 42 of the Rajasthan Tenancy Act. There is declaration that such transaction of sale of holding "shall be void". As the provision is declaratory, no further declaration is required to declare prohibited transaction a nullity. No right accrues to a person on the basis of such a transaction. The person who enters into an agreement to purchase the same, is aware of the consequences of the provision carved out in order to protect weaker sections of Scheduled Castes and Scheduled Tribes. The right to claim compensation accrues from right, title or interest in the land. When such right, title or interest in land is inalienable to non-SC/ST, obviously the agreements entered into by the Society with the Khatedars are clearly void and decrees obtained on the basis of the agreement are violative of the mandate of section 42 of the Rajasthan Tenancy Act and are a nullity. Such a prohibited transaction opposed to public policy, cannot be enforced. Any other interpretation would be defeasive of the very intent and protection carved out under section 42 as per the mandate of Article 46 of the Constitution, in favour of the poor castes and downtrodden persons, included in the Schedules to Articles 341 and 342 of the Constitution of India.

In ***State of M. P. v. Babu Lal, (1977) 2 SCC 435*** the provisions contained in section 165(6) of M.P. Land Revenue Code, 1959 came up for consideration before this Court. The High Court directed the State to file a suit for declaring the decree null and void. The decision was set aside. It was held that the case was a glaring instance of violation of law as such the High Court erred in not issuing a writ. The decision of the High Court was set aside. The transfer which was in violation of proviso to section 165 (6) transferring the right of Bhuswami belonging to a tribe, was set aside.

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***322. LAND ACQUISITION ACT, 1894 – Section 28-A**

**Whether second application under section 28-A of the Land Acquisition Act is maintainable after getting advantage of same provision? Held, No – Only one application can be moved under section 28-A for redetermination of compensation by an applicant according to *Union of India v. Hansoli Devi and others, (2002) 7 SCC 273* [Five Judge Bench judgment para 5(vi)].**

भूमि अर्जन अधिनियम, 1894 – धारा 28–ए

क्या धारा 28–ए भूमि अर्जन अधिनियम, 1894 के अधीन, इस प्रावधान का लाभ ले लेने के बाद, द्वितीय आवेदन प्रचलन योग्य होता है? अभिनिर्धारित किया गया, नहीं – यूनियन ऑफ इंडिया विरूद्ध हंसोली देवी, (2002) 7 एससीसी 273 पाँच न्यायमूर्तिगण की पीठ निर्णय चरण 5 (vi) के अनुसार धारा 28–ए के अधीन प्रतिकर के पुनः निर्धारण के लिए एक आवेदक द्वारा केवल एक (बार) आवेदन दिया जा सकता है।

**Kodar Singh v. State of M.P. & anr.**

**Judgment dated 25.03.2014 passed by the High Court of M.P. in First Appeal No. 15 of 2011, reported in ILR (2014) MP 3190**

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**323. LAND REVENUE CODE, 1959 (M.P.) – Sections 117, 176, 177 (3), 185 and 190**

**Suit for declaration of title on the basis of sub-tenancy – Unauthorized entries as occupancy tenant in khasra, effect of – Fact as to when land leased out by bhumiswami to ancestor of plaintiff neither pleaded in the plaint nor proved – No document filed to prove sub-tenancy – On the basis of unauthorised khasra entries, sub-tenancy cannot be held to be proved – Further held, court below committed no error in rejecting the suit.**

भू राजस्व संहिता, 1959 (म.प्र.) – धाराएं 117, 176, 177(3), 185 और 190

सब टेनेन्सी के आधार पर स्वत्व घोषणा का वाद – खसरे में मौरूसी कृषक के अनाधिकृत इंद्राज का प्रभाव न होना – वाद में यह तथ्य कि भूमि स्वामी द्वारा वादी के पूर्वजों को कब भूमि पट्टे पर दी न तो अभिवचन किया न ही प्रमाणित किया – सब टेनेन्सी प्रमाणित करने के लिए कोई दस्तावेज प्रस्तुत नहीं – अनाधिकृत खसरा इंद्राज के आधार पर सब टेनेन्सी प्रमाणित होना अभिनिर्धारित नहीं किया जा सकता – यह भी अभिनिर्धारित किया गया कि नीचे के न्यायालय ने वाद निरस्त करने में कोई त्रुटि नहीं की है।

**Gulab Bai and others v. State of M.P. and another**

**Judgment dated 09.03.2015 by the High Court of M.P. in Second Appeal No. 2448 of 2005, reported in 2015 RN 350 (HC)**

**Extracts from the Judgment:**

On perusal of the pleadings of the plaint it is evident that important facts have not been pleaded in the plaint. It has not been mentioned in the pleadings when Arjun Singh died and in which year the disputed land was leased out by Arjun Singh to Mahesh Prasad as sub tenant. To prove the terms and conditions of the contract, it should have been pleaded specifically in the plaint as to on which date and time, the contract for sub tenancy was made between Arjun Singh and Mahesh Prasad. Moreover, no written document to prove the sub tenancy has been produced on record. Apart from this, oral evidence produced

by the plaintiffs is also unreliable. In the said circumstances, both the learned courts below have not committed any error in holding that the contract of leasing the disputed land as sub tenant made by Arjun Singh in favour of Mahesh Prasad had not been proved.

So far as the khasra entries are concerned, no order was passed by the competent authority for making the said khasra entries. A Patwari has no right to make khasra entries without any competent authority passing the order. In the judgment of this Court in the case of ***Churamani and others v. Shri Ramadhar and others, 1991 RN 61*** (D.B.) too has categorically held that an entry made by the Patwari in the remark column or any other column of a khasra or field book no presumption of correctness can be attached as per section 117 of the M.P. L.R.C. The Division Bench further held that the Patwari is not required to make any kind of entry in the khasra or field book under Chapter 9 of the M.P.L.R.C. In this view of the matter, even if any entry in column no. 12 is made by the Patwari in the khasra it would not mean that the plaintiff is in possession of the suit property. Hence, keeping in view the proposition of law it is held that the khasra entries Ex.P/8 to Ex.P/15 about the disputed land were made by the Patwari without any order passed by the competent authority, because of this, the said entries cannot be relied upon to prove the title of the plaintiffs. The entry of the name of Mahesh Prasad was made first as sub tenant in the year 1969-70 Ex.P/8. The said entry was unauthorized as no order has been produced by the plaintiffs showing that the entries were made in compliance with the order passed by a competent authority and hence, subsequent entries made thereafter on the basis of the said entries have also no relevance. On the basis of unauthorized khasra entries, the status of Mahesh Prasad as sub tenant cannot be held to be proved. In the said circumstances, both the learned courts below have not committed any error in discarding the title of Mahesh Prasad on the basis of the said entries.

Considering the aforesaid judgments it is concluded that the plaintiffs' right of Bhumiswami cannot be accrued on the basis of adverse possession. Analyzing the pleadings and evidence on record it is concluded that both the learned courts below have rightly arrived at the conclusion that the plaintiffs have failed to prove their case. The findings recorded by both the learned courts below are hereby confirmed. Both the learned courts below have concurrently held that the plaintiffs are not entitled to get any relief in this case as the status of sub tenant of Mahesh Prasad has not been found proved. Since, no substantial question of law is involved in this appeal, the appeal is hereby dismissed.

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**324. LAND REVENUE CODE, 1959 (M.P.) – Section 165 (1)**
**CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 17**

**(i) Devolution of interest – Unamended section 165 (1) of the Code of 1959, applicability of – Amendment effected on 08.12.1961 which deleted the words 'otherwise than by Will' – Will in respect of agricultural land executed on 21.01.1961 – Since prior to such amendment, transfer of bhumiswami rights by way of Will was not permissible, bhumiswami rights could not be said to be transferred by way of Will – Therefore, there was no need to consider evidence in regard to genuineness of Will – Interest would be devolved in order of succession under unamended section.**

**(ii) Application under Order 6 Rule 17 CPC, determination of – In a suit filed 40 years ago, claim of title on the basis of succession sought to be incorporated as earlier claim was made solely on the basis of Will and not on the basis of inheritance – The application was rejected by the High Court on the ground of delay and change in nature of suit – Allowing the amendment application, it was held by the Apex Court that rules of procedure are intended to be a handmaid to the administration of justice – Party cannot be refused just relief merely on the ground of mistake, negligence, inadvertence or infraction of rules of procedure.**

भू राजस्व संहिता, 1959 (म.प्र.) – धारा 165 (1)
सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 17

(i) हित का न्यागमन – असंशोधित धारा 165 (1) अधिनियम, 1959 का लागू होना – दिनांक 08.12.1961 से प्रभावशील संशोधन से शब्द "इच्छा पत्र या (विल) के अलावा" विलोपित – कृषि भूमि संबंधित विल दिनांक 21.01.1961 को निष्पादित – ऐसे संशोधन के पूर्व भूमि स्वामी के अधिकारों का अंतरण विल के द्वारा अनुमत नहीं था, भूमि स्वामी के अधिकारों का अंतरण विल द्वारा होना नहीं कहा जा सकता – इस कारण विल के असली (या यथार्थ) होने के बारे में साक्ष्य पर विचार की आवश्यकता नहीं थी – हित का न्यायगमन असंशोधित धारा (या प्रावधान) के अधीन उत्तराधिकार अनुसार होगा।

(ii) आदेश 6 नियम 17 के आवेदन का निराकरण – 40 वर्ष पूर्व प्रस्तुत वाद में स्वत्व का अनुतोष (या दावा) उत्ताधिकार के आधार जोड़ना चाहा, पहले अनुतोष (या दावा) केवल विल के आधार पर न कि उत्ताधिकार के आधार पर था – उच्च न्यायालय ने (संशोधन) आवेदन विलंब के आधार पर और वाद की प्रकृति (या स्वरूप) बदलने के आधार पर खारिज किया – सर्वोच्च न्यायालय ने आवेदन स्वीकार करते हुए अभिनिर्धारित किया कि प्रक्रिया के नियम, न्याय प्रशासन की दासियाँ है – पक्षकार को न्यायसंगत अनुतोष से केवल त्रुटि, उपेक्षा, असावधानी या प्रकिया के नियम के उल्लंधन के आधार पर इंकार नहीं किया जा सकता।

## Ramkali Devi (Mahila) and others v. Nandram (D) through LRs. and others

**Judgment dated 14.05.2015 by the Supreme Court in Civil Appeal No. 2366 of 2010, reported in 2015 (2) JLJ 326 (SC)**

**Extracts from the Judgment:**

The substantial question of law is as to whether or not Ramkali is entitled to succeed to the suit property left behind by Ajuddhibai (Ayodyabai) under section 164 of the M.P. Land Revenue Code. Ajuddhibai executed the Will dated 21.01.1961 in respect of an agricultural land, i.e., suit property in favour of Ramkali Devi. The suit property was then governed by the Madhya Bharat Land Revenue and Tenancy Act. The devolution of interest of a Bhumidar and transfer of rights by Bhumidar was governed by Section 164 and 165 of the Code respectively. Amendment was incorporated in these provisions on 8.12.1961, whereas Ajuddhibai died prior to the amendment. Therefore, the legality of the Will shall be governed by unamended Section 164 of the Code. Section 164 of the Code, as it stood before its amendment in 1961, provided for the order in which the devolution of the rights of a Bhumiswami would take place after his death. The Hindu Succession Act, 1956 had already come into force when Section 164 was enacted.

However, this Section was amended by the M.P. Land Revenue Code (Amendment) Act No.38 of 1961 which came into force with effect from 08.12.1961 and the personal law was made applicable to devolution of Bhumiswami rights and property of the Bhumiswami after his death was to pass by inheritance, survivorship or bequest, as the case may be.

Transfer of interest of Bhumiswami in his land otherwise than by Will subject to Section 164 was dealt with by the unamended Section 165 of the Code. However, the words “otherwise than by will” was deleted by the amendment dated 8.12.1961 and the words “bequest” was added in Section 164. Therefore, the right of Bhumiswami to transfer his land by way of a Will was not recognized by law when Ajuddhibai executed the Will dated 21.1.1961. She had no right to execute the same prior to amendment of Section 164 of the Code. Property could only be devolved in the order of succession as mentioned in Section 164. Thus, the question of proving genuineness of the Will need not be considered.

The question referred for consideration to the Full Bench of the Madhya Pradesh High Court in ***Nahar Hirasingh and ors. v. Dukalhin and ors., AIR 1974 MP 141***, was whether the provision for succession of Bhumiswami rights under Section 164 of the Madhya Pradesh Land Revenue Code, 1959 as it stood before its amendment in 1961, was a valid provision or it was ultra vires in view of Section 4 of the Hindu Succession Act, 1956. The Court held it to be a valid provision. It was also observed that the M.P. Land Revenue Code, 1954, as also the M.P. Land Revenue Code, 1959, had received the assent of the President and therefore, by virtue of Sub-clause (2) of Article 254 of the

Constitution, that law would prevail in the State of Madhya Pradesh as against any provisions of the Hindu Succession Act, 1956. However, the matter would be different when the M.P. Land Revenue Code, 1959, after amendment of Section 164 by the M.P. Land Revenue Code (Amendment) Act, 1961, made the personal law of the parties applicable to devolution to agricultural properties. Upon such amendment, the personal law as amended from time to time would be applicable.

The application for amendment of plaint filed by appellant no.1 to make appellant nos. 2 to 5 fall under Class XVII of the Madhya Pradesh Land Revenue Code was rejected by learned Single Judge of the High Court on the ground that the same would change the nature of the suit which was filed 40 years ago, as the claim was made solely on the basis of Will and not on the basis of inheritance. The High Court allowed the appeal vide the impugned judgment as the appellants had no locus standi to file the suit as Ajuddhibai could not have transferred her interest through a Will. Hence, present appeal by special leave by the plaintiffs.

While rejecting the amendment petition, the High Court observed as under:

> "16. During the course of hearing an application is filed by the respondents under Order 6 Rule 17 CPC for amendment to the effect that the respondents Dinesh, Satish, Sanjay and Rajendra fails under Class XVII of the Madhya Pradesh Land Revenue Code. This amendment, at this stage, in fact cannot be allowed because the same is going to totally change the nature of the suit. The suit is filed in the year 1964 the suit was filed on the premises that Ramkali Devi has inherited the property from Ajudhibai on the basis of will. By the amendment in the pleadings Dinesh, Satish, Sanjay and Rajendra have joined as party. That amendment was incorporated on 18.7.1994 and their names were added as plaintiffs in the suit. In the cause title also the word 'plaintiff' is substituted by the word 'plaintiff'. However, there is no amendment in the averments made in the rest of the pleadings in the plaint. In such circumstances, now, it will not be in the interest of justice to allow the application for amendment which totally goes to change the premises of the suit after a lapse of more than 40 years. In the present case the plaintiffs have based their title solely on the basis of a will executed by Ajudhibai and, therefore, allowing an application for amendment making claim on the basis of inheritance that too through Hardayal cannot be permitted at this stage. Hence, the amendment application is rejected."

It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The Court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting malafide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

In our view, since the appellant sought amendment in paragraph 3 of the original plaint, the High Court ought not to have rejected the application.

In the case of ***Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon, AIR 1969 SC 1267,*** this Court held that the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.

In ***Pandit Ishwardas v. State of Madhya Pradesh and ors., AIR 1979 SC 551,*** this Court observed :-

> "We are unable to see any substance in any of the submissions. The learned counsel appeared to argue on the assumption that a new plea could not be permitted at the appellate stage unless all the material necessary to decide the plea was already before the Court. There is no legal basis for this assumption. There is no impediment or bar against an appellate Court permitting amendment of the pleadings so as to enable a party to raise a new plea. All that is necessary is that the Appellate Court should observe the well-known principles subject to which amendments of pleadings are usually granted. Naturally, one of the circumstances which will be taken into consideration before an amendment is granted is the delay in making the application seeking such amendment and, if made at the Appellate stage the reason why it was not sought in the trial court. If the necessary material on which the plea arising from the amendment may be decided is already there, the amendment may be more readily granted than otherwise. But, there is no prohibition against an Appellate Court permitting an amendment at the appellate stage merely because the necessary material is not already before the Court."

In the light of the discussion made hereinabove and also having regard to the fact that the amendment sought for by the plaintiff-appellant ought to have been allowed by the High Court, in our considered opinion substantial issue no.2, as formulated by the High Court, needs to be decided by the High Court afresh.

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**325. LIMITATION ACT, 1963 – Article 54**

**CIVIL PROCEDURE CODE, 1908 – Order 2 Rule 2**

**(i) Suit for specific performance of contract, limitation therefor – In reply to notice for specific performance of an agreement to sale, defendant denied execution of sale deed in reply dated 17.10.2000 – Held, period of limitation would commence from the date of denial.**

**(ii) Order 2 Rule 2 CPC, applicability of – Despite refusal to execute the sale deed, the plaintiff did not file a suit for specific performance even though they were entitled to ask for such relief, but they filed the first suit for declaration and injunction only, hence suit for specific performance was barred under Order 2 Rule 2 CPC.**

परिसीमा अधिनियम, 1963 – अनुच्छेद 54

सिविल प्रक्रिया संहिता, 1908 – आदेश 2 नियम 2

(i) संविदा के विनिर्दिष्ट पालन के वाद की परिसीमा – विक्रय करार के विनिर्दिष्ट पालन के सूचना पत्र के जबाब दिनांक 17.10.2000 में प्रतिवादी ने विक्रय पत्र के निष्पादन से इंकार किया – इंकारी के दिनांक से परिसीमा अवधि प्रारंभ होना अभिनिर्धारित किया गया।

(ii) आदेश 2 नियम 2 सीपीसी का लागू होना – विक्रय पत्र के निष्पादन से इंकार करने के बावजूद वादी ने अनुबंध पालन का वाद प्रस्तुत नहीं किया यद्यपि वह ऐसा अनुतोष मांगने के लिए हकदार था किन्तु उसने प्रथम वाद केवल घोषणा और निषेधाज्ञा का पेश किया अतः विनिर्दिष्ट पालन का वाद आदेश 2 नियम 2 सीपीसी में वर्जित है।

**Haribabu and anr. v. Himmat Singh and ors.**

**Judgment dated 04.02.2013 by the High Court of M.P. in F.A. No. 28 of 2006, reported in ILR 2014 MP 3160 (DB)**

**Extracts from the Judgment:**

It may be observed here that refusal to execute specific performance to the agreement was made by the respondents when they sent reply to the notice Ex.-P/18 vide reply dated 17th of October, 2000. In terms of Article – 54 of the Limitation Act, the limitation to file the suit for specific performance, therefore was over on 16th of October, 2003. According the respondents, the suit was filed beyond limitation.

It may be observed here that despite the clear stand taken by the respondents in their reply dated 17th of October, 2000 refusing to perform the agreement to sale and rather cancelling the agreement and adjusting the advance given by the appellants to the respondents at the time of execution of the agreement Ex.- P/1, the appellants still did not thought it appropriate to file a suit for specific performance rather they filed a suit for declaration that respondent nos. 1 to 3 were not

entitled to sale the property to any other persons except them and also for injunction to same effect, suit was filed on 7th of October, 2002.

It is thus clear that the findings returned above by the learned Trial Court were based upon the evidence which came on record and taking into consideration that, in this case, the suit filed by the appellants for seeking specific performance was not within time. It is seen that despite refusal to execute the sale deed, the appellants did not file a suit for specific performance. This fact is clear from the fact that they filed the first suit for declaration and injunction on 07.10.2002 which was not a suit for specific performance. The application for amendment of the said suit for seeking relief of specific performance was made on 27.02.2004 which was beyond three years from the date of refusal of the respondents to execute the sale deed of the remaining property. Moreover, the appellants had not filed the original suit for seeking relief of specific performance, even though they were entitled to ask for such relief, no permission was obtained from the Court to file separate suit for separate relief. However, this has not been done. It may be observed here that the suit filed for injunction was not filed by the petitioner after seeking permission from the Court concerned for not filing the suit for specific relief on that time by making an application under Order II Rule 2 of CPC. For the sake of reference, Order II Rule 2 of CPC is reproduced hereunder:

> ***2. Suit to include the whole claim –*** (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action, but a plaintiff may relinquish any portion of this claim in order to bring the suit within the jurisdiction of any Court.
>
> ***(2) Relinquishment of part of claim*** – Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.
>
> ***(3) Omission to sue for one of several reliefs*** – A person entitled to more than one relief in respect of the same cause of action may use for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.
>
> ***Explanation*** – for the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

In view of the aforesaid provisions and the limitation prescribed for filing a suit for specific performance i.e. under Article 54 of the Limitation Act, the relief of specific performance which was available to the appellants at the time of receiving reply to the notice Ex.-P/18 stood relinquished / abandoned as they did not claim that relief when they filed suit for injunction.

In view of the aforesaid, the suit for specific performance was not only barred by limitation, but also barred under Order II Rule 2 of C.P.C.

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***326. MOTOR VEHICLES ACT, 1988 – Sections 140 and 166**

**Interim award was passed under section 140 of the M.V. Act but not paid – Meanwhile, the claim application under section 166 of M.V. Act was withdrawn by the claimant – Whether interim award can be executed even after withdrawal or dismissal of application under section 166 ? Held, Yes, because interim award under section 140, on the basis of principle of no fault liability, is an independent relief [*Eshwarappa v. C.S. Gurushanthappa, 2010 ACJ 2444 (SC)* followed].**

मोटर यान अधिनियम, 1988 – धाराएं 140 और 166

धारा 140 मोटर यान अधिनियम के अधीन अंतरिम अवार्ड पारित किया गया किन्तु उसका भुगतान नहीं हुआ, इसी बीच दावा आवेदन धारा 166 मोटर यान अधिनियम आवेदक द्वारा वापस ले किया गया – क्या अंतरिम अवार्ड, धारा 166 के अधीन आवेदन वापस ले लेने या खारिज हो जाने के बाद भी निष्पादित करवाया जा सकता है? अभिनिर्धारित किया गया, हॉ, क्योंकि धारा 140 के अधीन अंतरित अवार्ड, त्रुटि रहित दायित्व के सिद्धांत के आधार पर, एक स्वतंत्र अनुतोष होता है एश्वरप्पा विरूद्ध सी.एस. गुरूशात्थप्पा, 2010 ए.सी.जे. 2444 (एस.सी.), का अनुसरण किया गया।

**Dabbal and others v. Oriental Insurance Co. Ltd. & anr.**

**Judgment dated 01.04.2014 passed by the High Court of W.P. No. 7638 of 2009, reported in 2015 ACJ 1815**

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***327. MOTOR VEHICLES ACT, 1988 – Section 149**

**Insurer, liability of.**

**Accident took place at 11.00 o'clock while premium for insurance deposited at 3.10 o'clock – Held, since insurance policy was not effective when accident took place, insurance company is not liable for payment of compensation.**

मोटर यान अधिनियम, 1988 – धारा 149

बीमा कर्त्ता का दायित्व।

दुर्घटना 11 बजे हुई जबकि बीमा की किश्त 3.10 बजे जमा की गई – अभिनिर्धारित किया गया, जब दुर्घटना हुई बीमा पालिसी प्रभाव में नहीं थी, बीमा कंपनी प्रतिकर के भुगतान के लिए उत्तरदायी नहीं है।

**National Insurance Co. Ltd. v. Harpal Singh & ors.**

**Order dated 03.04.2013 by the High Court of M.P. in Misc. Appeal No. 80 of 1997, reported in ILR (2015) MP 168**

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***328. MOTOR VEHICLES ACT, 1988 – Section 149**

**Insurer, liability of.**

**Tractor being insured for agricultural purposes, was being used for transporting sand – Deceased who was travelling sitting in the trolley, died on the spot as tractor-trolley turned turtle – Held, as tractor was being plied contrary to the purpose for which it was insured and in violation of the terms of the insurance policy, the insurance company is entitled to be exonerated.**

मोटर यान अधिनियम, 1988 — धारा 149

बीमा कर्त्ता का दायित्व।

ट्रैक्टर कृषि उद्देश्य के लिए बीमित था – रेत के परिवहन के लिए उपयोग किया गया – मृतक ट्राली में बैठकर यात्रा कर रहा था वह ट्रैक्टर ट्राली पलटने से घटना स्थल पर मर गया – अभिनिर्धारित किया गया, ट्रैक्टर, बीमा पालिसी की शर्तों के उल्लंघन में (उस उद्देश्य के विपरीत) चलाया जा रहा था जिसके लिए वह बीमित था – बीमा कंपनी दायित्व मुक्त होने की हकदार है।

**Karan Lal v. Charan Lal**

**Order dated 03.04.2013 by the High Court of M.P. in Misc. Appeal No. 2804 of 2011, reported in ILR (2015) MP 164**

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

**Assessment of compensation in death case – Deceased aged 45 years, was permanent Government employee, drawing Rs. 4,214/- p.m. – High Court awarded Rs. 6,30,000/- including Rs. 15,000/- towards loss of estate, funeral expenses and loss of love and affection – The Apex Court assessed her monthly income at Rs. 6,000/- and added 30% towards future prospects, adopted multiplier of 14 and awarded Rs. 10,98,000/- including Rs. 1,00,000/- each towards loss of love and affection and loss of estate and Rs. 25,000/- towards funeral expenses.**

मोटर यान अधिनियम, 1988 — धारा 166

मृत्यु प्रकरण में प्रतिकर का निर्धारण– मृतक 45 वर्षीय, स्थायी शासकीय कर्मचारी, 4214/– रूपयें प्रतिमाह वेतन पाती थी – उच्च न्यायालय ने 6,30,000/– रूपये अवार्ड पारित किया जिसमें 15,000/– रूपये संपदा की हानि, दाह संस्कार खर्च और प्रेम और वात्सल्य की हानि के शीर्ष में थे – सर्वोच्च न्यायालय ने उसकी मासिक आय 6,000/– रूपये निर्धारित की और उसमें 30 प्रतिशत भविष्य की संभावना जोड़ते हुए 14 का गुणांक प्रयुक्त कर 10,98,000/– रूपयें अवार्ड किये जिसमें 1,00,000/– रूपये प्रेम और वात्सल्य की हानि और संपदा की हानि प्रत्येक के लिए (प्रत्येक के लिए 1,00,000/–) 25,000/– दाह संस्कार खर्च शामिल थे।

**Shruti Gupta v. United India Insurance Co. Ltd. & anr.**
**Judgment dated 17.03.2015 passed by the Supreme Court of India in Civil Appeal No. 2933 of 2015, reported in 2015 ACJ 1755**

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**330. PREVENTION OF CORRUPTION ACT, 1988 – Sections 7, 13 (2) and 20**

**Demand and acceptance of illegal gratification, proof of – Demand of Rs. one lakh by Technical Assistant working with FCI for approving the quality of rice, established by complainant's evidence and corroborated by other prosecution witnesses – Phenolphthalein test also proved positive and recovery of currency notes bearing same numbers as mentioned in concerned memorandum also proved against the accused – Defence evidence not found probable and reasonable to rebut the presumption available under section 20 of the Act – Conviction of the accused under sections 7 r/w/s 13 (2) of the Act by trial court held, proper.**

भ्रष्टाचार निवारण अधिनियम, 1988 – धाराएं 7, 13 (2) और 20

अवैध परितोषण की मांग और स्वीकारोक्ति का प्रमाण – परिवादी की साक्ष्य से, तकनीकी सहायक जो कि भारतीय खाद्य निगम के साथ कार्यरत था, (उसके द्वारा) चावल की गुणवत्ता को मान्य करने के लिए, एक लाख रूपये की मांग करना स्थापित हुआ और उसकी पुष्टि अन्य अभियोजन साक्षीगण द्वारा की गई – फिनौफथिलीन परीक्षण भी सकारात्मक प्रमाणित हुआ और अभियुक्त के विरूद्ध उससे उन्हीं करेंसी नोट की जप्ती भी प्रमाणित हुई जो संबंधित मेमारण्डम में अंकित नम्बर के नोट थे – धारा 20 की उपधारणा को खंडित करने योग्य संभाव्य और युक्तियुक्त प्रतिरक्षा प्रमाण नहीं पाया गया – अभियुक्त की विचारण न्यायालय द्वारा धारा 7 सहपठित धारा 13 (2) अधिनियम के अधीन की गई दोषसिद्धी उचित होना, अभिनिर्धारित किया गया।

**Gurjant Singh v. State of Punjab**
**Judgment dated 24.07.2015 by the Supreme Court in Criminal Appeal No. 955 of 2015, reported in (2015) 8 SCC 650**

**Extracts from the Judgment:**

On going through the evidence on record, we find that PW-1 Harpal Singh, complainant, has proved the demand of rupees one lakh, made by the appellant, for accepting and approving the advance rice to be supplied by the Shellers. He has further proved that after some talks the appellant agreed to accept Rs.50,000/-. He has given detailed narration of the facts as to how the matter was complained to the Vigilance Department and trap was laid, and as to how the hundred tainted currency notes of denomination of Rs.500/- were accepted by the appellant, on which the Vigilance team caught the appellant red handed, and recovered the amount from him. The statement of PW-1 Harpal Singh is fully corroborated by PW-2 Sandip Kataria and PW-3 Jetha Ram, District Welfare Officer.

PW-11, Baldev Singh Dhaliwal, Deputy Superintendent of Police, Vigilance Bureau, Faridkot, has also narrated the entire operation. He has proved the complaint made by PW-1, and the First Information Report (Ext.PA/2), registered as directed by Baljinder Singh Grewal, Superintendent of Police. He further proved sanction (Ext. PM) for prosecution of appellant, and also proved the report (Ext. PP) from Forensic Science Laboratory, received on completion of investigation.

We have also gone through the statements of defence witnesses. But considering quality of evidence of prosecution witnesses, we are of the opinion that amount of Rs.50,000/- cannot be planted, and the defence version pleading innocence cannot be accepted in the facts and circumstances of this case. The statements of defence witnesses are of little help to discredit the testimony of the prosecution witnesses. As such, keeping in mind the presumption to be taken under Section 20 of the Prevention of Corruption Act, 1988, we are not inclined to interfere with the conviction recorded by the trial court under Section 7/13(2) of the Act, and affirmed by the High Court. We think it proper to mention here few decisions of this Court, which reflect what approach should be adopted in such matters.

In ***Narendra Champaklal Trivedi v. State of Gujarat, (2012) 7 SCC 80*** this Court, in almost similar facts, has observed as under:

> "22. In the case at hand, the money was recovered from the pockets of the appellant-accused. A presumption under section 20 of the Act becomes obligatory. It is a presumption of law and casts an obligation on the court to apply it in every case brought under section 7 of the Act. The said presumption is a rebuttable one. In the present case, the explanation offered by the appellant-accused has not been accepted and rightly so. There is no evidence on the base of which it can be said that the presumption has been rebutted."

In ***Mukut Bihari v. State of Rajasthan, (2012) 11 SCC 642*** referring to various cases, this Court has made following observations:

> "This Court in ***C. Sharma v. State of A.P., (2010) 15 SCC 1,*** after considering various judgments of this Court including ***Panalal Damodar Rathi v. State of Maharashtra, (1979) 4 SCC 526*** and ***Meena v. State of Maharashtra, (2000) 5 SCC 21*** held that acceptance of the submission of the accused that the complainant's version required corroboration in all circumstances, in abstract would encourage the bribe taker to receive illegal gratification in privacy and then insist for corroboration in case of the prosecution. Law cannot countenance such situation. Thus, it is not necessary that the evidence of a reliable witness is necessary to be corroborated by another witness, as such evidence stands corroborated from the other material on record……."

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***331. PREVENTION OF CORRUPTION ACT, 1988 – Sections 13(1)(d) and 19**
**INDIAN PENAL CODE, 1860 – Section 120-B**
**CRIMINAL PROCEDURE CODE, 1973 – Section 197**
**Sanction for prosecution – Accused was Collector and ex-officio Chairman of the Town improvement Trust, Ratlam – He had delegated all his powers to CEO of the Town improvement Trust – CEO transferred some land to co-accused without consideration and executed exchange deed – Nothing on record to suggest that the deed was executed at the instance of the Chairman – The Central as well as the State Governments refused to grant sanction for prosecution – Hon'ble Apex Court held that if the delegatee has not acted in terms of the delegated powers, the delegator cannot be held to be guilty for such act – It was not a fit case for grant of sanction for prosecution against Chairman.**

भष्टाचार निवारण अधिनियम, 1988 – धाराएं 13(1)(डी) और 19

भारतीय दण्ड संहिता, 1860 – धारा 120–बी

दण्ड प्रक्रिया संहिता, 1973 – धारा 197

अभियोजन के लिए स्वीकृति – अभियुक्त जिलाधीश और रतलाम नगर सुधार न्यास, का पदेन अध्यक्ष था – उसने उसकी सभी शक्तियाँ नगर सुधार न्यास के मुख्य कार्यपालन अधिकारी को प्रत्यायोजित कर दी थी – मुख्य कार्यपालक अधिकारी ने कुछ भूमि सह अभियुक्त को बिना प्रतिफल लिये अंतरित कर दी और विनिमय लेख निष्पादित कर दिया अभिलेख पर यह दर्शाने के लिए कुछ नहीं था कि विनिमय लेख अध्यक्ष के कहने पर निष्पादित किया गया था – केन्द्र सरकार और राज्य सरकार ने अभियोजन चलाने की स्वीकृति देने से इन्कार कर दिया माननीय सर्वोच्च न्यायालय ने अभिनिर्धारित किया कि यदि प्रत्यायोजि, प्रत्यायोजित शक्तियों की शर्तों के अधीन कार्य नहीं करता है तब ऐसे कार्य के लिए प्रत्यायोजक को दोषी नहीं माना जा सकता – अध्यक्ष के विरूद्ध अभियोजन चलाने की स्वीकृति देने का यह एक उचित मामला नहीं था।

**Vinod Chandra Semwal v. Special Police Establishment, Ujjain**
**Judgment dated 24.02.2015 passed by the Supreme Court in Criminal Appeal No. 2129 of 2011, reported in 2015 CriLJ 3606 (SC)**

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**332. PREVENTION OF CORRUPTION ACT, 1988 – Section 19**
**Sanction for prosecution under section 19 of the Act – It is a mandatory provision which creates complete and absolute bar on any court for taking cognizance of any offence punishable under sections 7,10,11,13 and 15 of the Act against a public servant except with the previous sanction of the competent authority – If the trial court finds that sanction is invalid, then it should have discharged**

**the accused rather than record an order of acquittal on the merit of the case – Sub-section (3) of section 19 postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction, it is not applicable to proceedings before the Special Judge who is free to pass an order discharging the accused for want of valid sanction – It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of a valid sanction.**

भ्रष्टाचार निवारण अधिनियम, 1988 – धारा 19

धारा 19 अधिनियम के अधीन अभियोजन के लिए स्वीकृति – यह एक आज्ञापक प्रावधान है जो एक पूर्ण व आत्यंतिक वर्जन या बार किसी भी न्यायालय के लिए, सक्षम प्राधिकारी की पूर्व स्वीकृति के बिना धारा 7, 10, 11, 13 और 15 अधिनियम के अधीन दण्डनीय अपराधों का संज्ञान किसी लोक सेवक के विरूद्ध लेने में, सृजित करता है – यदि विचारण न्यायालय यह पाती है कि स्वीकृति अवैध है तो उसे अभियुक्त को गुण–दोष पर दोषमुक्त करने के बजाय उन्मोचित करना चाहिए – धारा 19 की उपधारा 3 वरिष्ठ न्यायालय पर एक प्रतिबंध, विशेष न्यायालय के आदेश को स्वीकृति आदेश की किसी त्रुटि, लोप या अनियमितता के अधार पर उल्टने मे, लगाती है – यह विशेष न्यायाधीश के समक्ष कार्यवाहियों पर लागू नहीं होता है जो वैध स्वीकृति के अभाव में अभियुक्त को उन्मोचित करने का आदेश करने के लिए स्वतंत्र होते है – यह विशेष न्यायाधीश को कार्यवाहियों के किसी भी प्रक्रम पर यह अभिनिर्धारित करने से नहीं रोकता की अभियोजन वैध स्वीकृति के अभाव में चलने योग्य नहीं है।

## Nanjappa v. State of Karnataka

**Judgment dated 24.07.2015 passed by the Supreme Court in Criminal Appeal No. 1867 of 2012, reported in 2015 AIR SCW 4432**

**Extracts from the Judgment:**

Having said that there are two aspects which we must immediately advert to. The first relates to the effect of sub-section (3) to Section 19, which starts with a non-obstante clause. Also relevant to the same aspect would be Section 465 of the Cr.P.C. which we have extracted earlier. It was argued on behalf of the State with considerable tenacity worthy of a better cause, that in terms of Section 19(3), any error, omission or irregularity in the order sanctioning prosecution of an accused was of no consequence so long as there was no failure of justice resulting from such error, omission or irregularity. It was contended that in terms of explanation to Section 4, “error includes competence of the authority to grant sanction”. The argument is on the face of it attractive but does not, in our opinion, stand closer scrutiny. A careful reading of sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course

the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by Special Judge in appeal, confirmation or revisional proceedings on the ground that the sanction is bad save and except, in cases where the appellate or revisional court finds that failure of justice has occurred by such invalidity. What is noteworthy is that sub-section (3) has no application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1). Sub-section (3), in our opinion, postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction. It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of a valid order sanctioning the same. The language employed in sub-section (3) is, in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident even from the language employed in sub-section (4) according to which the appellate or the revisional Court shall, while examining whether the error, omission or irregularity in the sanction had occasioned in any failure of justice, have regard to the fact whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of sub-sections 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a higher Court and not before the Special Judge trying the accused. The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning prosecution under Section 19(1). Failure of justice is, what the appellate or revisional Court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision.

In the case at hand, the Special Court not only entertained the contention urged on behalf of the accused about the invalidity of the order of sanction but found that the authority issuing the said order was incompetent to grant sanction. The trial Court held that the authority who had issued the sanction was not competent to do so, a fact which has not been disputed before the High Court or before us. The only error which the trial Court, in our opinion, committed was that, having held the sanction to be invalid, it should have discharged the accused

rather than recording an order of acquittal on the merit of the case. As observed by this Court in ***Baij Nath Prasad Tripathi v. The State of Bhopal and anr., AIR 1957 SC 494,*** the absence of a sanction order implied that the court was not competent to take cognizance or try the accused. Resultantly, the trial by an incompetent Court was bound to be invalid and non-est in law.

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***333. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 3 and 12**

**Application under section 12 of the Act of 2005 has been filed by the wife in the year 2007 – Couple has started living separately since 1992 – Whether such application is maintainable? Held, Yes, moreso where maternal uncle with whom wife was living is no more ready to allow her to stay in his house [*V. D. Bhanot v. Savita Bhanot, AIR 2012 SC 965* relied on]**

घरेलु हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 – धाराएं 3 और 12

पत्नी द्वारा वर्ष 2007 में धारा 12 अधिनियम, 2005 के अंतर्गत आवेदन प्रस्तुत किया था – पति–पत्नि ने वर्ष 1992 में पृथक रहना शुरू किया था – क्या ऐसा आवेदन चलने योग्य है ? अभिनिर्धारित किया गया, हाँ, विशेषकर जब पत्नि जिस मेटरनल अंकल के साथ रहती थी वे उसे उनके घर में निवास करने देने को तैयार नहीं थे – न्यायदृष्टांत वी.डी. भनोत विरूद्ध सविता भनोत, एआईआर 2012 एससी 965 पर विश्वास किया गया।

**Shalini v. Kishor and others**

**Judgment dated 06.05.2015 passed by the Supreme Court in Criminal Appeal No. 1556 of 2010, reported in 2015 CriLJ 3610 (SC)**

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**334. SPECIFIC RELIEF ACT, 1963 – Section 19 (b)**

**(i) Specific performance of agreement to sale – Failure of plaintiff to perform his part of contract, effect of – Failure on the part of the plaintiff to perform his part of the contract i.e. payment of balance sale consideration within stipulated time, disentitles him to get decree of specific performance of such agreement.**

**(ii) Section 19 (b) of Specific Relief Act – Protection to bona-fide purchaser, availability of – Plaintiff filed suit seeking decree for specific performance of agreement to sale against defendant No. 1 to 11 – Plaintiff failed to pay the balance amount of consideration without stipulated time – Agreement of sale was unregistered document – Defendant No. 12 to 15 sought protection of section 19 (b) of Specific Relief Act on ground of being the bona-fide purchaser – They had made proper**

**verification from the competent authority to purchase the part of the suit scheduled property – They got the agreement of sale executed in their favour from defendant No. 1 to 11 and thereafter they got the sale deed registered also by paying sale consideration amount – Held, defendant No. 12 to 15 being the bonafide purchaser, are entitled to protection available under section 19 (b) of the Specific Relief Act.**

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 19(बी)

(i) विक्रय का विनिर्दिष्ट पालन – वादी द्वारा संविदा के उसके भाग का पालन करने में असफल रहने का प्रभाव – वादी द्वारा संविदा के उसके भाग का पालन करने में असफल रहने का प्रभाव अर्थात अवशेष विक्रय प्रतिफल निर्धारित समय में न देना, उसे उस अनुबंध के विनिर्दिष्ट पालन की आज्ञप्ति पाने के अयोग्य बना देता है।

(ii) धारा 19 (बी) विनिर्दिष्ट अनुतोष अधिनियम – सदभावी क्रेता को संरक्षण उपलब्ध होना – वादी ने प्रतिवादी क्रमांक 1 से 11 के विरूद्ध अनुबंध के विनिर्दिष्ट पालन की आज्ञप्ति पाने के लिए वादी पेश किया – वादी अवशेष प्रतिफल की राशि नियत समय में भुगतान करने में असफल रहा – विक्रय अनुबंध अपंजीकृत दस्तावेज था – प्रतिवादी क्रमांक 12 से 15 ने धारा 19 (बी) विनिर्दिष्ट अनुतोष अधिनियम के आधार पर सदभावी क्रेता होने के कारण संरक्षा चाही – उन्होंने सक्षम प्राधिकारी से भूमि का एक भाग क्रय करने से पहले उचित सत्यापन भी किया – प्रतिवादी क्रमांक 1 से 11 से उसके पक्ष में विक्रय अनुबंध भी निष्पादित कराया और उसके बाद विक्रय प्रतिफल की राशि अदा करके विक्रय पत्र निष्पादित कराया – अभिनिर्धारित किया गया, प्रतिवादी क्रमांक 12 से 15 सद्भावी क्रेता होने से धारा 19 (बी) विनिर्दिष्ट अनुतोष अधिनियम का संरक्षण पाने का हकदार है।

**Padmakumari and others v. Dasayyan and others**

**Judgment dated 07.04.2015 by the Supreme Court in Civil Appeal No. 3570 of 2015, reported in (2015) 8 SCC 695**

**Extracts from the Judgment:**

The legal contention urged on behalf of defendant Nos. 12 to 15 has been strongly rebutted by learned counsel on behalf of the plaintiff contending that the question of payment of balance consideration amount of Rs. 63,000/- within nine months would have arisen after the terms and conditions of the contract agreed upon by defendant Nos. 1 to 11 if they had measured the suit schedule property. They have not discharged their part of the contract stipulated in the agreement to sell, therefore, it is urged by him that time was not the essence of the contract as defendant Nos. 1 to 11 themselves have failed to perform their part of the agreement.

The contention urged on behalf of the plaintiff is unacceptable to us that the question of taking measurement would not arise before the plaintiff perform his part of the contract regarding the balance consideration within the period stipulated in the agreement. Undisputedly, that had not been done by the plaintiff in the instant case within the stipulated time and the notice was issued by the plaintiff only after one year, therefore, the plaintiff has not adhered to the time which is stipulated to pay the balance consideration amount to defendant Nos. 1 to 11 which is very important legal aspect which was required to be considered by the Courts below at the time of determining rights of the parties and pass the impugned judgment. The Courts below have ignored this important aspect of the matter while answering the contentious Issue Nos. 1 and 2 in favour of the plaintiff and granted decree of specific performance in respect of the suit schedule property. The said finding of fact is contrary to the terms and conditions of the agreement, pleadings and the evidence on record. Accordingly, we answer the said issues in favour of defendant Nos. 12 to 15 after setting aside the concurrent finding of fact recorded by the High Court.

The last contention urged is whether defendant Nos. 12 to 15 (the appellants herein) are protected under Section 19(b) of the Specific Relief Act as they being the bona fide purchasers. Learned counsel for defendant Nos. 12 to 15 has rightly invited our attention that the non-compliance of the contract regarding payment of balance consideration to defendant Nos. 1 to 11 on the part of the plaintiff within nine months is an undisputed fact and further the agreement of sale is not registered, as is evidenced from the encumbrance certificate obtained by defendant Nos. 12 to 15 before they entered into an agreement (Exhibit B-1). Both the Courts below have erroneously recorded an erroneous finding on the non existent fact holding that the agreement of sale in favour of the plaintiff is a registered document which, in fact, is not true. The same is evidenced from the encumbrance certificate. More so, defendant Nos. 12 to 15 before entering into the agreement with defendant Nos. 1 to 11 have made proper verification from the competent authority to purchase the part of the suit schedule property and got the agreement of sale (Exhibit B-1) executed in their favour, from defendant Nos. 1 to 11 and thereafter, they got the sale, deed registered by paying sale consideration amount. As could be seen from the agreement of sale and registered sale deed, which is marked as Exhibit B-3, it is very clear that defendant Nos. 12 to 15 have paid the sale consideration amount of the property, therefore, the reliance placed upon Section 19(b) of the Specific Relief Act as they being the bona fide purchasers, the specific performance of contract cannot be enforced against the transferees. Defendant Nos. 12 to 15 being the transferee as they have purchased the suit schedule property for value and have paid the money in good faith and without notice of the original contract.

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***335. SPECIFIC RELIEF ACT, 1963 – Section 53-A**

**LIMITATION ACT, 1963 – Article 54**

**Limitation for suit for specific performance of contract – It is three years from the date fixed for the performance or if no such date is fixed, than when the plaintiff has notice that performance is refused – Plaintiff was put in possession of the property, would not make any difference with regard to the limitation of filing the suit for specific performance of contract.**

विनिर्दिष्ट अनुतोश अधिनियम, 1963 – धारा 53–ए

परिसीमा अधिनियम, 1963 – अनुच्छेद 54

संविदा के विनिर्दिष्ट पालन के वाद के लिए परिसीमा – यह (परिसीमा) पालन के लिए नियत दिनांक से या यदि ऐसी दिनांक नियत न हो, जब वादी को यह सूचना हो जाये कि पालन से इनकार कर दिया है, वहाँ से तीन वर्ष होती है – वादी को सम्पत्ति का आधिपत्य दिया गया था इससे विनिर्दिश्ट पालन के लिए वाद प्रस्तुत करने की परिसीमा के संबंध में कोई अंतर नहीं पड़ता है।

**Fatehji and Company and another v. L. M. Nagpal and others**

**Judgment dated 24.04.2015 passed by the Supreme Court in Civil Appeal No. 3912 of 2015, reported in (2015) 8 SCC 390**

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**336. SUCCESSION ACT, 1925 – Section 63**

**EVIDENCE ACT, 1872 – Sections 67, 68 and 71**

**Will – Execution and attestation, proof of – Section 71 of the Evidence Act is not substitute of section 63 of the Succession Act and section 68 of the Evidence Act and it has to be accorded strict interpretation – Section 71 of the Evidence Act cannot be invoked to supplement failed attempt of proof on the part of the attesting witnesses.**

उत्तराधिकार अधिनियम, 1925 – धारा 65

साक्ष्य अधिनियम, 1872 – धाराएं 67, 68 और 71

इच्छा पत्र (या विल) का निष्पादन और अनुप्रमाणन का प्रमाण – धारा 71 साक्ष्य अधिनियम, धारा 63 उत्ताधिकार अधिनियम, और धारा 68 साक्ष्य अधिनियम का प्रतिस्थापन नहीं है तथा उसका कठोर अर्थान्वयन करना ही चाहिए – धारा 71 साक्ष्य अधिनियम को, अनुप्रमाणित गवाहों द्वारा प्रमाण देने में असफल होने पर, उनके पूरक की तरह लागू नहीं किया जा सकता है।

**Jagdish Chand Sharma v. Narain Singh Saini (dead) thru LRs. & others**

**Judgment dated 01.05.2015 by the Supreme Court in Civil Appeal No. 4181 of 2015, reported in AIR 2015 SC 2149**

**Extracts from the Judgment:**

A Will as an instrument of testamentary disposition of property being a legally acknowledged mode of bequeathing a testator's acquisitions during his lifetime, to be acted upon only on his/her demise, it is no longer res integra, that it carries with it an overwhelming element of sanctity. As understandably, the testator/testatrix, as the case may be, at the time of testing the document for its validity, would not be available, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation. This is more so, as many a times, the manner of dispensation is in stark departure from the prescribed canons of devolution of property to the heirs and legal representatives of the deceased. The rigour of Section 63 (c) of the Act and Section 68 of 1872 Act is thus befitting the underlying exigency to secure against any self serving intervention contrary to the last wishes of the executor.

Viewed in premise, Section 71 of the 1872 Act has to be necessarily accorded a strict interpretation. The two contingencies permitting the play of this provision, namely, denial or failure to recollect the execution by the attesting witness produced, thus a fortiori has to be extended a meaning to ensure that the limited liberty granted by Section 71 of 1872 Act does not in any manner efface or emasculate the essence and efficacy of Section 63 of the Act and Section 68 of 1872 Act. The distinction between failure on the part of a attesting witness to prove the execution and attestation of a Will and his or her denial of the said event or failure to recollect the same, has to be essentially maintained. Any unwarranted indulgence, permitting extra liberal flexibility to these two stipulations, would render the predication of Section 63 of the Act and Section 68 of the 1872 Act, otiose. The propounder can be initiated to the benefit of Section 71 of the 1872 Act only if the attesting witness/witnesses, who is/are alive and is/are produced and in clear terms either denies /deny the execution of the document or cannot recollect the said incident. Not only, this witness/witnesses has/have to be credible and impartial, the evidence adduced ought to demonstrate unhesitant denial of the execution of the document or authenticate real forgetfulness of such fact. If the testimony evinces a casual account of the execution and attestation of the document disregardful of truth, and thereby fails to prove these two essentials as per law, the propounder cannot be permitted to adduce other evidence under cover of Section 71 of the 1872 Act. Such a sanction would not only be incompatible with the scheme of Section 63 of the Act read with Section 68 of the 1872 Act but also would be extinctive of the paramountcy and sacrosanctity thereof, a consequence, not legislatively intended. If the evidence of the witnesses produced by the propounder is inherently worthless and lacking in credibility, Section 71 of Act 1872 cannot be invoked to bail him (propounder) out of the situation to facilitate a roving pursuit. In absence of any touch of truthfulness and genuineness in the overall approach, this provision, which is not a substitute of Section 63 (c ) of the Act and Section 68 of the 1872 Act, cannot be invoked to supplement such failed speculative endeavour.

Section 71 of the 1872 Act, even if assumed to be akin to a proviso to the mandate contained in Section 63 of the Act and Section 68 of the 1872 Act, it has to be assuredly construed harmoniously therewith and not divorced therefrom with a mutilative bearing. This underlying principle is inter alia embedded in the decision of this Court in the Commission of Income Tax, ***Madras v. Ajax Products Limited, AIR 1965 SC 1358***.

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**337. TRANSFER OF PROPERTY ACT, 1882 – Sections 5, 105 and 107**

**Lease, renewal of – Renewal clause in lease deed, prospective nature and effect of – The renewal of lease is a fresh grant where the principal lease executed between the parties contains a clause that the lease shall have to be renewed by giving a fresh grant in accordance with the said clause – Where original lease is granted by lessor (State) contains renewal clause entitling it to include additional terms and conditions as may be considered necessary, the additional conditions imposed while renewing lease would be binding prospectively on the lessee.**

संपत्ति अंतरण अधिनियम, 1882 – धाराएं 5, 105 और 107

पट्टे का नवीनीकरण – पट्टा विलेख में नवीनीकरण के अनुच्छेद की प्रकृति और उसका प्रभाव भविष्यलक्षी होना – पट्टे का नवीनीकरण एक नया अनुदान है जहाँ पक्षकरों के मध्य निष्पादित मूल पट्टे में एक अनुच्छेद था जिसके अनुसार पट्टे का नवीनीकरण एक नये अनुदान देते हुए किया जा सकेगा – जहाँ मूल पट्टा जो पट्टेदार (राज्य) द्वारा दिया गया उसमें नवीनीकरण का अनुच्छेद था जिसके अनुसार आवश्यक होने पर अतिरिक्त शर्तें व दशाएं शामिल किये जाने का उल्लेख है यदि ऐसी अतिरिक्त शर्तें पट्टे के नवीनीकरण के समय लगाई जाती है, वे भविष्यलक्षी रूप से पट्टागृहिता पर बंधनकारी होंगी।

**State of West Bengal and others v. Calcutta Mineral Supply Company Private Limited and another**

**Judgment dated 06.05.2015 by the Supreme Court in Civil Appeal No. 2548 of 2006, reported in (2015) 8 SCC 655**

**Extracts from the Judgment:**

Indisputably, the renewal of lease is a fresh grant where the principal lease executed between the parties containing a clause that the lease shall have to be renewed by giving a fresh grant in accordance with the said clause. In the instant case, as per clause 16(a) of the earlier lease deed, the lease is to be renewed for a further period of 30 years but subject to the rules and the terms and conditions of the lease and also such other terms and conditions as the State Government may from time to time consider it necessary to impose and include in such renewed lease. Clause 16(a) further provides that additional terms and conditions that may be considered necessary by the State Government

be included but the same shall not be inconsistent with the law renewing such lease and shall not have retrospective effect.

Admittedly, before the expiry of the lease in question in 1998, the respondent/transferee stepped into the shoes of the original lessee in the year 1990. In 1994, by notification dated 1.6.1994, an amendment was brought in Schedule F of the Rules, as discussed hereinabove, in terms of clause I-B. Therefore, the respondent shall not be liable to pay salami during the unexpired period of lease up to 1998. The State Government has rightly not made any claim for salami for the unexpired period of lease, but for the fresh renewal of lease after 1998 which is a fresh grant. The demand of salami by State Government for according sanction for renewal of lease cannot and shall not by any stretch of imagination be held to be retrospective.

In ***State of U.P. v. Lalji Tandon, (2004) 1 SCC 1,*** this Court while considering the renewal clause in the lease deed observed:-

> "In India, a lease may be in perpetuity. Neither the Transfer of Property Act nor the general law abhors a lease in perpetuity. (Mulla on the Transfer of Property Act, 9th Edn., 1999, p. 1011.) Where a covenant for renewal exists, its exercise is, of course, a unilateral act of the lessee, and the consent of the lessor is unnecessary. [***Baker v. Merckel, (1960) 1 All ER 668 (CA) also Mulla, ibid., p.1204.***] Where the principal lease executed between the parties containing a covenant for renewal, is renewed in accordance with the said covenant, whether the renewed lease shall also contain similar clause for renewal depends on the facts and circumstances of each case, regard being had to the intention of the parties as displayed in the original covenant for renewal and the surrounding circumstances. There is a difference between an extension of lease in accordance with the covenant in that regard contained in the principal lease and renewal of lease, again in accordance with the covenant for renewal contained in the original lease. In the case of extension it is not necessary to have a fresh deed of lease executed, as the extension of lease for the term agreed upon shall be a necessary consequence of the clause for extension. However, option for renewal consistently with the covenant for renewal has to be exercised consistently with the terms thereof and, if exercised, a fresh deed of lease shall have to be executed between the parties. Failing the execution of a fresh deed of lease, another lease for a fixed term shall not come into existence though the principal lease in spite of the expiry [pic]of the term thereof may continue by holding over for year by year or month by month, as the case may be."

In ***Gajraj Singh v. STAT, (1997) 1 SCC 650,*** this Court while considering the term renewal of lease or licence contained in document, observed that :

> "....grant of renewal is a fresh grant though it breathes life into the operation of the previous lease or licence granted as per existing appropriate provisions of the Act, rules or orders or acts intra vires or as per the law in operation as on the date of renewal".

In ***M.C. Mehta v. Union of India, (2004) 12 SCC 118,*** a Division Bench of this Court was considering the question as to the effect of notification in such case where the lessee claims renewal of mining lease. Some of the leases were granted for extraction of minerals. In the mean time, the notification dated 27.1.1994 was issued by Ministry of Environment and Forest, Government of India in exercise of power conferred by Environment (Protection) Act, 1986 putting a restriction to the grant of mining lease without the clearance of the State Government in accordance with the procedure specified in the notification. Rejecting the contention made by the lessee this Court observed:

> "We are unable to accept the contention that the notification dated 27.01.1994 would not apply to leases which come up for consideration for renewal after issue of the notification. The notification mandates that the mining operation shall not be undertaken in any part of India unless environmental clearance by the Central Government has been accorded. The clearance under the notification is valid for a period of five years. In none of the leases the requirements of the notification were complied with either at the stage of initial grant of the mining lease or at the stage of renewal. Some of the leases were fresh leases granted after issue of the notification. Some were cases of renewal. No mining operation can commence without obtaining environmental impact assessment in terms of the notification."

Considering the entire facts of the case and the law discussed hereinabove, we are of the definite opinion that the respondent Darjeeling Dooars Plantations (Tea) Ltd. is liable to pay salami which is one of the conditions of the Rules for the purpose of renewal of lease. The demand made by the Collector is fully justified. The impugned order passed by the High Court, therefore, cannot be sustained in law.

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**338. TRANSFER OF PROPERTY ACT, 1882 – Section 43**

**Doctrine of feeding grant by estoppel, applicability of – Section 43 TPA is based on the principle of estoppel – According to which where a granter has purported to grant an interest in the land which he did not at that time possess, but subsequently acquires, the benefit of his subsequent acquisition goes automatically to the**

**earlier grantee i.e. where a vendor sells without title in the property, but subsequently acquires title, then a right accrues to the purchaser to claim interest in the said property and it automatically goes in favour of the transferee – However, transferee would be entitled under section 43 of the Act to claim interest in such property ordinarily only when transferor subsequently acquires title over the same during his lifetime – If he does not acquire such interest during his lifetime but after his death, his heirs acquire interest therein from original owner – Section 43 of the Act would not operate against such heirs – However, had it been a case where the transferor during his lifetime acquires an interest in the property but died subsequently, then to some extent it could have been said that the heirs of the transferor who inherited the property on the death of the transferor would be bound by the principle of estoppel.**

संपत्ति अंतरण अधिनियम, 1882 – धारा 43

फिडिंग ग्रांट बाय स्टोपल के सिद्धांत का लागू होना – धारा 43 विबंध के सिद्धांत पर आधारित है जिस संबंध में विधि समझाई गई।

## Agricultural Produce Marketing Committee v. Bannamma (dead) by Legal Representatives

**Judgment dated 25.07.2014 by the Supreme Court in Civil Appeal No. 3198 of 2007, reported in (2015) 5 SCC 691**

**Extracts from the Judgment:**

The doctrine of feeding the grant by estoppel as contemplated under Section 43 of the Transfer of Property Act reads as under:-

> "43. Transfer by unauthorised person who subsequently acquires interest in property transferred.- Where a person fraudulently or erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.
>
> Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option."

The doctrine is based on the principle of law of estoppel. It simply provides that when a person by fraudulent or erroneous representation transfers certain immovable property, claiming himself to be the owner of such property, then such transfer will subsequently operate on any interest which the transferor may acquire in such property during which the contract of transfer subsists. This doctrine known in English law has form part of Roman Dutch law, according

to which where a granter has purported to grant an interest in the land which he did not at the time possess, but subsequently acquires, the benefit of his subsequent acquisition goes automatically to the earlier grantee. In other words, where a vendor sells without title in the property, but subsequently acquires title then a right accrues to the purchaser to claim interest in the said property and it automatically goes in favour of the transferor (*sic* transferee)

In the peculiar facts of the instant case, in our considered opinion, the appellant would not be entitled to take the benefit of the doctrine of feeding the estoppel. The finding of facts recorded by the two courts based on the records that the original plaintiff was the owner and title holder of the said property but by making false and fraudulent representation by her son that the property belonged to him, transferred the same in favour of the appellant. During the pendency of the first appeal before the district court, the vendor (son of the original plaintiff) died. Although on the death, his children did not inherit or succeeded any interest in the property, through their deceased father, but they were impleaded as legal representatives in the appeal. However, during the pendency of this appeal, the original plaintiff, namely, Bannamma died. After her death, the respondents being the grand children inherited and acquired interest in the suit property. Admittedly, the deceased son of the original plaintiff, namely Nagi Reddy never acquired any interest in the suit property owned by his mother during his life time. In the aforesaid premises, the doctrine of feeding the estoppel would not come into operation as against the grand children of the original plaintiff. Section 43 in our considered opinion applies when the transferor having no interest in the property transfers the same but subsequently acquires interest in the said property, the purchaser may claim the benefit of such subsequent acquisition of the property by the transferor. Had it been a case where the son Nagi Reddy during his life time succeeded or inherited the property but- died subsequently, then to some extent it could have been argued that the heirs of Nagi Reddy who inherited the property on the death of their father would be bound by the principle of estoppel. We have, therefore, no doubt in our mind that in a case where a transferor never acquired by succession, inheritance or otherwise any interest in the property during his life time then the provision of Section 43 will not come into operation as against the heirs who succeeded the stridhan property of their grandmother.

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**339. TRANSFER OF PROPERTY ACT, 1882 – Section 52**

**Doctrine of *lis pendens*, applicability of – Alienation or creation of third party rights in the suit property is not only against the principles underlying in section 52 of the Transfer of Property Act, 1882 but also an attempt to seek legal recognition of transfer of title by suppression and misrepresentation of facts.**

संपत्ति अंतरण अधिनियम, 1989 – धारा 52

वाद लंबन के सिद्धांत का लागू होना – वाद संपत्ति का अंतरण या उसमें तृतीय पक्ष के अधिकारों का सृजन न केवल धारा 52 संपत्ति अंतरण अधिनियम, 1882 में बतलाये सिद्धांत के विरूद्ध है बल्कि तथ्यों को छिपाने और दुर्व्यपदेशन द्वारा स्वत्व के अंतरण को, विधिक मान्यता देने का प्रयास भी है।

**Kulwant Singh v. State of M.P. & ors.**

**Order dated 10.12.2014 by the High Court of M.P. in W.P. No. 1388 of 2012, reported in ILR (2014) MP 3153**

**Extracts from the Order:**

In the case of ***Amit Kumar Shaw and another v. Farida Khatoon and another, (2005) 11 SCC 403,*** the Hon'ble Supreme Court has dealt with the scope and object of section 52 of the Transfer of Property Act and held as under:

> "Section 52 of the Transfer of Property Act is an expression of the principle "pending a litigation nothing new should be introduced". It provides that pendente lite, neither party to the litigation, in which any right to immovable property is in question, can alienate or otherwise deal with such property so as to affect his appointment. This section is based on equity and good conscience and is intended to protect the parties to litigation against alienations by their opponent during the pendency of the suit. In order to constitute a lis pendens, the following elements must be present:
>
> 1. There must be a suit or proceeding pending in a court of competent jurisdiction.
> 2. The suit or proceeding must not be collusive.
> 3. The litigation must be one in which right to immovable property is directly and specifically in question.
> 4 There must be a transfer of or otherwise dealing with the property in dispute by any party to the litigation.
> 5. Such transfer must affect the rights of the other party that may ultimately accrue under the terms of the decree or order."

Undisputedly, title dispute between the appellants and the respondents in ***S.A.No.609/2008*** is pending for consideration in this Court. The aforesaid second appeal was admitted on five substantial questions of law; the first two relates to the title asserted by either of the parties based on claim of share in partition and existence of 'will'. The trial Court has found possession of the suit property with the appellants in ***S.A.No.609/2008*** (supra). This Court while admitting the appeal has directed maintenance of status quo by the parties as regards possession. Under such circumstances, as a matter of fact, in all fairness, no

third party rights should be allowed to be created which shall lead to multiplicity of the litigation against the judicial discipline and shall certainly have substantial bearing of inter se rights of the parties with prejudicial consequences. Further, the stipulation in the draft sale deed is to the effect that the vendors have exclusive rights and they are in possession and they have handed over the possession to the purchaser (petitioner in the present writ petition) appear to be de hors reasoning as there is no mention of the following therein:

(i) as regards title dispute, pendency of ***S.A.No.609/2008*** (supra);

(ii) seeking relief of writ of Mandamus in the instant writ petition; the direction to the Sub Registrar (respondent No.3) to register the sale deed dated 20/04/2011 without making either appellants or respondents in ***S.A.No.609/2008*** (supra) as parties;

(iii) pendency of Contempt Case No.134/2013 with effect from 11/02/2013; and

(iv) interim order dated 17/02/2010 passed for maintaining status quo as regards possession of the suit property and the said order made absolute vide order dated 20/03/2010; are the circumstances which reflect on the conduct of the petitioner in collusion with the respondents' in ***S.A.No.609/2008*** (supra).

Therefore, the counsel for the intervenor/applicants is right when he contends that the aforesaid sale deed dated 20/04/2011 is in fact an evil design to deceive the appellants and their valuable right to the suit property and to render ***S.A.No.609/2008*** (supra) of no consequence. Besides, the same is the outcome of the collusion between the petitioner and the respondents in ***S.A.No.609/2008*** (supra) with ulterior motive.

The submission of counsel for the petitioner that there is no stay against alienation or creation of third party rights in the suit property, therefore, there is no prohibition in execution of the sale deed in issue cannot be countenanced and in fact, the same is found to be not only against the principles underlying section 52 of the Transfer of Property Act but also an attempt to seek legal recognition of transfer of title by suppression and misrepresentation of facts. This cannot be permitted as our legal system does not approve of the same founded on principles of rule of law, justice, equity and good conscience.

In view of the aforesaid, in the opinion of this Court, no equitable discretionary relief can be granted to the petitioner in exercise of the extraordinary Constitutional jurisdiction under Article 226 of the Constitution of India. The petition is devoid of merit is hereby dismissed. No order as to costs.

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# PART - III
## CIRCULARS/NOTIFICATIONS

### REGARDING REFERRAL OF CRIMINAL CASES IN MEDIATION PROCESS IN THE LIGHT OF THE RESOLUTION OF MAIN MEDIATION MONITORING COMMITTEE, STATE OF MADHYA PRADESH (MMMC) DATED 25.07.2015

On the aforementioned subject the meeting of Main Mediation Monitoring Committee, State of Madhya Pradesh (Main Mediation Centre) was held on 25/07/2015 at Gwalior. The Chairman of the Committee Hon'ble Shri Justice Sanjay Yadav, and the Members Hon'ble Shri Justice S. C. Sharma, Hon'ble Shri Justice Sheel Nagu have considered the issue and doubt raised by some Judges of various districts in the State of Madhya Pradesh that Whether in criminal cases mediation process can be adopted for resolving the dispute between parties?

The Hon'ble Members of the Committee have been kind enough to unanimously resolve that ***"Afcon's case (2010) 8 SCC 25 does not bar the consideration of such criminal matters which are compoundable under Section 320 of Cr.P.c. Further, it was also discussed that there is no bar in any statute regarding conciliation and mediation in compoundable offences. The Hon'ble Supreme Court in a pending matter of Relnhuman Conditions in Prisons WP. (Civil) No. 406/2013 has held that various agencies of Government and all the State Legal Services Authorities functioning in the country shall take initiative for compounding the offences in which the accused are in jail. Apart from this/as in Lok Adstst; cases of compoundable nature are considered and decided. in the same manner, the methodology of mediation can also be adopted in criminal cases of compoundable nature under Section 320 of Cr.P.C.".***

The above resolution passed by the MMMC has made it crystal clear that in criminal cases methodology of mediation process can be adopted in offences which are compoundable under Section 320 of Cr.P.C.

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When you focus on the goodness in your life, you create more of it.

**– Oprah Winfrey**
**TV personality**

If you don't have integrity, you have nothing. You can't buy it. You can have all the money in the world, but if you are not a moral and ethical person, you really have nothing.

**–Henry Kravis**

The moral values, ethical codes and laws that guide our choices in normal times are, if anything, even more important to help us navigate the confusing and disorienting time of a disaster.

**–Sheri Fink**

Ethics is knowing the difference between what you have a right to do and what is right to do.

**–Potter Stewart**

Obedience to lawful authority is the foundation of manly character.

**–Robert E. Lee**

# PART - IV
## IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

## THE REGISTRATION (MADHYA PRADESH AMENDMENT) ACT, 2014

**No. 12 of 2015***

***[Received the assent of the President on the 27th June 2015; assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)", dated the 7th July, 2015]***

**A Bill further to amend the Registration Act, 1908 in its application to the State of Madhya Pradesh. –** Be it enacted by the Madhya Pradesh Legislature in the sixty-fifth year of the Republic of India as follows: –

**1. Short title and commencement. –** (1) This Act may be called the Registration (Madhya Pradesh Amendment) Act, 2014.

(2) It shall come into force from the date of its publication in the Madhya Pradesh Gazette.

**2. Amendment of Central Act No. 16 of 1908 in its application to the State of Madhya Pradesh. –** The Registration Act, 1908 (No. 16 of 1908) (hereinafter referred to as the principal Act) shall in its application to the State of Madhya Pradesh be amended in the manner hereinafter provided.

**3. Amendment of Section 2. –** In Section 2 of the principal Act, after clause (4-A), the following clause shall be inserted, namely : –

"(4-B) electronic signature shall have the same meaning as assigned to it in clause (ta) of sub-section (1) of Section 2 of the Information Technology Act, 2000 (No. 21 of 2000);"

**4. Amendment of Section 17. –** In Section 17 of the principal Act, –

(i) in sub-section (1), in clause (g), for full stop, the semi colon shall be substituted and thereafter the following clause shall be inserted, namely : –

"(h) any other instrument required by any law for the time being in force, to be registered";

(ii) in sub-section (3), for the word "son", the word "child" shall be substituted.

**5. Amendment of Section 20. –** In Section 20 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely: –

"(1 The registering officer may in his discretion refuse to accept for registration any document in which any interlineations, blanks, erasures or alterations appear, unless the persons executing and claiming under the document attest with their signatures or initials such interlineations, blanks, erasures or alterations.".

**6. Amendment of Section 21. –** In Section 21 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely : –

"(1) No non-testamentary document relating to immovable property shall be accepted for registration, unless it contains a description of such property along with a map and photographs showing its location and nature, sufficient to indentify the same.".

**7. Amendment of Section 22. –** In Section 22 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely: –

"(1) Where it is, in the opinion of the State Government, practicable to describe houses and lands by reference to a Government map or survey, the State Government, may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of Section 21, be so described.".

**8. Substitution of Section 24. –** For Section 24 of the principal Act, the following section shall be substituted, namely :-

"24. Documents executed by several persons at different times. – Where there are several persons executing a document at different times, such documents may be presented for registration and re-registration within four months from the date of last execution.".

**9. Substitution of Section 25. –** For Section 25 of the principal Act, the following section shall be substituted, namely ;-

"25. Provision where delay in presentation is unavoidable. – If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registering Officer, in cases where the delay in presentation does not exceed four months, may register the document, on payment of a fine not exceeding ten times the amount of the proper registration fee on such document.",

**10. Substitution of Section 32-A. –** For Section 32-A of the principal Act, the following section shall be substituted, namely :-

**"32-A.Compulsory affixing of photograph, etc. –** Every person presenting any document at the proper registration office under section 32 shall affix his passport size photograph, thumb impression and signature to the document

Provided that where such document relates to the transfer of ownership of immovable property, the passport size photograph, thumb impression and signature of each executant and claimant of such property mentioned in the document shall also be 'affixed to the document."

**11. Amendment of Section 34. –** In Section 34 of the principal Act, –

(i) in sub-section (1), for the existing provisos, the following proviso shall be substituted, namely :–

"Provided that when any document as notified by the State Government is presented in electronic form, personal appearance shall not be required.";

(ii) for sub-section (2), the following sub-section shall be substituted, namely:–

"(2) Appearances under sub-section (1) shall be simultaneous.";

(iii) in sub-section (3), after clause (a), the following clause shall be inserted, namely:–

"(ab) enquire whether or not the document is duly stamped as per provisions of the Indian Stamp Act, 1899;";

(iv) sub-section (4) shall be deleted.

**12. Amendment of Section 49. –** In Section 49 of the principal Act, after the words, figures and bracket "Transfer of Property Act, 1882 (4 of 1882)" occurring twice, the words "or any other law for the time being in force" shall be inserted.

**13. Amendment of Section 57. –** In Section 57 of the principal Act, in sub-section (5), for full stop, the colon shall be substituted and thereafter the following proviso shall be added, namely :–

"Provided that when a registered document is electronically signed and stored in a database authorized by the Government under the concerning rules, then subject to the provision of section 67-A of the Indian Evidence Act, 1872 (No. 1 of 1872), copies thereof may be downloaded/issued from the said authorized database and the same shall also be admissible for the purpose of proving the contents of the original ducument."

**14. Insertion of Section 63-A. –** After Section 63 of the principal Act, the following section shall be inserted in Part XI (B), namely :–

**"63-A. Presentation etc. may be done in electronic form. –** (1) All presentations, endorsements, filing, certifications, signatures and maintenance of books and indexes required

under the Act, may be done in electronic form, as per procedure, if any, laid down under the rules.

(2) All books and indexes that are open to public inspection, may be made available for inspection through a Government website or the Electronic Registration System as notified by the Government for the purpose."

**15. Substitution of Section 82. –** For Section 82 of the principal Act, the following section shall be substituted, namely :–

**"82. Penalty for making false statements, false recitals, delivering false documents, or copies or translations, false personation, and abatement. –** Whoever –

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act; or

(b) intentionally makes any false recital in a document presented for registration; or

(c) intentionally delivers to a registering officer, in any proceeding, a false document, or copy or translation of a document, or a false copy of a map or plan; or

(d) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summon or commission to be issued, or does any other act in any proceeding or enquiry under this Act; or

(e) abets anything made punishable by this Act, shall be punishable with imprisonment for a term which may extend to seven years or with fine, or with both."

**16. Amendment of Section 82-A. –** In Section 82-A of the principal Act, in sub-section (2) for the words "two hundred rupees", the words "ten thousand rupees" shall be substituted.

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# THE MADHYA PRADESH LAND REVENUE CODE (SECOND AMENDMENT) ORDINANCE, 2015

**No. 5 of 2015***

***[First published in the "Madhya Pradesh Gazette (Extra-ordinary)", dated the 21st August, 2015.]***

Promulgated by the Governor in the sixty-sixth year of the Republic of India.

**An Ordinance further to amend the Madhya Pradesh Land Revenue Code, 1959.**

Whereas, the State Legislature is not in session and the Governor of Madhya Pradesh is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (l) of Article 213 of the Constitution of India, the Governor of Madhya Pradesh is pleased to promulgate the following Ordinance :–

**1. Short title. –** This Ordinance may be called the Madhya Pradesh Land Revenue Code (Second Amendment) Ordinance, 2015.

**2. Madhya Pradesh Act No. 20 of 1959 to be temporarily amended. –**During the period of operation of this Ordinance, the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) (hereinafter referred to as the principal Act) shall have effect subject to the amendment specified in Sections 3 to 9.

**3. Amendment of Section 50. –** In section 50 of the principal Act,–

(i) for sub-section (1), the following sub-section shall be substituted, namely :–

''(1) The Board may, at any time on its motion or on an application made by any party or the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer may, at any time on his own motion, call for the record of any case which has been decided or proceedings in which an order has been passed by any Revenue Officer subordinate to it or him and in which no appeal lies thereto, and if it appears that such subordinate Revenue Officer,-

(a) has exercised a jurisdiction not vested in him by this code, or

(b) has failed to exercise a jurisdiction not so vested, or

(c) has acted in the exercise of his jurisdiction illegally or with material irregularity,

the Board or the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer, as the case may be, make such order in the case as it or he thinks fit :

Provided that the Board or the Commissioner or the SettlementCommissioner or the Collector or the Settlement Officers shall not, under this section, vary or reverse any order made, or any order deciding a issue, it the course of the proceeding, except where –

(a) the order, if it had been made.in favour of the party applying for revision to the Board, would have finally disposed of the proceedings, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.";

(ii) in sub-sections (2) and (3), for the words "or the Collector or the Settlement Officer" wherever they occur, the words "or the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer" shall be substituted; and

(iii) for sub-section (6), the following sub-section shall be substituted, namely :–

"(6) Notwithstanding anything contained in sub-section (1), –

(i) where proceedings in respect of any case have been commenced by the Board under sub-section (1), no action shall be taken by the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer in respect thereof;

(ii) where proceedings in respect of any such case have been commenced by the Commissioner or the Settlement Commissioner under sub-section (1), no action shall be taken by the Collector or the Settlement Officer in respect thereof;

(iii) where proceedings in respect of any such case have been commenced by the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer under sub-section (1), the Board may either refrain from taking any action under this section in respect of such case until the final disposal of such proceedings by the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer, as the case may be, or may withdraw such proceedings and pass such order as it may deem fit;

(iv) where proceedings in respect of any such case have been commenced by the Collector or the Settlement Officer under sub-section (1), the Board or the Commissioner or the Settlement Commissioner may either refrain from taking any action under this section in respect of such case until the

final disposal of such proceedings by the Collector or the Settlement Officer, as the case may be or may withdraw such proceedings and pass such order as it may deem fit.".

**4. Amendment of Section 158. –** In Section 158 of the principal Act, in sub-section (3), –

(i) for existing proviso, the following proviso shall be substituted namely ;-

"Provided that no such person shall transfer such land within a period of ten years from the date of lease or allotment, and entry to this effect as 'non-transferable land' shall be made in the record of rights and Bhoo Adhikar Avam Rin Pustika.";

(ii) after the proviso as to substituted, the following explanation shall be added, namely :-

"Explanation. – For the purpose of this section, 'non-transferable land means the land held in bhumiswami rights under sub-section (3) of Section 158."

**5. Amendment of Section 162. –** In Section 162 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely :–

"(1) Notwithstanding anything contained in Section 248 and subject to rules made in this behalf, any land belonging to the State Government in such areas as notified in the official Gazette by the State Government, which is in unauthorized possession, maybe disposed of for agricultural purposes in Bhumiswami rights and non-agricultural purposes, in Government lessee fights by the Collector to such extent and on payment of such amount as may be prescribed."

**6. Amendment of Section 165. –** In Section 165 of the principal Act, for sub-section (7-b), the following sub-section shall be substituted namely :–

"(7-b) Subject to the other provisions of this section, if a person who holds land in Bhumiswami rights under sub-section (3) of Section 158, desires to transfer such land, after ten years from the date of allotment, may apply for removing the entry recorded as 'non-transferable' in record of rights and bhoo Adhikar Avam Rin Pustika, to the Sub-Divisional Officer and the Sub-Divisional Officer shall direct to the applicant for payment of amount equivalent to ten percent of current market value of such land to the Government treasury and after making of such payment, the Sub-Divisional Officer shall pass an order for removing such entry.

(7-c) Subject to the other provisions of this section, if a person who held land in Bhumiswami rights under sub-section (3) of Section 158, and transferred such land after ten years from the date of allotment without prior permission of the Collector and such land is not forfeited or forfeited but not used or allotted to anyone, till the date of the commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2015, it shall be liable to the payment of –

(a) amount equivalent to ten petcent of market value of financial year 2000-2001 and nine percent simple interest on such amount from lst April, 2000, if such transfer of land is of the year of 2000-2001 or prior to that; or

(b) amount equivalent to ten percent of market value of such land on the date of transfer and nine percent simple interest on such amount from the date of such transfer, if such transfer of land is made after the financial year 2000-2001, till the date of payment; to the government treasury.

Explanation. – Any land of a Bhumiswami under sub-section (3) of Section 158 is transferred and payment required under sub-section (7-b) or sub-section (7-c) has been paid, such land shall not be liable for such payment again for any subsequent transfer."

**7. Amendment of Section 166. –** In Section 166 of the principal Act, in sub-section (3), the words, bracket and figure "and (2)" shall be omitted.

**8. Amendment of Section 172. –** In section 172 of the principal Act,-

(i) in sub-section (4), for the words "not exceeding , twenty per centum of the market value of such diverted land", the words "amounting to two per centum of the current market value of such diverted land" shall be substituted;

(ii) in sub-section (5), for the words "not exceeding twenty per centum of the market value of such diverted land", the words "not exceeding one per centum of the current market value of such un-diverted land" shall be substituted.

**9. Amendment of Section 247. –** In section 247 of the principal Act, in sub-section (4), for the words, figures and bracket "the Land Acquisition Act, 1894 (1 of 1894)", the words, figures and bracket "the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (No. 30 of 20 13)" shall be substituted.

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